

Proposed Marlborough Environment Plan

Minute of the Hearing Panel

Minute 3B

1. Te Runanga o Ngāti Kuia ('Ngāti Kuia') have requested to be heard on Chapter 3 of Volume 1, which is listed as Topic 2, in the first hearing week. They have complained that they were not issued with a hearing notice to present submissions on Chapter 3 because their submission was not listed in the notified Summary of Submissions as having submitted on to Chapter 3. Ngāti Kuia point to the fact that their submission did indeed refer to Chapter 3 on a number of occasions, which the Panel accepts is correct.

2. Ngāti Kuia maintain the problem has arisen because of the following procedural failings by Council:

- *The limiting format that the council required submissions meant that there was not an ability to address matters holistically;*
- *...the summary of Council submissions did not include these aspects of our submission as it did not fit within their prescribed format;*
- *...we were not aware at that point in time that MDC intended to use their summary of the submissions to ascertain the scope of the individual submitter;*
- *The prescribed format of the submissions requested by council effectively prohibit the active participation in the process by Ngāti Kuia and our ability to raise concerns.*

3. Finally, Ngāti Kuia seek the following actions from the Hearing Panel:

We ask that the Panel ensure we are permitted to speak to the full scope of our submission and; that the s42a report is updated to reflect the oversight.

4. In their current request to be heard on Chapter 3, Ngāti Kuia summarise their submission on Chapter 3 in the following way:

In summary Chapter 3 matters provide the foundation for the specific matters our submission refers to in the other chapters. It is not possible to read our submission as separate, at a fundamental level, chapter 3 matters and it is impossible for our concerns over the MEP to be properly understood without having the ability to properly convey our views on chapter 3.

5. That is similar to the original submission by Ngāti Kuia which, under a heading of 'Background', stated inter alia:

Ngati Kuia support the principles of Chapter 3 of the Proposed Plan, particularly the expectation that an application will consult with iwi when iwi are affected. Unfortunately many activities that affect iwi are permitted within the plan or simply not identified and therefore no consultation is realistically expected.

And,

How Mauri of waterways is to be assessed and measured and affected is light. The plan puts emphases on 'encouraging' and 'promoting' good land practices but does not 'require' them. Iwi values identified in Chapter 3 are stronger than the policies and rules in other chapters of the plan but, this should not be the case.

6. The problem that has arisen is that the submission lodged by Ngāti Kuia did not go on after its 'Background' discussion to actually request any particular decision in the formal portion of the submission form.
7. The statutory form of submission requires specific provisions to be identified in respect of which a submission is made, supported by reasons. Importantly, the form then requires specific decisions to be requested which the submitter requests from Council on the identified provision or provisions.
8. Now it is important to record that Ngāti Kuia are in error in seeking to blame the Council or its staff for the requirements of that form and procedure. The Council was bound at law to follow the mandatory procedural format laid down by the First Schedule of the Resource Management Act 1991, and the related Resource Management (Forms, Fees, and Procedure) Regulations 2003. None of the requirements of the submission form or procedure were set by Council. They are set as a matter of law.
9. The purpose of the submission format both requiring identification of specific provisions that are the subject of the submission, and requiring the requesting of specific decisions by Council on those identified provisions, is to enable a summary of the specific decisions requested by submitters to be published. That publication of a summary of the decisions requested by submitters is done so that other people who might be affected by such decisions can themselves lodge further submissions in support or opposition of the decision requested in the original submission.
10. In short, the process is designed not to exclude participation but quite the opposite — it is designed to enable participation by people affected by the decisions that have been requested in submissions.
11. As can be seen from the discussion and extracts above, the Ngāti Kuia submission unfortunately did not specifically request a decision or decisions in respect of Chapter 3 — doubtless because it stated earlier in the submission under the heading of 'Background' that it supported the principles in Chapter 3.
12. As a consequence we see no error in the summary of decisions requested in the submissions, as notified by Council.
13. However, equally we can see very clearly that Ngāti Kuia wished in general terms of principle to support Chapter 3, and stated in their introductory 'Background' to the later specific submissions on particular identified provisions that they sought the application generally of those principles in other areas of the Plan.

14. Clause 6 of the First Schedule to the RMA states (bolded for emphasis):

6 Making of submissions under clause 5

(1) Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.

(2) ...

(3) ...

(4) ...

*(5) **A submission must be in the prescribed form.***

15. However, clause 4 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 provides:

4 Use of prescribed forms

Use of a form is not invalid only because it contains minor differences from a form prescribed by these regulations as long as the form that is used has the same effect as the prescribed form and is not misleading.

We do not consider that the form of submission Ngāti Kuia decided to use, by including what it called a 'Background', was in any way misleading. It was a method sought to be used by Ngāti Kuia to express support for some general principle aspects which in its view affected the whole Plan.

16. We consider the best method of proceeding is to enable Ngāti Kuia to address us in hearing week one by way of written material, and the normal up to 20 minute oral presentation, on the reasons for its support of Chapter 3. The requirements for the provision of evidence are set out in Minute 1 and Minute 2 of the MEP Hearing Panel.

17. It should be plain to Ngāti Kuia, though, from the above discussion that it cannot seek decisions beyond those requested in its submission.

Dated 27 October 2017



Councillor Trevor Hook

Chair of the MEP Hearing Panel