

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 39 – Stream 5 Hearing Follow Up

1. Following completion of the first stage of the Stream 5 hearing, as provided for in Minute 35, we have received legal submissions from Professor Iorns together with a commentary in the nature of legal submissions authored by students participating in the Wellington Community Justice Project, on behalf of the Judgeford Environmental Protection Society Inc.
2. In Minute 35 we foreshadowed that having received legal submissions for the Society, we would consider what procedure we then followed, given that there would be an opportunity to hear from its Counsel in the additional hearing days we have scheduled on 5 and 6 July. In the event, that option is not practically available because Professor Iorns will be out of the country and unable to participate in a virtual hearing on those days. Accordingly, we have reviewed her submissions with a view to identifying matters on which we might request a written response.
3. The points on which we seek counsel's further input are as follows:
 - (a) At various points in her legal submissions, Professor Iorns refers to Government policy regarding the provision of more future housing. The Hearing Panel noted such references at paragraphs 17 and 77. The latter referred specifically to the National Policy Statement on Urban Development (**NPSUD**). The Hearing Panel's understanding is that the NPSUD relates to housing (and business) development within urban areas, as defined. If Professor Iorns is suggesting that the NPSUD applies to development within non-urban areas, can she kindly identify what provisions in the NPSUD have that effect?

- (b) At paragraph 29, Professor Iorns notes the potential to distinguish between large and small scale quarrying activities. At paragraph 31, it is suggested that such a distinction could be made on a variety of bases. Can Professor Iorns point us to any evidence supporting any particular basis for drawing such a distinction that she submits we ought to adopt e.g if based on Heavy Truck movements, how many such movements?
- (c) At paragraph 30, Professor Iorns suggests that in a Restricted Discretionary Activity Rule, conditions can only be imposed on a consent “*if they have already been identified and listed in the Plan*”. It may be that this is only shorthand for what Professor Iorns had in mind, but Section 104C(3) appears to the Hearing Panel to provide a broader jurisdiction to impose conditions in respect of those matters over to which the Plan restricts the exercise of its discretion. Professor Iorns is invited to comment?
- (d) At paragraph 36, Professor Iorns compares the situation she is addressing with the Environment Court’s decision in relation to the proposed Hilton Hotel at Queens Wharf, in Wellington¹. While that decision focussed significantly on identified traffic effects, to what extent is a decision considering a proposed hotel development in the Wellington CBD relevant to the Hearing Panel’s consideration of potential traffic effects from heavy traffic in rural areas?
- (e) At paragraphs 38-43, Professor Iorns develops an argument based on applying a precautionary approach to potential effects on the Pauatahanui Stream and inlet. What evidence is on the hearing record of the potential risk arising from quarrying in the Judgeford area on these natural features, including how, for instance, such risks differ from the adverse effects that would occur without quarrying as a result of periodic flooding in the Pauatahanui Stream catchment?
- (f) At paragraph 61, Professor Iorns suggests that a statement of the precautionary principle could be included in the PDP. Can counsel please identify for us a submission seeking that relief, that would provide jurisdiction for the Hearing Panel to amend the PDP in the manner she suggests.

¹ Intercontinental Hotel and others v Wellington Regional Council W015/2008

- (g) As regards Section D of Professor Iorns' submissions, the evidence for the Council is that identification of the Judgeford Flats Future Urban Zone is necessary to implement the direction in the NPSUD that (among other things) demand for business land over the next 30 years be provided for (and that no additional land needs to be provided for residential housing demand over that same period). If Professor Iorns is suggesting that that assessment is factually incorrect, what is the basis for that submission? Assuming the Council evidence is correct, does the legal obligation the Hearing Panel has to give effect to the NPSUD preclude our accepting Professor Iorns' submissions in this regard, and if not, why not?
- (h) As regards the reliance, in both Professor Iorns' submissions and in the separate submissions of the CJP, on provisions in other District Plans governing quarrying activities, what weight can the Hearing Panel put on provisions in other District Plans in the absence of evidence as to the comparability of the districts concerned with the Porirua City situation, the content of the Section 32 evaluations supporting the provisions in those other Plans, and the applicability of the reasoning in those evaluations to the situation in Porirua City?
4. If Professor Iorns is able to respond to these questions before her departure offshore (which we understand to be 15 June) that would be appreciated. However, it is understood that this may not be possible given the competing demands on her time. Accordingly, we direct that Professor Iorns' answers to our written questions are to be supplied by Memorandum not later than 1pm on 13 July.

Dated 3 June 2022



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