

**BEFORE THE HEARING COMMISSIONER**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an application for resource consent to demolish a Category B Heritage Building and undertake associated earthworks and site remediation

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT**

**Dated 16 July 2019**

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**LACHLAN MULDOWNEY**  
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](http://www.lachlanmuldowney.co.nz)**

**MAY IT PLEASE THE COMMISSIONER:****INTRODUCTION**

1. This memorandum is filed on behalf of Hamilton City Council – Community Facilities (**applicant**), regarding the hearing and timetable directions issued by the Commissioner in the Directions of Commissioner: No.1 dated 17 May 2019.
2. The purpose of the memorandum is to seek both an adjournment of the hearing scheduled to commence on Tuesday 6 August 2019 and amended timetable directions.
3. In the directions dated 17 May 2019, the Commissioner directed that:
  - (a) Pursuant to section 42A(1) and (3) and s 103B(2) of the Resource Management Act 1991 (**RMA**), the section 42A report be provided by Hamilton City Council – Planning Guidance Unit (**consent authority**) and submitters by opening of business on 16 July 2019.
  - (b) Pursuant to section 41B(1) and (2) of the RMA, the applicant provide its expert evidence in chief to the consent authority by 5pm on 22 July 2019, and to all submitters by opening of business on 23 July 2019.
  - (c) Pursuant to section 41B(3) and (4) of the RMA, if any submitter intends to present expert evidence, then the submitter is to provide a written brief of that evidence to the consent authority by 5pm 30 July 2019. The consent authority shall make available to all parties to these proceedings a copy of any submitter's expert evidence by opening of business on 1 August 2019.
  - (d) Pursuant to s 41B(1) and (2) of the RMA, if the applicant intends to present evidence in rebuttal of the s 42A report or any pre-circulated submitter evidence, then a written brief of that rebuttal evidence is to be presented by the witness as part of the hearings process.

**REASONS FOR ADJOURNMENT**

4. The application for resource consent proposes demolition of the pool complex including the removal of all built structures (excluding the learners pool) and earthworks and site remediation. The proposal to demolish the facility is supported by expert reports including on heritage and structural engineering matters which form part of the application and assessment of environmental effects (**AEE**).
5. As expected, the applicant has been in ongoing discussions with the consent authority. The consent authority has advised the applicant that it has received a report from an independent heritage expert, Mr Richard Knott. Mr Knott identifies some heritage value in the spectator grandstand which forms part of the pool complex, and considers that this value might potentially be retained by undertaking a partial demolition of the pool complex while retaining the grandstand. That opinion differs to that of the applicant's heritage expert, Mr Adam Wild, who considers that there is little or no heritage value in the grandstand structure, whether as part of the pool complex, or as a stand-alone structure.
7. Preservation of the grandstand was not anticipated in the preparation of, and is therefore not addressed in, the application, the AEE, and the evidence of the applicant's expert witnesses.
8. The applicant requires time to respond to the issues raised in the independent expert report regarding the grandstand. It is submitted that it will aid both the Commissioner and submitters if the applicant responds to this new matter at this stage in the proceeding (before the evidence is circulated) rather than at the hearing.
9. Further, the applicant seeks to resolve (where possible) the differences between the heritage experts. To that end, it proposes that the heritage

experts caucus in order to narrow the issues and identify the points of agreement between them and any matters in dispute.

10. The applicant has consulted with the consent authority regarding its proposal for an adjournment. It agrees that there is merit in an adjournment and supports this application.
11. It is submitted that the adjournment will:
  - (a) Not prejudice the interests of submitters (for the reasons set out above);
  - (b) Assist with the full and complete assessment of the effects anticipated from the implementation of the proposal; and
  - (c) Ensure a more efficient and effective hearing process.

#### **DIRECTIONS SOUGHT**

12. The applicant therefore seeks the following directions, that:
  - (a) The hearing, set down to commence 6 August 2019, is vacated;
  - (b) The timetable directions set out in the Direction of Commissioner No.1 dated 17 May 2019 are vacated;
  - (c) The heritage experts of the applicant and consent authority undertake expert witness caucusing by 30 August 2019;
  - (d) Any statement produced in expert witness caucusing is to be circulated to all parties by 5pm 6 September 2019.
  - (e) Pursuant to section 42A(1) and (3) and s 103B(2) of the RMA, the s 42A report be provided by the consent authority and submitters by opening of business on 20 September 2019.
  - (f) Pursuant to s 41B(1) and (2) of the RMA, the applicant's expert evidence in chief be provided to the consent authority and submitters by 5pm on 27 September 2019.
  - (g) Pursuant to s 41B(3) and (4) of the RMA, if any submitter intends to present expert evidence, then they are to provide a written brief of

that evidence to the consent authority by 5pm 4 October 2019. The consent authority shall make available to all parties to these proceedings a copy of any submitter's expert evidence by opening of business on 7 October 2019.

- (h) Pursuant to s 41B(1) and (2) of the RMA, if the applicant intends to present evidence in rebuttal of the s 42A report or any pre-circulated submitter evidence, then a written brief of that rebuttal evidence is to be presented by the witness as part of the hearings process.
- (i) The hearing of this matter be set down at the earliest opportunity from 14 October 2019.

13. This memorandum will be served upon all submitters on this application.

Dated 16 July 2019



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L F Muldowney  
Counsel for Hamilton City Council