

28 August 2017

Auckland Council  
Private Bag 92 300  
AUCKLAND 1142

Attention: Natalie Bedggood, Principal Planner, Hearings and Resolutions  
Email: Natalie.bedggood@aucklandcouncil.govt.nz

Dear Madam

**RE: 72 TIDAL ROAD BUN60081843 – FACTORY DEVELOPMENT AND LUC60301158 – ONF EARTHWORKS APPLICATION, REQUEST FOR DIRECT REFERRAL OF RESOURCE CONSENT APPLICATIONS UNDER SECTION 87D OF THE RESOURCE MANAGEMENT ACT 1991.**

On behalf of Ambury Properties Limited (APL), the applicant for resource consent (Applicant) to undertake a factory/office development and earthworks on behalf of The Comfort Group (TCG) within the Light Industry zone at 72 Tidal Road, Mangere (Proposal), we request pursuant to section 87D of the Resource Management Act 1991 (RMA) that the following applications be the subject of direct referral to the Environment Court:

**52284 (BUN60081843):**

LUC60290847 Land use  
DIS60278235 Regional Stormwater  
DIS60277563 Regional Air Quality  
DIS60277566 Regional Wastewater (collectively, the main facility applications)

**And**

**LUC60301158** Earthworks within an ONF overlay (the earthworks application).

Introduction

APL previously sought direct referral of the main facility applications when those were first lodged with Council on 22 December 2016. The direct referral request was prepared by Berry Simons and included as Appendix 24 to the application documents (Direct Referral request).

The Direct Referral request is attached as **Attachment 1**. It includes a comprehensive analysis of the Proposal and the grounds on which APL seeks direct referral. In summary (and irrespective of the number of submissions and likelihood of appeals), those grounds include:



- The large scale of the Proposal and (consequently) its economic significance. The Proposal has a net present value of \$300m and will involve a net capital expenditure by TCG of \$40m. Direct referral is therefore warranted on the basis that it will:
  - Enable a more rapid determination of the applications than if a Council consent decision is subject to appeal; and
  - Eliminate the possibility of Environment Court appeals (and a second hearing) altogether.
  
- The adverse economic effects associated with delay that would be incurred by having a first instance hearing followed by Environment Court appeal(s).
  
- The technical complexity of the issues arising, which will benefit from effective case management (including mediation and expert caucusing) and robust testing via cross-examination, which would not be available via a first instance hearing. In this regard, the potential effects and issues arising from the proposal include:
  - Risk (fire and contamination from escape) associated with the use, storage and handling of hazardous substances on the site;
  - Health effects from air discharges of toluene diisocyanate (TDI);
  - Cultural effects and archaeological / historic heritage effects;
  - Geological;
  - Erosion, sedimentation and flooding;
  - Noise and vibration;
  - Ecological (terrestrial and marine);
  - Transportation and traffic; and
  - Visual / landscape (including with respect to an ONF).
  
- The fact that allowing direct referral will not have any adverse effects on submitter participation.

Although Council officers were generally supportive of the Direct Referral request, they recommended against allowing the request until submissions had closed so as in addition to the grounds addressed in the request, they could better assess the likelihood of appeals being lodged. Following discussions with council officers, the Direct Referral request was withdrawn by letter dated 9 February 2017 (attached as **Attachment 2**), without prejudice to APL's right to make a fresh request in accordance with section 87D of the RMA.

The analysis and reasons set out in the Direct Referral request remain valid and applicable to both the main facility and earthworks applications and are relied upon by the Applicant in support of this Direct Referral request. In addition, we consider that the Direct Referral request is now supported by the number and nature of submissions that have been received on both the main facility and earthworks applications (noting that further submissions may be received on the earthworks application prior to the close of submissions on 1 September 2017).

A brief summary and discussion of the submissions received to date follows.

### Submissions Received

The submission period for Application 52284 closed on Friday 18 August 2017, with a total of nine submissions received. Seven submissions oppose the application, and two submissions are neutral (but request conditions of consent). In total seven submitters wish to be heard (refer to attached summary of submissions – **Attachment 3**)

The submissions raise a wide range of issues, that extend across almost all aspects of the proposal, including:

- Landscaping and visual impact;
- Traffic effects and traffic management;
- Risks associated with the storage and use of hazardous substances;
- Risk of contaminants entering adjacent watercourses and the Waiokauri Creek;
- Potential adverse effects of air discharge emissions of TDI;
- Consideration of alternative locations i.e. Favona Heavy Industrial area;
- Cultural, spiritual and historical effects on Waiokauri Creek and portage route; and
- Noise.

The submission period for LUC60301158 closes on Friday 1 September 2017. To date two submissions in opposition have been made (one local resident and one iwi), and the submitters both wish to be heard. It is anticipated that additional submissions will be received by the closing date of 1 September 2017.

### Grounds for direct referral request

To summarise the points made in the Direct Referral request, the main grounds on which APL is seeking direct referral of both the main facility and earthworks applications are:

- The proposal will give rise to a complex range of potential adverse effects and resource management issues, as noted above.
- The range and nature of the Proposal's potential effects (including those raised in submissions) are complex. Direct referral will enable these issues (and the associated evidence) to be effectively and efficiently managed via Environment Court mediation / dispute resolution and caucusing and tested via cross-examination, in a more efficient manner than the first instance Council process.
- Although good consultation has occurred with members of the local community, eleven submissions opposing the development have been lodged to date (nine on the main facility application and two on the earthworks application), and more are anticipated in respect of LUC60301158. If a Council hearing is held in the first instance, any submitter has a right of appeal to the Environment Court, with consequential delays to the Proposal.

- Given the number of submissions received on the applications to date and issues those raise, there is a significant likelihood that any first instance decision will be appealed, either by one or more submitters or APL.
- There will be no adverse effects on submitter participation by use of the direct referral process. Submitters are likely to derive benefit from Court processes in relation to complex air and risk related issues.
- The opportunity for substantive Council input on the applications and the quality of that input would not be compromised by direct referral.
- Development of the site as proposed will secure the future operation of TCG's bed manufacturing operation in Auckland for the foreseeable future. This is a substantial commercial operation, representing a net present value (once expanded as proposed) of at least \$300m and means the Proposal will result in substantial economic benefits for both Mangere and the wider Auckland region.
- Given the significant benefits of consolidating TCG's facilities at one location and the economic costs associated with delays, time is of the essence. APL / TCG wishes to obtain the necessary resource consents and commence construction as soon as practicably feasible (in early 2018).

Accordingly, we reiterate Berry Simons' principal submission from the Direct Referral request (at paragraph 2.19, which remains applicable to the present applications) that:

*"Having regard to the foregoing, APL's principal submission is that DR of its applications is warranted on the basis that:*

- a. The benefits of directly referring the matter to the Court for determination by the Court via a single process far outweigh any benefits that may be obtained by requiring the applicant undergo the council process with the attendant uncertainty and costs associated with appeals.*
- b. The sustainable management purpose of the RMA and the objectives of the Resource Management (Simplifying and Streamlining) Amendment Act 2013 would be better served by Direct Referral to the Environment Court rather than requiring the Project to be considered via the Council process."*

In the event Council has any queries regarding the grounds for this request or considers further information is required in this regard, APL would expect to be advised of this and given an opportunity to comment / provide further information.

#### Waiver of time frame for making direct referral request

Council officers have advised by email dated 23 August 2017 that given the date on which submissions on the main facility applications closed, the final date for requesting direct referral under section 87D

of the RMA is Monday 28 August 2017 (being five working days from the date the submissions closed and were provided to APL).

For completeness and to the extent it may be necessary, APL also applies pursuant to section 37 of the RMA for a waiver of the time within which the request for direct referral under section 87D of the RMA must be filed, on the grounds that APL has made this request within five working days from the date the submissions closed and were provided to APL, as advised by Council staff.

In the event that the Council wishes to revisit the timing of this application, APL expect to be given formal notice and an opportunity to comment.

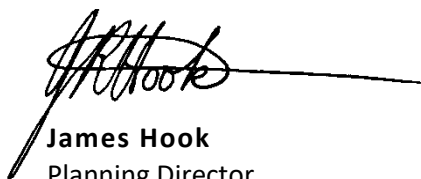
### Summary

For the reasons set out above, APL requests pursuant to section 87D of the Resource Management Act 1991 for Direct Referral to the Environment Court of the five interrelated applications listed above.

Please do not hesitate to contact the writer on (09) 630 9512 or at james.hook@envivo.co.nz if you require any further information in relation to this request.

Yours faithfully

**Envivo Ltd**

A handwritten signature in black ink, appearing to read 'J Hook', with a long horizontal line extending to the right.

**James Hook**

Planning Director

BSurv MRRP(Dist) MNZPI RMLA

**Attachment 1:** APL's Direct Referral request dated 22 December 2016.

**Attachment 2:** Berry Simons' letter of 9 February 2017.

**Attachment 3:** Summary of Submissions - Application 52284.