

## Proposed Marlborough Environment Plan

### Minute of the Hearing Panel

#### Minute 3BC

On 17 September 2018, the Proposed Marlborough Environment Plan Hearing Panel (the Panel) received a request from the New Zealand Deer Farmers Association - Marlborough Branch (the Association) requesting an extension to the time for lodging evidence and inferring more time would be required to present at the hearing.

In its consideration, the Panel noted the request for extra time to prepare evidence does not provide any particular compelling reason beyond the work ordinarily needed to prepare and collate evidence. The purpose of the timings stipulated is to ensure there is sufficient time for the evidence to be copied and provided to Panel members for them to be able to read the evidence before the hearing. In the absence of any particular reason being advanced to support of an extension of time request, the Panel is reluctantly prepared to agree to evidence being supplied no later than 1:00 pm on Friday 28 September.

As to the other more general indications of an intent to call evidence from other 'speakers', **attached** by way of a reminder, is a copy of the Panel's initial procedural Minute providing procedural Directions. That has worked well with all submitters to date in the Plan hearings, and has achieved the aims of enabling full opportunity for participation by submitters to fully inform the Panel of their views, while also ensuring repetition is avoided.

The Panel has noted that your submission primarily focusses on one major issue of stock access to water.

The Panel draws attention to the time limits in that initial procedural Minute for presentations to be made at the hearing. When coupled with the pre-reading of evidence by the Panel, that will ensure the Association has ample time to make its points in relation to the issue its submission raised.

Dated 19 September 2018

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

Councillor Trevor Hook

Chair of the MEP Hearing Panel

**Encl.**

# 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, the Proposed Marlborough Environment Plan (MEP) to a Hearing Panel (the Panel). The Panel is chaired by Councillor Trevor Hook and comprises Councillors David Oddie, Laessa Shenfield, Jamie Arbuckle; and the independent commissioners Mrs Shonagh Kenderdine, Mr Ron Crosby and Mr Rawiri Faulkner.

There are over 1300 separate submissions made on the MEP, consisting of over 17,000 separate submission points in support of or in opposition to the notified MEP provisions. This is obviously a large number of submissions to consider when making decisions on the MEP. A significant proportion of submitters also wish to be heard. The challenge is to devise a process which is “appropriate and fair in the circumstances” as required by the Resource Management Act 1991 (RMA).

On the 23 August 2017, the Panel considered the matter of procedure for the hearing of submissions and further submissions on the Proposed Marlborough Environment Plan (MEP).

The Panel is mindful that the MEP is a combined regional policy statement, regional coastal plan, regional plan and district plan. The planning provisions addressing any issue are contained in up to four volumes: Volume 1 (objectives, policies and methods), Volume 2 (rules and definitions), Volume 3 (appendices) and/or Volume 4 (zoning maps and overlays). Taking these circumstances into account, and the challenges posed by the large number of submissions it has to consider, **the Panel has decided to hear submitters and further submitters by topic**. In this way, the Panel will hear the evidence and information for all of the provisions addressing an issue at the same hearing (regardless of the volume within which the provisions reside).

The Panel did take into account that this might require submitters (for the remainder of this Minute the term “submitters” includes further submitters) to appear on multiple occasions (if they submitted on a variety of provisions) and were mindful of the travel and financial implications that hearing by topic might create. However, the Panel is charged with making decisions on an integrated planning document. The Panel members are currently of the opinion that structuring the hearing by topic is the best option in these circumstances. 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 present intent is that topics will be grouped into hearing blocks (a block of time set aside to hear submitters on particular topics). This approach will, in combination with the procedural directions below, assist with the organisation of the hearing and the scheduling of individual submitters in each hearing block. A separate hearing notice will be issued for each hearing block.

An indicative list of topics is attached to this minute. Please note that this is subject to change.

The very large number of submissions and people 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.*

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.

The Panel has decided that 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 each notice of hearing for a particular block of topics. Such further evidence and legal submissions should, if possible, be provided in electronic form.

To make steady progress through the hearing topics, 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. If submitters do not wish to appear and make an oral presentation in respect of the topic set down for hearing in that hearing block, or do not require the full 20 minutes for that purpose, they are requested to advise that in writing.

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 relevant hearing block 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 either a reduced number of appearances (i.e., by providing evidence/information on multiple topics on the one occasion) or for further time.

The Panel will provide submitters who wish to be heard the opportunity to have an input into the overall hearing procedure, as set out in this minute. That input must be provided in writing to Pere Hawes, Manager Environmental Policy at the Council by Friday 6 October 2017. The Panel will consider any feedback and then issue a minute to confirm the overall hearing procedure prior to commencing Hearing Block One.

Any other procedural requests as the hearings proceed, which arise from exceptional circumstances at the time, (e.g., illness, weather, unexpected absence from Marlborough), must be made in writing two weeks prior to the commencement of the relevant hearing block of topics. The request should set out the relevant reasons. The Panel will then issue a further minute with decisions on the requests prior to the hearing block commencing.

The Panel intends to commence with two hearing weeks on 20 November 2017 for Hearing Block One.

The present intent is that subsequent topic hearing blocks will re-commence with Hearing Block Two in the week 12 February 2018 and continue to the conclusion thereafter. The hearings are proposed to be held from Monday to Thursday of each hearing week, except on those weeks when other Council meeting requirements require Panel Councillors to be present on a Thursday. Flexibility will be retained by the Panel to have breaks in that sequence as required to meet availability concerns for Panel members or submitters.

The Council staff who will be organising the hearings, and to whom any enquiries as to timing for appearances can be made, are Sue Bulfield-Johnston and Louise Walker. Their contact details are:

	<b>Phone</b>	<b>Email</b>
Sue Bulfield-Johnston	03 520 7400	sbu@marlborough.govt.nz
Louise Walker	03 520 7400	lwa@marlborough.govt.nz

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 MEP generally as follows:

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;
4. Section 42A reports will be pre-circulated at least 10 working days prior to the date that all evidence/legal submissions are 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;
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);
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.

Partly to demonstrate how the procedure is to apply, but primarily to provide submitters early notice in respect of Hearing Block 1 and Hearing Block 2, the Panel has attached directions with respect to the topics covered in each of these blocks. Note that a date by which evidence and any legal submissions are to be lodged with the Council is specified.

For the avoidance of doubt, a separate hearing notice will be sent to all submitters that wish to be heard on the topics within Hearing Block 1 and 2 in due course. This will include instructions on how to lodge evidence and/or legal submissions with the Council.

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](http://www.marlborough.govt.nz/your-council/resource-management-policy-and-plans/proposed-marlborough-environment-plan)

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 MEP 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 14 September 2017

A handwritten signature in black ink, appearing to read 'T Hook', followed by a period. The signature is written in a cursive, fluid style.

Councillor Trevor Hook

Chair of the MEP Hearing Panel

# 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](http://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