

**GREATER WELLINGTON REGIONAL COUNCIL  
Proposed Natural Resources Plan for the Wellington Region**

**HEARING PANEL MINUTE 2**

**9 December 2016**

**FINAL PROCEDURES FOR HEARING OF SUBMISSIONS**

**Introduction**

1. The purpose of this Minute is to outline the procedures for the hearings programmed to begin in April 2017.
2. The Minute covers the following matters:
  - Relevant Background
  - Membership and Role of the Hearing Panel
  - Principles of Hearing Process and Hearing Sessions
  - Register of Interests
  - Role of Council Staff and Expert Advisors
  - Pre-hearing Meetings
  - Evidence Preparation and Pre-circulation
  - Hearing Process and Presentations
  - Hearing Sessions and Protocols
  - Expert Conferencing
  - Hearing schedule
3. The Hearing Panel will issue other Minutes from time to time, both in the lead-up to the hearings, and, if necessary, during the course of the hearings.

## Relevant Background

4. The Proposed Natural Resources Plan for the Wellington Region (PNRP) was notified on 31 July 2015. The submission period closed on 25 September 2015 with 429 submissions received.
5. The summary of decisions requested (SDR) was notified on the 26 February 2016, with the further submission period closing on the 25 March 2016. A total of 95 further submissions were received. An Errors and Omissions Addendum to the SDR was notified on 11 April 2016 and closed on 26 April 2016 with five further submissions received.

## Membership and Role of the Hearing Panel

6. In accordance with s34A(1) of the Resource Management Act 1991 (RMA) the Wellington Regional Council (the Council), at its meeting on 30 September 2015, appointed a three-member Hearing Panel comprising:
  - Mark St.Clair (Independent Commissioner and Chairperson)
  - Elizabeth Burge (Te Upoko Taiao – Natural Resource Management Committee member and Independent Commissioner)
  - David McMahon (Independent Commissioner)
7. The Hearing Panel is required to hear and determine all submissions and further submissions and prepare decision reports on the submissions and further submissions. The Hearing Panel assumed the responsibility for the hearings process going forward from the 30 September 2015.
8. References to submissions and submitters in this Minute and Directions includes further submissions and further submitters.
9. The Quorum for the Hearing Panel is two commissioners.

## Principles of Hearing Process and Hearing Sessions

10. The Hearing Panel will establish and conduct a hearing process that:
  - **is appropriate and fair:** the Hearing Panel will at all times act in a fair and transparent manner;

- **avoids unnecessary formality:** the Hearing Panel will be inclusive and acknowledge the broad range of interests of submitters and facilitate a process that provides all parties the opportunity to be heard, whether presenting oral or written submissions and evidence;
- **is efficient:** the Hearing Panel will conduct an efficient process which minimises time and costs to all parties participating in the hearings. The Hearing Panel will provide all submitters with an adequate opportunity to be heard, while, at the same time, avoiding unnecessary repetition and presentation of irrelevant material;
- **recognises tikanga Māori:** the Hearing Panel will receive evidence written or spoken in Māori when requested to do so by a submitter who has given sufficient advance notice to enable an interpreter to be available; and
- **recognises New Zealand sign language: the Hearing Panel will** receive evidence in sign language when requested to do so by a submitter who has given sufficient advance notice to enable an interpreter to be available.

### Register of Interests

11. A fundamental pre-requisite to a fair and transparent hearing process is an obligation on all Hearing Panel members to bring an independent view and open mind to the role of hearings commissioner, free of any 'conflicts of interest' that could result in bias and/or predetermination.
12. As part of the appointment process, the Hearing Panel members were required to declare any conflicts of interest. Following appointment, the Hearing Panel met and agreed to disclose any potential conflicts to the Chair prior to the commencement of the hearings. Conflicts of interest may include where a Panel member:
  - has previously advocated a particular position, or
  - appeared in the past as a witness or advisor to a party who may hold an interest and/or lodged a submission on a PNRP provision, or
  - holds an interest which may result in a potential conflict of interest and/or a perceived bias.
13. The vehicle for recording the above interests is a "Register of Interests" which records the ongoing involvements and/or interests held by Panel Members. This has been prepared by the Chair. The Chair will decide on a course of action, which may result

in the Panel Member being requested to stand aside from the relevant hearing session/s and from the deliberations and decision-making arising from the hearing session/s.

14. The Register of Interests will be maintained for the full term of the hearings process and be available for public inspection.
15. At the commencement of each hearing day, Hearing Panel members will be asked (by the Chair) to declare that no issues of 'interest' arise for them given the day's proceedings. Similarly, the Chair will also make a declaration.
16. All parties to each day's proceedings will be entitled to bring to the Chair's attention any potential 'interest' situation.

### **Role of Council staff and expert advisors**

16. A number of Council staff and expert advisors will be involved in the hearing process. These are as follows:
  - a) Officer (Section 42A) Report Writers
  - b) Hearings Officer

#### Officer (Section 42A) Report Writers

17. A number of Council staff and consultant advisors will be involved through the preparation of reports (known as s42A Reports) which will summarise and evaluate the various submissions and further submissions received on the various parts/topics/chapters of the PNRP. These reports will be pre-circulated at least 20 working days in advance of the hearings. The report writers will attend the hearings and be available to answer any questions from the Hearing Panel. The s42A Reports will constitute part of the body of evidence to be considered by the Hearing Panel, alongside the evidence of submitters.
18. The s42A Reports will contain recommendations for the consideration of the Hearing Panel. Such recommendations will not be binding on the Hearing Panel. Furthermore, the s42A Reports carry no greater weight than any other material to be brought forward to the Hearing Panel by, or on behalf of, any submitter.
19. The s42A Reports and any other Council evidence will be available on the Council website: <http://www.gw.govt.nz/proposed-natural-resources-plan/>

### Hearings Officer

20. The Hearings Officer will oversee the various administrative tasks needed to ensure an efficient hearing process. These tasks will include, but not be limited to:
  - a) issuing schedules and hearing notifications;
  - b) making meeting arrangements;
  - c) making available hearing directions/Hearing Panel Minutes;
  - d) making available evidence and reports to be received by the Hearing Panel;
  - e) handling submitter enquiries; and
  - f) handling public and media enquiries to the Hearing Panel; and
  - g) assisting the Hearing Panel as required.
21. Submitters will be notified by email of any new material that is placed on the Council's website. E.g. section 42A reports, changes to the hearing schedule, etc.
22. The Hearings Officer will be the Council's 'point of contact' for submitters and the media. The contact email address is: [regionalplan@gw.govt.nz](mailto:regionalplan@gw.govt.nz)
23. The Hearings Officer will be responsible for managing the Council's website to ensure that all the necessary information to support an efficient hearings process is displayed and updated.
24. The website address is: <http://www.gw.govt.nz/proposed-natural-resources-plan/>.

### **Pre-hearing meetings**

25. The Hearings Officer will be responsible for organising and scheduling pre-hearing meetings. These meetings will have an independent facilitator in some instances and are to occur in a timely fashion prior to the actual hearings.
26. The Hearing Panel considers the pre-hearing meetings will be important in seeking to identify and resolve procedural issues, and in determining whether substantive issues raised in submissions can be addressed through mediation, other alternative dispute resolution process, expert conferencing or by way of a hearing session.

27. Minutes will be taken at the pre-hearing meetings and a report will be prepared by the Chair or Facilitator for the Hearing Panel. The report will set out any understanding matter, clarification or resolution of a matter or an issue agreed between parties in attendance.

### **Evidence preparation and pre-circulation**

28. The Hearing Panel accepts that many submitters may wish to simply speak to their original submission/further submission at the hearing. However, the Hearing Panel also anticipates that many submitters will wish to present written evidence from suitably qualified expert(s) and potentially have legal submissions presented on their behalf.

#### Expert evidence from Council

29. The Council's s42A Reports will be made available on the Council's website at least four weeks (20 working days) in advance of the scheduled hearing; and all relevant parties advised of their availability. This will ensure that all relevant parties wishing to prepare evidence can do so in knowledge of the issues addressed in the s42A Reports.

#### Expert evidence<sup>1</sup> for submitters

30. It is the Hearing Panel's intention to pre-read all expert evidence in advance of the hearings. To enable the pre-reading to be undertaken in a timely fashion, all submitter written expert evidence is to be provided to the Hearings Officer, preferably in electronic format, a minimum of two weeks (10 working days) in advance of the allocated date for the commencement of the relevant hearing.
31. Submitter expert evidence will be posted on the Council's website as soon as practicable following receipt of that evidence as set out in paragraph 30 above.
32. Each expert witness can only present one brief of evidence per hearing topic. Where that expert witness is appearing in respect of multiple submitters, that evidence may be subdivided into appropriate sections so as to enable the submitters' cases to be presented adequately.

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<sup>1</sup> Expert Evidence as identified in the Environment Court of New Zealand Practice Note 2014.

### Lay evidence

33. When a submitter speaks to their submission only (is not giving expert evidence), this is considered lay evidence. Any written material should be presented on the day of the hearing and read aloud. It is not required to be pre-circulated. Submitters are requested to bring ten (10) copies of any written material to the hearing. If a submitter has difficulties copying the material, then they should send the material to the Hearings Officer at least 3 days prior to their scheduled hearing time so that the material may be copied and provided to the Hearing Panel.
34. Any submitter wishing to speak to their submission using a power-point presentation is required to provide the power-point in an electronic format to the Hearings Officer at least 3 days prior to their scheduled hearing time. This is to ensure compatibility with the electronic system to be used at the hearing venue. Any file less than 30Mb can be emailed to the Hearings Officer.

### Tabled evidence

35. Where a submitter or their representative is unable to attend the hearing for a particular topic, material in support of their submission may be tabled provided it is received by the Hearings Officer at least 5 working days prior to the hearing on the topic commencing.

### Additional Evidence

36. Once the hearing for a topic is completed, the panel will not accept additional material on that topic, other than in exceptional circumstances which will require approval of the Hearing Panel Chair.
37. The purpose of making evidence available is to enable all parties to be aware of and understand the issues to be addressed at the hearing. This will contribute to a more efficient hearings process.
38. Legal submissions may be presented at the hearing, and there is no requirement for these to be pre-circulated.

### **Hearing process and presentations**

39. An audio recording will be taken at each hearing session. These will be publicly available on the Hearings website.

40. As expert evidence will be pre-circulated to all parties prior to the hearing and will be read by the Hearing Panel before the commencement of the hearing, evidence will be taken as read at the hearing. However, all expert witnesses will be given an opportunity to speak to a summary of their evidence, by way of a written summary covering the main points.
41. Based on this approach, the Hearing Panel anticipates that the majority of expert witnesses will, as a general rule, speak for no more than 10 minutes.
42. Notwithstanding the approach outlined above, the Hearing Panel wishes to make it clear that all submitters will be given (within reason) the time that they require to adequately present their views. The main purpose behind pre-circulation is to minimise the time required for everyone to present at the hearing itself, but, at the same time, to ensure that everyone is able to fully participate in the hearing process. However, unnecessary repetition and 'time wasting' will not be allowed.

### **Hearing sessions and protocols**

43. The Hearing Panel's intention is to manage a hearings process that is appropriate and fair, efficient and without unnecessary formality.
44. To this end, it is envisaged that each hearing will consist of:
  - a) Chairperson's introduction and register of interest;
  - b) Any legal submissions from the Council – for each Hearing Topic;
  - c) Overview of s42A Report by report author; including an explanation of the topic, how it works and is set out in the proposed plan, identification of key issues as well as relevant objectives, policies and methods and how they link together;
  - d) The Hearing Panel may ask questions of the s42A Report authors and expert witnesses called by the Council;
  - e) Submitter's submissions and evidence (by submission number);

- f) The Hearing Panel may ask questions following each submitter's presentation; and
- g) Reply by s42A Report author in relation to any changes to recommendations in light of submissions and evidence presented by submitters. This is to be in writing and lodged with the Hearings Officer within 10 working days of the adjournment of the hearing and will be available on the Council's website.

### **Expert Conferencing**

- 45. The Hearing Panel requests that all parties (the reporting officers and submitters) calling expert witnesses co-ordinate conferencing of their respective experts on matters relevant to their specific areas of expertise. The Hearing Panel requests this conferencing between experts is done prior to the preparation of their reports or evidence (including any track changes to applicable PNRP provisions). The aim of such conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence.
- 46. In addition, the Hearing Panel may, at any time prior to or during the Hearing, request that additional conferencing of experts be held. Expert conferencing will normally only be requested where one or more specific issues that are the subject of expert evidence require separate conferencing.
- 47. As noted above, each expert witness can only present one brief of evidence per hearing topic. Where that witness is appearing in respect of multiple submitters, that evidence may be subdivided into appropriate sections so as to enable the submitters' cases to be presented adequately.
- 48. The Hearing Panel will attempt to focus on the issues of contention during the hearing and in their deliberations thereafter and so would greatly appreciate the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner.
- 49. The Hearing Panel has the same expectations of expert witnesses as set out in the Environment Court's Practice Note, including in particular:
  - a) An expert witness has an overriding duty to assist the Hearing Panel impartially on matters within the expert's area of expertise; and
  - b) An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship

with the parties calling them or any interest they may have in the outcome of the proceedings.

### **Hearing schedule**

50. It is the Hearing Panel's intention to hold hearings on a 'topic by topic' basis. The Hearing Panel accepts that this approach will mean that some submitters may have to attend and participate in more than one hearing. The Hearing Panel also acknowledges that this approach may be disruptive to submitters' other work and family commitments. However, it is considered that the 'topic by topic' approach is the most appropriate way to achieve an efficient hearing process.
51. It is also the Hearing Panel's intention to hold hearings at three locations across the Wellington Region; Kāpiti Coast, Wellington and the Wairarapa to reduce disruption and travel time for submitters.
52. It is anticipated that hearings are likely to commence in April 2017 and take in the order of eight months through to the end of 2017 to complete. The Panel will not be issuing interim decisions. The indicative hearing schedule is available on the Council's website <http://www.gw.govt.nz/proposed-natural-resources-plan/>.
53. Where this separation into topic areas means that a submitter may be required to repeat essentially the same submissions and evidence in more than one hearing session, the Hearing Panel is happy to have this presented at the first relevant hearing, and then have the material tabled at the remaining relevant hearings. The submitter or submitter's representatives and any witness(es) will need to attend the subsequent hearings so as to be available for questions from the Hearing Panel for those later hearings unless excused from attending by the Hearing Panel.
54. In general terms, it is anticipated that the hearings will be held three or four days per week for two to three weeks, followed by a non-hearing/deliberation week, followed by another two/three-week block etc. There will be a period of two to three weeks between hearing topics.
55. The Hearing Panel request that where there is a group representing a wider group of submitters that that group speak to their submission first; followed by individual group members.

56. In regard to the opportunity to speak to their submissions, all submitters will be advised of the scheduled hearing date, their allocated time, and the hearing venue at least 10 working days in advance. The Hearings Officer will email the details to each submitter and place a schedule of the timetable on the Hearing website.
57. The Hearing Panel's objective is to ensure that to the greatest extent practicable, and in compliance with the requirements of the Resource Management Act 1991, the most appropriate, fair and efficient hearing process is established and endorsed by all parties.



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Mark St.Clair

Chair

For and on behalf of

Proposed Natural Resources Plan Hearing Panel

9 December 2016

Note 1: The Hearings Officer will be the Council's 'point of contact' for submitters and the media. The contact email address is: [regionalplan@gw.govt.nz](mailto:regionalplan@gw.govt.nz)

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