

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THE HAMILTON CITY COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991 (**Act**)  
**AND**

**IN THE MATTER** of an application for subdivision and land use  
consent for the Amberfield development  
pursuant to the Act.

**APPLICANT** Weston Lea Limited

**CONSENT AUTHORITY** Hamilton City Council

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**MEMORANDUM OF COUNSEL FOR WESTON LEA LIMITED**

**28 February 2019**

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Solicitors on Record

**WYNN WILLIAMS LAWYERS**  
*SOLICITOR — LUCY DE LATOUR*

PO Box 4341, Christchurch 8140  
P 03 379 7622 F 03 379 2467 E lucy.delatour@wynnwilliams.co.nz

Counsel

**R A MAKGILL**  
*BARRISTER*

PO Box 77-037, Mt Albert, Auckland 1350  
P 09 815 6750 E robert@robertmakgill.com

**MAY IT PLEASE THE HEARING COMMISSIONERS**

1. This memorandum of counsel responds to the Commissioners' directions, dated 22 February 2019, setting out a timetable for the hearing of Weston Lea Limited's (**Weston Lea**) application for resource consent for the Amberfield development.
2. Counsel have some reservations concerning the timetable for exchange of expert evidence. This memorandum respectfully requests an amendment to the evidence exchange timetable and a minor extension to the commencement date of the hearing to **Wednesday 1 May 2019**.
3. These changes would enable Weston Lea's evidence-in-reply to be filed with the Commissioners and read before the commencement of the hearing thereby avoiding any hearing time being unnecessarily occupied with written evidence. It would also enable counsel to address all evidence in their opening submissions.
4. The Commissioners' present directions would mean that:
  - (a) The Hamilton City Council's (**Council**) section 42A report is to be provided to Weston Lea and submitters 15 working days before the hearing.
  - (b) Weston Lea's expert evidence is to be provided to the Council four working days following receipt of the section 42A report and 11 working days before the hearing.
  - (c) Submitter's expert evidence is to be provided to the Council four working days following receipt of the Weston Lea expert evidence and six working days prior to the hearing.
  - (d) Weston Lea's expert evidence in reply to the section 42A report and submitter expert evidence, is to be provided in a written brief at the hearing (rather than Weston Lea's reply to the section 42A report being included in its pre-circulated evidence-in-chief).
5. Section 103B of the Resource Management Act contemplates that there should be a period of at least five full working days between the provision of each party's evidence prior to the hearing. That statutory timetable provides a minimum period within which to consider and respond to written evidence before a party is required to lodge their evidence-in-chief or evidence-in-reply.

6. Counsel suggest that a further step be included in the evidence exchange timetable to allow for the filing of Weston Lea's evidence-in-reply prior to the hearing. This would involve delaying the hearing, by two working days, until Wednesday 1 May 2019. Notwithstanding that delay, the Commissioners would still be able to undertake their site visit on Monday 29 April 2019.
7. Counsel considers there are good reasons for ensuring that the Commissioners have all written evidence prior to the commencement of the hearing:
  - (a) The complex nature of this resource consent application means there will be numerous briefs of expert evidence (Weston Lea anticipates providing 17 briefs of evidence-in-chief). The most efficient approach would ensure all evidence, including Weston Lea's evidence-in-reply to the section 42A report and any submitter expert evidence, is circulated and read prior to the hearing.
  - (b) It would avoid hearing time being unnecessarily occupied by Weston Lea's experts reading their written evidence-in-reply, especially where there are issues that may not be contested.
  - (c) It would enable counsel to address all evidence in their opening submissions, rather than referring to evidence that the Commissioners, and other parties, have not yet read and considered.
  - (d) All parties, as a matter of natural justice, would have an opportunity to see the evidence-in-chief and evidence-in-reply prior to the commencement of the hearing.
8. Accordingly, Counsel seek the following directions in relation to the exchange of expert evidence:
  - (a) The Council's section 42A report is to be provided to Weston Lea and submitters by opening of business on **Wednesday 3 April 2019**.
  - (b) Weston Lea's expert evidence-in-chief is to be provided to the Council by no later than 5pm on **Monday 8 April 2019**.<sup>1</sup> The Council shall make available to all parties to these proceedings a copy of Weston Lea's expert evidence-in-chief by opening of business on Wednesday 10 April 2019.

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<sup>1</sup> As noted in the memorandum, it is proposed that the evidence-in-chief of Weston Lea's experts will not address the matters raised in the section 42A report.

- (c) Any submitter who intends to present expert evidence is to provide a written brief of that evidence to the Council and Weston Lea by no later than 5pm on **Monday 15 April 2019**.<sup>2</sup> The Council shall make available to all parties to these proceedings a copy of the submitter's expert evidence by opening of business on Wednesday 17 April 2019.
- (d) Weston Lea's evidence-in-reply to the section 42A report and any pre-circulated submitter expert evidence, is to be provided to the Council no later than 5pm on **Wednesday 24 April 2019**. The Council shall make available to all parties to these proceedings a copy of Weston Lea's evidence-in-reply by 5pm on Friday 26 April 2019.<sup>3</sup>
- (e) The hearing shall commence at 9am on **Wednesday 1 May 2019**.

**Dated this 28<sup>th</sup> day of February 2019**



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**Robert Makgill / Kate Woods**

Counsel for Weston Lea Limited

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<sup>2</sup> We note the submitter expert evidence is to be provided to Weston Lea, as well as to the Council, to ensure that Weston Lea has the full five working days to consider the submitter expert evidence prior to filing its evidence-in-reply.

<sup>3</sup> Noting that Thursday 25 April 2019 is Anzac Day and a public holiday.