

HAMILTON CITY COUNCIL
HEARING OF RESOURCE CONSENT APPLICATIONS BY WESTON LEA LIMITED
DIRECTIONS OF COMMISSIONER HEARING PANEL: No. 10

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.

The Panel have received a Memorandum of Counsel for the Director General of Conservation dated 30 August 2019, Memorandum of Counsel for Weston Lea Ltd and Memorandum of Counsel for Hamilton City Council (“HCC”) both dated 2 September 2019, all responding to our earlier Directions 7 and 8, additional information provided by the Applicant dated 12 August 2019 and the HCC supplementary s42A report dated 16 August 2019.

In their Memorandum Counsel for the Director General seeks to provide further submissions and evidence in reliance upon Directions 7 and 8. Counsel for the Applicant and the HCC have submitted that to the contrary the directions (and earlier ones), do not allow for the submission of the evidence provided by the Director General. The Applicants Legal Counsel states to do so would be procedurally and evidentially unfair and prejudicial to the Applicant. This view is reiterated by Counsel for HCC referencing in addition, the lack of time for HCC witnesses to prepare. Counsel for the Applicant further states that only the HCC s42A officer and associated witnesses, and Weston Lea have a right to be heard at the reconvened hearing on 5 September 2019.

We have considered the three Memoranda and accordingly, we make the following comments:

The Director General as authoritative body

The HCC by way of revised draft condition 90, have inserted a requirement that the Director General participate in the determination of any amendment to a Certified Management Plan under his authority under section 53 of the Wildlife Act 1953. This statutory role is to be distinguished from the consultative role DoC have been invited to take in the development of the management plans prior to certification (draft condition 89).

In her Memorandum, Legal Counsel for the Director General has set out the legal framework under which that statutory authority exists. We consider that while this information would have been helpful earlier it is relevant to the new draft condition and whether it can at law be actionable. Caselaw is clear that ensuring that a condition is actionable and legal, is within the scope of any consent decision.

The new draft condition 90 could be considered to open the gate to this information even at this 11th hour and to ignore this could risk at best an unusable condition or at worst an offence under the Wildlife Act 1953.

Other Evidence

The Panel has been clear that no further evidence is required from parties beyond that timetabled. It is on that basis that no other submitter evidence is to be accepted and that both the HCC and Applicant have proceeded with the development of the supplementary s42A report, HCC witness preparation and closing submissions respectively. The Panel remains of that view.

Directions

The Panel direct the following:

- a. The panel will receive submissions from the parties at the reconvened hearing on the issue of revised draft condition 90 and the matters raised in the Memorandum of the Director General with respect to that condition, and the extent and impact of the Director General's authority under the Wildlife Act 1953.
- b. All remaining evidence not related to the revised draft condition or the Director Generals authority, is considered by the Panel to be inadmissible.

Dated this 2nd day of September 2019

A handwritten signature in black ink, appearing to read 'Bill Wasley', with a stylized initial 'W'.

Bill Wasley

Commissioner Chair
on behalf of the Hearing Panel