

**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

**JOINT MEMORANDUM OF COUNSEL FOR WESTON LEA LIMITED AND
HAMILTON CITY COUNCIL**

Dated: 25 June 2019

Solicitors on Record

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MAY IT PLEASE THE COMMISSIONER HEARING PANEL:

1. This a joint memorandum is filed by counsel for Weston Lea Limited (**Applicant** or **Weston Lea**) and counsel for the Hamilton City Council (**Council**) as consent authority.
2. The purpose of this joint memorandum is to:
 - (a) Respond to the memorandum of counsel for the Director-General of Conservation (**Director-General**) dated 21 June 2019;
 - (b) Advise the Hearing Panel that the applicant is providing the Council with some consequential information to assist with the preparation of the further s.42A report which is considered necessary as a consequence of the outcomes of the Joint Statement of Ecology Witnesses (**Joint Statement**);
 - (c) In light of the provision of consequential information, respectfully request an amended timetable for the further s.42A report and the reconvened hearing; and
 - (d) Advise of the availability of Mr Mark Kessner, the Applicant's lighting specialist, for questions from the Hearing Panel and respectfully request a timetable for responding to any questions the Hearing Panel may have.
3. Each of these matters are discussed below.

Director General's memorandum of counsel

4. Counsel refer to the memorandum of counsel for the Director-General dated 21 June 2019.
5. Counsel do not consider that it is appropriate for Weston Lea to provide further clarification to the Director-General on the mitigation proposed by the applicant at this juncture.
6. Counsel note that procedurally there is no further opportunity for the submitters, including the Director-General, to provide further evidence or legal submissions in response to the Joint Statement at the reconvened hearing (without leave from the Hearing Panel). Following the hearing of evidence at a hearing, it is standard practise for the Council, as consent authority, to

provide a further s.42A report responding to any matters raised during the hearing and for the applicant to have the final right of reply.

7. As previously indicated at the hearing by the Hearing Panel, the reconvened hearing will provide an opportunity for the Council's s.42A officers to be questioned by the Hearing Panel (following the pre-lodgement of the further s.42A report), and the applicant will provide its closing legal submissions, and final set of proposed conditions.
8. Counsel notes that as the Director-General will not be taking an active role in the reconvened hearing, the starting time of the reconvened hearing does not need to accommodate the availability of the Director General's witnesses.

Provision of consequential information and amended timetable

9. As a result of ecology caucusing on the 10-11 June 2019 and the matters recorded in the Joint Statement, Weston Lea is providing the Council with some consequential information to assist with the preparation of its s.42A report in response to the matters raised during the course of the hearing.
10. Weston Lea is providing the Council with the following consequential information:
 - (a) updated Staging Plan and Scheme Plans reflecting the revised draft staging plan (that was provided to parties on 5 June 2019 as part of the Weston Lea's reply to the Director-General's and Riverlea Environment Society's witnesses questions);
 - (b) the updated set of conditions proposed by the Weston Lea reflecting the additional mitigation agreed to by Weston Lea's witnesses and noted in the Joint Statement (for example, provision of bat boxes and further on-lot lighting controls); and
 - (c) confirmation of predicted lux levels at edge of the buffer planting on the North Eastern Terrace.

11. In order to allow sufficient time for Weston Lea to provide the consequential information to the Council and for the Council officers to the prepare the further s.42A report, counsel respectfully request an amended timeframe for the further s.42A report and the reconvened hearing date.

Hearing Panel questions for Mr Mark Kessner

12. Counsel also acknowledge that the Hearing Panel has not had an opportunity to question the Applicant's lighting design witness, Mr Mark Kessner, following the lodgement of his evidence-in-chief on 27 May 2019.
13. Counsel suggest that if the Hearing Panel wish to question Mr Kessner that the questions are provided to the Applicant by way of directions (or further minute) by the 5 July 2019. Mr Kessner can then provide a written response to those questions prior to the Council providing its further s.42A report.

Directions sought

14. Counsel respectfully seek the following directions:
 - (a) the further s.42A report be provided on Friday 19 July 2019; and
 - (b) subject to the availability of the Commissioner Hearing Panel, the hearing is reconvened on one of the following dates: 7, 8 or 9 August 2019;
 - (c) that any questions from the Hearing Panel to Mr Kessner are provided in writing by Friday 5 July 2019; and
 - (d) that Mr Kessner is to provide a written response to the Hearing Panel's questions by Friday 12 July 2019.
15. If the Hearing Panel is unavailable on 7, 8 or 9 August 2019, counsel respectfully request that they have the opportunity to file a further memorandum outlining alternative hearing dates in September 2019. Lead counsel for Weston Lea is unavailable to attend the reconvened hearing during the last week of July 2019 and in August 2019 (other than 7, 8 or 9 August) due to existing Court commitments in a large Court of Appeal proceeding.

Dated this 25th day of June 2019



Robert Makgill / Kate Woods
Counsel for Weston Lea Limited



Marianne Mackintosh
Counsel for Hamilton City Council, as consent authority