

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

**Dated: 8 July 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 COMMISSIONER HEARING PANEL:**

1. This is a joint memorandum is filed by counsel for Weston Lea Limited (**Applicant**) and counsel for the Hamilton City Council as consent authority (**Council**).
2. The purpose of this joint memorandum is to:
  - (a) Respond to Direction No. 8 of the Hearing Panel dated 28 June 2019 and respectfully request a timetable for the further s.42A report and the reconvened hearing in September 2019;
  - (b) Advise of the unavailability of Mr Mark Kessner, the Applicant's lighting specialist, to attend the reconvened hearing in September and accordingly respectfully request a timetable for responding to any questions of the Hearing Panel prior to the further s.42A report; and
  - (c) Provide the Hearing Panel and submitters with transcripts of audio recordings of all parties' ecology witnesses at the hearing in May 2019.
3. Each of these matters are discussed below.

**Availability for reconvened hearing and attendance of Mr Kessner**

4. Counsel understands the Hearing Panel is available on Thursday 5 September 2019 to reconvene for the last day of the hearing. The Applicant and the Council are both available on Thursday 5 September 2019.
5. Lead counsel for the Applicant is not available to attend a hearing after 9 September 2019 due to existing Court commitments in a Court of Appeal proceeding and PhD commitments in Europe.
6. Counsel note that in Direction No. 8, the Hearing Panel requested that Mr Kessner attends the reconvened hearing to answer the questions of the Panel. Unfortunately, Mr Kessner is unavailable to attend a hearing on 5 September 2019 as he will be out of the country from 23 August to 15 September 2019.

7. Counsel suggest that Mr Kessner provides his answers to the questions of the Hearing Panel, in writing, prior to the hearing and the provision of the further s.42A report. This will also enable Council Officers to have the benefit of Mr Kessner's answer when preparing their further s.42A report response.
8. If the Hearing Panel wishes to question Mr Kessner on his written answers, a teleconference can be arranged between the Hearing Panel and the parties, prior to 23 August 2019, to enable the Hearing Panel to ask Mr Kessner any further questions they may have.

### **Directions sought**

9. Accordingly, counsel respectfully seek the following directions:
  - (a) Mr Kessner is to provide a written response to the Hearing Panel's questions (provided on Wednesday 10 July 2019) by Wednesday 24 July 2019;
  - (b) If the Hearing Panel have any further questions following the receipt of Mr Kessner's written answers, they are to advise the parties and a teleconference will be arranged prior to 23 August 2019;
  - (c) the further s.42A report be provided on Friday 16 August 2019; and
  - (d) the hearing is reconvened on Thursday 5 September 2019.

### **Transcripts of hearing**

10. The Applicant engaged Epiq NZ to transcribe the audio recordings of all parties' ecology witnesses at the hearing. While counsel for the Applicant requested the transcription to assist with their closing submissions, counsel provides them to the Hearing Panel, the Council and submitters as a courtesy and also to assist with the Hearing Panel's determination.
11. The following audio recordings were transcribed and are provided with this memorandum:
  - (a) "*Weston Lea RMA hearing – 3 May 2019 – 9am-12:30pm*" – Transcribed from start to 01:53:12.
    - i. Mr Miller, Mr Blayney, Ms Cummings, Dr Flynn (for the Applicant)

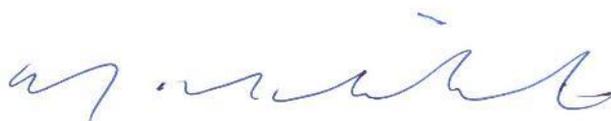
- (b) “Weston Lea RMA hearing – 6 May 2019 – 1:30pm-4:45pm” – Whole audio transcribed.
  - i. Professor Clarkson (for Riverlea Environment Society Inc. (**RESI**)). Also, the Council as submitter (Mr Muldowney, Mr Parsons, Mr Roberts, Mr Sirl).
  
- (c) “Weston Lea RMA hearing – 8 May 2019 – part of recording missing starts at 4:30pm” – Transcribed from start to 00.17.05.
  - i. The very end of evidence of Dr Stirnemann (on behalf of RESI).
  
- (d) “Weston Lea RMA hearing – 13 May 2019 – morning session Dept of conservation” - Whole audio transcribed.
  - i. Ms Pryde, Dr Borkin, Dr Barea, Mr Riddell (on behalf of the Director General of Conservation)
  
- (e) “Weston Lea RMA hearing – 14 May 2019 – 9am-1:15pm” - Transcribed from 01:46:29 to end of audio.
  - i. Dr Parsons (on behalf of the Applicant).

**Dated this 8<sup>th</sup> day of July 2019**



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**Robert Makgill / Kate Woods**  
Counsel for Weston Lea Limited



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**Marianne Mackintosh**  
Counsel for Hamilton City Council, as consent authority