

**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

## **Stream 5 Hearing Arrangements**

### **Introduction**

1. There are a number of matters related to the forthcoming Stream 5 hearing that the Hearing Panel needs to address. This Minute is, accordingly, a collection of miscellaneous matters.

### **Covid-Related Regulation**

2. The Council's policies related to managing Covid-related risk have changed. As a result, submitters (and any interested spectators) are able to attend the hearing in person if they wish, provided all people present in the Council Chambers are wearing masks. The facility to appear by Zoom will remain. Please advise our Hearing Administrator Ash Morton-Adair if you are planning to be present in person for your appearance.

### **Hongoeka**

3. There are two matters to address under this heading. First, we have received a Memorandum from the Council recording that advice from Ngāti Toa is that the appropriate tikanga for the hearing of submissions in relation to the Hongoeka Zone is to have members of that community, including the Chair of the Hongoeka Marae Committee formally open the proceedings in relation to that Zone with a Mihi.
4. We have no difficulty accommodating the suggested arrangements. We note that the Council indicates that the representatives of the Hongoeka Community will be available to answer any questions the Panel may have. We will deal with that immediately following presentation of their mihi.

5. Secondly, we record that during the course of our Stream 3 site visits, most of the Stream 5 Hearing Panel took the opportunity to walk into Hongoeka via the road along the foreshore, escorted by Commissioner Pomare, who pointed out features of interest visible from there.

### **Silverwood**

6. On 27 April, we received a Memorandum from Counsel for Silverwood Corporation Limited seeking that hearing of its submission be deferred until Stream 6, alternatively that its evidence not be required to be filed before 8 June.
7. Silverwood's submission seeks that a substantial area of land (some 114 hectares) between Whitby/Waitangirua and the new State Highway 1 be rezoned from Rural to Future New Urban Zone.
8. Counsel's Memorandum explains that the Silverwood land was identified in both the Council's Long Term Growth Plan and the Porirua Urban Growth Strategy as potentially available for urban development. Counsel advises that when the Council's Section 42A Reports were released, including an Economic Report concluding that residential capacity provided in the PDP is more than sufficient to meet residential need in Porirua over the next 30 year timeframe, this therefore came as a complete surprise to Silverwood. Put simply, Silverwood says that it was blindsided by the Council's economic assessment.
9. It therefore seeks sufficient time to brief economic evidence addressing what it sees as a late running issue that appears fundamental to the Council's opposition to its submission.
10. It is fair to say that we are more than somewhat surprised that on a submission seeking rezoning of such a large area of land, Silverwood did not consider that it would likely need to produce economic evidence to justify the relief it was seeking. It already knew the Council did not support that relief because the PDP was not notified with the zoning it was seeking, and while it might have hoped for reconsideration by the Council in light of the extensive materials provided with Silverwood's submission, we would have thought that a prudent submitter in Silverwood's position would not have exposed itself to the risk that the Council would remain of that view, or indeed that the Council might identify that there were additional reasons why the notified position was appropriate not previously identified in its Section 32 evaluation.

11. It is fair to say that had we remained on the original fast track foreshadowed at the outset of the hearing process, we would have had little sympathy for Silverwood's request for more time to prepare its case, notwithstanding the desirability of having as much information and analysis as possible before us.
12. Fortunately perhaps for Silverwood, that is no longer the situation. For the reasons set out in earlier Minutes, with the exception of the relatively short Stream 6 hearing (related to Designations) in late June, there is going to be a lengthy hiatus following the conclusion of Stream 5 before the variations the Council has foreshadowed, and which we understand is currently consulting on, are ready for hearing.
13. It follows that subject to issues of potential prejudice to other parties being able to be addressed, we are receptive to Silverwood's Application.
14. To ascertain the potential for prejudice, we asked the Hearing Administrator to advise all Stream 5 parties of the Application that had been made and request that they urgently provide any feedback they might have. Only the Council has responded, confirming its absence of opposition to the relief Silverwood seeks, but expressing a preference for deferral to Stream 6, rather than an earlier hearing date.
15. Silverwood's alternative relief based on scheduling its submission for hearing as part of Stream 6 is not a viable option, because only the Chair and Commissioner McMahon will be sitting on Hearing Stream 6.
16. We have investigated alternative dates and the earliest that the Stream 5 Hearing Panel could reconvene is 5-6 July. We fix those days for hearing of Silverwood's primary submission. We note that Silverwood did not ask to adjourn hearing of its further submissions, and its reasons for adjournment do not appear to apply to them. Accordingly, our original hearing directions apply to Silverwood's further submissions.
17. To enable a hearing to proceed on 5-6 July, we direct the following further intermediate steps:
  - (a) Expert evidence in chief in relation to Silverwood's submission: 20 June
  - (b) Rebuttal: 28 June
  - (c) Pre-circulation of legal submissions and other representations: 1 July

18. We will not direct expert conferencing until we have had the opportunity to review the expert evidence that is filed.
19. We address the timing of the Council's Reply below.

### **Judgeford Issues**

20. Separately, we have received a request from Ms Blake on behalf of the Judgeford Environmental Protection Society Inc seeking deferral of presentation of the Society's legal submissions and evidence to the week of 30 May to accommodate the unavailability of Professor Iorns, who is acting as counsel for the Society, and who is unavailable before then.
21. The competing commitments of the Commissioners mean that it is not possible for the Hearing Panel to sit beyond the currently scheduled conclusion of the Stream 5 hearing on 27 May, into the following week. Nevertheless, for much the same reasons as for Silverwood, the Hearing Panel has determined that we should endeavour to accommodate Professor Iorns, so as to ensure that the Society has appropriate legal assistance, as Ms Blake put it, "*to navigate these complex issues effectively.*"
22. Our preference would have been to receive Professor Iorns' legal submissions before we heard the Council witnesses. However, Ms Blake was unable to confirm that this would be possible in the time available. Rather than make directions, only to be followed (potentially) by a further application when the Society has been able to consult with Professor Iorns, we request that the legal submissions for the Society be filed Thursday 12 May if possible, but that if this is not possible, counsel for the Society has leave to file her legal submissions in writing not later than 1pm on 31 May.
23. Ms Blake also asked for leave to present the Society's supporting evidence at the same time as Professor Iorns' legal submissions. She did not advise what sort of evidence would be involved, and in particular, whether that would include any expert evidence. For similar reasons as above, we would prefer to have the Society's supporting evidence in advance of our hearing the Council's opening. However, we appreciate that the Society will likely want Professor Iorns to have the opportunity to review its evidence, and we do not know if this will be possible prior to the hearing.
24. We therefore make an order in the same terms in relation to the Society's evidence as for legal submissions, namely that it be filed Thursday 12 May if possible, but that if this is not possible, not later than 1pm on 31 May.

25. We appreciate that these directions have the potential to cause prejudice to other submitters, who we have not been able to consult due to shortage of time. We give any affected party leave to make application for consequential directions prior to the Stream 5 hearing commencing on 16 May.
26. The process we follow after we receive the Society's legal submissions and evidence will depend in part on whether there are any affected submitters who wish to be heard on the Society's case, and in part on the results of our own review of the Society's legal submissions and evidence. It may be that we will provide written questions for the Society's counsel and/or witnesses to answer in writing, but if we determine that we would be assisted by hearing the Society verbally, that will occur on either 5 or 6 July when we reconvene to hear the Silverwood case.
27. The Society's submission relates both to the Judgeford Flats FUZ and to the Rural Zone. We do not currently consider that the directions we have made regarding hearing of the Society's case (and that of Silverwood) should affect preparation of the Council's Reply on the other hearing topics in Stream 5. We currently do not therefore consider that the date for the Council's Reply on matters other than the Rural Zone and the FUZ, should be deferred but we will keep that under review and confirm our ruling before the Stream 5 hearing is adjourned.
28. Accordingly, at this point, we amend only the date for filing the Council's Reply on the Rural Zone and FUZ, to 22 July. We will, however, keep the issue under review and will, if necessary, make further directions at the conclusion of the first stage of the Stream 5 hearing.

**Dated 2 May 2022**



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