

**WAIMAKARIRI DISTRICT COUNCIL**  
**MEMO**

**FILE NO AND TRIM NO:** DDS-06-10-02-05-17 / 240417060839

**DATE:** 11 April 2024

**MEMO TO:** Proposed District Plan Hearings Panel

**FROM:** Matthew Bacon – Development Planning Manager

**SUBJECT:** Stream 12D - Ohoka – Provision of Urban Design and Landscape Evidence

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1. The purpose of this memorandum is to inform the panel of availability constraints related to Mr Hugh Nicholson who has been engaged by Council to provide urban design and landscape evidence in relation to Hearing Stream 12D, and to propose an alternative approach to potential questions of evidence in relation to that expert.
2. The submission to be heard in Hearing Stream 12D seeks a re-zoning under the PDP that is very similar to a re-zoning sought through Private Plan Change RCP031 to the Operative District Plan. Mr Nicholson provided a number of pieces of expert evidence on behalf of the Council to an Independent Hearings Panel on RCP031.
3. For continuity and efficiency for the Ohoka topic, the Council wishes to utilise the services of Mr Nicholson again to provide evidence for Hearing Stream 12D, which is scheduled to start on 1 July 2024.
4. Unfortunately, Mr Nicholson is overseas at the time the hearing is scheduled and is unable to attend the hearing, either in person or remotely. The evidence for the Submitter has been lodged and the s42A report for Hearing Stream 12, which is scheduled to be available on 29 May 2024, will address and respond to the Submitter evidence.
5. Mr Nicholson is overseas and unavailable from the end of May to mid-August. Mr Nicholson is accordingly available to provide evidence to support the s42A Report and Right of Reply Report which will follow the July hearing, as well as any expert conferencing (subject to the timing proposed for any such conferencing).
6. Rather than introduce a new urban design and landscape expert the Council seeks leave from the Hearings Panel for Mr Nicholson to be excused from attending the hearing. The Council consider that Mr Nicholson's absence for the hearing can be managed without impacting on or delaying the hearing process, for example by the Panel following its established practice of providing written questions and these being responded to by Mr Nicholson via the Right of Reply report or a separate memoranda. Mr Nicholson's participation in any expert conferencing (should it be required) can be scheduled for after his return. Mr Nicholson could also appear at a later hearing if that would assist the Panel. In addition to these options or as alternatives, the Council would welcome any suggestions from the Panel assisting in managing Mr Nicholson's unavailability for the hearing.
7. The Council has advised the submitter for the Stream 12D hearing of Mr Nicholson's availability and Council's proposed approach to that. I have set out my understanding of the submitter's position on this matter with a view to assisting the Panel by responding to the points raised. Council understands that the submitter has concerns that Mr

Nicholson's unavailability will result in prejudice to the submitter. The submitter has advised that it is "*expecting to close the case on 4 July without any latitude for further information to come to the Panel later*" and that they would be prejudiced if Mr Nicholson wanted to add comments later. The submitter also advised that it intends to seek that expert conferencing occurs before 1 July 2024<sup>1</sup>. The response also noted that part of the reason for the submitter's position is the interaction between the Stream 12D hearing and the submitter's position regarding the progress of the Environment Court appeal against the PC31 decision (ENV-2023-CHC-136).

8. The Council has considered the points raised by the submitter and notes the following:

- No request has yet been made by the submitter to the Panel, or the Council (beyond the recent engagement regarding this matter), for expert conferencing in advance of the 1 July hearing.
- In terms of the post hearing position, the Council agrees with the submitters sentiment and would not expect that the panel would provide the ability for any party to provide further evidence (and therefore not expect that Mr Nicholson would do so) unless the Panel has questions for Mr Nicholson. The Council acknowledges that the panel may direct conferencing to occur after the hearing and will be expecting the s42A officers to respond to evidence presented at the hearing in line with the directions in Minute 1.
- In reference to the above, Council understands that the hearing panel are not making decisions on hearings sequentially (after each sub-stream), and therefore the panel already has discretion to revisit aspects of the full range of plan provisions prior to making recommendations on submissions. This may occur after any party has presented evidence at the relevant hearing stream. In the event the Panel would be assisted by further expert conferencing and/or reply material following the hearing, Council considers that can be accommodated having regard to Mr Nicholson's availability constraints without impacting on the Hearings Panel's decision-making timeframes.
- With regard to the interface with the PC31 appeal the Council acknowledges that there is some overlap in the two processes; however the PC31 appeal process is a separate proceeding before the Environment Court. Council also notes that it has made an application to the Environment Court for the PC31 hearing to be adjourned sine die. That application has been opposed by the submitter. No decisions or directions have yet been made by the Environment Court.

9. For these reasons, the Council does not consider any prejudice would arise in the context of the PDP process if Mr Nicholson were to be excused from attending the Stream 12D hearing.

10. In order to support the assessment of the Ohoka re-zoning submissions and in light of the above, the Council respectfully requests the Panel to confirm that Mr Nicholson excused from attending the Hearing Stream 12D Ohoka hearing.

11. The Council would be happy to address the Panel on this matter including to answer any questions the Panel may have.

**SIGNED**

Matthew Bacon (Development Planning Manager)

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<sup>1</sup> No formal discussions on this topic have occurred to date.