

Proposed Marlborough Environment Plan

Minute of the Hearing Panel

Minute 11

1. The purpose of this Minute is to raise with those yet to appear before the Hearing Panel an issue which has been causing the Panel increasing concern during its hearings and preliminary deliberations.
2. That issue is the very important issue of the powers of the Hearing Panel to grant the relief being suggested to it by some submitters and further submitters – commonly termed the ‘scope’ or legal ability to grant the relief requested at the hearings.
3. The principle laid down in the relevant statutory provisions under the Resource Management Act 1991 is that the Hearing Panel only has the lawful ability to grant relief within the scope of the relief which was specifically sought in an original submission. Council’s Guidelines to writing a submission on the Marlborough Environment Plan (MEP) drew attention at paragraph 4 to the need for relief requested to be specific:

“The decision I seek from the Council is ...” Clearly state the decision you wish the Council to make. Start by indicating if you want the provision to be retained, deleted or amended. If you want an amendment (including additional provisions) then specify what wording changes you would like to see.

4. The statutory provisions require that such requests for relief made in submissions are summarised by Council and notified to the public. The purpose of that process is to enable further submissions to be able to be made which can either support or oppose the relief sought in the original submission.
5. Council’s Guidelines to writing a submission on the MEP also emphasised that feature of the statutory scheme as to further submissions:

5. What happens next

After closing date for submissions, the Council will prepare and release a summary of the submissions lodged. There will be an opportunity to make a further submission in support of, or in opposition to, the submissions already made.

6. The Hearing Panel has increasingly become concerned that it is being repetitively requested to grant relief which is beyond the scope of the relief sought in the original submission.
7. The consequence is that even though evidence and legal submissions are being most diligently prepared and succinctly presented at the hearings, often it is found that some evidence and/or legal submissions seek relief that is well beyond the

scope of the original relief sought in the primary or original submission. Common examples include:

- Seeking relief in respect of policies or rules which have not even been subject to a specific submission
 - Seeking relief in respect of lands, seascapes and landscapes, or other physical features or aspects which again have not been the subject of any submission
 - Seeking by way of further submission to expand the relief sought in an original submission
8. In such cases, despite the presentation at a hearing providing interesting background to an issue, the outcome sought by the submitter or further submitter presenting to the Hearing Panel is simply unable to be granted, if the relief that is being requested at the hearing is beyond the scope of the relief requested in the original submission.
 9. The consequence in such cases, which the Hearing Panel wishes to avoid, will inevitably be a sense of disappointment at a decision being received advising that the relief requested at the hearing has been declined because the relief requested was beyond the scope of the relief sought in the original submission.
 10. The Panel is keenly aware that in such cases much time, thought, effort, and (in many cases) considerable expense will have gone into the preparation and presentation of evidence and legal submissions, only for the outcome to be what appears to be a rather blunt decision that the relief requested could not be granted as it was beyond the scope of the relief sought in the original submission.
 11. The Panel is also keenly cognisant that its own ability to hear the large volume of parties wishing to present to it is being unnecessarily delayed and diverted by time spent in hearing presentations seeking relief which cannot be granted.
 12. The Hearing Panel accordingly requests that all parties yet to present check again very carefully the scope of the specific relief which was requested originally in the original submission in respect of which they are presenting to support or oppose. That request applies to all submitters and further submitters.
 13. The Panel requests that all parties presenting ensure that their presentations, whether in written evidence, legal submissions, or oral presentations at the hearing, are indeed within the scope of the relief sought in the original submission.
 14. If that is done the following advantages will flow:
 - the hearing and deliberation process can be properly confined to relief validly sought within the scope of the original submission.
 - as a consequence the whole hearing and deliberation process can avoid the waste of valuable hearing time.
 - submitters and further submitters can avoid unnecessary wasted time, effort, thought and expense.

- potential disappointment can be avoided arising from requests for relief being declined, because the relief requested at the hearings goes beyond the scope of relief requested in the original submission.

Dated 4 April 2018

A handwritten signature in black ink, appearing to read 'T Hook', followed by a period.

Councillor Trevor Hook

Chair of the MEP Hearing Panel