

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton
City District Plan

MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL

Dated 15 June 2023

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MAY IT PLEASE THE INDEPENDENT HEARING PANEL

INTRODUCTION

1. The current deadline for Hamilton City Council (**HCC**) to issue its decision on Plan Change 12 (**PC12** or the **IPI**) is 31 March 2024 (**decision deadline**). The hearing for PC12 has been set for 4 September 2023.
2. On 12 June 2023, HCC wrote to the Minister for the Environment (**Minister**) seeking an extension of the decision deadline through to 31 December 2024 (**extension request**). A response to the extension request is expected within the next few weeks.
3. In the meantime, pursuant to Panel Direction #9 dated 3 March 2023, the parties are required to participate in expert witness conferencing during the week of 10 and 19 June 2023. Direction #9 also establishes an evidence exchange timetable through July and August 2023.
4. For the reasons set out in this memorandum, HCC seeks a Panel Direction amending the current timetable for expert conferencing and the exchange of evidence.

BACKGROUND

5. Flood hazards and inundation risk is a significant resource management issue in Hamilton. Currently, flood hazard mapping within the Operative District Plan (**ODP**) covers only 14% of the City. This limitation is reflected in PC12 which recognises these identified areas as flood hazard qualifying matters. The remaining 86% of the City is not addressed in PC12.
6. Recent weather events have highlighted the importance of ensuring that any decisions identifying areas of residential housing intensification are

properly informed by up to date flood hazard information.

7. HCC is actively pursuing updated flood hazard modelling so that it holds a complete and robust understanding of flood risks across the entire City. Currently 70% of the City is now GIS mapped and that modelling is expected to be completed, or close to 100% complete, by late 2023. Concurrently, HCC is updating its resource management approach to flood hazards, which along with the updated modelling, will be reflected in a proposed plan change to the ODP, which will be identified as Plan Change 14 (**PC14**). HCC expects to publicly notify PC14 in the first quarter of 2024.
8. It is critical that decisions concerning the intensification of residential land use are fully informed of flood hazards and inundation risks. Having PC14 notified, and the flood hazard information in the public domain, at the time that evidence is heard on PC12 and recommendations and decisions are made, represents sound resource management practice.

PROCEDURAL IMPLICATIONS

9. The substantive hearing on PC12 is currently scheduled to commence on 4 September 2023. If the hearing proceeds as scheduled, the Panel will not hear full and complete evidence concerning flood hazards. If it then proceeds to make recommendations based on the evidence presented, those recommendations and any HCC decision on the IPI may be flawed.
10. Conversely, if the Hearing of PC12 is deferred until after public notification of PC14, at a time when the full flood hazard information will be in the public domain, all stakeholders, submitters, and the Panel will be fully informed of flood hazards going into the hearing of PC12. This outcome is HCC's strong preference.

11. Clearly, the Minister's approval of the extension request is a material consideration in terms of the Panel's decision to defer the hearing. Regrettably, that decision may be some weeks away.
12. In the meantime, HCC and a number of parties are spending significant time and resources on preparing for and attending expert witness conferencing. Similarly, evidence preparation is ongoing in anticipation of the September hearing.
13. To avoid potential inefficiencies and costs, HCC seeks that the current timetable for expert conferencing and timetable for the exchange of evidence is pushed back by a period of two weeks, which should be sufficient to gain clarity on the extension request, and how it might impact on any decision to defer the hearing. To be clear, regardless of the Ministerial response, HCC seeks to ensure PC14 is publicly notified ahead of the hearing on PC12.
14. HCC accepts that other parties will have a view on any deferral of the hearing, and that this should be accommodated in any procedural directions. However, it is submitted that in the meantime, the request below for an adjustment to the existing timetable causes no prejudice to any party and can be addressed immediately by the Panel.
15. The adjustment to the timetable is intended to 'create some space' to resolve the extension request and formulate a proposed alternative hearing timetable for resolution of PC12. Notably, the adjusted timetable still accommodates the September hearing commencement should that be retained.

DIRECTIONS SOUGHT

16. HCC respectfully seeks a Panel Direction in the following terms:

- a) The current timetable for expert conferencing is vacated and any further expert conferencing (if directed) is to take place during the week of 10 July 2023;
- b) The current timetable for the exchange of evidence is vacated and the following timetable is established:
 - i. An updated Section 42A Report is to be lodged with the hearing coordinator by 5pm 21 July 2023;
 - ii. Evidence on behalf of HCC is to be lodged with the hearing coordinator by 5pm 28 July 2023;
 - iii. Evidence on behalf of submitters is to be lodged with the hearing coordinator by 5pm 11 August 2023;
 - iv. Reply evidence on behalf of HCC and of any submitters in response to other submitters' evidence is to be lodged with the hearing coordinator by 5pm 25 August 2023;
 - v. All legal submissions relating to the substantive hearing are to be lodged with the hearing coordinator by 5pm 1 September 2023;
- c) By no later than 30 June, or within 2 days of receiving the Minister's response to the extension request (whichever is the sooner) HCC will file a further memorandum with the hearing coordinator advising of the Minister's response (if any), and set out any further request for updated procedural directions, including any formal application to defer the hearing (**updating memorandum**);
- d) Within 5 days of HCC filing its updating memorandum, any party

wishing to express a view on the proposed procedural directions, including any deferral of the hearing, shall file a memorandum with the hearing co-ordinator;

- e) After receiving all memoranda, the Panel will then issue a minute setting out its further procedural directions in relation to PC12. Those directions may include convening a pre-hearing conference to address any issues arising.

Dated 15 June 2023



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Counsel for Hamilton City Council