

BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of an application by Onoke Heights Limited for resource consents for a 93 lot residential subdivision on Dip Road, Whangarei

**MEMORANDUM OF COUNSEL REGARDING EVIDENCE EXCHANGE AND
HEARING DATES
9 NOVEMBER 2023**

SOLICITOR ACTING:

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MAY IT PLEASE THE INDEPENDENT HEARING PANEL

- 1 This memorandum is filed on behalf of Onoke Heights Limited (**Applicant**).
- 2 Pursuant to section 103B(3) of the RMA, the Applicant filed its expert evidence on 31 October 2023, being 10 working days before the hearing (scheduled for 14 November 2023).
- 3 This evidence was provided by way of email to the Hearing Administrator¹ and council officers (Kaylee Kolkman – WDC Team Leader RMA Consents; Alister Hartstone – Section 42A Author; and Stuart Savill – NRC Consents Manager) as counsel for the Applicant has not been provided a list of all parties that have indicated an intention to attend the hearing. Receipt of the evidence was confirmed by Ms Kolkman and Mr Hartstone.
- 4 On 6 November 2023, counsel followed up with Ms Kolkman by way of email as to whether the evidence filed on 31 October 2023 had been circulated to submitters. No response was received. Attempts have also been made to reach Ms Kolkman by telephone.
- 5 On 7 November 2023, counsel checked the Whangarei District Council website and noted that the Applicant's evidence was not available. Upon re-checking the website on 8 November 2023, counsel noted the evidence was now available.
- 6 Accordingly, unless the evidence was separately circulated to submitters, it appears that submitters have only received/had access to the Applicant's evidence on 8 November 2023. This breaches the statutory minimum timeframes for evidence exchange in advance of a hearing by a regulatory authority.
- 7 The Applicant is concerned that submitters will, rightly, raise the issue of prejudice either in advance of the hearing or at the commencement of the hearing on 14 November 2023. In that regard, the Applicant will incur significant costs for its witnesses and counsel to attend the hearing on 14

¹ Per the Minute dated 23/25 October 2023, "all queries should be directed to or through the Hearing Administrator".

and 15 November 2023, in addition to the costs which the Council will “on-charge”.

- 8 If it is decided, at the hearing, that the hearing is to be adjourned to allow submitters further time to consider the Applicant’s evidence, the Applicant will incur further costs and be subject to additional uncertainty as to the timing for this process to be completed and when a determination will be made. As it stands, the Applicant’s position is potentially prejudiced in relation to its case because it faces the prospect of having to consider and respond to additional evidence or submitter statements following an adjournment of the scheduled hearing (should an adjournment occur). Moreover, this would be an extremely inefficient use of resources.
- 9 Counsel seeks directions from the Commissioner as to whether they intend to take any action with respect to the Councils’ delay in making the Applicant’s evidence available, given the breach of statutory minimum time frames. If so, counsel seeks an opportunity to provide the Applicant’s position with respect to any proposed action prior to any directions being made.
- 10 Noting that the Applicant’s counsel and witnesses have already spent considerable time (and therefore cost) preparing for the hearing next Tuesday, and to allow the Applicant’s counsel and witnesses sufficient time to amend their travel arrangements (should the hearing not be proceeding next Tuesday), counsel respectfully requests that any proposed directions be circulated by 10am tomorrow, Friday 10 November 2023.

DATED this 9th day of November 2023



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M Mackintosh

Counsel for the Applicant