

## Variations 1 and 1A to the Proposed Marlborough Environment Plan

### Minute of the Hearing Panel

#### Minute 1

The Council has delegated the authority to hear submissions and further submissions to, and make decisions on, Variation 1: Marine Farming and Variation 1A: Finfish Farming (collectively the 'Aquaculture Variations') to the Proposed Marlborough Environment Plan to a Hearing Panel (the Panel). The Panel is chaired by Trevor Hook and comprises Councillor David Oddie, and the independent commissioners Shonagh Kenderdine, Rawiri Faulkner and Sharon McGarry.

112 submissions were made on the Aquaculture Variations, consisting of over 1,200 separate submission points in support of or in opposition to the notified Aquaculture Variation provisions. A significant proportion of those submitters also wish to be heard.

Previously, provision for aquaculture in the Proposed Marlborough Environment Plan (the Plan) was removed seeking further review. The Aquaculture Variations are the result of that process and propose additions to each of the four volumes in the Plan: Volume 1 (objectives, policies and methods), Volume 2 (rules and definitions), Volume 3 (appendices) and/or Volume 4 (zoning maps and overlays).

Hearings on the remainder of the Plan concluded in April 2019. The previous MEP Hearing Panel formulated a procedure for those hearings which was further refined through feedback received by submitters to the process. The Panel for the Aquaculture Variations are satisfied with the general structure provided by the previous MEP Panel and felt that it achieved the Resource Management Act 1991 (RMA) requirement that the established procedure be "appropriate and fair in the circumstances". Some refinements have been made to the procedure to reflect the smaller scale of the Aquaculture Variation process.

Throughout the hearing process though, the Panel will retain the flexibility to vary the process, but only where it is satisfied the circumstances require some different approach.

The number of submitters (for the remainder of this Minute the term "submitters" includes further submitters) requesting to be heard mean that a time issue arises as to how the process can be conveniently handled to meet the statutory imperative in Section 21 of the Resource Management Act 1991 (RMA):

#### *Section 21*

*Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.*

As occurred previously, the Panel's view is that this is a case where it is necessary to utilise the powers of direction within Sections 41B and 41C of the RMA in order to achieve an efficient, appropriate and fair hearing. All evidence and legal submissions should be pre-circulated prior to the hearing. The evidence, as well as the original submissions and further submissions, will have been read by the Panel in advance of the hearing.

If you are a submitter and you wish to speak only to the matters you have raised in your submission no further documents need to be provided to the Council as the Panel will have pre-read all submissions.

However, you may also wish to give evidence by providing a written statement or discussing additional information, including expert evidence, which was not provided with your original submission, but which is relevant to and supports issues raised in that submission, or call a witness to do this on your behalf. If this is the case, all written material must be provided to the Council ahead of the hearing by a date which will be specified in the notice of hearing. Such further evidence and legal submissions should, if possible, be provided in electronic form.

To make steady progress through the hearing, it is also considered necessary to limit the time provided to each submitter. Time is to be limited for oral presentations to 20 minutes per submitter, including any expert evidence.

The approach outlined above provides submitters the opportunity to emphasise the principal points that they wish to make. The hearing also provides an opportunity for Panel members to ask questions of submitters.

If any submitters wish to be heard in te reo they are requested to advise that in writing two weeks prior to the hearing commencing.

The Panel recognises that there may be exceptional circumstances that justify some flexibility in terms of the procedural directions outlined above and in more detail below. Having said that, the term "exceptional" is deliberately used. Logical and compelling reasons will be necessary to support any requests for delays in evidence timeframes or for further time.

The Panel are mindful that many of the submitters will be presenting on both variations. Given the interrelated nature of the variations, the Panel agree that these matters can be heard concurrently to limit the need for multiple appearances. For clarity, those who submitted on both Variation 1 and on 1A will still be able to book two time slots if they deem this necessary.

The Panel intends to commence the hearing on 9 November 2021 and this will be confirmed by hearing notice as soon as practicable. However, the impact the coronavirus is having on work schedules and the ability to hold the hearing will need to be considered by the Panel on an ongoing basis. Council staff will

endeavour to keep the website updated with any changes and, where a submitter who has identified they wish to be heard, has provided an email address for service updates can be provided directly.

As was available for the MEP hearings, an online booking system will be the preferred method for booking hearing slots. If you are not familiar with the system and require assistance Council staff will be able to help. Further details will be provided on the hearing notice.

The Council staff member preparing the hearing, and to whom any enquiries as to timing for appearances can be made, is Christine Leslie. Her contact details are: [Christine.leslie@marlborough.govt.nz](mailto:Christine.leslie@marlborough.govt.nz), 03 520 7400.

During the hearing, Sue Bulfield-Johnston will hold the position of Hearing Facilitator and any enquiries at that stage can be directed to her at: [Sue.Bulfield-Johnston@marlborough.govt.nz](mailto:Sue.Bulfield-Johnston@marlborough.govt.nz), 03 520 7400.

Please note that an audio record of the hearing will be made. This will be available upon request from the Council.

#### **Procedural directions**

To summarise, the Panel intends to conduct the hearing on the Aquaculture Variations generally as follows:

1. The Panel will conduct variations 1 and 1A concurrently;
2. A hearing notice will issue confirming the start date, time and venue;
3. The submitters are to provide all of their evidence, and/or that of their expert witness, 10 working days prior to the commencement of the hearing. Any legal submissions must be lodged with the Council at least 5 working days prior to the commencement of the hearing;
4. Section 42A reports will be pre-circulated at least 10 working days prior to the date that evidence is to be lodged;
5. Any request for additional time at the hearing must be made in writing at least two weeks prior to the commencement of the hearing. Any request for additional time should detail who the witnesses are for whom more time is sought, why they need more time, and how much extra time is sought;
6. The Panel will issue a minute in respect of any such request(s) prior to the hearing commencing. These will be made available on Council's website;
7. If any submitters wish to be heard in te reo they are requested to advise that in writing two weeks prior to the hearing commencing;
8. The hearing will commence with an oral presentation by the Section 42A report writers;

9. Thereafter, each submitter, and/or their expert witness(es), is to present orally within the 20 minute time limit;
10. After hearing submissions and/or evidence, members of the Panel may ask questions of the submitters and/or their expert(s) through the Chair. (Please note that the RMA does not allow cross-examination by any submitter.) Extra time provision will be included in the hearing schedule to allow for this Panel questioning over and above the 20 minute time limit.);
11. At the conclusion of the submitters presentations, the Section 42A report writers will be asked to briefly make any points of clarification they would like to make in view of hearing the submissions and evidence;
12. Council staff may arrange site visits for the Panel if considered necessary by the Panel.

All information relevant to the hearings will also be made available on the Council's website:

<https://www.marlborough.govt.nz/your-council/resource-management-policy-and-plans/proposed-marlborough-environment-plan/variations/variation-1-and-1a>

The Panel may issue further minutes, through the Chair, when necessary during the hearing process. These minutes will also be uploaded to the Council's website. Submitters are encouraged to view the Council's website from time to time.

Finally, the Panel wish to reiterate the MEP Hearing Panel sentiment that this process 'will set the strategic direction for the sustainable management of Marlborough's natural and physical resources for the foreseeable future. The Panel understands the serious nature of these proceedings and our decision making role. This has been foremost in our mind when considering and determining a hearing procedure that is fair and appropriate'.

Dated 24 September 2021



**Trevor Hook**

Chair of the Aquaculture Variations Hearing Panel