

**IN THE MATTER** of the Resource Management Act 1991 ("RMA" or "the Act")

**AND**

**IN THE MATTER** of a submission in respect of the **PROPOSED WAIKATO DISTRICT PLAN** by **AMBURY PROPERTIES LIMITED** pursuant to Clause 6 of Schedule 1 of the Act

**SUBMISSIONS OF COUNSEL FOR AMBURY PROPERTIES LIMITED  
IN SUPPORT OF REQUEST FOR AN EARLY HEARING AND DECISION**

**1. INTRODUCTION**

- 1.1 Ambury Properties Limited ("APL") is the property arm and wholly owned subsidiary of The Comfort Group ("TCG"). TCG is Australasia's largest manufacturer of foam and mattresses which are sold under Sleepmaker, Sleepyhead, Simmons, Dunlopillo, Design Mobel and Serta bedding brands, and flexible foam manufacturer under Dunlop Foams. TCG is a New Zealand owned and operated family company that is committed to making, not merely assembling, the components for its mattresses as part of its New Zealand operations. TCG is a substantial employer, produces significant output in dollar terms and sells into domestic markets throughout New Zealand as well as exporting to a Pacific and Asian markets.
- 1.2 Per the affidavit of TCG's Chief Operating Officer, Stefan Geerstema<sup>1</sup>, TCG currently operates manufacturing facilities at Otahuhu and Avondale, Auckland. These factories have passed their "use by" date and are operating well beyond their design capacity. This has resulted in inefficiencies that are impacting on TCG's ability to maintain its competitiveness as a result of which the company some time ago decided to rectify the situation by consolidating all of its operations at one location.<sup>2</sup>
- 1.3 TCG needs a large site that meets a range of criteria to accommodate this consolidated operation. One key factor in that regard is ability to have direct access to rail. After an extensive process of site selection, in August 2018 TCG identified the site at Ohinewai as an ideal location for its purposes as well as being a highly suitable use of the site. Furthermore, the size of the site enables provision of housing to accommodate TCG's employees (and others) and complementary business activities that comprise what will eventually be the Sleepyhead Estate.<sup>3</sup>
- 1.4 TCG entered into an agreement for sale and purchase in September 2018. The purchase of the land required for "Stage 1" of the development (a 1,800m<sup>2</sup> foam

---

<sup>1</sup> As well as in Christchurch and Australia.  
<sup>2</sup> Affidavit of S Geertsema at paragraph 4.2.  
<sup>3</sup> See generally Affidavit of S Geertsema Exhibit A.

plant on the north-western corner of the site settled on 2 August 2019. The purchase of the balance of the land will be settled in May 2020. The agreement is unconditional<sup>4</sup>.

- 1.5 Development of the site as proposed would enable the expansion and consolidation of TCG's foam and mattress manufacturing operations to the extent that they would be able to have a permanent home at Ohinewai. TCG's facility and the overall Sleepyhead Estate has the potential to become a powerhouse of the local economy.
- 1.6 The Ohinewai site will:
  - (a) Enable technological improvements that cannot be implemented at TCG's current facilities.<sup>5</sup>
  - (b) Improve output by improved technology, increased storage capacity, and improved transportation, and removing the need to travel between sites. For example, foam production at the Otahuhu site is currently restricted by the ability to store only 14 blocks of foam at any one time. In contrast, at the Ohinewai site it would be possible to store 40 blocks in "hot" (i.e. straight out of the machine) and 70 cured blocks.<sup>6</sup>
- 1.7 The mix of uses at the Sleepyhead Estate has been carefully selected in order not to compete with the nearby town of Huntly which is seen as a major source of the workers that will be required to fill the 1,500 jobs that are expected to be generated by the Sleepyhead Estate once complete.

#### **APL submission on the Waikato Proposed District Plan**

- 1.8 TCG, via APL, lodged a comprehensive submission on the Waikato Proposed District Plan ("PDP") seeking a change from the site's current Rural zoning to a mix of Business, Residential, and Industrial zonings, together with a structure plan, to accommodate the Ohinewai development.
- 1.9 Were Waikato District Council ("WDC") not reviewing its district plan, APL would undoubtedly have approached WDC with a view to promulgating a private plan change. For all intents and purposes, it is appropriate to see the APL development as standing in the shoes of a private plan change that is seeking to establish a "spot zone", and it is useful to conceptualise it as such for the purpose of considering APL's request for an early hearing / decision on its submission.

#### **Request for early hearing / decision**

- 1.10 For reasons outlined in Mr Geertsema's affidavit, it is not feasible for TCG to wait until 2022 to learn the outcome on its submission which is why APL has requested that its submission be heard and determined within a more rapid time frame than contemplated for decisions on both stages of the PDP.
- 1.11 This request was made via a memorandum dated 21 June 2019 and this pre-hearing conference has been called to deal with that request. TCG / APL are very grateful for the constructive and accommodating manner in which the Hearings Panel has approached this request.
- 1.12 If the request for an early hearing / decision is granted, APL is looking towards a hearing in May 2020 to enable notification of the Stage 2 of the PDP so that

---

<sup>4</sup> There are small parcels of land within the rezoning area that are not subject to sale and purchase agreements.

<sup>5</sup> Affidavit of S Geertsema at paragraph at 4.22.

<sup>6</sup> Affidavit of S Geertsema at paragraphs 4.17 and 4.18.

the Natural Hazard provisions and the submissions on them can be before the Panel (alongside the highly detailed technical work that TCG will have on natural hazards). Also, WDC is about to commence preparation of a District Growth Strategy with a consultation draft due in November 2019 and being finalised in mid-2020. A May 2020 hearing will also enable this document and submissions on it to be taken into account.

- 1.13 Assuming a decision in late July 2020 and a month for the appeal period to expire (with no appeals lodged), TCG would be hopeful of having the resource consents for the 100,000m<sup>2</sup> manufacturing facility (foam manufacturing plant, mattress manufacturing plant, storage, and related access elements) by the end of March 2021.

#### **Meeting with WDC representatives**

- 1.14 APL representatives held a most constructive meeting with WDC officers and advisors on Monday, 29 July 2019 to canvass legal and procedural issues that arise in the context of APL's request for an early hearing / decision. The key issues raised / discussed were as follows:

- (a) Clarification of the relief sought by APL's submission – whether it was intended to include rules and become operative once a decision is made.
- (b) Clarifying the need or justification for APL's submission to be dealt with early, i.e., the "need for speed".
- (c) Ensuring procedural fairness for:
  - (i) Landowners in the vicinity that may be adversely affected by the proposal;
  - (ii) Further submitters on the APL submission;
  - (iii) Other submitters seeking rezoning of land at Ohinewai; and
  - (iv) Submitters seeking rezoning of land elsewhere.
- (d) The need to take a holistic view of rezonings at Ohinewai and how this could be achieved.
- (e) The concern that other submitters who have requested rezonings elsewhere in the district may be aggrieved by a decision to hear and determine APL's submission early, or that such a decision would result in a flood of similar ("me too") requests.
- (f) How to ensure that natural hazards are appropriately addressed if APL's submission is heard and determined before the Natural Hazard provisions of the PDP.

#### **Purpose and scope of submissions**

- 1.15 TCG / APL is satisfied that all of these can be satisfactorily addressed procedurally or put properly into perspective.
- 1.16 On the basis that members of the Panel may wish to raise similar issues, the purpose of these submissions is to address those issues canvassed at the meeting with WDC, and also related issues that arise in the context of the further submissions which have been lodged in respect of the APL submission on the PDP.

1.17 Specifically, these submissions address:

- (a) The Sleepyhead Estate rezoning/structure plan proposal (Section 2);
- (b) APL's request - timing issues and the "need for speed" (Section 3);
- (c) The nature and intent of APL's submission (Section 4);
- (d) APL's request – legal / jurisdictional issues (which are touched on for completeness despite the agreement reached with WDC) (Section 5);
- (e) Procedural issues and how to address potential impediment to acceding to APL's request, including:
  - (i) Ensuring procedural fairness (Section 6);
  - (ii) Dealing with other rezoning requests (Section 7); and
  - (iii) Issues arising in relation to natural hazards (Section 8);
- (f) APL's principal submission (Section 9).

## 2. SLEEPYHEAD ESTATE STRUCTURE PLAN PROPOSAL

2.1 The overall Sleepyhead Estate structure plan proposal is addressed in some detail in a document entitled "Sleepyhead Estate Masterplan Summary" dated July 2019<sup>7</sup>. A most straightforward and succinct capture of the concept is at the very beginning of the document where it states:

*"Sleepyhead Estate consists of 176 hectares of marginal rural land which will be remediated and transformed into a mixed use community.*

*Sleepyhead Estate will create in excess of 1500 new jobs for the local community. Additional jobs will be created during the construction phases of the project having a direct positive social and economic impact on Huntly Township and Ohinewai Village.*

*Investment in infrastructure, construction of industrial, outlet stores and homes, and development of the open spaces and streets will pump 1 billion dollars of investment into the local district.*

*Sleepyhead Estate includes 66 hectares of industrial land including light industry, factory outlet shops, a service centre, local community shops and various community focused enterprises and facilities. The anchor industrial user will be a new 100,000m<sup>2</sup> Comfort Group factory.*

*A mixture of free standing and attached homes will offer a diverse range of housing choice at a range of affordability levels. Up to 3000 people will call Sleepyhead Estate home.*

*Large areas of land will be converted into public recreational and nature restoration reserves. Open spaces will have diverse functions and provide social, health, ecological and environmental benefits."*

---

<sup>7</sup> Included as Exhibit C to Mr Geerstema's affidavit.

2.2 It is not proposed to address the merits of the proposal today. Economic analysis is being undertaken by Property Economics and that is not available yet. However, Mr Geerstema's affidavit outlines the level of expenditure expected:<sup>8</sup>

5.3 *The cost associated with development of the Ohinewai site is significant... Stage One of the site...is in the vicinity of \$45 million. The cost associated with Stages 2 and 3 of TCG's facility (taking the facility to 50,000 m<sup>2</sup>) is approximately a further \$82 million, with further long term intent to expand to 100,000m<sup>2</sup> in order to pursue our growth and export strategy. Overall, implementation of the entire Sleepyhead Estate structure plan is projected to cost up to \$1 billion including supporting infrastructure and the development of other commercial and residential projects on the site.*

2.3 The point we wish to make here is that the Sleepyhead Estate proposal represents a unique opportunity to achieve significant economic growth and a significant social and economic benefits number of benefits for the Northern Waikato. This is underpinned by the economic analysis undertaken by Dr Wheeler.<sup>9</sup>

2.4 It is submitted that this is a highly relevant factor in considering concerns that granting APL's request for an early hearing / decision will result in a number of "me toos" who will also wish to be heard early. In our submission, the key factors in that regard are that:

(a) Despite having the opportunity to do so, no other submitters have made a similar request; and

(b) Other rezonings are generic in nature and are not being sought to create the context for such a large and important development that will undoubtedly proceed if the appropriate zoning framework can be put in place.

2.5 On that basis, it is submitted that the proposed Sleepyhead Estate represents such a unique opportunity that an innovative and flexible approach to planning processes is justified to enable the benefits arising from the implementation of the development to be delivered approximately 18-24 months earlier than would be the case under the proposed timetable for decision-making on the PDP.

### **Stage 1 resource consents applied for**

2.6 APL is already in the process of applying for the resource consents it needs to facilitate "Stage 1" of the development of TCG's facilities on the site. On 26 July 2019, applications were lodged with WDC and the Waikato Regional Council ("WRC") for resource consents to undertake earthworks on approximately 7.65 hectares in the north-western corner of the site to prepare a building platform for TCG's foam manufacturing plant.

It is anticipated that an application for resource consent to authorise the Stage 1 plant itself is likely to be lodged with WDC before the end of August.

2.7 If APL's applications are successful, APL will look to begin building in 2020, following approximately 6-8 months of earthworks / pre-loading. The foam manufacturing plant will be 18,000m<sup>2</sup> in area which comprises some 18% of the total area of TCG's facilities which will eventually be 100,000 m<sup>2</sup>.

### **Timing for future stages**

---

<sup>8</sup> Mr. Geerstema's affidavit at paragraph 3.6.

<sup>9</sup> Exhibit D to Mr. Geerstema's affidavit.

- 2.8 Following the completion of Stage 1, it is currently proposed that (assuming APL's submission is accepted and the structure plan / zoning framework is put in place), the remainder of TCG's facilities will be undertaken (after securing all necessary consents) in a further four 18 month stages of around 20,000-30,000m<sup>2</sup> comprising:
- (a) 6 months preloading of the relevant portion of the site; and
  - (b) 12 months construction period.
- 2.9 These timings have been confirmed by TCG's geotechnical specialist, Initia<sup>10</sup>, and construction advisors, Barnes Beagley Doherr<sup>11</sup>.
- 2.10 The total expenditure on the Stage 1 project is expected to be \$45 million, comprising the costs of construction and plant and machinery but not including the land purchase<sup>12</sup>.
- 2.11 Although committed to proceeding with Stage 1 as soon as practicable, two of TCG's key concerns are:
- (a) The extent of the expenditure associated with Stage 1 that is required without any certainty about the "big picture", (i.e. the overall rezoning/structure plan) until the end of 2021 / early 2022 if the current hearing timetable is retained.
  - (b) That TCG ends up with the foam manufacturing plant at Ohinewai but nothing else.
- 2.12 TCG acknowledges that it needs to accept this risk but achieving an early hearing / decision would be of great assistance in addressing TCG's concern as well as enabling earlier delivery of the benefits of the project by 18-24 months.

### 3. **APL'S REQUEST - TIMING ISSUES AND THE "NEED FOR SPEED"**

#### **TCG's need to consolidate its operations to improve efficiencies**

- 3.1 As noted above, TCG currently operates facilities at Otahuhu and Avondale in Auckland that are operating beyond capacity and which is impacting on TCG's ability to maintain an international competitiveness. As outlined in Mr Geertsma's affidavit, it is the need to remove physical and technical constraints imposed by TCG's current Auckland-based sites, consolidate operations and thus improve efficiency, which has resulted in the purchase of the Ohinewai site, the lodging of the submission on the PDP, and the significant master-planning exercise that has been undertaken.
- 3.2 It is submitted there are significant economic drivers for accelerating the proposal:
- (a) The upfront costs of Stage 1 of the proposal are not insignificant, and the overall cost is considerable. As would be expected, TCG is hesitant to invest significantly in the Ohinewai site without certainty that it will be able to complete the Sleepyhead Estate development that is envisaged;

---

<sup>10</sup> Letter dated 1 August 2019 included as Exhibit A to Mr. Geerstema's affidavit.

<sup>11</sup> Letter dated 1 August 2019 included as Exhibit b to Mr. Geerstema's affidavit.

<sup>12</sup> Mr. Geerstema's affidavit at paragraph 3.6.

- (b) TCG's operations comprise only one part of the Sleepyhead Estate, with the development including space for other industrial and commercial operations, which would in turn bring economic and employment opportunities; and
- (c) When completed, the Sleepyhead Estate, will provide employment for up to 1,500 people.

### **Economic considerations**

- 3.3 Economist Dr Brent Wheeler has calculated the economic consequences associated with the construction and operation of the 100,000m<sup>2</sup> foam and mattress production and storage facilities and has produced a report addressing these issues. He considers that the plant will generate significant beneficial economic impacts on the district and regional economy through enhancing economic efficiency and the propagation of net beneficial multiplier effects arising from direct, indirect, and induced economic activity which is expected to accompany the development in both the construction phase and the ongoing activity over and above the traditional, historical outputs of TCG's activity but enabled by the new plant.
- 3.4 By undertaking this analysis, Dr Wheeler is able to calculate the economic consequences associated with delays in commencing the activity. Dr Wheeler's findings are usefully summarised in Mr Geerstema's affidavit<sup>13</sup> as follows:

*"...the economic analysis undertaken by Dr Wheeler...indicates that the economic consequences associated with a delay are significant – if APL does not secure an early hearing and decision and this results in a delay of a year there would be a loss of approximately \$11.8 million to the economy and some 60 full time equivalent jobs curtailed for that year. A delay of two years (if there is an appeal) would result in the loss of \$23 million to the economy."*

- 3.5 Put simply, given the significant economic benefits of consolidating TCG's facilities at one location and the economic costs associated with delays clearly justify a decision to enable the submission to be heard and determined early.
- 3.6 It is also submitted that no potential "me toos" can make a similar claim – this clearly sets TCG apart.

### **Lease term**

- 3.7 For completeness, we note that our memorandum dated 21 June 2019 indicated<sup>14</sup> that a reason for TCG needing to move was the expiry of its lease at Avondale in December 2020. That date was incorrect, and the lease term does not form a substantive part of the justification for the request for an early hearing / decision. However, the difficulties relating to the current leased premises that are referred to in Mr Geertsema's affidavit continue to drive the need for relocation as soon as possible.

## **4. THE NATURE AND INTENT OF APL'S SUBMISSION**

- 4.1 APL's submission on the PDP was comprehensive and sought the following decision:

"36. *Ambury seeks the following relief:*

---

<sup>13</sup> Paragraph 5.4.

<sup>14</sup> Memorandum dated 21 June 2019, paragraph 5.2(a).

- (a) *to rezone the Property from Rural to Industrial, Business and Residential as generally shown on the plan included as Attachment 1 to this submission;*
- (b) *amend Objective 4.1.2(a) and Policy 4.1.3(a) to support the infrastructure, development and use of the Property as sought in this submission, as follows or with words to similar effect:*

*"Objective 4.1.2(a) Future settlement pattern is consolidated in or around existing and planned towns and villages in the district."*

*"Policy 4.1.3(a) Subdivision and development of a residential, commercial and industrial nature is to occur within existing and planned towns and villages where infrastructure and services can be efficiently and economically provided'.*
- (c) *a new policy for Ohinewai, or alternatively Policy 4.1.13 Huntly to be amended to include Ohinewai, to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential land of the Property;*
- (d) *amendments to other objectives and policies, or inclusion of new objectives and policies, as necessary to provide for the subdivision, use and development of the Property;*
- (e) *to include an Ohinewai Structure Plan in Appendix 13 of the Proposed Plan, as generally shown in Attachment 2 to this submission; and*
- (f) *Such further relief and / or amendments to the Proposed Plan as may be necessary to support Ambury's relief, as set out in this submission."*

4.2 At the meeting with WDC representatives on 29 July 2019 it became evident that there has been some confusion as to whether the relief sought by APL's submission was intended to:

- (a) Simply achieve a rezoning from one PDP zone (Rural) to different PDP zones (Business, Industrial, Residential), along with a set of bespoke objectives and policies, with the rules attached to each of the new zones simply applying (and with development happening later); or
- (b) Was intended to incorporate rules as well as objectives and policies so that the Sleepyhead Estate structure plan and its zoning can become operative as soon as the appeal period expired.

4.3 To be clear, APL's intention has always been that its submission on the PDP would cover objectives, policies, and rules via the request to rezone the site as part of a structure plan. In other words, it was always envisaged to seek a site specific-zoning (effectively a spot zone) that crystallises once the final decision on the objectives, policies, and rules is made so that TCG / APL can proceed to apply for the resource consents needed to implement the Sleepyhead Estate development. It is submitted that APL's relief is sufficiently broad to ensure that the Panel has jurisdiction to determine that outcome.

4.4 It is acknowledged that the planning provisions relating to equivalent Residential, Business and Industrial zonings outside of the Sleepyhead Estate (or the Ohinewai area if other Ohinewai rezoning requests are heard at the same time) may transpire to be different if the other provisions are altered as a result



of PDP processes after the Sleepyhead / Ohinewai decision is delivered. While this may have some implications for administration of the PDP, it is submitted that this is of little consequence, provided that the relevant objectives, policies, methods, and rules withstand scrutiny in terms of section 32AA of the RMA and represents an effective set of controls for the relevant site.

- 4.5 In any event, if it later transpired to be worthwhile promulgating a variation then that could occur.
- 4.6 Either way, it is submitted that potential inconsistency between equivalent provisions or the possible need for a minor variation of the PDP represent a small price to pay for the early delivery of the massive benefits of the Sleepyhead Estate proposal will bring.

## 5. **APL'S REQUEST – LEGAL/JURISDICTIONAL ISSUES**

- 5.1 At our meeting with WDC officers and advisors on Monday, 29 July 2019, WDC's legal counsel, Bridget Parham, advised that she agreed with the legal analysis contained in APL's memorandum dated 21 June 2019 that the Panel has legal jurisdiction to hear and determine the APL (and any other) submissions early and in a staged manner.
- 5.2 In other words, there is agreement that there is no jurisdictional impediment to APL's request – adopting a staged approach to hearings and the release of decisions is available to the Panel.
- 5.3 This section is nevertheless included for completeness but covers nothing that is not addressed in the memorandum filed with the Panel on 21 June 2019 which addressed three questions as follows<sup>15</sup>:
- (a) *Whether a Hearings Panel generally has jurisdiction to hear an individual submission as a stage in a Schedule 1 process?*
  - (b) *Whether a Hearings Panel generally has jurisdiction to make a decision on an individual submission as a stage in a Schedule 1 process?*
  - (c) *Whether the Hearings Panel has jurisdiction to adopt the staged approach requested by APL in this instance?"*
- 5.4 Sections 2, 3, and 4 of the 21 June 2019 memorandum addressed these issues and clearly concluded that the answer to all three question is "Yes".
- 5.5 In that regard, it is noted that, the Hearings Panel clearly has jurisdiction to hear an individual submission as a stage in a Schedule 1 process. There is nothing in Schedule 1 or Part 5, subpart 3 of the RMA that prevents a staged approach to a "hearing" or directing how a staged approach should be structured. Indeed, that is the very manner in which the Waikato PDP is being managed.
- 5.6 In relation to whether the Hearings Panel has jurisdiction to make a decision on an individual submission as a stage in a Schedule 1 process, just as it is possible to hear a submission as a stage, it is possible to make decisions on those stages in the course of that process. Paragraph 3.4 of the 21 June 2019 memorandum notes<sup>16</sup> that:

*"A staged approach to release of a decision on a proposed planning instrument is not without precedent. A three-stage*

---

15 Memorandum dated 21 June 2019, paragraph 1.3.

16 Memorandum dated 21 June 2019, paragraph 3.4.

*approach to hearings and notification of decisions was recently adopted by Queenstown Lakes District Council."*

5.7 In relation to the third question is addressed in paragraph 4.5 of our 21 June 2019 memorandum which states<sup>17</sup>:

- "(a) The requested timing for hearing of APL's submission (May 2020) means that hearings on Stage 1 comprising the majority of the PDP's provisions<sup>10</sup> will likely be complete,<sup>11</sup> and that Stage 2 comprising natural hazards and climate change will be notified. The upshot is that the Hearings Panel would not be hearing APL's submission in isolation from or without knowledge of the rest of the PDP. The Hearings Panel would be fully equipped to ensure the proposed structure plan site and supporting plan provisions were determined and prepared in accordance with Part 2 and section 31, gave effect to any national direction<sup>12</sup>, and were aligned with the rest of the PDP.*
- (b) The focused nature of a structure plan means that environmental issues can be considered and addressed by bespoke provisions, in a more nuanced fashion than through those applying to the underlying zone. This provides the opportunity for issues which would not have been through the wider hearings process at the time APL's submission is heard, like natural hazards, to be carefully considered and addressed if required. APL intends to provide comprehensive expert evidence in support of its submission which would support this process.*
- (c) Any relief sought by APL would be required to "give effect to" the relevant higher order planning documents, in the same way as the balance of the PDP, providing an important statutory measure of continuity and integration.*
- (d) All submitters have had opportunity to request revised scheduling of the hearing of and decisions on their submissions as a pre-hearing legal and jurisdictional matter. If that opportunity was not taken there is no obligation on WDC or the Hearings Panel to provide for revised scheduling at a later date.*
- (e) Public participation would not be compromised. All persons with an interest in APL's submission will have had opportunity to further submit on the submission and requests to be heard on any relevant further submission points could be built into the hearing process."*

5.8 Section 18A(1) of the RMA is also highly relevant in the current circumstances. It states:

*"Every person exercising powers and functions under this Act must take all practicable steps to –*

- (a) use timely, efficient, consistent, and cost effective processes that are proportionate to the functions or powers being performed or exercised; ... "*

5.9 As per, paragraphs 4.7 to 4.9 of our 21 June 2019 memorandum it is submitted APL's request is consistent with achieving those outcomes. It fits with the current, overall PDP schedule and comprise steps that would be taken anyway,

---

17 Memorandum dated 21 June 2019. paragraph 4.5.

simply at a different time. It would also ensure timeliness, efficiency, and cost effectiveness for APL and development of the Sleepyhead Estate. Any issues of consistency in content between provisions and fairness between submitters can be addressed.

## **6. PROCEDURAL ISSUES – ENSURING PROCEDURAL FAIRNESS**

6.1 At our meeting on 29 July 2019, WDC expressed a concern to ensure procedural fairness in the context of APL's request for:

- (a) Those people living in the immediate vicinity of the Sleepyhead Estate proposal who may wish to oppose the project but have not submitted on the PDP and did not lodge a further submission in relation to the APL's submission;
- (b) Further submitters on APL's submission;
- (c) Other submitters seeking rezoning in Ohinewai; and
- (d) Submitters seeking rezoning elsewhere in the district.

### **Locals who may wish to oppose the project**

6.2 The first point to note in this regard is that we are not "starting from scratch". APL representatives have engaged with locals in the vicinity of the Sleepyhead Estate site, including a well-attended public meeting, and indeed have obtained a number of written approvals from immediate neighbours. It is nevertheless acknowledged that there are a small number of neighbours who still hold concerns about the proposed development.

6.3 As far as locals are concerned, TCG / APL has no opposition to the concept of identifying a category of potentially affected local parties who will be specifically notified of the Sleepyhead Estate proposal and given an opportunity to file a document signifying their position and to join the process and attend the early hearing should that be what the Panel desires.

6.4 This would be akin to limited notification of a resource consent application but the relevant locals will be lodging a document that is akin to a further submission on the APL submission and which enables those submitters to be heard at the hearing of the APL submission.

6.5 It is submitted that the Panel has jurisdiction to implement such an arrangement pursuant to its general power to "establish a procedure that is fair and appropriate in the circumstances" in terms of section 39 of the RMA.

6.6 If there were any doubt in that regard, APL would also be content for any such parties to present their case as part of another further submitters case in relation to the APL submission.

### **Further submitters**

6.7 As far as further submitters are concerned, they can obviously be involved in the hearing. The issue is one of timing, not the planning merits.

6.8 APL is already aware that Ohinewai Lands Limited are supportive of APL and will be attending the pre-hearing conference to advise same. That company is interested in collaborating with APL, including the possibility of the Sleepyhead Estate structure plan being extended to include part of their land. Discussions in that regard will occur in the near future.

### **Other zonings requested in Ohinewai**

- 6.9 APL's submission was prepared and lodged on the basis that it is a viable spot zone that is self-contained and immediately implementable. For that reason, Sleepyhead's preference, for simplicity's sake, is to have its submission dealt with on a stand-alone basis.
- 6.10 However, two further submitters who support the APL primary submission in part are Ohinewai Land Limited ("OLL") and Shand Properties Limited ("SPL"), have also sought rezonings of land in Ohinewai and have requested that the structure plan for the Sleepyhead Estate be extended to other parts of Ohinewai.
- 6.11 If the Panel considers that all rezoning submissions should be heard together, APL has no opposition to the early hearing / decision relating also to the other rezoning submission by OLL and SPL provided that doing so does not delay or unduly complicate the hearing of the APL submission in May 2020. Given the May 2020 timing, OLL and SPL should have ample time to prepare a case. In the meantime, all three companies can work together to determine synergies and areas of mutual interest (e.g. investigation of natural hazards-related issues).

#### **Rezoning requested elsewhere in Waikato District**

- 6.12 WDC staff expressed a concern that the proponents of proposed rezonings in Tuakau and Pokeno that had been put on hold pending the release of the PDP may be aggrieved if APL (and the other Ohinewai rezoning submitters) achieve an early hearing / decision and they do not.
- 6.13 The first point, already made, is that the request by APL was well-known and provision was made in the timetable preceding the pre-hearing conference for any similar requests to be made. None have been.
- 6.14 Further, apart from one submission seeking rezoning for a rural hotel complex, the other zonings are generic rezonings without any specific designated purpose or certainty of outcome, whereas the rezoning for the Sleepyhead Estate site is being undertaken for a specific purpose and is a development that will proceed provided the necessary zonings are put in place. It is submitted that this represents a sufficient point of difference to allay any concerns that might arise.
- 6.15 In addition, we see no reason why the Pokeno and Tuakau (or any other) rezonings could not be heard as early as possible in the PDP hearing schedule.

#### **Procedural fairness - summary**

- 6.16 In summary, in terms of procedural fairness, we submit that any concerns that the Panel may have can (to the extent that they mirror the issues raised by WDC representatives) be addressed by putting in place a process by which:
- (a) Local residents or businesses who wish to comment on the Sleepyhead Estate proposal can be specifically notified and be given the opportunity to lodge a document signifying their position. APL would have no opposition to them lodging a document.
  - (b) Any further submitters can of course be heard in support of their further submissions - the merits do not change, just the timing in which the matter is heard and determined.
  - (c) Should the Panel consider it appropriate, other requests for rezoning at Ohinewai can be heard alongside the APL submission. This also has the benefit of ensuring that a holistic view is taken of the Ohinewai area and to ensure alignment with the National Policy Statement on Urban Development Capacity.

7. **APL'S REQUEST – ENSURING A HOLISTIC APPROACH**

- 7.1 In terms of achieving a holistic approach to planning for the Ohinewai area, as just noted, APL considers that its submission can appropriately be heard alone and that is its preference. However, as noted, APL has no opposition to the concept of having all Ohinewai rezonings heard at the same time provided that doing so does not delay the hearing of APL's submission in May 2020.
- 7.2 There is no reason why the other rezoning submitters cannot be ready by that stage and APL welcomes the idea of working with other parties to ensure that any proposed rezoning "fits together" and will achieve a positive outcome for Ohinewai. Equally, APL submits that a "spot zoning" for the land comprising the Sleepyhead Estate would also be appropriate and justifiable in these circumstances, and that those provisions will withstand scrutiny in terms of section 32AA of the RMA.

8. **APL'S REQUEST – DEALING WITH NATURAL HAZARDS**

- 8.1 In its further submission to the APL submission, Mercury Energy has said:

*3.2 At the time of lodging this further submission, neither natural hazard flood provisions nor adequate flood maps were available, and it is therefore not clear from a land use management perspective, either how effects from a significant flood event will be managed, or whether the land use zone is appropriate from a risk exposure perspective.*

*3.3 Mercury considers it is necessary to analyse the results of the flood hazard assessment prior to designing the district plan policy framework."*

- 8.2 We submit that that is not a sufficiently good reason to delay the Sleepyhead decision until after Stage 2 of the PDP is determined. Part of the rationale for delaying the hearing of the APL submission until May 2020 is to enable the Natural Hazard provisions to be notified and submissions on those provisions to have closed. In other words, the Panel will at the May 2020 hearing be able to keep a "weather eye" on the draft Natural Hazard provisions, the notified provisions and the relief sought by submissions on those provisions.
- 8.3 Perhaps more importantly, TCG will by then have had detailed technical work and modelling in relation to flood risk and residual risk undertaken so that we will be in a position to put before the Panel highly detailed information about those issues. That technical analysis will have been informed by the draft Natural Hazard provisions which we understand are likely to be released October / November this year.
- 8.4 The upshot is that the Panel will have high quality information in relation to natural hazards (flood risk and residual risk) and a very good feel for where the relevant provisions of the PDP are headed – with the result that APL will be in a position to put bespoke, targeted Natural Hazard provisions before the Panel that will be appropriate for Ohinewai but will also be consistent with the overall PDP.
- 8.5 For the reasons outlined above, there is no cause of concern in relation to a lack of knowledge about flood risk and residual risk because APL will, by the time of a May 2020 hearing, have a microscopic level of detail in relation to issues relevant to natural hazards which can be used to inform decision-making and development of relevant provisions.

## 9. **APL'S PRINCIPAL SUBMISSION**

- 9.1 APL has lodged a comprehensive submission and further submission on the Waikato PDP to enable the implementation of a major project in the form of the Sleepyhead Estate at Ohinewai. The company has requested an early hearing / decision on the project for two main reasons:
- (a) To enable the consolidation of its Auckland operations at one location thus obviating the inefficiencies associated with its existing Auckland sites, both of which have passed their "use by" date. Dr Wheeler has calculated the economic consequences to the district of delaying the commencement of that project by 18-24 months and concluded they are significant.
  - (b) To bring forward, by that 18-24 months period, the economic and social benefits that will flow from the implementation of the project.
- 9.2 We have addressed in these submissions the legal and procedural impediments to this course of action, particularly in relation to ensuring procedural fairness, that a holistic view is taken of the zoning pattern in Ohinewai, and concern about lack of information in relation to natural hazards. In our respectful submission, all such potential concerns can be addressed.
- 9.3 While some concerns may be expressed about a "spot zone" and the possibility that the detail of the provisions covered by the spot zone will end up being out of step by the outcome of other decision; in that regard, it is submitted that:
- (a) The very significant economic and social benefits of the Sleepyhead Estate project justify any minor inconsistencies in that regard;
  - (b) The Hearings Panel will be aware of the outcome of the Sleepyhead Estate / Ohinewai rezoning submissions when other matters are heard; and
  - (c) There is no impediment to undertaking a later "tidy up" variation to address these issues.
- 9.4 APL intends to produce a section 32AA assessment report for the proposal which will obviously include the other Ohinewai rezonings if that were to occur.
- 9.5 Overall, it is submitted that the early hearing / decision represents a process which is fair and appropriate in the circumstances and which will promote the sustainable management purpose of the RMA particularly insofar as it will promote the sustainable management of the physical resource this land represents in a way which will enable the people and communities of this part of the Waikato to provide for their social, economic and cultural wellbeing while ensuring that any potential adverse effects can be addressed in the context of the resource consent processes which will follow.

9.6 Counsel are very grateful to the Hearings Panel for the manner in which it has conducted the APL's request and to WDC staff and advisors for their assistance to date.

**DATED at Ngaruawahia this      day of August 2019**

---

**Simon Berry**

**Counsel for The Comfort Group and  
Ambury Properties Limited**