

**BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL
INDEPENDENT HEARING COMMISSIONERS**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a request for Private Plan Change NPDC PLC18/00048
by Oakura Farm Park Limited to rezone land at Oakura
within the New Plymouth District

MEMORANDUM OF COUNSEL FOR OAKURA FARM PARK LIIMITED

Dated 12 August 2019

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May it please the commissioners;

Introduction

1. This memorandum is supplementary to the memorandum of counsel for the applicant dated 31 July 2019. It is filed in response to the memorandum of counsel for submitters Peacock, Shearer, Looney and Looker dated 6 August 2019, and email communications to the commissioners from Sam Dixon and Richard Shearer dated 2 August 2019.
2. Those parties object to the procedural directions sought by the applicant. The concerns focus on the potential prejudice arising from any expansion of evidence filed on behalf of the applicant, and from the delay in closing the hearing. This memorandum addresses these concerns.

Legal Framework

3. The commissioners have broad discretionary powers to determine the appropriate next steps in this proceeding. Those powers are established under the Resource Management Act 1991 (RMA).
4. Relevantly, section 39 of the RMA requires that where a local authority, or person given authority to conduct hearings, holds a hearing into a plan change, it shall be held in public, and it *shall establish a procedure that is appropriate and fair in the circumstances*.¹
5. Section 39(2) also requires that in determining an appropriate procedure for the purposes of section 39(1), the authority shall avoid unnecessary formality.²
6. Pursuant to s41(1) of the RMA, the provisions of the Commissions of Inquiry Act 1908 apply to the conduct of hearings, including s4B which

¹ S39(1)

² S39(2)(a)

relates to evidence.³ Section 4B of the Commissions of Inquiry Act 1908 provides:

S4B(1) The Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.

7. Section 41(4) further provides:

S41(4) At every hearing conducted in relation to a matter described in section 39(1), the authority may request and receive, from any person who makes a report under section 42A or who is heard by the authority or who is represented at the hearing, any information or advice that is relevant and reasonably necessary to determine the application.

8. Accordingly, it is clear that the commissioners have broad discretionary powers to create a process and hear whatever evidence they consider necessary to assist them with their inquiry into this proposed plan change. Ultimately, that discretion must be exercised in a manner which meets the requirements of natural justice, and serves the single purpose of sustainable management as defined in s5 of the RMA.

Current procedural stage

9. The hearing of this plan change commenced on the afternoon of 22 July and was adjourned on the evening of 26 July. During that hearing the applicant presented its case during the afternoon of 22 July, and concluded during the afternoon of 23 July. From the afternoon of 23 July, through to the afternoon of 26 July the commissioners heard evidence from submitters in opposition to the plan change, and then adjourned the hearing after hearing evidence from the s42A authors and supporting

³ S41(1)(b)

technical witnesses. A very substantial amount of evidence was presented, much of which expanded on submissions to a significant extent. Under any objective analysis, the body of evidence presented after the applicant case was uncharacteristic of most private plan change hearings. A substantial body of evidence was presented at the hearing which had not been pre-circulated, and which the applicant has had no opportunity to address.

10. In these circumstances, the principles of natural justice require that the applicant be given a fair opportunity to respond to the evidence presented. Much of that response can be presented in closing legal submissions, but there is a genuine need to provide the opportunity for further evidence to be presented, particularly in those areas identified by the s42A authors as being uncertain.
11. Contrary to the submissions set out in Mr Grieve's memorandum of 6 August 2019, is not efficient or fair to close the hearing in circumstances where the provision of further evidence may assist the commissioners with their inquiry into this plan change. While all parties share an interest in securing a prompt and timely resolution of this matter, forcing the hearing to close prematurely and without all necessary evidence to make an informed decision, will result in an injustice, and unnecessarily give rise to appeal risk.
12. As set out in the memorandum of counsel for the applicant dated 31 July 2019, the applicant may seek to present reply evidence to matters raised in the technical evidence presented by the s42 authors at the conclusion of the hearing. This is not evidence that will expand the scope of the application, rather it will be evidence refining the plan change, and supporting evidence, in response to matters raised in the s42A reporting.

13. This evidence will be confined to reply evidence in respect of matters raised in the s42A presentation. It will refine the applicant's position and assist the commissioners to focus on the critical evidential issues.
14. Significantly, the suggestion that the applicant should not be entitled to address the commissioners on potential amendments to the plan change, in response to submissions and evidence, and instead stand or fall on the original application is strongly rejected.⁴ Clause 10(2)(b) of Schedule 1 to the RMA specifically enables the commissioners to make consequential alterations necessary to the proposed plan arising from submissions. This iterative process is further reinforced through s32AA of the RMA which requires a further evaluation of changes to the plan change which arise since the first s32 evaluation report.
15. Accordingly, if there are potential changes to the plan change which better achieve sustainable management than the originally proposed provisions, the applicant must be entitled to address the commissioners on those issues, and where necessary, provided changes are within the scope of the plan change, present evidence to support its position.
16. Accordingly, the applicant seeks the directions set out at paragraph 12 of its memorandum dated 31 July 2019.

Dated 12 August 2019



L F Muldowney
Counsel for Oakura Farm Park Limited

⁴ Memorandum of counsel for submitters Peacock, Shearer, Looney and Looker dated 6 August 2019.