

**In the Environment Court of New Zealand
Auckland Registry**

**I Te Koti Taiao O Aotearoa
Ki Tamaki Makaurau**

ENV-2021-AKL-

Under the Resource Management Act 1991 (the Act)

In the matter of an appeal under Clause 14(1) of the First Schedule of the Act

and in the matter of a decision by Waikato District Council in respect of the proposed Waikato District Plan to rezone land at Ohinewai

Between **Waka Kotahi New Zealand Transport Agency**
Appellant

And **Waikato District Council**
Respondent

Notice of appeal by Waka Kotahi New Zealand Transport Agency

Dated 6 July 2021

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Notice of appeal to Environment Court against decision on proposed plan

To: The Registrar
Environment Court
Auckland

- 1 Waka Kotahi NZ Transport Agency ('**Waka Kotahi**') appeals against the decisions of the Waikato District Council (the '**Respondent**') to rezone land at Ohinewai under the Proposed Waikato District Plan ('**Proposed Plan**').
- 2 Waka Kotahi made a further submission¹ on the Proposed Plan in relation to the Respondent's decision to rezone land at Ohinewai.
- 3 Waka Kotahi is not a trade competitor for the purposes of section 308D of the Act.
- 4 Waka Kotahi received notice of the decision on 24 May 2021.
- 5 The decision was made by the Respondent.

Provisions being appealed

- 6 The decisions that Waka Kotahi is appealing are the Respondent's decisions on the Proposed Plan to allow the submissions of Ambury Properties Limited ('**Ambury**') to rezone 52 ha of residential land ('**Residential Rezoning**') and 68 ha of industrial land ('**Industrial Rezoning**') at Ohinewai.

General reasons for the appeal

- 7 The general reasons for this appeal are that, in the absence of the relief sought, the Respondent's decisions:
 - a Will not promote the sustainable management of resources, and will therefore not achieve the purpose of the RMA, including by not meeting the reasonably foreseeable needs of future generations;
 - b Will not promote the efficient use and development of natural and physical resources;
 - c Will not achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources;
 - d Do not represent the most appropriate way of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore not appropriate in terms of section 32 and other provisions of the RMA;

¹ Dated 15 July 2019.
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- e Do not give effect to, and are not consistent with, the objectives and policies of the Waikato Regional Policy Statement (**'WRPS'**); and
- f Do not adequately provide for the efficient function of the state highway network as a significant physical resource, and therefore a matter of national importance under Part 2 of the RMA.

Reasons for appeal of particular provisions

- 8 Without limiting the generality of paragraph 7, Waka Kotahi's reasons for appealing the Residential Rezoning are:
- a Waka Kotahi, Waikato Regional Council, the district councils, iwi within the Waikato region, central government agencies and infrastructure providers have all invested significant time and effort into spatial planning exercises in the Waikato region to ensure that land use and transport planning are integrated. This process has occurred through projects such as Future Proof, and the Auckland to Hamilton Corridor.
 - b The Residential Rezoning will result in a car-oriented development that uses the Waikato Expressway for local trips, and will not result in a well-functioning urban environment. The proposed provisions are not sufficient to ensure that affordable housing is developed for employees of the Sleepyhead factory. There is no requirement for basic services such as retail, healthcare, high schools and tertiary education to be provided as part of the development. Therefore, residents will need to travel to Huntly to access key services. Residents will have easy access to the Waikato Expressway which will result in a high use for short trips in private vehicles on the Expressway to Huntly. The reliance on the Expressway for short trips is inconsistent with the strategic function of the Waikato Expressway, does not align with priorities in the Government Policy Statement on Land Transport (**'GPS'**) and is inconsistent with the Government's expectations outlined within the GPS relating to accelerating mode shift.
 - c Reliance on private vehicles will also increase greenhouse gas emissions which is inconsistent with the GPS, the National Policy Statement on Urban Development (**'NPS-UD'**), and the WRPS including but not limited to the following:
 - i The GPS contains four strategic priorities to guide land transport investments including the reduction of greenhouse gasses emitted by transport;
 - ii Objective 8 and policy 1 of the NPS-UD require that urban environments support a reduction of greenhouse gas emissions; and
 - iii The WRPS development principles promote the minimisation of carbon emissions and of private motor vehicle use.

- d There is insufficient analysis of alternative locations for the Residential Rezoning as required by Section 32AA of the Act. A thorough assessment of alternative sites should have been undertaken given the Residential Rezoning is not anticipated in the relevant planning documents, will result in a car-oriented development without essential services, may not be affordable housing or be occupied by factory workers, and is being advanced in preference to other alternatives for residential growth that have previously been assessed and included in Future Proof and embedded in the RPS.
 - e Ohinewai and Huntly are not part of the same “urban environment” under the NPS-UD. Ohinewai and Huntly cannot together be seen as being, or intended to be “predominantly urban in character” given the separation of 2.3km of non-urban land between them. Ohinewai does not meet the threshold of a housing or labour market of a least 10,000 people.
 - f Notwithstanding paragraph (e) above, the Residential Rezoning is inconsistent with the NPS-UD because it is out of sequence development that will not contribute to the minimum requirements for a well-functioning environment in Policy 1, including in particular that it does not include good accessibility to services, and does not support a reduction in greenhouse gas emissions.
- 9 Without limiting the generality of paragraph 7, Waka Kotahi does not oppose the Industrial Rezoning provided new standards are included to ensure that the potential environmental effects of travel to and from the site are minimised through a Travel Management Plan that contains methods to achieve mode shift outcomes to alternative, non-motorised and public transport utilisation.

Relief sought

- 10 Waka Kotahi seeks the following relief:
- a That the Residential Rezoning is declined; or in the alternative
 - b That the Residential Rezoning provisions are amended, and/or the extent of the Residential zone is reduced, to address the issues in paragraph 8 above including, but not limited to, ensuring:
 - i The effective provision of affordable worker housing at appropriate densities;
 - ii The creation of a well-functioning urban environment that achieves a range of transport modes including public transport, walking and cycling; and
 - iii Amendments to the staging provisions in Table OHI-I so that all community infrastructure, including the neighbourhood centre is provided prior to and/or at an earlier stage of the residential development;

- c That the Industrial Rezoning be allowed, provided the development standards for the Industrial zone applying to Ohinewai are amended as per paragraph 9 above;
- d Such further or alternative relief, or ancillary changes, that resolve the concerns set out in this notice of appeal; and
- e Costs.

11 The following documents are attached to this notice of appeal:

- a A copy of Waka Kotahi's further submission on the Proposed Plan;
- b A copy of the decision; and
- c A list of names and addresses of persons to be served with this notice of appeal.

12 Waka Kotahi agrees to participate in mediation or other alternative dispute resolution mechanism.

Dated 6 July 2021



Christina Sheard
Counsel for Waka Kotahi New Zealand Transport Agency

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Advice to recipients of copy of notice of appeal

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 Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 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 attach a copy of the 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, Wellington, or Christchurch.

Appendix 1: Waka Kotahi's further submission

Appendix 2: Decision

Appendix 3: list of names of persons to be served

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Daniel and Rebekah Holmes
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David and Tiffany Whyte
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Douglas Dobbs
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Future Proof Implementation Committee
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McGredy Winder & Co
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Mercury NZ Limited
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Michael James and Susan Margaret Keleher
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Ohinewai Area Committee
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Ohinewai Land Limited
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Ribbonwood Family Trust
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The Ralph Estates
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