

**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 Mark
and Melissa Prosser

AND

IN THE MATTER OF

Hearing of submissions on the Proposed
Waimakariri District Plan and Variations 1 and
2

**MEMORANDUM OF COUNSEL FOR MARK AND MELISSA PROSSER
REQUESTING LEAVE TO FILE SUPPLEMENTARY PLANNING EVIDENCE IN
RESPONSE TO COUNCIL S42A REPLY REPORT ON THE STREAM 12C HEARING**

Dated: 10 December 2024

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**MEMORANDUM OF COUNSEL FOR MARK AND MELISSA PROSSER
REQUESTING LEAVE TO FILE SUPPLEMENTARY PLANNING EVIDENCE IN
RESPONSE TO COUNCIL S42A REPLY REPORT ON THE STREAM 12C HEARING**

1. This memorandum is filed on behalf of Mark and Melissa Prosser (**Prossers** or **Submitter**) in response to the s42A Reply Report dated 29 November 2024 following Hearing Stream 12C regarding Large Lot Residential Zone (**LLRZ**) rezoning requests (**Reply Report**).
2. Counsel respectfully requests leave for the Prossers to file supplementary planning evidence from Mr Allan in response the Reply Report regarding the efficacy of recommended amendments to the Proposed Waimakariri District Plan WPDP (**PWDP**) and the notified subdivision provisions to resolve remaining issues in respect of the Prosser rezoning proposal at North East Mandeville.
3. This request is made on the following grounds:
 - (a) That the additional material that the Submitter seeks to provide to the Hearing Panel is highly relevant to determination of the Prosser submission on the PWDP;
 - (b) That granting the request will not result in any prejudice to other participants in the hearing process, including other submitters, section 42A officers and other Council staff; and
 - (c) That granting the request will not result in any disruption to the efficient completion of Hearing Stream 12C.

Relevance of the additional material

Context

4. Following Hearing Stream 12C the Hearing Panel issued Minute 33 dated 29 July 2024 which directed that:
 - (a) Expert conferencing occur on questions set out in Attachment 1 to the Minute, to be co-ordinated by the Council's s42A reporting officer on LLRZ rezoning submissions (**reporting officer**);¹ and

¹ Minute 33 dated 29 July 2024 at [6]

- (b) The Council obtain from its legal advisors' responses to the questions set out in Attachment 2 to the Minute.²
5. On 4 September 2024 a Joint Witness Statements (**JWS**) regarding Stream 12C/12D wastewater expert conferencing was signed by wastewater experts involved with Stream 12C and 12D. Mr Sookdev attended this witness conference on behalf of the Prossers.
 6. On 9 September the reporting officer filed a memo addressing various matters pertaining to expert conferencing including (relevantly) a table that identified zoning requests where expert conferencing may help address matters prior to the final right of reply. The table referred to conferring with a range of technical experts including expert planning consultants.³ The table does not refer to expert conferencing with Mark Allan, the Prosser's planning consultant, presumably because at that time this was not considered necessary by the reporting officer.
 7. By Minute 40 dated 19 September 2024 the Panel responded to the above memo and among other matters noted the proposed conferencing to occur for Hearing Stream 12C proposed by the s42A reporting officer.⁴
 8. Subsequently the Panel posed a series of overarching and specific questions to be answered by the reporting officer in the officer's reply report on the Stream 12C LLRZ rezoning hearing. The specific questions included a direction that the reporting officer respond to the expert evidence and Mr Fowler's submission in respect to Prosser.⁵ The officer was also directed to liaise with the relevant planners representing submitters on any planning proposals.⁶

Liaison between council officers and Mr Allan, planning expert for the Prossers

9. By email to Matt Bacon dated 15 October⁷, Mr Allan stated that from the Prosser's perspective based on the three JWS relevant to Stream 12C (transport, groundwater and wastewater) all issues have been resolved between the respective experts, with the exception of wastewater where there remains some

² Supra at [10]

³ Memo of Council's 42A reporting officer at [16]

⁴ Minute 40 dated 19 September 2024 at [5]

⁵ Panel questions to the reporting officer (undated) at [6(k)]

⁶ Supra at [8]

⁷ Email Mark Allan to Matt Bacon dated 15 October 2024 (Mark Buckley the reporting officer was away at the time but had invited Mr Allan to contact Mr Bacon in his absence)

disagreement between the Prosser expert (Mr Sookdev) and the Council's expert in respect of network capacity.

10. Mr Allan then sets out his view regarding how this matter can be addressed at the subdivision stage under the notified PWDP subdivision standards..
11. Mr Allan's email further comments that (underlining added):

I'm not sure where this leaves us in terms of planner conferencing or how it is intended to report the Prosser's position back to the Panel. If Mark [Buckley] is now on the same page, then I'd suggest there is no need for conferencing. However if Mark's recommendation is still to decline, arguably there is basis for conferencing to allow each planner to put forward their view as to the efficacy of provisions in relation to the proposed rezoning.

12. Subsequently, in response to a request from Mr Buckley dated 5 November, Mr Allan corresponded with Mr Buckley by email dated 8 November regarding proposed rules and ODP relevant to the Prosser rezoning proposal. Mr Allan noted that (underlining added):⁸

For ease, I have inserted my ODP narrative and rules into your document and responded to your comments in turn (2nd attachment). I consider my previously filed provisions appropriately address your queries, however you will see I do not consider it necessary to insert site-specific provisions relating to wastewater, for the reasons I have set out. Please let me know if you disagree, as it would be appropriate that our respective positions on this matter are recorded in a JWS.

13. Mr Allan followed up with Mr Buckley by email dated 20 November seeking an update and confirmation there was nothing more needed for the purpose of his Reply Report. Mr Allan reiterated that he would like the opportunity to resolve any matters with him, or otherwise record any disagreement in a JWS if that was necessary.
14. Counsel understands that Mr Allan did not receive any response from Mr Bacon or Mr Buckley to his request for conferencing or a JWS in the event of disagreement between the planning experts, and no such conferencing occurred.

⁸ Email Mark Allan to Mark Buckley dated 8 November 2024

Reply Report

15. The Reply Report is dated 29 November 2024. It comments on the issue of wastewater servicing of the site as follows:⁹

I note that there is a difference of opinion between Mr Sookdev and Council engineers regarding the servicing of the site using the existing wastewater system. While it is recognised that a developer lead solution is possible, at this stage no developer is proposing to install a new pump station and rising main.

16. The Reply Report also comments on the availability of infrastructure to serve the Submitters' site at Mandeville as follows:¹⁰

I note that there are significant infrastructure constraints that have not been adequately addressed in the proposed rezoning, and can be considered as not being "infrastructure ready."

17. The Reply Report includes Appendix 2 which contains a brief evaluation of each LLRZ rezoning submission and a final recommendation. The Prosser site is discussed under the heading "North East Mandeville Development Area" and comments as follows regarding impacts on the existing sewer network:¹¹

- *"The developer is proposing a staged development that may reduce potential impact upon the sewer system,*
- *There may be compatibility issues associated with existing sewer rising main and proposed sewer system,*
- *Given a developer led upgrade to the sewer system this may not be a constraining issue,"*

18. The Reply Report then records the officer report recommendation that the Prosser's rezoning request be rejected.¹²

19. Notwithstanding the above recommendation, the Reply Report includes recommended amendments to the WPDP specific to the Prosser rezoning proposal entitled "MNE – Mandeville Northeast Development Area"¹³ including an ODP for the Prosser site (**recommended amendments**).

⁹ Reply Report at [121]

¹⁰ Supra at [125]

¹¹ Supra, Appendix 2 at page 25

¹² Supra, Appendix 2 at page 26

¹³ Supra, Appendix 2 at pages 27-29

20. The Reply Report does not record or discuss Mr Allan's responses to Mr Buckley's 5 November request, nor does it provide any context to the recommended amendments to the WPDP specific to the Prosser rezoning proposal.

Evaluation

21. It is noteworthy that nowhere in the Reply Report does the reporting officer record or discuss:
 - (a) Mr Allan's views, in response to questions from Mr Buckley, about the efficacy of the recommended amendments; or
 - (b) Mr Allan's views about the efficacy of notified WPDP subdivision provisions to resolve remaining wastewater capacity issues.
22. Further, expert conferencing has not occurred between the expert planners, despite Mr Allan's request that this takes place should the reporting officer's recommendation remain decline. Nor has a JWS been prepared recording the views of the planning witnesses about the above matters.
23. In the circumstances the Prosser's are placed at a disadvantage because Mr Allan's views are not available to be considered by the Panel.
24. The Submitter seeks an opportunity to file brief supplementary planning evidence regarding these matters.
25. It is considered that this additional information is highly relevant and will assist the Hearings Panel to determine the Prosser LLRZ rezoning proposal at North East Mandeville.

Prejudice to other participants in the hearing process

26. Granting the Submitter's request to submit additional information will not result in prejudice to other participants in the hearing process for the following reasons:
 - (a) The additional information is narrow in scope and confined to the efficacy of recommended amendments and the notified WPDP subdivision provisions to resolve remaining issues in respect of the Prosser rezoning proposal at North East Mandeville;

- (b) There are no other submitters or further submitters that have an interest in the Prosser's submission regarding these matters that might be potentially prejudiced by admission of the additional information;
- (c) The reporting officer was aware of Mr Allan's views and had an opportunity to include them in the Reply Report but for whatever reason did not do so; and
- (d) The additional information should not cause any prejudice to other Council staff.

Disruption to the efficient completion of Hearing Stream 12C

- 27. The additional information from the Submitter should not cause disruption to the efficient completion of Hearing Stream 12C nor extension of the duration of the hearing.
- 28. The hearing has not yet closed as the Panel is still awaiting provision of final reports from council officers on so-called 'wrap-up' matters which is due by 13 December 2024.¹⁴
- 29. Counsel acknowledges that the Hearings Panel anticipates being able to close the PWDP and V1 hearings respectively soon after receiving the final reports.¹⁵
- 30. Should the Hearings Panel decide to grant leave to the Prossers then the additional material discussed above can be filed by 4pm 13 December 2024 or within 24 hours of leave being granted, whichever is the later.

Proposed directions

- 31. If the Hearings Panel is minded to grant the leave requested by the Submitter, it is respectfully proposed that the Panel direct that the Prossers file brief supplementary planning evidence from Mr Allan by 4 pm 13 December 2024 or within 24 hours of leave being granted, whichever is the later.

¹⁴ See Minute 44 dated 23 October 2024 at [2]

¹⁵ Supra at [4]

Dated: 10 December 2024

A handwritten signature in cursive script, appearing to read 'Chris Fowler', positioned above a horizontal line.

Chris Fowler
Counsel for Mark and Melissa Prosser