

**BEFORE AN INDEPENDENT HEARING PANEL  
APPOINTED BY TAUPŌ DISTRICT COUNCIL**

**UNDER THE**

Resource Management Act 1991

**IN THE MATTER**

of Plan Change 43 (Industrial), being a proposed plan change to the Taupō District Plan in accordance with Schedule 1 to the Resource Management Act 1991

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**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF TAUPŌ DISTRICT COUNCIL  
AND MEGA FOOD SERVICES LIMITED**

**Dated: 15 AUGUST 2023**

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**Counsel acting:**

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## MAY IT PLEASE THE HEARING PANEL

1. This memorandum responds to Minute 9 (**Minute**) issued by the Hearing Panel on 13 August 2023, and the directions in paragraphs 19 and 20 of that Minute in particular.
2. Paragraph 19 of the Minute stated:

In granting that extension we encourage the representatives (particularly counsel) of Mega Foods and TDC to have an urgent conference regarding the scope matter and fairness/natural justice matters. To be clear, this is not a question of whether the submissions are 'on the plan change' (this is not in question), but whether the recommended amendments in the s42A report could have been envisaged as a reasonable outcome of the submissions lodged and whether there is any natural justice/fairness issue arising.
3. Counsel for Mega Food Services and the Council have conducted an urgent conference as directed by the Minute. We report that we have a common view as to the legal position, which we outline below.
4. We do not consider that there are scope or natural justice issues arising from the contents of the Council's section 42A report on this plan change. In that respect, there are several submissions<sup>1</sup> that raise geothermal hazard and ecological management issues which relate to the merits of and constraints upon possible industrial rezoning of the submitter's land.
5. In turn, the section 42A report considers and makes recommendations on the matters raised in relevant submissions.
6. Counsel therefore consider that the matter relates more to the merits of the Council's recommendations and will raise issues including evidential sufficiency, compliance with section 32/32AA of the RMA, appropriate plan-making considerations, and competing expert evidence.
7. In other words, counsel are of the view that the central issues for the Hearing Panel are more likely to be related to the merits of the different

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<sup>1</sup> For example Alana Delich, Department of Conservation, Tukairangi Trust

positions of participants on the plan change, rather than any procedural complaints about fairness or natural justice.

8. Counsel do not have a firm view on whether further directions are required, such as those identified in paragraph 20 of the Minute. It is possible, given the position expressed in this memorandum, that section 32 and 32AA matters may be adequately addressed at the hearing without the need for further conferencing, but the parties would however engage in further conferencing if directed.
9. If this memorandum does not resolve the Hearing Panel's concerns, then counsel will be prepared to address matters such as those identified in paragraph 16(a) of the Minute at the hearing, should the Panel require that assistance. Counsel also record that they have noted the Panel's request at paragraph 16(b) of the Minute to address the legal requirements relating to the identified higher order planning documents via legal submissions.

**DATED** this 15th day of August 2023



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James Winchester  
Counsel for Taupō District Council



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Joanna Beresford  
Counsel for Mega Foods Limited