

HAMILTON CITY COUNCIL

HEARING OF RESOURCE CONSENT APPLICATIONS BY WESTON LEA LIMITED

DIRECTIONS OF COMMISSIONER HEARING PANEL: No. 3

Publicly Notified Applications

Applications by Weston Lea Limited to develop approximately 105 hectares of land adjoining the western bank of the Waikato River in Peacocke Hamilton at 337-461 Peacockes Road, Hamilton. The location is fully described by the application for resource consent. The subdivision and development will provide for 862 dwellings on individual certificates of title. In addition, there will be two large lots proposed adjacent to Peacockes Road to be development in the future for a mixed use residential/commercial centre (development of these lots is not part of current applications). Earthworks, new roading, cycleways, walkways, additional planting within a retained esplanade, and three waters infrastructure are required to enable to the development and a number of open space areas are included in the applications.

Further to Direction No 2 dated 7 March 2019, the Hearing Panel has received the following correspondence regarding the proposed evidence exchange timetable for the purposes of the hearing of the application and submissions:

1. Email from Mr Peter Skilton dated 25 February 2019, on behalf of the Johnson Family Trust; and
2. Memorandum of counsel for Riverlea Environment Society (a submitter), dated 12 March 2019.

This Direction No 3 responds to both.

• **Request from Peter Skilton, on behalf of the Johnson Family Trust**

Mr Skilton wrote to Council officers by email dated 25 February 2019 advising that he will be out of the country from 3 April 2019 to 28 April 2019. Mr Skilton effectively sought that his circumstances be accommodated by the Hearing Panel.

We are prepared to provide an exception in this instance for the reasons cited by Mr Skilton, as recorded below:

- (a) The focus of the Trust submission is narrow; and
- (b) The submission is detailed and addresses a matter which does not appear to have been raised directly by other submitters.

Accordingly, we will accept late lodgement of Mr Skilton's evidence by 5pm on **3 May 2019**.

• **Memorandum of counsel for the Riverlea Environment Society ('RES')**

Counsel for the RES has requested, by way of memorandum:

1. That all the evidence for Weston Lea Limited (“Applicant”), including expert and non-expert evidence, be pre-lodged at the same time, and available of review by the regulatory authority and submitters; and
2. That the directions are amended to require the Applicant’s response to the section 42A report to be lodged earlier, around the 10 or 11 of April 2019. The submitters may then lodge any evidence in reply to the Applicant’s response to the section 42A report by 24 April 2019.

First request to amend evidence exchange timetable

With respect to the first request, the Hearing Panel considers this to be an appropriate amendment to the directions and the formal directions which follow will include this requirement.

Second request to amend evidence exchange timetable

With respect to the second request, it may be helpful to provide some further background to Direction No.2 regarding the evidence exchange timetable (“current timetable”) before responding to the request. In the current timetable, the section 42A report is to be provided to the Applicant and submitters by the opening of business on 3 April 2019. The date for the lodgement of the Applicant’s evidence in chief is 8 April 2019. In the ordinary course of such matters, the purpose of evidence in chief is to set out an applicant’s response to the Council’s section 42A report.

In response to the original proposed timetable (set out in Direction No 1, 22 February 2019), counsel for the Applicant raised a concern that there was insufficient time to provide a response to the section 42A report. It sought an additional step in the evidence exchange timetable to provide for a “reply” to the section 42A report and any pre-circulated submitter expert evidence. The Hearing Panel issued a direction to that effect being the current timetable.

Counsel for the RES subsequently filed its memorandum on 12 March 2019 seeking further amendments to allow opportunity for submitters to review and respond to the Applicant’s “response” to the section 42A report.

Having reviewed the memorandum of counsel for the RES and the current timetable regarding the evidence exchange timetable, the Hearing Panel considers it appropriate to make provision for submitters to review the Applicant’s evidence responding to the s42A report (albeit that this is ordinarily the purpose of evidence in chief) and lodge submitter evidence in response to the same.

On the basis that the current timetable makes provision for the Applicant to lodge rebuttal evidence in response to the submitter expert evidence, it is appropriate for the Applicant to have the opportunity to do so.

In order to make provision for the exchange of evidence of both the Applicant and submitters, the current timetable will require amendment.

In addition, in our previous Direction No 2, we had stated that the applicant’s expert evidence in chief had to be pre-circulated and had not specifically required that evidence other than expert evidence, also be pre-circulated. In respect of section 41B (1), the section requires pre-circulation of the applicant’s evidence and does not distinguish between expert and lay evidence, whereas for submitters the requirement is for circulation of expert evidence only. Accordingly, we through this direction amend that requirement to require all of the applicant’s evidence to be pre-circulated in accord with the timetable outlined in this direction.

Accordingly, we direct as follows:

1. Pursuant to RMA s42A (1) & (3) and s103B (2), that the **Council's section 42A report**, and any briefs of evidence it intends to call, be provided to the Applicant and submitters by opening of business on **3 April 2019**.¹
2. Pursuant to RMA s41B (1) & (2), that Weston Lea Limited **evidence in chief and including its response to the section 42A report** be provided to the Hamilton City Council by no later than 5pm on **11 April 2019**. The Hamilton City Council shall make available to all parties to these proceedings a copy of Weston Lea Limited expert evidence in chief by opening of business on **15 April 2019**.
3. Pursuant to RMA s41B (3) & (4), any submitter who intends to present expert evidence² is to provide a written brief of that evidence to Hamilton City Council by no later than 5pm on **23 April 2019**. The Hamilton City Council shall make available to all parties to these proceedings a copy of the submitter's expert evidence by **opening of business on 24 April 2019**.
4. Pursuant to RMA s41B (1) Weston Lea Limited evidence in reply to any pre-circulated submitter expert evidence, is to be provided at the commencement of the hearing on **2 May 2019**.
5. Mr Skilton is to lodge any statement of evidence on behalf of the Johnson Family Trust by **5pm on 3 May 2019**.

Hearing commencement

6. The hearing will commence at **9am, Thursday 2 May 2019**.

Dated this 25th day of March 2019



Bill Wasley

Commissioner Chair

on behalf of the Hearing Panel

¹ The Hamilton City Council will make the s42A report and all evidence available on the Council website (www.hamilton.govt.nz/amberfield) and a hard copy will be available for viewing on the Ground Floor of the Municipal Building, Hamilton City Council, Garden Place during office hours (7.45am to 5.00pm Monday to Friday).

² The term 'expert' means a person recognised as an expert in his or her field due to relevant qualifications and/or experience. An expert witness must exercise independent and professional judgement and must not act on instructions or directions of any person.