

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Hearing of Submissions
and Further Submissions
on the Proposed Porirua
District Plan

Minute 22 – Stream 4 Timetabling Issues

1. In Minute 20, we directed that expert conferencing occur on three identified sets of issues, and that conferencing statements be provided as soon as possible, by close of business on 1 February at latest.
2. We have already received one conferencing statement (in relation to noise associated with temporary military training activities). Thank you to Messrs Lloyd and Humpheson for that.
3. On 27 January, we received a Joint Memorandum of Counsel for KiwiRail Holdings Limited (KiwiRail) and Waka Kotahi New Zealand Transport Agency (Waka Kotahi) seeking timetabling provision for filing of rebuttal evidence following conclusion of expert conferencing in relation to noise and vibration associated with the State Highway and rail networks, and that the parties with an interest in those issues have leave to file their legal submissions by close of 9 February.
4. The Chair formed the tentative view that rebuttal on the noise and vibration issues the subject of conferencing could more efficiently be included within the experts' Joint Witness Statement than being the subject of separate rebuttal statements, and asked that that view be communicated to all parties who would be represented at expert conferencing, with a request for any further comment those parties might have.
5. We have been advised that Counsel for KiwiRail, Waka Kotahi and Kāinga Ora all abide the Panel's decision.
6. Having reflected on the matter further, we confirm the Chair's initial advice, namely that to the extent that following expert conferencing, matters of disagreement remain, the experts can and should advise the reasons why

they disagree on the identified issues in their Joint Witness Statement. That will then be an obvious focus for the Panel when they appear.

7. Accordingly, we do not make provision for further rebuttal statements after completion of the Joint Witness Statements, separate from those statements.
8. We observe Counsel's advice that the noise experts are meeting on 1 February. They did not say so, but we infer that there must be a potential for the experts to be unable to complete the Joint Witness Statement by close of 1 February, as we have previously directed. Our direction that the Joint Witness Statement should include reasons for disagreement in lieu of further rebuttal briefs being filed may exacerbate this risk.
9. The same is even clearer for the third area of expert conferencing. The Council has separately advised us that the transport experts are unable to meet until 2 February, so clearly their statement will not be filed by 1 February, as directed.
10. Recognising the realities of the situation, we direct that in each case the experts' Joint Witness Statement should be filed as soon as possible following conclusion of conferencing, and in any event, no later than 5pm on 3 February.
11. As counsel have observed, their legal submissions need to take into account the outcomes of conferencing. In Minute 2 (at paragraph 54) we directed that legal submissions should be lodged with the Hearing Administrator not less than two working days before the commencement of the relevant hearing. In this case, two working days before commencement of the hearing would provide no time for consideration of Joint Witness Statements filed at the deadline directed, as above.
12. We acknowledge the understandable desire of Counsel for the parties to file one set of legal submissions addressing all issues. In this case, however, we have the competing consideration that the Panel needs to understand the legal underpinning of the case each party is going to advance before it hears from the Council Officers, so it can test relevant issues with those Officers. This would not be possible if, as Counsel for KiwiRail and Waka Kotahi suggest, legal submissions are filed at close of business on 9 February.
13. In the circumstances, we consider that the best balance between these competing considerations is for Counsel representing parties whose experts are participating in conferencing to have more time to file their legal

submissions – we enlarge that timeframe to 1pm on 4 February - and have leave to file an addendum setting out any additional legal submissions they have on the matters the subject of Joint Witness Statements by close of 8 February if Counsel are unable to incorporate same within their primary legal submissions.

Dated 31 January 2022

A handwritten signature in blue ink, appearing to read 'T. Robinson', with a large, stylized flourish extending upwards and to the left.

**Trevor Robinson
Chair
For the Proposed Porirua District Plan Hearings Panel**