

Proposed Marlborough Environment Plan

Minute of the Hearing Panel

Minute 54

To: Paul Whyte, Section 42A Report Writer – Topic 18 Nuisance Effects;

1. Attached hereto is Minute 43 issued to Mr Nevil Hegley, as the Section 42A report writer on noise issues, on 13 November 2018 at the time of the hearings of these matters.
2. Subsequently, Mr Hegley attempted to meet the concerns expressed by the Hearing Panel when providing his report in response to the evidence.
3. However, in terms of actual consideration of the two reports, (being his original Section 42A report and his reply to evidence report), the Hearing Panel has found it is still very difficult to relate recommendations between the two.
4. That is particularly so because the response report has adopted a format which does not relate to the same recommendations that were made in the original Section 42A report, but rather specifically responds to a particular witness or submitter's evidence or submissions. Moreover, the Panel has sometimes found that in the right hand column a wording is utilised of simple agreement with suggested recommendations of witnesses, but without the value of a tracked change version.
5. The Panel is left, therefore, with a degree of uncertainty as to the final form of amendments Mr Hegley finally settled upon, and also importantly ensuring those recommended amendments are consistent with recommendations in your own reports on similar provisions – a good example being the outcome recommended for the temporary military training provisions.
6. It would seem to the Panel that the most efficient and effective solution in respect of these noise issues may well be to request you to prepare jointly with Mr Hegley a set of final recommended amendments on a tracked changed basis with reference to the source submission relied upon for scope. Whilst the Panel would wish to receive that report by Monday 8 April, 2019 for its deliberations that week, it appreciates there is much work required to achieve the result it requests. It

appreciates that timing may depend on the availability of both yourself and Mr Hegley in the intervening weeks.

7. If there is a difficulty with that timing could you please liaise with Mr Pere Hawes to fix on another suitable date which can fit into the Hearing Panel's increasingly compressed deliberation meetings schedule as it seeks to conclude its deliberation process.

Dated 15 March 2019

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

Proposed Marlborough Environment Plan

Minute of the Hearing Panel

Minute 43

To: Nevil Hegley, Section 42A Report writer – Nuisance Effects (Noise)

1. At the conclusion of the presentation of your Section 42A Report on noise effects issues on Monday, 12 November, 2018 a number of issues were canvassed verbally with you. The Hearing Panel wishes to record those issues in writing because it is important you have a clear understanding of the reasons for the Panel's requests as to the format for your responding observations, after evidence and submissions have been presented by submitters.
2. The present format of your Section 42A Report has been to largely repeat and comment on the submissions in a plan provision sequence, rather than the issue based approach which you briefly presented orally to the Panel at the hearing. With the current format of the existing report a number of matters currently inhibit its ready use to assist the deliberation process.
3. The first of those is that, as the Chair observed at the hearing, the Panel is most particularly assisted by the Section 42A Reports identifying the principal issues submissions have raised. It is most helpful if those submissions seeking common relief are drawn together in summary form in a Section 42A Report. That enables the principal issues raised and relief sought to be responded to in that combined manner by the Section 42A Report writer's comments on an issue basis, rather than on an individual submission point basis.
4. With such an approach the Panel can have confidence that the scope of the relief sought over a large number of submissions is clearly identified and captured on an issue basis. That in turn enables the Panel in its deliberations to be satisfied on the first point it must consider, which is that there is definite scope identified for each of the recommendations which the Section 42A Report may make.
5. The second matter of importance is the recommendations made do not appear to have been linked either in an issue-based manner. At the moment the report format means that often generalised comments are made of 'agreement' with a

submission which is commonly ranging over many issues, but without a definite wording for a recommendation being made at that juncture. Often such 'agreement' is expressed with many consecutive submissions, often interspersed with comments where 'agreement' is not expressed. As a consequence recommendations often follow a description of many submissions spanning many pages.

6. The Panel has struggled with the fact that the Section 42A Report comments boxes do not set out the recommended changes made on specific submission points making it difficult many pages later to relate actual recommendations back to specific relief sought, or comments made.
7. The outcome of the difficulties faced by the Panel with the current report format was instanced by the Panel at the hearing with two examples early on in the report – they were but two of such difficulties the Panel experienced throughout the report.
8. To reiterate, the second of those examples related to the recommendation in respect of rule 3.4.1.3 as to the penalty for frost fan machines with special audible characteristics. That provision set out below was recommended to be deleted in its entirety:

3.4.1.3 Noise from a frost fan which has special audible characteristics such as tonality or impulsiveness, must have a 5 dB penalty added to the measured level before compliance with Standard 3.4.1.1 is assessed except that where the Reference Method in the Standard is used to determine the penalty, the value of the penalty shall be a value in the range 0.1 dB to 6.0 dB as determined by that method.

9. The Panel wishes to ensure that in your responding remarks to evidence and submissions presented on this topic that as far as possible the linkages it has requested in this Minute are complete.
10. The Panel appreciates that may not be possible on Thursday 15 November, but it is anxious to ensure it can deliberate on this topic by the week commencing 3 December. To have time for reading your final report for that purpose, it requests that reply analysis by end of the working day Wednesday 28 November, 2018.

11. If there are difficulties about that date the Panel requests you raise those for discussion on Thursday 15 November.

Dated 13 November 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