BEFORE THE CENTRAL HAWKE'S BAY DISTRICT COUNCIL

220003

IN THE MATTER OF	the Resource Management Act 1991
AND	An application for a resource consent to subdivide land at Pourērere (being Part of Lot 1 DP 27067 and contained in Record of Title HBW3/400)

LEGAL SUBMISSIONS OF COUNSEL FOR THE APPLICANT

12 January 2024

MAY IT PLEASE THE COMMISSIONERS

1 These are the closing submissions on behalf of the applicant.

2 The central question in this application is one of soils. Ms Foster and Mr O'Leary have been in discussions regarding proposed conditions. Little difference remains between Ms Foster and Mr O'Leary on the other issues and appropriate conditions (with the exception of landscape).

3 **Attached** are the conditions which the applicant now proposes.

Highly Productive Land

What is productive capacity?

4 The main difference between the argument we articulated at the hearing and that which Mr Williams and Ms Bielby articulated turns on the meaning of the phrase "the overall productive capacity of the subject land over the long term".[1] Neither Mr Williams nor Ms Bielby supported Mr Wiffen when he indicated that "subject land" is restricted to HPL land.[2]

5 In respect of the meaning of "long term", we accept that 30 years might be a reasonable interpretation of such a provision. Consequently, we agree with Ms Bielby in that respect.[3]

6 "Productive capacity" is defined:[4]

> …, in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:
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> (a) physical characteristics (such as soil type, properties, and versatility); and
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> (b) legal constraints (such as consent notices, local authority covenants, and easements); and
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> (c) the size and shape of existing and proposed land parcels

7 In this case the soil class is class "3W1" (the "W" standing for "soil wetness resulting from poor drainage or a high water table, or from frequent overflow from streams or coastal waters first limits production").[5]

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[1] National Policy Statement for Highly Productive Land 2022, cl 3.8(1)(a).
[2] Although Mr Grant's amended approach is consistent with Mr Wiffen's approach. Mr Grant received no support on this matter from the Council's solicitor.
[3] Ms Bielby's submissions at [4.18].
[4] NPS-HPL, cl 1.3(1).

8 Mr Williams and Ms Bielby's argument must be that the NPS protects, not only those physical characteristics that the soil has, but also those physical characteristics after the expenditure of capital to change those physical characteristics in the long term. We agree that the application of lime or fertiliser or the growing of a different crop type does not change the physical characteristics over the long term and consequently would be insufficient. However, the installation of drainage changes the physical characteristics of the property over the long term: the soil type is no longer "3W1" but something else (at least insofar as excess water in winter is concerned).

9 Mr Williams and Ms Bielby's submissions amount to suggesting that "productive capacity" includes the capacity of the soil to be changed by changing the physical characteristics. That cannot be the intention of the drafters of the national policy statement as it would lead to absurd results.

10 Here are some examples to assist in determining what that submission will mean in practice:

(a) Slope can be changed with big enough earth moving equipment. Does the productive capacity of the subject land include significant interventions in the topography of the landscape?

(b) With sufficient time and money, chemical deficiencies in soil can be remediated through the application of appropriate treatment. Does the productive capacity of the soil include the potential to change the long-term soil chemistry in order to enable plant growth?

(c) A legal constraint can reduce productive capacity.[6] A legal constraint, such as a consent notice, local authority covenants and easements might not be a constraint if sufficient time and money were devoted to their removal;

(d) The size and shape of existing and proposed land parcels[7] might not be a constraint if adjoining land was purchased.

11 The difficulty with Mr Williams and Ms Bielby's argument is that they are not looking at the land as it currently is with its existing physical characteristics but looking at the land as it might be after capital is expended to change those

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[5] P F J Newsome, R H Wilde and E J Willougby *Land Resource Information System Spatial Data Layers: Data Dictionary* (Landcare Research New Zealand, 2008).
[6] NPS-HPL 1.3(1) "Productive Capacity", paragraph b.
[7] At (c).

physical characteristics. Under their argument, it is difficult to conceive of any parcel of land which does not have high productive capacity given sufficient modification.

12 It is the Applicant's case that the productive capacity of the "land" and "the subject land" is the land as it presently stands with its physical characteristics, legal constraints and size and shape. The NPS-HPL does not go so far as to enable you to ignore the present physical characteristics, legal constraints and size and shape in your assessment of what land-based primary production is able to be supported over the long term.

13 Mr Williams describes the case as open and shut.[8] In the famous case of *John v Rees* it was held:[9]

> As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not: of unanswerable charges which, in the event, were completely answered; with inexplicable conduct which was fully explained.

14 The explanation in this case is that Mr Williams, Ms Bielby and their witnesses have not assessed the land as it is, but have assessed the land as they would like it to be.

15 Drainage, because it is a long-term change to the physical characteristics of the land, has not been included as part of the present position. I note:

(a) Neither Mr Bridge, nor his predecessors, nor Charlie Harris' predecessors have installed subsoil drainage.[10] Drainage is not merely a "management technique".[11]

(b) Ultimately, the Applicant sees productive capacity as the physical characteristics, legal constraints and the size and shape of the existing and proposed land parcels as they currently are, not as someone might wish them to be. Productive capacity has a specific definition. It is not correct to merely say that land could be drained and therefore its productive capacity assumes its drainage.

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[8] Submissions of Counsel for the Havelock Bluff Trust at [15].
[9] *John v Rees* [1970] 1 Ch 345, [1969] 2 All ER 275.
[10] We know that more than 100 years ago the site was a wetland. A modified tributary of the Pourērere Stream and the sewing of pasture have resulted in the three W1 soil classifications.
[11] Contrary to the submission of Mr Williams.

Use of models in determining productive capacity

16 We all know the phrase "all models are wrong, but some are useful".[12] During the hearing it was stated more bluntly, "garbage in, garbage out".

17 Both Steve Goodman and Philip Tither used the Farmax model. That alone suggested the Farmax model is reliable. After all, the Farmax model is used to make many commercial and operational decisions: it is used to assist in the valuation of rural land. On the basis that both farm advisors use the model, it must be helpful.

18 The Farmax model produces a variety of outputs. One can measure production[13] in terms of quantities of meat and fibre produced or the value of that production. In this context it does not matter what units are used.

19 The purpose of using the model is to compare scenarios. The quantity of goods produced can be expressed either in financial or other terms. So long as one chooses appropriate metrics it does not matter how the quantities are expressed.

20 At the hearing, Mr Tither retreated from a number of conclusions he expressed in his evidence:

(a) He seemed to accept that his capitalised economic farms surplus was not reliable. He did not disagree that the residual value of the farm if the 18ha were removed remains in the order of $5m. It was not $23,261 as his figures might suggest;

(b) Mr Tither accepted he used old aerial photographs to determine affected farm area. He said "we should not get hung up on that". The difference between Mr Goodman and Mr Tither amounts to some 50ha. Mr Tither should have accepted that he got this very wrong;

(c) There is no disagreement between Philip Tither, Lachlan Grant and Steve Goodman in respect of the average achievable stocking rate. Nonetheless, if drainage should be assumed for the purposes of calculating carrying capacity, then both Mr Grant and Mr Tither ought to have used a higher stocking rate for the farm;

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[12] *Box, George E. P. (1976), "Science and statistics" (PDF), Journal of the American Statistical Association, **71** (356): 791–799, doi:10.1080/01621459.1976.10480949.*

[13] In terms of the NPS-HPL definition, the ability of the land to support land-based primary production.

(d) Mr Tither accepted that the difference between a loss before drainage of 4.5% or 5.5% of the productive capacity of the farm was not an issue;

(e) "Carrying capacity" is not to be assumed to be "opportunity cost";

(f) Mr Tither gave no explanation as to why he manipulated his model to require a management fee of $80,000;

(g) Mr Tither applied his imaginary forage improvement (plantain) to only the 18ha, not an 'apples with apples' comparison. Plantain could be grown on all of the farms flats to gentle rolling country. If this was done the whole farm EFS would be higher meaning the loss of the 18ha would be a lesser proportion than Tither estimated.

21 The phrase, "garbage in, garbage out" is not ours. Nevertheless, Mr Tither was not able to explain a number of his inputs. The output that he obtained did not result in a realistic property valuation.

Variety irrelevant to productive capacity

22 Productive capacity does not mean capacity for variety. At the hearing, some speakers appeared to be operating on an assumption that land that can support a multitude of different primary productions has a greater productive capacity. There is nothing in the definition or stated purpose of the NPS which supports this.

23 A parcel of land which is highly productive for one type of production and nothing else is still highly productive. It follows that, any reference to an alternative primary production use of the land is irrelevant unless that alternative use would be more productive than the status quo. In this case, Mr Grant said that the "most productive land use" is cattle.

The growing of tree crops or horticulture

24 Ms Harty stated "if the farm was drained it would be ideal for tamarillos and citrus". That is the point — if the land were drained then its productive capacity would be altered. This takes capital. It cannot be assumed to be a solution available either today or in the long term. Otherwise, why did her family not do it? Why has Charlie Harris not done it?

25 The answer as to why they have not done it is likely to be because it is not financially viable. Lachlan Grant indicated that, in order to succeed in a commercial outcome, one needs to not merely grow 10 acres (4ha): the sort of scale that had previously been grown. Consequently, when Charlie Harris

suggested that the growing of avocado on Aramoana Station might be a realistic comparator, there seemed to be general agreement that the avocado orchard at Aramoana had failed.

26 Throughout the hearing, submitters attempted to make comparisons with other environments within the Country which are quite simply not comparable. To give just one example, the transport of horticultural produce from Pukekohe to Hamilton along a newly constructed expressway with a speed limit of 110 kmph is not comparable to transporting produce from Pourērere to Hastings. It is inefficient to go through every comparative example raised at the hearing. Rather, we urge the panel to consider critically any comparisons made and ask yourselves whether they are, in fact, materially similar.

Avoiding minor or transitory effects

27 The best evidence available to you is that the proposed subdivision will not have an impact on the productive capacity of the land. As we noted in our opening submissions, the *New Zealand King Salmon* Supreme Court decision confirms that, while an overall broad judgment approach to national direction is incorrect, an avoid policy does not require the avoidance of effects which can be considered minor or transitory. This is confirmed and reinforced by the newly released Supreme Court decision in *Port Otago Ltd v Environmental Defence Society Inc*.[14]

28 Mr Goodman notes in his evidence that his assumptions are highly conservative. The applicant submits that, based on the evidence of Mr Goodman, the proposed subdivision will have such a small effect on productive capacity it must be considered minor or transitory under the *NZ King Salmon* / *Port Otago* tests.

29 If the applicant is wrong in this respect, they have offered drainage works as a condition of this consent. Properly interpreting "productive capacity", these drainage works will clearly mean there is no loss to the productive capacity of the land caused by the subdivision.

30 In just the past few weeks, the Environment Court has released a decision on how the NPS-HPL should be applied.[15] The decision considers an application for a subdivision and land use consent. The decision specifically quotes the *Port*

[14] *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112 at [64] to [68].
[15] *Gibbston Vines Ltd v Queenstown Lakes District Council* [2023] NZEnvC 265.

Otago decision. The Court found that the proposed activity "would give rise to only minor adverse effects on the environment".[16] The Court found that granting consent is not contrary to the intentions of the NPS-HPL.[17] The Court said, in particular:

> [82] … inherently the Modified Proposal limits the capacity to protect highly productive land. However, given the minor adverse effect that the Modified Proposal has, including in regard to the life-supporting capacity of soils, we find that the Modified Proposal is not inappropriate use and development in the sense intended by Pol 8. Hence, it is not inconsistent with that policy.

Highly productive land in the PDP

31 At the hearing, there was some confusion over the status of HPL in the proposed district plan. Some persons implied that the applicant's case is that the National Policy Statement does not take precedence over the proposed plan. This is incorrect. It was also asserted that the applicant is seeking an 'overall judgment' approach as rejected in the *NZ King Salmon* decision. This is also incorrect.

32 The applicant accepts and submits that the NPS-HPL takes precedence over the PDP. What this means is that the policy direction in the NPS must be applied in preference to any policy direction in the PDP. However, just because the NPS takes precedence over the PDP does not mean that the NPS definition of Highly Productive Land is automatically incorporated into the PDP. The policies in the PDP must be interpreted in light of the apparent intent of the drafters at the time that they wrote the proposed plan.

33 The PDP was notified prior to the gazettal of the NPS. Those provisions have not changed in the decisions version. At the time of notification, the consultation draft on the NPS was significantly different from the version to be notified. As such, it is not temporally possible for the drafters of the PDP to have intended to incorporate the NPS definition of HPL.

34 If the PDP policy direction is inconsistent with the NPS, the NPS must take precedence. However, the definition of HPL in the NPS does not require or justify interpreting the PDP beyond the intent of the PDP's drafters.

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[16] At [64].
[17] From [78].

35 An analogy to illustrate this point can be seen with the definition of "lifestyle lot". Mr O'Leary admits that the definition of "lifestyle lot" in the PDP definition differs from that in the National Planning Standards, a piece of national direction. It is accepted in that context that, despite the fact that the PDP is required to give effect to the national direction, the PDP definition differs from that used in the national direction.

36 The application proposed is consistent with the policies in the PDP which relate to highly productive land.

Final comments on the NPS

37 Clause 3.8 of the NPS was described at the hearing as a "loophole". This term is incorrect and misleading. The inclusion of cl 3.8 and 3.10 is a deliberate policy decision of the drafters of the NPS to determine what activities are and are not appropriate in and around highly productive land. Both cl 3.8 and 3.10 operate independently as situations where activities are appropriate in highly productive land. The NPS does not purport to ban all non-primary production in HPL. Rather, a clear theme of the NPS is an intent to prevent "inappropriate" activities and to define what is appropriate. This application is entirely appropriate.

38 In our opening, we made submissions on the legal irrelevance of guidance prepared by the Ministry. It was suggested at the hearing that this could be addressed as a matter of weight. The applicant submits that, as a legally irrelevant document, the guidance document must be given no weight. To give any weight to a guidance document prepared by the executive after the gazettal of the NPS, in effect, makes the guidance document an amendment to the NPS outside the statutory process. This is why the Environment Court politely expressed "extreme difficulty" with considering guidance documents in the *Adams* decision.

Reverse Sensitivity

39 Reverse sensitivity arises when (and only when) an established use is causing adverse environmental impact to nearby land. A new, benign activity is proposed in the vicinity. The 'reverse sensitivity' is this:[18]

> If the new use is permitted, the established use may be required to restrict its operations or mitigate its in-effects so as not to adversely affect the new activity.

40 Mr Harris stated at the hearing "reverse sensitivity works two ways". This is, by definition, incorrect. Mr O'Leary also referred to effects on neighbouring land as "reverse sensitivity". This is also incorrect.

41 Reverse sensitivity is not the same as ordinary sensitivity. At the hearing, several complaints were made about Mr Bridges' current farming activity. Even if true, these would not be relevant to the question of reverse sensitivity. Reverse sensitivity, in this context, is the sensitivity caused by the owners of any new lots being sensitive to existing activities in the environment.

42 Mr Harris is concerned that his established activity, which at the current point in time is farming cattle, might be curtailed because people in newly constructed dwellings will complain.

43 I address this in three ways:

(a) There is no evidence of a current issue: Mr Harris has expressed fear of what might happen in the future;

(b) A rural urban interface exists right across Central Hawkes Bay District Council. Indeed, Pourērere itself already has a kilometre or more of residential boundary adjoining rural land;

(c) The measures put in place to address reserve sensitivity will be sufficiently effective.

Mr Harris' apprehended concerns

44 Mr Harris repeated on more than one occasion that he had in fact been affected by the preexisting subdivision. Nevertheless, he gave no specific details about what had happened and how that event had led to a challenge to part of his farming operation. It was plain that Mr Harris was sensitive to

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[18] *Gateway Funeral Services v Whakatane District Council* Env Wellington W005/08, 5 February 2008 at [26] quoting Bruce Pardy and Janine Kerr "Reverse Sensitivity – The common law giveth and the RMA taketh away" 1999 3 NZJEL 93.

allegations being made about his farming practices. He referred to the reference to the Supreme Court *Synlait Milk Limited v New Zealand Industrial Park Limited*[19] as being "triggering". He referred to himself as an interested party in that case. So, whatever his interest in that case was, he was not associated with one of the participants, nor was he a director or shareholder of any of those participants.

45 Mr Harris highlighted concerns about the vilification of farming and suggested a reason for that is because New Zealanders did not get out into a rural environment. His opposition to this application, if successful, will prevent New Zealanders from experiencing a rural environment on holiday. Mr Harris' assertion that the applicant should build a buffer is akin to building a wall.

46 Some of the fears Mr Harris raised were in respect of animal welfare. He indicated that cows lowing in a field might be perceived to be hungry even though lowing is part of ordinary cow behaviour.

47 The second perceived issue is the possibility of fertiliser drifting over the boundary. The short point is that if fertiliser is drifting across the boundary that is unlawful. It is contrary to the regional plan.[20] In addition, it is a nuisance which can create a liability in tort. That state of affairs exists whether or not it is residential or rural farmland adjoining Mr Harris' property. Consent cannot be refused because it would require Mr Harris to curtail behaviour which is unlawful.

48 Nevertheless, the applicant is prepared to build a hedge between the farm accessway and Mr Harris's property as a condition of the consent if that is necessary.[21]

Final comments on reverse sensitivity

49 Mr Harris asserted that land covenants are ineffective to address reverse sensitivity issues. Even though this application was publicly notified, not a single person subject to an existing no-complaints covenant submitted on the application. This illustrates covenants' effectiveness.

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[19] *Synlait Milk Limited v New Zealand Industrial Park Limited* [2020] NZSC 157; [2020] 1 NZLR 657.
[20] Hawkes Bay Regional Resource Management Plan, chapter 6.
[21] A condition can be imposed requiring consultation with Mr Harris as to the species of the hedge.

Landscape

50 Mr O'Leary, in his supplementary, states that the subdivision will "dominate the rural valley floor". This is not supported by the evidence. The proposal is consistent with the scale of development as currently consented on the valley floor.

51 Mr O'Leary and Ms Foster have been working on a set of conditions relating to landscape for this development. Ultimately, they have been unable to reach an agreement. We have included with this submission the conditions the applicant submits are appropriate. It is for the panel to decide what is appropriate based on the evidence before it.

52 Ms Ryder admitted at the hearing that the conditions she has sought to be imposed on this subdivision have been based on conditions imposed on a development in the outskirts of Hamilton. The context is quite different and inappropriate in the context of Pourērere.

Engineering

53 We understand that the engineering issues raised at the hearing have been addressed through the consent conditions agreed between Ms Foster and Mr O'Leary

Traffic

54 We understand that the traffic issues raised at the hearing have been addressed through the consent conditions agreed between Ms Foster and Mr O'Leary

55 Speed limits are not determined by street signs. They are no longer determined by council bylaws. Rather speed limits are set out in the National Speed Limits Register in accordance with rule 2.1 of the Land Transport Rules: Setting of Speed Limits 2022 issued under the Land Transport Act 1998. The legal regime for setting and updating speed limits is legally complicated and outside the scope of the Resource Management regime. It is the joint responsibility of the District Council, Regional Council and Waka Kotahi.

56 Mr Bridge has clarified that the Punawaitai main carriageway is not the access to the farm.

57 Effects of the activity on the Council's budget are not effects on the environment. Budgetary concerns are addressed through development contributions. Any perceived deficiencies in development contributions

policies relating to traffic cannot be remedied by requiring works as consent conditions.

Freshwater Management

58 There is no evidence of any natural inland wetland in or near the land captured by the National Environmental Standards for Freshwater.

59 If a condition is imposed requiring drainage works to be completed, any required regional consents will be obtained before undertaking those works.

Miscellaneous matters

60 This section sets out responses to several miscellaneous matters arising.

61 At the hearing, it was questioned who prepared the s 92 response. This was prepared by Ms Foster.

62 At the hearing, it was queried whether the Council has given any reasons for its proposed zoning at Pourērere. We have been unable to find any reasons given explaining the proposed zoning at Pourērere.

63 The applicant reiterates its submission that it is inappropriate for this panel to pre-judge the merits of Mr Bridges appeal on the zone. The Case quoted by Ms Bielby (*Knowles v Queenstown Lakes District Council*) does not support the proposition that Councils may prejudge the merits of an appeal or the prospects of its success. Rather, the case concerned an appeal that was lodged outside its jurisdiction. As such, it was an invalid appeal. There is no suggestion that Mr Bridge's appeal was invalidly filed. The merits of Mr Bridge's appeal is for the Environment Court to determine.

64 Objective GRUZ-O2 in the proposed district plan is not under appeal.

65 Commissioner Wilson asked at the hearing why the applicant did not seek written approvals from neighbours. The applicant did seek written approvals. The applicant obtained written approvals. Those approvals are in the form of the rules of the society incorporated by land covenants. If anyone has come to the property after the covenant is in place, they effectively come to any nuisance.

66 During the hearing, it was noted that the rules of the society could change. That is irrelevant to their status as affected party approvals for the following reasons:

(a) The rules have not changed;

(b) Even if they had changed, the fact that the rule was in place when the application was lodged means that any subsequent change is irrelevant. Any subsequent change would be akin to a neighbour who had given written approval to an application prior to lodging subsequently trying to withdraw that approval.

(c) The High Court in *South Pacific Tyres NZ Ltd* has confirmed that a person may waive their rights to public participation by their free and informed consent.[22] The Court said "I consider that it would be 'unduly paternalistic and precious' to prohibit an individual from surrendering his/her rights of public participation in return for what he/she sees as being a 'sufficient advantage to make it appropriate to do so'".[23]

67 Mr O'Leary stated that the panel should take into account effects on stage one properties out of "an abundance of caution". This implies a level of discretion that the Council does not have. Section 104 prohibits the consideration of the affects of any person who has given written approval. The applicant submits that the council has no discretion to take into account affects on such persons even if this would be the cautious approach. Rather, the panel must determine who has given written approval according to the law properly applied and disregard their effects accordingly.

68 Mr Mr O'Leary did not serve the stage one owners or occupiers. Since the council was required to serve all affected persons, this implies that Mr O'Leary considers that those persons are not affected by the application. This is inconsistent with his argument that they are affected.

69 There was some confusion at the hearing over the fact that a community facility is proposed. There was a suggestion that what we and Ms Foster were saying about the status of the community facility were inconsistent. This is denied. This issue was addressed at length in the opening submissions but we summarise the position here:

(a) The prevailing case law is that a resource consent is a consent for an activity, not a consent to breach a rule. The extent of an activity for which a consent is sought is determined by the application interpreted in its context.

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[22] *South Pacific Tyres NZ Ltd v Powerland (NZ) Ltd* [2009] NZRMA 58 (HC).
[23] At [62].

(b) Because a resource consent is for an activity, not to breach a rule, the consent may include activity aspects which were permitted at the time the consent was applied for but which later cease to be permitted activities (see *Marlborough DC v Zindia Limited*). [24]

(c) Although 'community facility' was not specifically mentioned by name when the application was lodged, the community facility (as defined in the PDP) was within the scope of the activity for which a consent was sought as set out in the application documents. It was not called a community facility because, at that time, the proposed plan had not been notified.

(d) Under the Act, the activity status of a resource consent is fixed at the date of the application. As such, while the policies in the PDP may have relevance (to be given more or less weight depending on the circumstance), the rules in the PDP which relate to activity status only apply to applications lodged after the PDP was notified. They do not apply to this application.

70 We note that, during the hearing, Mr Harris' counsel purported to swear him in. We make a number of observations:

(a) The exchange did not actually amount to an oath or affirmation so this attempt was not effective;

(b) This oath/affirmation was neither requested nor required;

(c) An oath or affirmation is not standard practice in these hearings. The unilateral decision to attempt to put a witness on oath was inappropriate;

(d) No other witnesses were given the opportunity to give their evidence on oath.

71 Much attention was given at the hearing to various participants' conflicts of interest or perceived conflicts of interest. It should be noted that Mr Williams is a councillor member of the Hawkes Bay Regional Council.

Submission on Council's Conduct in this Application

72 The applicant's position is that this application is lawfully on hold under the RMA. Its position is that the panels latest minute purporting to require the

[24] *Marlborough District Council v Zindia Limited* [2019] NZHC 2765.

filing of these closing submissions is invalid as it was issued while the application is on hold. These submissions are filed without prejudice to the applicant's position.

73 It is regrettable that the Council has repeatedly failed to meet its legal obligations when processing this application:

(a) The Council was legally required to make a notification within 20 working days. It took the 177 working days for the Council make a notification decision. This occured despite repeated requests from the applicant for the Council to make a decision and an express request that the application be publicly notified in an attempt to expedite this process.

(b) The Council has failed to follow the principles of natural justice. This includes providing secret legal advice to the decision maker which was not released until after a decision was made.

(c) The Council has twice purported to issue an invoice ignoring its obligations under the Resource Management (Discount on Administrative Charges) Regulations 2010.

(d) The Council has failed to meet its obligations to hold a hearing on an objection under the objection provisions of the RMA.

(e) The Council has failed to recognise the applicant's legal right to put the application on hold. Instead, it has taken the position that its unlawful delays somehow remove the applicant's right to put the application on hold.

(f) The Council has multiple times failed to meet its obligations under the Local Government Official Information and Meetings Act 1987 to disclose information on request. As at the date of this submission, there is an official information request which is currently outstanding and beyond the statutory deadline for a response.

74 The applicant reserves all rights arising from the Council's actions above.

Dated this 12th day of January 2024

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Quentin A M Davies | Josh S Marshall