

Proposed Marlborough Environment Plan

Minute of the Hearing Panel

Minute 2

On the 14 September 2017 the Proposed Marlborough Environment Plan Hearing Panel (the Panel) issued Minute 1. This set out the Panel's intended procedures for the hearing of the submissions and further submissions (collectively referred to as submissions for the remainder of this minute). The Panel sought feedback on these procedures.

The following nine submitters provided feedback:

- Te Runanga o Ngati Kuia
- Te Runanga o Ngati Rarua
- Te Atiawa o Te Waka-a-Maui Trust
- Te Runanga o Kaikoura and Te Runanga o Ngai Tahu
- Director General of Conservation
- Kenepuru and Central Sounds Residents Association
- Federated Farmers of New Zealand
- Marine Farming Association
- Aquaculture New Zealand

There were five main matters raised in the feedback. These are set out below.

Iwi interests in the hearing process

Te Runanga o Ngati Kuia, Te Runanga o Ngati Rarua, Te Atiawa o Te Waka-a-Maui Trust, and Te Runanga o Kaikoura and Te Runanga o Ngai Tahu highlighted a concern that the approach set out in Minute 1 was directive as to venue and kawa and therefore, in their view, disrespectful of the partnership that underlies the relationship between the Council and iwi.

The Panel recognises the mana of the iwi that have submitted to the Proposed Marlborough Environment Plan (MEP). The Panel's intent was, and still is, to consult with iwi with respect to these matters. The Panel believes that it is important that Mr Rawiri Faulkner, the appointed iwi commissioner, is part of that process. He has unfortunately been unavailable to be involved in such a capacity, but returns to New Zealand very shortly. Thereafter, there will be an opportunity for face to face discussion to occur.

It is important to the Panel that the introductory aspects to the hearing on Topic 2 (Tangata Whenua Iwi) is conducted with appropriate tikanga and it therefore looks forward to discussing the pre-hearing procedures for this topic with the iwi authorities that have submitted on the MEP.

Te Runanga o Kaikoura and Te Runanga o Ngai Tahu also requested that two additional iwi commissioners be appointed to the Panel. The Council has delegated to the Panel the role of hearing submissions and making decisions on the MEP. The appointments to the Panel were made by the Council and the Panel does not have the ability to revisit this decision.

Legal submissions

The intended procedures required legal submissions to be provided at the same time as any evidence. The following submitters questioned the proposed timing for the provision of legal submissions:

- Director General of Conservation; and
- Kenepuru and Central Sounds Residents Association.

The Panel agrees with legal counsel for the Director General that Section 41A of the RMA 1991 is restricted to the provision of evidence. However, the Panel retains discretion to establish the overall procedures under Section 39 of the RMA 1991. It has previously decided that an efficient hearing can be achieved if all relevant information, including legal submissions, is provided to the Panel ahead of the hearing.

In doing so, the Panel notes that those preparing legal submissions would benefit from being informed by any evidence the submitter is providing. It therefore agrees that those preparing legal submissions be provided with more time to complete those legal submissions. The Panel has determined that legal submissions should be lodged with the Council at least 5 working days prior to the relevant hearing commencing. The directions circulated on 14 September 2017 are therefore amended accordingly.

Cross examination

The Panel would also like to take this opportunity to remind submitters that wish to be heard that there is **no** opportunity for cross-examination of submitters or their experts during the hearing. This also applies to legal counsel for submitters.

Request for separate hearing block for farmers

Federated Farmers of New Zealand requested a separate block of hearings in which farmers could address all MEP provisions they had submitted on at one hearing block in order to save them from attending multiple hearing blocks. The Panel carefully considered this matter when initially determining its intended procedures (as set out in Minute 1). This is because the same issue exists for any submitter that has submitted on multiple topics, not just those with farming interests. Further to Minute 1, the Panel retains its view that hearing all submitters on a specific topic at the same time allows for more effective decision making.

For this reason, the Panel declines the request for a further hearing block specific to farmers. In doing so, the Panel reiterates the point made in the original minute that it will retain the flexibility to vary its process, including requests to be heard out of sequence. In doing so, the Panel reminds submitters that the circumstances must be sufficient to warrant any deviation from the procedures set out in Minute 1. The process for requesting variation to the procedures is set out in that minute.

Relationship of MEP Provisions to the NES for Plantation Forestry

The MEP contains provisions that manage commercial forestry. Since the MEP was publicly notified in June 2016, the National Environmental Standard for Plantation Forestry (NES) has been gazetted (on 31 July 2017).

The Panel understands that the NES contains a comprehensive set of regulations to manage the effects of plantation forestry. The NES commences on 1 May 2018 which raises the matter of the status of MEP rules relative to the NES.

Section 44A of the RMA 1991 requires the Council to amend the MEP to remove any rules that duplicate regulations in the NES or are in conflict with those regulations. In addition, Regulation 6 of the NES allows the Council to have more stringent rules in specific circumstances.

Kenepuru and Central Sounds Residents Association have sought to have their submissions falling under Topic 3 heard when Topic 22 (Commercial Forestry and Non-permanent Sequestration Forestry) is scheduled.

Council staff have advised the Panel that the Council has to undertake a process of aligning the provisions of the MEP (and also incidentally the operative plans) with the NES. As a result, the Panel is of a mind to not commence hearing Topic 22 until that alignment process is complete. It is probable that some rules that have attracted submission will be removed as a result of the alignment process, making it unnecessary to hear those submissions or make decisions on those provisions. At the completion of the alignment process, there will be certainty regarding the MEP provisions that remain subject to submission and we will be able to plan that part of the hearing accordingly.

For this reason, the Panel recommends that the Kenepuru and Central Sounds Residents Association present their relevant submission points falling within Topic 3 in Hearing Block One.

Requests for additional time with respect to Hearing Blocks One and Two

The Marine Farming Association, Aquaculture New Zealand and the Kenepuru and Central Sounds Residents Association all sought additional time with respect to the topics being heard during Hearing Blocks One and Two. Federated Farmers of New Zealand highlighted the potential for it to seek additional time.

In issuing Minute 1, the Panel invited feedback on the overall procedures. The feedback received from the Marine Farming Association, Aquaculture New Zealand and the Kenepuru and Central Sounds Residents Association above was specific to Hearing Blocks One and Two. The intended procedures specified that submitters could request additional time in response to individual hearing notices. The Panel encourages the submitters to resubmit their requests in response to the relevant hearing notices. These requests should set out the relevant exceptional circumstances that justify the increased time, and should also detail who the witnesses are for whom more time is sought, why they need more time, and how much extra time is sought for any particular witness.

Request to extend timeframe for lodgement of evidence on Hearing Block Two

The Kenepuru and Central Sounds Residents Association requested an extension of the date by which they must lodge legal submissions and evidence on Hearing Block 2 to the 2 February 2018. Note the amendment of the procedures with respect to legal submissions as detailed above. The Panel notes that the Association's submission on natural character and landscape topics is extensive. It therefore grants the request with respect to lodging evidence.

Procedural directions

Drawing upon the procedures set out in Minute 1, as amended by decisions recorded in this minute, the following are the confirmed procedures for the MEP hearings:

1. The Panel will conduct the MEP hearing by topic, with multiple topics to be scheduled in blocks to allow the directions set out below to be most effectively applied;
2. A hearing notice will issue for each hearing block of topics;
3. The submitters are to provide all of their evidence, and/or that of their expert witness, ~~and any legal submissions~~ prior to a date set for each hearing block. 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 all evidence/~~legal submissions are is~~ to be lodged;
5. Any request to hear evidence/further information out of sequence or any request for additional time at the hearing must be made in writing at least two weeks prior to the commencement of the relevant hearing block. 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 for any particular witness;
6. The Panel will issue a minute in respect of any such request(s) prior to the relevant hearing block commencing;
7. If any submitters wish to be heard in Te Reo they are requested to advise that in writing two weeks prior to the relevant hearing block commencing;
8. Each hearing block will commence with an oral presentation by the relevant Section 42A report writers in respect of that block of topics;
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 notices to allow for this Panel questioning.);
11. The relevant 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 are to provide hearing notices for hearing blocks, dates, times and venues to generally enable processes to be followed;

13. Council staff may also arrange site visits for the Panel if considered necessary by the Panel.

As a reminder, all information relevant to the hearings will also be made available on the Council's website.

www.marlborough.govt.nz/your-council/resource-management-policy-and-plans/proposed-marlborough-environment-plan

Dated 18 October 2017

A handwritten signature in black ink, appearing to read 'T Hook', with a small dot at the end.

Councillor Trevor Hook

Chair of the MEP Hearing Panel

Record No: 17194611