BEFORE THE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY NEW PLYMOUTH DISTRICT COUNCIL

PPC18/00048

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	an application by Oākura Farm Park Limited to vary or cancel Condition 4 of Consent Notice Instrument No. 9696907.4 on Lot 29 DP 497629
And	
In the matter of	Proposed Private Plan Change 48 to the New Plymouth District Plan requested by Oākura Farm Park Limited for the proposed rezoning of land at Wairau Road, Oākura

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MEMORANDUM OF COUNSEL FOR MATTHEW PEACOCK; RICHARD SHEARER; STEVEN LOONEY; and WAYNE LOOKER (SUBMITTERS)

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MAY IT PLEASE THE INDEPENDENT HEARINGS COMMISSIONERS

1. This Memorandum is filed in response to the Memorandum of Counsel for Oakura Farm Park Limited dated 31 July 2019.

2. My clients/the submitters are highly concerned about the Applicant's above response (and rightly so in the circumstances), and the Applicant's intentions to effectively endeavour to continue the hearing process for another four months or so.

3. At the conclusion of the hearing on Friday 26 July 2019 it is understood that the Council Officers (who authored the Section 42A Report) were of a view that that Application should either be declined on the evidence adduced at that time, or further information could be requested.

4. There has been ample opportunity for further information to have been tabled by the Applicant in a timely manner over a relatively extensive time in this case.

5. Obviously the local authority could have initially requested further information from the Applicant in accordance with Clause 23, Part 2, Schedule 1 of the Resource Management Act 1991 (RMA) within 20 working days of receipt of the Applicant's plan change request.

6. Following notification of the Application on 29 June 2018, many of the submissions in opposition filed in with the Council on or about 10 August 2018 raised issues about a lack of adequate and/or sufficiently robust information in the Application. The

Applicant was on notice in respect of same from at least that time.

7. The Officer's Section 42A Report dated 31 May 2019 again put the Applicant on further notice regarding such matters (prior to the Applicant filing its evidence and the hearing) in the following paragraphs of the Officer's Report (but not necessarily limited to those paragraphs): 11.18, 13.19, 13.26, 13.33, 13.36, 13.44, 13.45, 13.49, 13.50, 13.51, 13.67, 13.68, 13.71.

8. It is also noted that the evidence/submission presented at the hearing for Taranaki Iwi dated 25 July 2019 inter alia records at paragraph 5 that the Applicant was put on notice by the Iwi on 29 January 2019 that its evidence (at that time) did not include a Cultural Impact Assessment or sufficient application of Taiao Taiora.

9. The Applicant had until 17 June 2019 (being over two weeks after the Officer's Report was received) to file its expert evidence and could have addressed all the information deficiencies which had been squarely brought to its attention at that time.

10. Further, the hearing did not in fact commence until 22 July 2019 – after receipt of the submitter's expert evidence on 25 June 2019 (all of which evidence again raised issues about the lack of adequate information) – and after the joint traffic and landscape conferencing in early-mid July 2019 – which gave the Applicant even further time to address such information deficiencies.

11. At no time did the Applicant seek to address those information gaps which had been squarely brought to the Applicant's attention on more than one occasion (and were a common

theme of submitters (and Council Officers) both prior to and during the hearing).

12. It was also open to the Applicant to request that the hearing be adjourned (for example, after the Officer's Report was produced and prior to the hearing) if it had concerns that its evidence was not robust in the context of the issues raised in this Memorandum. However, the Applicant chose to continue with its case without addressing the information gaps.

13. It is respectfully submitted that the onus was on the Applicant to put its best foot forward and run a robust case - and that these matters should have been addressed when its Application was filed – or at the very latest at evidence exchange or prior to the hearing. . However, the Applicant chose to continue with its case without addressing the information gaps.

14. Moreover, as noted by Mr Kensington, for example, during the course of presenting his evidence at the hearing – it is too late to now provide a landscape framework for the Plan Change – that is a process that is undertaken at the start of a Plan Change process – not at the end (or after a hearing of it).

15. Such processes are meant to be conducted in a timely and efficient manner under the RMA.

16. Moreover, such processes must be conducted with fairness to all parties.

17. This matter has now been to a five-day hearing at great cost to the community in terms of time, energy and money (in respect of professional expert witnesses and Counsel engaged etc).

18. It must be remembered that this is now a right of reply/closing hearing process under consideration – not the protraction of the actual hearing itself – or the rehearing of the Applicant's case.

19. It must also be respectfully questioned whether or not the submitters would be afforded the same latitude to produce further evidence at this late stage of the process - if their evidence had not been robust in the first instance at evidence exchange or at the hearing?

20. As noted in an email from Julie Straka, New Plymouth District Council to my clients on 6 May 2019 (regarding my clients request for a deferment of the hearing due to reasons canvassed at that time) the Commissioners advised that they were, "... *of the view that the hearing proceed on the 22-26 July date in accordance with the update provided to all submitters. There has been reasonable time for parties to organise evidence and appearances since the close of submissions in late 2018.*" – copy **attached**.

21. Surely that must also apply to the Applicant in this case.

22. The Applicant's closing must be just in reply – the Applicant should not be afforded an opportunity to produce information that should have been produced previously; or, moreover, to revisit the proposal in a materiel way.

23. That should be the end of the matter – the hearing should be closed – and a decision should now be made based on the evidence adduced by all parties to date

24. If the Commissioners are of the view, however, that the Applicant should be afforded some opportunity to produce further information (and it is submitted that the Applicant should definitely not be afforded such opportunity in the circumstances of this case) – then that must be information strictly in terms of the Applicants right of reply.

25. It should not be an opportunity for the Applicant to produce further material and evidence that should have been produced earlier i.e. the Applicant cannot now produce further material and evidence in respect of any new issues, or issues that it clearly previously had the opportunity to address.

26. If the Commissioners are of the mind to allow the Applicant this opportunity (which they should not) – then it is submitted that the Commissioners must be very directive as to what additional information the Applicant is able to now produce in the context of its right of reply.

27. Moreover, any information produced in that context must be circulated to all submitters - and all submitters must have the right to respond in fairness to all submitters.

28. The Applicant's suggested time frames to produce such information are also far too long (if the Commissioners are of a mind to allow the Applicant to do so – and it is submitted that they should not be).

29. The Applicant should be ready to produce such information at short notice – its case should have been completed properly in the first instance – and time should only now be allowed for any

"minor" gap filling that needs to occur – not a few months for the Applicant to effectively relitigate its case.

30. At Environment Court level such information (in Counsel's experience) – if it was allowed at all (and in the circumstances of this case, it is highly dubious that it would be allowed) - would normally be required within, at most, about 10 working days of being requested.

31. If the Applicant is wanting to revisit the proposal to such an extent that it needs the time requested in its Memorandum of Counsel dated 31 July 2019 – then it is submitted that the Applicant should be requested to withdraw the Application entirely and to start again – as this can hardly be seen as a minor gap filling exercise – but rather must be seen as a wholesale attempt by the Applicant to retrospectively patch up its poorly presented case (in order to attempt to discharge the evidentiary burden of proof) at the expense of the submitters; to have another go.

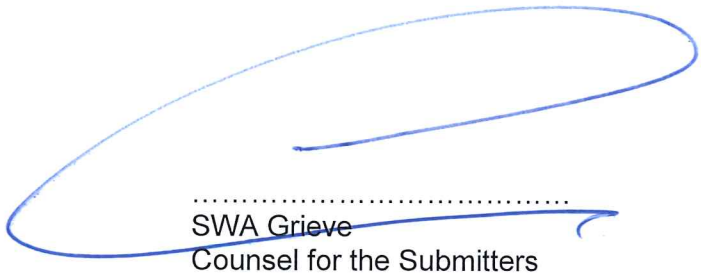
32. As noted, - this is a right of reply process under consideration – not the protraction of the actual hearing itself – or the re-hearing of the case.

33. It must be reiterated that this is not an opportunity for the Applicant to 'go back to the drawing board' on a wide range of materially significant matters that are in dispute (rather than just a minor information gap filling exercise – which gaps should have been filled a long time ago).

34. We await the Commissioner's further determinations in respect of these matters – and the submitters respectfully seek that the

Commissioner's now close the hearing on the information already adduced and decide the case on that basis.

Dated at New Plymouth this 6th day of August 2019



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SWA Grieve
Counsel for the Submitters

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Scott Grieve

From: Scott Grieve
Sent: Tuesday, 7 May 2019 9:40 AM
To: Julie Straka; OCAG; Richard Shearer QP Sport NZ; Matt Peacock
Subject: RE: Oakura Private Plan Change hearing date

Thanks Julie, noted;

Obviously my clients are disappointed in the response but we appreciate you putting it to the Commissioner's etc for consideration.

I'll email you further shortly re the OCAG just to clarify a few things for the council and others, cheers

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RMY LEGAL

From: Julie Straka <julie.straka@npdc.govt.nz>
Sent: Monday, 6 May 2019 5:07 PM
To: Scott Grieve <sgrieve@rmy.co.nz>; OCAG <oakuracommunityactiongroup@gmail.com>; Richard Shearer QP Sport NZ <richard@qpsport.co.nz>; Matt Peacock <matt@setengineering.co.nz>; Sharon Davis <smd@rmy.co.nz>
Subject: Oakura Private Plan Change hearing date

Dear OCAG members

I apologise for the delay in responding to your request for a deferment of hearing. It has taken longer than anticipated to receive responses from the various parties.

I sought comments from both the Council's reporting planner and the applicant. These were then forwarded to the Commissioners for their consideration.

Having considered the matters raised, the Commissioners are of the view that the hearing proceed on the 22-26 July date in accordance with the update provided to all submitters. There has been reasonable time for parties to organise evidence and appearances since the close of submissions in late 2018.

While the hearing date will remain as indicated, the evidence pre-circulation dates will be brought forward. This means the planner's report, applicant's briefs of evidence and the submitter's briefs of expert evidence will need to be provided prior to the start of the school holidays.

Formal notification, including the pre-circulation dates, will be issued once we have secured a hearing venue. The formal notification will advise of the Commissioners direction on evidence pre-circulation dates.

Regards
Julie Straka