

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for subdivision and land use consent
for the Amberfield development

BETWEEN **WESTON LEA LIMITED**
Applicant

AND **HAMILTON CITY COUNCIL**
Consent authority

**OPENING LEGAL SUBMISSIONS ON BEHALF OF THE OPEN SPACES AND
FACILITIES UNIT AND STRATEGIC INFRASTRUCTURE UNIT OF HAMILTON CITY
COUNCIL (SUBMITTER 65)**

Dated: 6 May 2019

LACHLAN MULDOWNY
BARRISTER

P +64 7 834 4336 M +64 21 471 490
Office Panama House, 15 Grantham Street, Hamilton
Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240
www.lachlanmuldowney.co.nz

INTRODUCTION

1. These legal submissions are made on behalf of the Open Spaces and Facilities Unit and the Strategic Infrastructure Unit of Hamilton City Council (HCC) (submitter 65).
2. These units within HCC have lodged a joint submission in respect of this publicly notified resource consent application pursuant to section 96 of the Resource Management Act 1991 (RMA). The applicant has expressed some concern regarding the legality of this submission, and the propriety of HCC's approach. Both concerns can be resolved in short order.
3. First, as to the legality of a council lodging a submission. S96 of the RMA provides that if an application for a resource consent is publicly notified, *any person* may lodge a submission.¹ The RMA defines a person as including the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporated. Pursuant to s12(1) of the Local Government Act 2002 a local authority is a body corporate with perpetual succession, thus meeting the definition of a person under the RMA. Indeed, Councils routinely submit on resource consenting processes.
4. As to the Court's approach to the question of a council performing dual roles, it is acknowledged that the point is novel, but most recently addressed by a full bench of the Environment Court in *Auckland Council v Auckland Council*.² While not directly on point, that case dealing with a Council appealing against its own decision, the Court reviewed a series of cases where Councils had participated in appeals with dual roles, and held:

[45] After that review of the most relevant case law, we conclude that there is no express authority that a council, as applicant for resource consent, may not appeal against its own decision as the consent authority.

¹ S96(1) and (2) RMA

² [2018] EnvC 56

Counsel advised they had searched strenuously for direct authority and found none. The Court's own researches also indicate an absence of clear statements in New Zealand or United Kingdom case law about public bodies being on opposing sides of litigation.

...

[51] We accept that any entity (and especially a local authority) may have many roles. However, we remain of the view that a council, as a single legal entity, must act with integrity and accountability. We do not see any basis on which a council can assert that it is able to split itself. If it is to act as both appellant and consent authority, then it must do so in a way that carefully addresses and avoids apparent conflicts and minimises procedural complications.

5. Ultimately however, this issue is moot, because as Counsel for the applicant stated in opening submissions, the applicant does not seek that the hearing panel make a determination on this point, but rather you exercise caution in how this submission is received and treated.³
6. The applicant urges caution because it asserts the role of HCC as submitter, and as reporting officer under s42A presents a clear conflict. That is accepted, and HCC has managed that conflict appropriately by ensuring an appropriate separation of functions between the submitter units and the s42A author.
7. The other reason that the Applicant urges caution in relation to your treatment of this submission is because it asserts the HCC is attempting through the submission to secure *outcomes it wishes to accomplish through a DA (or development contributions)*.⁴ The applicant asserts that seeking relief including a condition precedent requiring a development

³ Opening legal submissions of counsel for Weston Lea Ltd dated 2 May 2019; paragraphs 24, 25

⁴ Opening legal submissions of counsel for Weston Lea Ltd dated 2 May 2019; paragraph 14,

agreement be entered into with HCC before certain works occurring is unlawful.⁵ The applicant misconstrues the intent and effect of the submission. Rather than unlawful, the submission seeks conditions which are essential to the grant of consent.

PURPOSE OF THE SUBMISSION

8. The purpose of lodging a joint submission on behalf of these units within HCC (joint submission) is to ensure that the strategic infrastructure matters which arise in the context of this resource consent application are highlighted and specifically addressed. That HCC has taken the step of lodging a submission on behalf of two of its operational units, rather than rely on the usual portal of the s42A report which is a report commissioned at the discretion of the hearing panel, should be taken as a clear signal of the strategic significance that HCC places on the infrastructure issues which arise in respect of this consenting process.
9. Simply put, the Peacockes structure plan area (Peacockes) is the single largest area of land within Hamilton City which is yet to be urbanised. The Western Lea resource consent application for subdivision and land use activities within Peacockes (Amberfield) represents the first significant private development project dealing with this scarce land resource. It's development comes at a time when HCC is planning for and on the cusp of implementing the rollout of significant public infrastructure within Peacockes, which will enable the urbanisation of not only Amberfield, but also all of the remaining land resource within the Peacockes area.
10. The co-ordinated, efficient and timely rollout of public infrastructure with urban land use activities is vitally important to the overall success of Hamilton City and the well-being of its residents. This outcome goes to the

⁵ Opening legal submissions of counsel for Weston Lea Ltd dated 2 May 2019; paragraphs 119-122

heart of achieving the single purpose of the RMA, being the sustainable management of natural and physical resources.⁶ The co-ordination of the development of core public infrastructure alongside the development of residential and other associated urban land use activities represents a once in a generation opportunity to get it right from the outset.

11. To optimise this opportunity, development of Amberfield must occur in a manner which is consistent with, and does not compromise, the rollout of HCC's strategic infrastructure programme within Peacockes.
12. It is important to note that HCC is supportive of Weston Lea's aspirations for Amberfield, but seeks consent conditions which address its concerns regarding strategic infrastructure. This position is reflected in the joint submission which sought a *decision to approve the application subject to making the amendments sought in the submission or otherwise decline those aspects of the application which are inconsistent with the submission.*⁷
13. The focus of the joint submission is to identify those aspects of the application, or proposed conditions of consent, which require amendment, to explain why amendment is sought, and to promote practical solutions which will enable Western Lea to achieve its aspirations for Amberfield without compromising HCC's strategic infrastructure outcomes.

BACKGROUND TO STRATEGIC INFRASTRUCTURE REQUIREMENTS WITHIN PEACOCKES

14. The Peacocke structure plan area comprises approximately 740 ha of land located at the south-western end of Hamilton City. The land resource is

⁶ S5 RMA

⁷ see section 3 joint submission dated 28 September 2018

largely undeveloped rural land which transferred from the Waipa District to HCC under a boundary reorganisation in 1989.⁸

15. The National Policy Statement on Urban Development Capacity 2016 (NPS – UDC) was developed to ensure that urban areas with high population growth, such as Hamilton City, provide sufficient capacity for residential and business growth in a manner which promotes the efficient use of urban land and infrastructure.⁹ In addition, NPS-UDC policy PA1 requires that short-term capacity, being within three years, must be feasible, zoned and serviced with necessary public infrastructure, while medium-term capacity, between three and ten years, must be feasible, zoned and either serviced with public infrastructure or funding for that infrastructure must be identified in the relevant Long Term Plan.
16. While the relevant provisions of the Operative District Plan (ODP) which enable urbanisation within Peacockes have been operative since October 2017, the necessary public infrastructure to support urbanisation in this area of the city has not been in place, nor has it been allocated funding in HCC's Long Term Plans.
17. This position changed after October 2016 with the Ministry of Business, Innovation and Employment announcing a new \$1B housing infrastructure fund (HIF) for growth councils such as Hamilton, to assist in funding public infrastructure necessary to enable new large areas for housing.
18. HCC submitted a successful bid for funding to build public infrastructure necessary to enable urbanisation within Peacockes. HCC secured \$290.4M in funding, comprised of \$180.3M in interest-free loans over a ten-year period, and \$110.1M of NZ Transport Agency subsidies.¹⁰ With this funding in place, HCC then made provision for capital expenditure in its 2018 – 28

⁸ section 42 a report 3.1

⁹ in PSU DC policy PA three

¹⁰ section 42 a report paragraph 25

Long-Term Plan to deliver the key strategic network infrastructure necessary to enable development within Peacockes.

19. In addition to resolving these infrastructure funding requirements, earlier in 2016 HCC and NZ Transport Agency jointly secured the necessary designations to enable the Southern Links Project, being the redevelopment and extension of the existing State Highway network and certain arterial networks within and around Peacockes which would ensure the integration of local and collector roads to be developed within Peacockes with the broader arterial and state Highway network.
20. Accordingly, by mid 2018 the Southern Links designations, the land use planning framework set out in the ODP, and the infrastructure planning framework set out within the Long Term Plan had become well aligned, and the conditions were set for the urbanisation of Peacockes.
21. As identified in the section 42A report, based on the HIF programme, the key strategic network infrastructure now planned comprises¹¹;
 - Construction of a transfer pump station and pressure main to pump wastewater north from Peacocke to the Pukete treatment plant. This project is currently in design and programmed for completion in late 2023.
 - The extension of Wairere Drive southwards and the construction of a bridge over the Waikato River connecting this arterial network to Peacockes. This bridge is designed and designated as part of the Southern Links Network and is consistent with the Peacocke Structure Plan. This bridge will accommodate walking, cycling and passenger transport, and provide a corridor for utilities including the wastewater pressure main. This project is currently in design and

¹¹ section 42 a report paragraph 26

programmed for completion by late 2023. The bridge will link to the arterial network within Peacockes including the upgraded Peacockes Road.

- The Wairere/Cobham Drive overpass (currently in construction with programmed completion in 2021).
- An intersection at SH3 and Ohaupo Road (design complete, commencing enabling works construction in April 2019 and completion planned in 2020)

22. HCC considers the integration of these proposed infrastructure works with the Amberfield development program to be critically important to the successful urbanisation of Peacockes. Accordingly, it seeks resource consent conditions which achieve this outcome.

PRIVATE DEVELOPMENT AGREEMENT

23. As is commonplace in respect of development projects of this nature, the developer, Western Lea, and HCC have been in close discussions regarding technical infrastructure related matters, with a particular emphasis on the requirements necessary to ensure integration between the infrastructure provided by Western Lea within Amberfield, and the strategic public infrastructure to be delivered by HCC within Peacockes.

24. The parties have been working in good faith to finalise a private development agreement which would secure integration of the various infrastructure projects. HCC's requirements are clearly set out in the draft private development agreement which is attached to Mr Parsons' statement of evidence dated 23 April 2019. To date, that agreement has not been finalised. However, as signalled in Mr Parsons' evidence, he considers that the parties are very close in terms of resolving technical

matters. Mr Parsons reaches this view after having reviewed the evidence of Mr Ray O'Callaghan lodged on behalf of Western Lea.

INFRASTRUCTURE RELATED CONDITIONS SOUGHT

25. While the technical infrastructure specifications appear close to resolution, HCC requires all matters related to timing, access, construction and integration to be resolved to its satisfaction before it will agree to the connection and integration of the infrastructure within the Amberfield development with its broader strategic network.
26. Accordingly, HCC seeks that either the subdivision and land use consents contain conditions which directly and specifically address these *infrastructure integration* requirements, or alternatively that a suitable condition precedent be included within the subdivision and land use consents which requires a development agreement between Western Lea and HCC which resolves these issues to be in place prior to certain infrastructure works commencing. HCC considers the condition precedent option is less cumbersome, and is preferred.
27. The applicant appears to contend that a condition precedent of this nature is unlawful. That assertion is incorrect, and mischaracterises the intent and effect of the condition precedent.
28. Rather, HCC considers that conditions of this nature are necessary in order for the proposed development to be *consentable*. To illustrate this point, reference is made to condition 131 in the draft set of conditions accompanying Mr Sergeant's reply evidence dated 1 May 2019. Condition 131 provides:

The consent holder must discharge wastewater from the site into the Far Eastern Interceptor at Crosby Road.

29. Under this condition wastewater is proposed to be reticulated and pumped from Amberfield in the south west of the City to the Far Eastern Interceptor located at Crosby Road, some 6 km away, in the north east of the City. To achieve this outcome the consent holder needs to;
- a) Run a waste water pipeline within HCC's southern Links designation footprint;
 - b) Bore a line underneath the Waikato River;
 - c) Return the wastewater line under Cobham Drive;
 - d) Extend the pipe north approximately 5 km within the Wairere Drive corridor;
 - e) Connect the pipe to the Far Eastern Interceptor.
30. Clearly such a condition is incapable of compliance without HCC's consent as Requiring Authority, road controlling authority and infrastructure owner. What confidence can the hearing panel have that the consent holder has any prospect of complying with this condition? Without HCC's compliance, there can be none. Without being capable of compliance, there is no wastewater solution for Amberfield. Without a wastewater solution, the project is *unconsentable*.
31. It is well established that the power to impose conditions on a planning consent is not unlimited. In addition to the restrictions that now apply under s 108AA, to be valid at law, a condition must:
- (i) Be for a resource management purpose, not for an ulterior one;
 - (ii) Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and

- (iii) Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.¹²

32. In addition to these core requirements, the Environment Court has established that a condition may be unenforceable if it relies on the compliance of a third party, or where compliance cannot occur without the agreement of a third party.¹³

33. Whether a condition involving third party rights is unenforceable depends on the manner in which it is worded. If compliance with a condition would involve infringement of the legal rights of third parties, the condition should not be imposed unless:

- a) All third parties affected provide consent to the execution of the work and the manner of its execution; or
- b) There is statutory power to execute the work, and it is carried out by or on behalf of the public body having the statutory power.

So while potentially problematic, the fact that third party consent is required would not automatically make the condition invalid.¹⁴ This is particularly so if it is framed as a condition precedent.

34. In *Westfield (NZ) Ltd v Hamilton CC (2004) 10 ELRNZ 254*; [2004] NZRMA 556 (HC) the High Court held that a condition which defers the opportunity for the applicant to embark on an activity until a third party carries out some independent activity was valid. The Court held that there was a critical distinction between the two ways in which a condition is framed. One requires an applicant to bring about a result, which is not within the

¹² See *Newbury DC v Secretary of State for the Environment*; *Newbury DC v International Synthetic Rubber Co Ltd* [1981] AC 578; [1980] 1 All ER 731 (HL)

¹³ *Fletcher v Whakatane* A093/99; *Mackay v North Shore CC* W146/95

¹⁴ *Kiwi Property Management Ltd v Hamilton CC* (2003) 9 ELRNZ 249

applicant's power, and is invalid. The other stipulates that a development should not proceed until an event has occurred. Justice Fisher captured the position in these terms;

[55] Conditions attached to a consent will usually be regarded as unreasonable if incapable of performance. A classic example was consent to erect additional dwellings subject to a condition requiring access via a 4.8 metre wide strip when access to the Applicant's property was in fact possible only through an existing strip with a width of only 3.7 metres: *Residential Management Ltd v Papatoetoe City Council* (Planning Tribunal A62/86, 29 July 1986, Judge Sheppard); and see further *Ravensdown Growing Media Ltd v Southland Regional Council* (Environment Court, C194/2000, 5 December 2000, Judge Smith).

[56] On the other hand, a condition precedent which defers the opportunity for the Applicant to embark upon the activity until a third party carries out some independent activity is not invalid. There is nothing objectionable, for example, in granting planning permission subject to a condition that the development is not to proceed until a particular highway has been closed, even though the closing of the highway may not lie within the powers of the developer: *Grampian Regional Council v City of Aberdeen*[1983] P&CR 633, 636 (HL).

35. Returning to the example of draft condition 131, as a stand alone condition it is, prima facia, unenforceable because the consent holder's compliance requires the agreements and actions of a third party, namely HCC. This defect is capable of remedy however. It can be resolved by redrafting the condition in one of two ways.
36. Option 1: Add, as a condition precedent to any wastewater discharge pipeline infrastructure works commencing, that *the consent holder must have entered into a private development agreement with HCC which*

secures HCC's agreement to allow the consent holder to build the necessary waste water infrastructure to connect Amberfield with the Far Eastern Interceptor. This will validate the condition by expressly acknowledging that it requires third party agreement as a precondition to works commencing; or

37. Option 2: recast the condition so that it operates as a stand alone condition precedent by stating; *The consent holder shall not commence construction of the Amberfield waste water discharge pipeline until the Far Eastern Interceptor has been extended south to Cobham Drive.* This will validate the condition by removing the element of third party compliance, and simply casts the condition as a prohibition on certain works until a certain event has occurred.
38. Similar drafting techniques can be deployed in respect of a number of other conditions which relate to the integration of Amberfield infrastructure with the wider strategic network. Mr Parsons will address you further on these matters.

SPORTS PARK

39. The provision of a 7ha active recreation sports park within the Amberfield development remains in contention between Weston Lea and HCC. Weston Lea maintains that there is no legal requirement for it to provide a 7ha sports field within Amberfield, either to comply with any relevant district plan provisions, or to address the effects of the application.¹⁵ HCC disagrees.
40. As noted in the s42A report, higher order strategic Policy 2.2.2b emphasises the need for development within identified growth areas to be in general accordance with the relevant Structure Plan. This is reflected in

¹⁵ Opening legal submissions of counsel for Weston Lea dated 2 May 2019; paragraph 109

lower order Structure Plan Objective 3.3.1 'Optimise long term, positive environmental, economic, social and cultural effects of greenfield development' and supporting Policy 3.3.1a 'Development should be in general accordance with the relevant Structure Plan'.¹⁶

41. Additional relevant policies 5.2.8c and 5.2.8d are found in the Peacocke Character Zone chapter, which establish the requirement to ensure that development is consistent with the Peacocke Structure Plan and any master plan prepared for the area, and to ensure that development of non-residential activities are located in areas identified in the Peacocke Structure Plan or any approved master plan that provides for such activities.
42. Linked to this objective and policy framework is the indicative location on the Peacocke Structure Plan Figure 2-1 for this active recreational sports park within the southern part of the Amberfield site adjacent to Peacocke Road.
43. Weston Lea's AEE states the proposal is in general accordance with and has a high level of consistency with the Structure Plan provisions. The applicant's AEE (Appendix A) states these 'have all been achieved with the provision for a sports park on easy sloping to flat land in the southern part of Amberfield on Peacocke Road, to the south of the proposed neighbourhood centre. The park is also linked with other open space and shared paths.'¹⁷
44. This 'provision' of the sports park was not apparent to the s42A author, given that the area is shown as residential lots on the relevant scheme plan. This disconnect was tested through the s92 further information request where the issue was framed in these terms;

¹⁶ S42A report; paragraph 206

¹⁷ AEE, appendix A

The AEE assessment of the objectives and policies in the Peacocke Structure Plan (in particular 3.4.1.11 and 3.4.1.11a, b and c) indicates that the proposal is consistent with these objectives and policies, however the application itself does not include the land (shown indicatively in the southern part of the application site) required for the sports park as reserve to vest in Council. The subdivision plans show the indicative location as proposed residential lots. Pre-application discussions have consistently requested the sports park be provided in the proposed development. Please show the sports park to be vested in Council or if not clarify how the application is consistent with the Peacockes Structure Plan and relevant objectives and policies.

45. Weston Lea's response, which it has maintained through the hearing, was as follows;

Section 3.11.3 of the AEE sets out the applicant's proposal for the sports park to be located in the southern development neighbourhood. As you point out, the scheme plan does not currently show the sports park, but instead shows proposed residential lots. The responses in Appendix A (to Objective 3.4.1.11 and related policies) are based on the assumption that the park is provided. However, the provision of the park is contingent on Council initiatives in purchase and development. Resolution of this matter therefore needs to take the following matters into account. Council has two roles in this matter, that of a sport and recreation asset manager and that of a regulatory authority under the Resource Management Act 1991. The first of these roles requires it to establish a need for the sports park and to directly negotiate with the landowner for the purchase of the park. The indication of a green triangle on the structure plan and the expressed objectives in the Structure Plan do not comprise a firm commitment by the Council as asset manager to purchase the park or a requirement to vest the land in Council. The landowners have received no such commitment, hence the reluctance to show the sports park in the scheme plan. An action is clearly required here by the Council to advance this matter to the point that the land should vest pursuant to the scheme plan. In its RMA decision-making role, the Council

must be satisfied that, in resource management terms, the taking of 7ha of land in this location within the zone is the most appropriate use of the land. The Council, as decision-maker, will need evidence from the Council, as asset owner, that this is the case. It is anticipated that the Council evidence would be made available to the applicant and potentially presented to the forthcoming hearing for the Independent Commissioners to consider. This evidence would need to contain details of the Council's city-wide provision of sports parks of the scale envisioned not just within the scheme plan area, but also the second green triangle location to the north, population projections for the proposed parks' catchment area, the types of active recreation uses generating the need for the parks, and consideration of alternatives

46. Mr Sergeant's evidence has confirmed that the scheme plan depicts approximately 110 residential lots in the sports park site area, but that the roading pattern has been designed to facilitate the sports park if it is required. Mr Sergeant also notes that the s223 and s224 procedures for this area within Amberfield will not proceed for some years, allowing Council ample time to secure funding and propose a firm offer for the land.¹⁸
47. HCC's position is that granting subdivision and land use consent to build houses on 110 residential lots within the identified sports park land area is not consistent with the structure plan, as required by the objectives and policies in the ODP. Nor can it be said that formulating a road layout which does not inhibit the sports park amounts to making 'provision for the sports park' as the AEE asserts.
48. Weston Lea points to no firm commitment from Hamilton City Council in purchasing the sports park land as their reason for not providing it up front. HCC has consistently advised Weston Lea of its requirement for the sports

¹⁸ Statement of Evidence at paragraphs 87 -89

park, and as Mr Sirl's evidence states, this was made clear during the pre-lodgement consultation phase, and has not changed.¹⁹ Mr Sirl notes in his evidence that HCC's requirement for the sports park has always come with an acknowledgment that financial compensation would need to be addressed.

49. Weston Lea's logic appears to be that unless and until HCC has exercised statutory rights under the Public Works Act 1991 to compulsorily acquire the land, or enter into a deal to acquire the land, the land should be consented and enabled for residential housing. This logic is inconsistent with the structure plan provisions which clearly establish the requirement for this public infrastructure. This should be the starting position, particularly given that HCC has advised of its requirement.
50. Weston Lea also contends that the 7ha area is greater than what is needed to mitigate their effects. Weston Lea's evidence suggests that, at most, the Amberfield development will generate demand for sports park land between 2.48 ha and 2.76 ha consistent with the existing levels of service within Hamilton.²⁰ Both Mr Sergeant and Dr Fairgray consider it inefficient and contrary to Council's Open Space Provision Policy requirements for Weston Lea to only provide a 2.5 ha sports park. HCC agrees. It is for that reason that it requires a 7ha sports park to be provided.
51. Weston Lea then contends there are *serious legal questions* as to the lawfulness of a condition requiring a 7ha sports park, on the basis that it does not meet the legal tests set out in s108AA of the RMA.²¹ That assertion is incorrect. S108AA provides;

¹⁹ Statement of evidence of Jamie Sirl paragraphs 60-61

²⁰ Statement of evidence of Doug Fairgray paragraph 58

²¹ Opening legal submissions of counsel for Weston Lea; paragraph 114

Requirements for conditions of resource consents

- (1) A consent authority must not include a condition in a resource consent for an activity unless-
- (a) the applicant for the resource consent agrees to the condition; or
 - (b) the condition is directly connected to 1 or both of the following:
 - (i) an adverse effect of the activity on the environment;
 - (ii) an applicable district or regional rule, or a national environmental standard; or
 - (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.
52. S108AA(1)(b) does not limit conditions to only mitigating those effects on the environment arising from the activity. Rather, S108AA(1)(b) requires that a consent authority must not include a condition in a resource consent unless the condition is directly connected to either an adverse effect of the activity on the environment, or an applicable district rule, or both.
53. Provision of the 7 ha sports park is directly connected to an adverse effect arising from the activity, being the increase community demand for active sports park infrastructure and facilities in a newly urbanised location. Sizing the sports park to be efficient and effective represents sustainable management. As Mr Sirl notes, and as is accepted by Weston Lea, a 2.27ha sports park would be neither functional nor efficient. Nor is a limitation of this nature, which mitigates only effects arising from Amberfield, necessary to comply with s108AA.
54. On this basis, a condition requiring the provision of a 7ha sports park meets both the requirements of s108AA of the RMA, and more fundamentally, s5 of the RMA.

55. A condition of this nature does however raise the issue of financial compensation. As Mr Sirl states, HCC is willing to address that matter through a separate process.

PROPOSED DRAFT SPORTS PARK CONDITION


56. The consents should not be drafted in a manner which establishes land use rights to build residential dwellings on 110 lots within the sports park area. The consents should be drafted to reflect the structure plan requirement for a sports park within Amberfield.
57. A sensible and practical compromise which would address Weston Lea's concern over HCC not yet initiating any formal process to acquire the land would be for the subdivision consent to authorise two alternative scheme plans for this part of the Amberfield subdivision. Scheme plan A would depict the sports park, Scheme Plan B would depict the 110 residential lots.
58. A condition could be imposed which requires the consent holder to develop in accordance with Scheme Plan A, but reserving the option for the consent holder to develop in accordance with Scheme Plan B if within a certain timeframe, say 2022, Council formally advises that it no longer requires the land for sports park purposes.
59. In the event that Scheme Plan A is pursued, a further condition would require the consent holder to vest the land in Council subject to Council paying compensation to the consent holder for any "upsizing component" which compensates for any land vested beyond the land necessary for the consent holder to mitigate their effects. That condition could reference the Public Works Act mechanism for valuing any compensation.

60. This drafting solution meets the requirements of s108AA of the RMA by reflecting the intent of the structure plan, but providing an alternative development path in the unlikely event that the sports park becomes surplus to Council's open space requirements.

CONCLUSION

61. HCC reiterates that its infrastructure teams are fully supportive of the Amberfield development concept. The issues identified in the joint submission are all capable of resolution through the imposition of suitable consent conditions. HCC remains committed to working with the Weston Lea team to achieve drafting solutions which resolve all matters.

Dated 6 May 2019



L F Muldowney

Counsel for Open Spaces and Facilities Unit and the Strategic Infrastructure Unit
of Hamilton City Council (HCC) (submitter 65).