

**BEFORE THE TAUPŌ DISTRICT COUNCIL
PROPOSED PLAN CHANGE 36 WHAREROA NORTH**

IN THE MATTER a request for change to the
Operative Taupō District
Plan pursuant to Clause 21
of Schedule 1 to the
Resource Management Act
1991

BETWEEN **THE PROPRIETORS OF
HAUHANGAROA NO. 6**

Plan Change Proponents

AND **TAUPŌ DISTRICT
COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL ON BEHALF OF TAUPŌ DISTRICT COUNCIL
SEEKING ADJOURNMENT OF PLAN CHANGE REQUEST AND DEFERRAL OF
CURRENT TIMETABLE**

25 MAY 2020

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MAY IT PLEASE THE HEARINGS PANEL

1. This memorandum is filed on behalf of Taupō District Council (**Council**) in its processing and reporting role on this private plan change request.
2. The purpose of this memorandum is to seek directions from the Hearings Panel that the current timetable for this plan change request be placed on hold, and all scheduled steps required by the current timetable be adjourned pending further directions of the Panel. The reasons for this request are set out below.
3. The Hearings Panel will be aware of the substantial amount of information produced by the Council and its team of experts, both for the preparation of the section 42A report and rebuttal evidence. Under the Council's administrative charging policy, the Plan Change Proponents are invoiced for the Council's actual and reasonable costs of carrying out its functions.
4. The Council's most recent invoice relating to preparation for the hearing is now outstanding. When queried the Proponents have indicated earlier today that best efforts would be made to make payment of this invoice by 15 June 2020 but that some flexibility may be required. Under section 36AAB(2) of the Resource Management Act 1991, a local authority is not required to perform an action to which the charge relates until the charge has been paid in full.
5. The Council is concerned that there are a number of hearing preparation steps which have been directed by the Hearings Panel (including in particular an intensive expert witness conferencing programme) which are imminent. These steps are likely to involve significant time and effort, and hence expense being incurred, when there appears to be a risk that the Council's costs will not be met.
6. Of perhaps greater concern for the Council is that such effort and expense is likely to be incurred in circumstances where, it is respectfully submitted, there are pivotal issues relating to the viability of the plan change request, and the Hearings Panel's ability to appropriately consider it on its merits, which remain at large.
7. The central issue in that regard is the uncertainty over the proposed road and bridge access to the plan change site, which the Hearings Panel has itself identified in its recent written questions to the Proponents. The Council is concerned that, without some greater certainty as to the ability for this matter to

be resolved as between the Proponent, the Council, and a third party owner of the relevant land, the further steps towards and convening of a hearing may at best be inefficient, and at worst an exercise in futility. Part of the Council's concern relates to the risk that the Proponents are bearing and the costs that they may be exposed to.

8. For that reason, on 21 May 2020 the Council invited the Plan Change Proponents, through their representatives Ms Lewis and Dr Forret, to jointly put the present timetable and steps towards hearing on hold to enable additional time for this matter to be thoughtfully discussed and (potentially) agreement in principle to be explored as to whether a Maori roadway was a viable option.
9. This is because this issue requires three parties to reach agreement on the terms of an application to the Maori Land Court and the exercise of the Council's discretion and decision-making powers under other legislation, over which it is respectfully submitted that this Hearings Panel has no delegated authority to direct or bind the Council.
10. The Council's invitation was declined by the Proponents' representatives. They were however put on notice that, if the invitation was declined, the Council would approach the Hearings Panel to seek directions to immediately defer the witness conferencing and hearing for the reasons identified above.
11. Obviously, in normal circumstances, the question of risk is one for an applicant or the Proponents to bear. In the present circumstances however, where the viability of the entire plan change request is effectively dependent on whether or not the Council reaches agreement on a complex matter to be decided under other legislation and involving a third party, and there is ongoing uncertainty over the Council's costs being met, the risk equation is somewhat different.
12. For these reasons, the Council respectfully seeks a direction that the current timetable and directions are put on hold until further notice, and the scheduled hearing commencing on 15 June be vacated. This would allow the Council and the Proponent sufficient time to consider whether a Maori roadway concept can be a workable option, which in turn might allow the plan change request to otherwise be considered on its merits.

13. Counsel is available for an urgent telephone conference if that would assist the Hearings Panel.

DATED this 25th day of May 2020

A handwritten signature in blue ink, appearing to read 'J. Winchester', with a small dot above the 'i'.

James Winchester
Counsel for Taupō District Council