

**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

MEMORANDUM OF COUNSEL FOR WESTON LEA LIMITED

Dated: 27 May 2019

Solicitors on Record

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MAY IT PLEASE THE COMMISSIONER HEARING PANEL:

INTRODUCTION

1. This memorandum is filed by counsel for Weston Lea Limited (**Weston Lea**).
2. The purpose of this memorandum is to provide the Hearing Panel and submitters with the following documents:
 - (a) Compilation of Weston Lea's ecological mitigation information (**information package**);¹
 - (b) Evidence-in-chief of Mr Mark Kessner, a lighting specialist; and
 - (c) Waikato Expressway (Hamilton Section) resource consents and the relevant managements under those consents.
3. The nature of these documents and the reason for their provision are summarised below.

INFORMATION PACKAGE

4. The information package has been prepared in accordance with the:
 - (a) Documents that Weston Lea's ecological experts agreed they would compile and provide to the submitters' ecologists under the ecological joint witness statement dated 14 May 2019 (**JWS**);² and
 - (b) Hearing Panel's direction No.6 dated 24 May 2019.³
5. Counsel concurs with the Hearing Panel's clear wish to avoid further legal argument at this juncture and instead move constructively forward with further ecological caucusing.
6. However, the submitters' memoranda dated 24 May make unsubstantiated claims that expert caucusing discussions are disclosed in Weston Lea's memorandum dated 17 May.⁴ These claims necessitate a short answer.
7. There is nothing in Weston Lea's memorandum to support the submitters' contention.

¹ Amberfield Development: Compilation of ecological mitigation Information, 27 May 2019.

² Ecological joint witness statement dated 14 May 2019, page 3, under Topic 3, headed "Appropriateness of avoidance, remediation, and mitigation ...",

³ Commissioner Hearing Panel directions dated 24 May 2019, at [1].

⁴ Memorandum of Counsel on behalf of the Director General, dated 24 May 2019, at [4].
Memorandum of Counsel on behalf of RESI, dated 24 May 2019, at [5].

8. The memorandum was based on the JWS (at face value) and the requirement for existing information to be re-packaged for the submitters' experts. It is reasonable, in these circumstances, to question whether the submitters' experts are familiar with the full application.
9. Counsel hopes further ecological caucusing will adequately address the areas of agreement and disagreement concerning Weston Lea's ecological assessments, proposed mitigation, and relevant technical information.
10. Counsel reserves the right to address evidential matters in closing argument.

ADDITIONAL INFORMATION

Mr Kessner's Evidence-in-Chief

11. Mr Kessner advised Weston Lea's experts on bat-sensitive street lighting for the riverside roads, the road adjacent to and crossing the Southern Gully, and the roads crossing the East-West Shelterbelt. It is intended that Mr Kessner will assist prepare a bat sensitive street lighting design, to be submitted to HCC for certification prior to implementation of the consent.⁵
12. In order to assist with the further bat caucusing, Mr Kessner has provided evidence addressing the following:
 - (a) What is ambient light, including common sources of ambient light in residential settings and how is it measured;
 - (b) Ways in which ambient light can be controlled, including external lighting design for residential properties and proposed street lighting design.

Waikato Expressway (Hamilton Section) resource consents and relevant managements plans

13. Dr Parsons was asked questions by the Hearing Panel concerning the Waikato Expressway (Hamilton Section) resource consents and relevant bat management triggers. Following questioning, the Hearing Panel requested copies of that resource consent and the management plan prepared under that consent.

⁵ This requirement is contained within condition 87 of the s42A report recommended conditions. Further minor refinements to this condition are included the condition set that is attached to Mr Dave Serjeant's evidence-in-reply (condition 87).

14. The Waikato Expressway resource consents include the:
- (a) Waikato Regional Council (**WRC**) consent for the main expressway alignment (AUTH130361.01.01) (see relevant conditions 48(f)(vi) – (viii));
 - (b) WRC consent for the Ruakura Interchange (AUTH133855.01.02) (see relevant conditions 48(f)(vi) – (viii));
 - (c) WRC consent for the Tamahere East/West Link (AUTH130382.01.01) (see relevant conditions 42(e)(vi) – (viii)); and
 - (d) Waikato District Council designation conditions for the Tamahere East West Link (see relevant conditions at 7.4(i)(v)).
15. The consents require the preparation of an Ecological Management and Restoration Plan, and a Bat Management Plan. The relevant trigger for changes in bat activity (from ABMs) is:⁶
- “...an ability to detect a 10% decline in activity per year at each location with 80% power is considered the minimum acceptable outcome.”
16. The Waikato Expressway Bat Management Plan is instructive in that it details how the conditions are satisfied. In summary, the Bat Management Plan addresses:
- (a) Tree removal protocol;
 - (b) Specific mitigation measures (although some of these are roading specific); and
 - (c) The monitoring approach, noting that this has a strong statistical component in order to ensure that the effects on bat activity are related to the project activity

Dated this 27th day of May 2019



Robert Makgill / Kate Woods
Counsel for Weston Lea Limited

⁶ Bat management plan for the Waikato Expressway (Hamilton Section), dated 4 August 2016, page 28, section 6.2.1