

Before Commissioners
Delegated by Kapiti Coast District Council

In the matter of proposed Plan Change 2 to the Kapiti Coast District Plan

And Submissions and further submissions by Waikanae Land Company

MEMORANDUM OF COUNSEL FOR WAIKANAЕ LAND COMPANY

16 March 2023

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1. The purpose of this memorandum is to raise a procedural issue regarding the allocations of hearing time for PC2, and seek directions from the Panel to resolve the issue.
2. The relevant subject matter is PC2's proposed inclusion of a new wāhi tapu listing over residentially zoned and partially developed land owned by Waikanae Land Company (**WLC**) at Waikanae Beach.
3. WLC has filed submissions and further submissions opposing the proposed new wāhi tapu listing.
4. Ātiawa ki Whakarongotai Charitable Trust (**the Trust**) has filed submissions and further submissions supporting the proposed new wāhi tapu listing.
5. In accordance with the Panel's directions WLC has filed two statements of expert evidence to support its position. It has also filed one statement of factual evidence to support its position. All three statements were duly uploaded to the Council's website on 13 March. Given the extent of this evidence, and the knowledge that its position will be opposed by the Trust, WLC requested—and has been granted—2 hours to be heard. The allocation is at 9:05am on Friday 24 March.
6. Subsequently, WLC has learned that the Trust has been allocated 2 hours to be heard immediately after WLC, and that the Trust has filed no evidence in advance.
7. The result is that—on the current timetable—WLC will have to present its case without knowing what evidence the Trust intends to present. WLC is assuming the Trust will endeavour to support its position with some evidence, even if that is non-expert evidence. Conversely, the Trust has the benefit of knowing already all of the evidence that WLC intends to present. This is self-evidently prejudicial to WLC, and also seems unlikely to be of much assistance to the Panel: the only experts giving evidence will be heard before the Panel has any insight into the case the Trust is presenting, which will impede the Panel from being able to focus questions to those experts on the matters raised by the Trust.
8. There are a variety of ways these issues could be resolved.
9. First, the timetable could be adjusted so that WLC is heard after the Trust. WLC and its witnesses are available to be re-scheduled to 30 March (after 11am) or 31 March. If WLC can be re-scheduled to be heard on one of those dates (with the Trust being heard as scheduled on 24 March), then

WLC will be able to present its case on an equal footing with the Trust, i.e. each party will be able to present its case, knowing what evidence is being presented by the other party.

10. Second, the sequence on 24 March could simply be reversed, so that the Trust is heard first, followed by WLC. This is less preferable than the first option, as it would allow no time for WLC's witnesses to consider the evidence presented by the Trust. Yet it would still be an improvement over the current timetable.
11. Third, if the hearing sequence cannot be adjusted in either of the ways described above, the prejudice to WLC might be able to be rectified by the Panel allowing WLC to file further submissions or brief rebuttal evidence at a later date, after the Trust's presentation.
12. Fourth, the Panel could potentially direct the Trust to circulate its evidence at least 2 days in advance of 24 March.
13. WLC respectfully requests the Panel to consider the issue identified above, and direct one of the above outcomes (or any alternative that the Panel considers will address the issue).
14. In the meantime, WLC acknowledges the Panel's preference to receive legal submissions in advance. In light of the above issues, WLC presently reserves its position concerning any legal arguments the Trust might advance in favour of the proposed new wāhi tapu listing. However, WLC can indicate that it intends to file legal submissions prior to the commencement of the PC2 hearings on a related issue. As the Panel may be aware, WLC's submission contends that the proposed new wāhi tapu listing exceeds Council's power to make provision for a qualifying matter under an IPI. The Council has filed legal submissions addressing this (dated 14 March), and WLC intends to file legal submissions setting out its position on this particular aspect, prior to the commencement of the PC2 hearings.



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