

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
WAIMAKARIRI DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on the Proposed Waimakariri
District Plan (**PWDP** or **the Proposed Plan**)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Waimakariri District Plan by
**Momentum Land Limited, Mike Greer
Homes NZ Limited, Mark and Melissa
Prosser, and Doncaster Developments
Limited**

AND

IN THE MATTER OF

Hearing of submissions on the Proposed
Waimakariri District Plan and Variations 1 and
2, Streams 12C and 12E

**MEMORANDUM OF COUNSEL FOR LARGE SCALE REZONING SUBMITTERS
REGARDING FILING EXPERT EVIDENCE**

Dated: 27 March 2024

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MEMORANDUM OF COUNSEL FOR LARGE SCALE REZONING SUBMITTERS REGARDING FILING EXPERT EVIDENCE

Introduction

1. This memorandum is filed by Counsel for Momentum Land Limited, Mark and Melissa Prosser, Mike Greer Homes NZ Limited and Doncaster Developments Limited, which have each filed submissions seeking large scale rezoning (**the Submitters**) that are due to be heard within hearing Stream 12C (Prosser) and Stream 12E (remaining Submitters).¹
2. The purpose of this memorandum is to provide visibility to the Hearings Panel about when the Submitters intend to file expert planning evidence and expert greenhouse gas evidence, so as to avoid any uncertainty and to provide the Panel with an opportunity to respond should it consider that further guidance is required.

Panel directions

3. Minute 1 (Version 8) of the Hearings Panel directed that:²

[F]or those submissions that seek substantial rezoning proposals (whether upzoning or downzoning) the Hearings Panel require that these submitters provide any technical evidence that they wish to have considered by Council officers in preparing their Section 42A reports by no later than 60 working days before the rezoning hearings (dates to be advised). Those submitters may wish to provide that evidence in advance of that timeframe. Where technical evidence is provided in advance, this is in addition to presenting submissions and providing legal submissions and expert evidence in advance of the hearing.

4. The Minute further directed that s42A reports should be made available twenty working days before the relevant Hearing Stream commences, but earlier if possible and that expert evidence be filed ten working days before the relevant Hearing Stream commences.³

¹ The submission by Mark and Melissa Prosser is due to be heard within Sub-stream 12C. The remaining submissions are due to be heard within Sub-stream 12E.

² Minute 1 (Version 8) at [74]

³ Supra at [119]

Technical evidence for the Submitters

5. A comprehensive bundle of technical evidence for each of the Submitters was filed on 5 March 2024 in accordance with the above directions and the due date advised in Minute 18.⁴

Planning evidence for the Submitters not filed with technical evidence

6. Expert planning evidence has not been filed by the Submitters with the bundle of technical evidence, on the basis that such evidence is not considered to be technical evidence and therefore did not need to be filed by the 5 March deadline.
7. We consider technical evidence encompasses engineering assessments⁵ and may extend to include other expert evidence such as economic, landscape, ecology and urban design assessments but does not typically include planning evidence.
8. In our view, the purpose of filing technical evidence early is so that it can be reviewed by Council technical experts to inform the preparation of the reporting officer's s42A report on large scale rezoning submissions. This is why Minute 1 distinguishes between "technical evidence"⁶ and "submitter expert evidence".⁷
9. Prior to 5 March we consulted with the relevant reporting officers for Stream 12C (Mr Buckley) and Stream 12E (Mr Wilson) who agreed with the above interpretation and noted that they did not expect planning evidence by 5 March.
10. Accordingly, none of the Submitters included planning evidence in the bundle of technical evidence filed on 5 March because we considered that none was required by this date. This was noted in Doncaster Developments Limited's email to Council at the time of lodging Doncaster's technical evidence as follows:⁸

We understand that the reporting officers do not consider planning evidence to be "technical evidence", and that they expect the planning evidence to be filed at a later date, after the reporting officers have had an opportunity to review the technical evidence...

⁴ Minute 18 at [9] refers to 5 March 2024

⁵ For example, contaminated land, geotechnical, infrastructure, transportation and flood hazard assessments.

⁶ Minute 1 (Version 8) at [74] and [75]

⁷ Supra at [68] to [73]

⁸ Email from Margo Perpick on behalf of Doncaster Developments Limited to Audrey Benbrook dated 5 March 2024

11. We acknowledge that other submitters have filed planning evidence with their technical evidence. That is their choice and we have no objection to that whatsoever, however our reading of Minute 1 is that it's not mandatory to do so.

Submitters intentions regarding filing of planning evidence

12. We consider that planning evidence for the Submitters is due 10 working days before the relevant Stream 12 hearing, at the latest.
13. Minute 1 does not prevent the Submitters from filing expert evidence sooner than 10 working days before the relevant hearing stream commences. We consider that it may assist reporting officers if this evidence is provided sooner, so that such evidence might be considered in the preparation of their s42A reports.
14. Whether this approach is likely to be helpful is entirely dependent on the capacity of the reporting officers to consider such evidence, taking into account the technical evidence already filed by the Submitters and other submitters being heard within Stream 12C and Stream 12E.
15. We have consulted with Mr Buckley and Mr Wilson regarding the above approach and note that:
 - (a) Mr Wilson advises that it would assist preparation of his s42A reports regarding the Submitters' rezoning submissions if he received planning evidence by **30 April 2024**, and earlier if possible, and
 - (b) Mr Buckley advises that he is happy with the above approach provided that he receives planning evidence for consideration no later than **19 April 2024**.
16. On this basis, and subject to any further clarification from the Panel, the Submitters intend to file planning evidence in accordance with the above timeframes.

Greenhouse gas emissions evidence

17. We advise that Momentum Land Limited and possibly Mike Greer Homes NZ Limited intend to file greenhouse gas emissions evidence. Given the limited pool of expertise in this emerging area, this evidence has been commissioned out of

Australia. It was not filed by 5 March and is therefore due 10 working days before the Stream 12E hearing, at the latest.

Summary

18. We consider the approach outlined above is consistent with the directions contained within Minute 1. We also consider this approach will assist with the effective and efficient hearing of submissions in a manner that does not cause any prejudice to other parties.
19. We therefore consider that no particular application is required to be filed by the Submitters and that no further directions are required.
20. However, if the Panel holds a different view or otherwise considers that more clarity might be of assistance to other submitters being heard within Stream 12C and Stream 12E, then Counsel would respectfully invite the Panel to issue further guidance to this effect.

Dated: 27 March 2024



Chris Fowler
Counsel for Momentum Land Limited,
Limited
Mark and Melissa Prosser and
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Margo Perpick
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