

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, including
Variation 1 and Plan
Change 19 to the Operative
Porirua District Plan

Minute 52 – Arrangements for Hearing of Balance of Submissions

Introduction

1. As foreshadowed in previous Minutes, Variation 1 to the PDP was notified on 11 August 2022. It was accompanied by Plan Change 19 to the ODP. Between them, Variation 1 and Plan Change 19 attracted 118 submissions. Summaries of submissions for both were notified on 20 October 2022. The time for lodging further submissions closed on 4 November and we understand 26 Further Submissions were lodged.
2. The Council has appointed the same Hearing Panel (i.e. Myself, and Commissioners McMahon, Pomare, St Clair and Williams) to hear submissions and further submissions on Variation 1 and Plan Change 19 as was previously appointed to hear and make decisions on the Proposed District Plan notified on 28 August 2020.
3. The Minister for the Environment has directed that the ISPP process be concluded by 20 August 2023. In practice, because of the need to allow time for the Council to consider the Hearing Panel's recommendations and to make its own decisions, that means that the deadline the Hearing Panel will be working to will be some time before then.

4. The Minister has also granted the application of the Council to extend the time for decisions to be reached on the balance of the PDP by that same date i.e. 20 August 2023 to allow preparation of an integrated set of decisions (on non-ISPP matters) and recommendations on ISPP matters.
5. There remain also a large number of PDP submission points that were originally intended to be heard in the Stream 7 PDP hearing. The Stream 7 hearing was deferred pending notification of Variation 1, to allow the latter to 'catch-up' procedurally.
6. Variation 1 and Plan Change 19 are collectively an Intensification Planning Instrument in terms of Section 80E of the Resource Management Act 1991, as amended in December 2021. Accordingly, they are subject to the Intensification Streamlined Planning Process (**ISPP**) provisions in the amended Part 6 of the First Schedule to the RMA.
7. Variation 1 amends large parts of the PDP governing Urban Zones, but the extent of amendment varies. Some PDP Chapters have been entirely replaced, but other PDP Chapters have been amended only in part.
8. To the extent that Variation 1 has amended the provisions of the PDP that have previously been the subject of submissions, Clause 16B of the First Schedule of the RMA provides that those submissions are deemed to be submissions on the Variation. We consider it follows that those submissions also will be heard as part of the ISPP.
9. Part 6 of the First Schedule has procedural provisions that are specific to the ISPP and which differ from the First Schedule provisions applying to the balance of the PDP submissions yet to be heard.
10. In particular, under the ISPP provisions, there is potential for submitters to ask questions/cross examine witnesses of other parties (including the Council) at the discretion of the Hearing Panel. Clause 98(4) of the First Schedule requires the Hearing Panel to be satisfied that it is in the interests of justice before it permits cross examination. We make specific directions about that issue below.
11. Secondly, whereas the Council delegated the power to make decisions on the PDP to the Hearing Panel, under the ISPP, the Hearing Panel makes recommendations to the Council. If the Council decides not to accept any particular recommendation, the matter is then referred to the Minister for the Environment for final decision. Either way, there is no right of further appeal.

12. Because of these procedural differences, it is important both for participants in the hearing, and for the Hearing Panel to keep in mind at all times what matters are being heard within the ISPP, and what matters are being heard under the normal First Schedule provisions.

Hearing Procedures for non ISPP Matters

13. For those matters being heard under the normal First Schedule provisions, the directions contained in Minute 2 (see [Porirua PDP-Minute 2 Hearing Procedures 17 August 2021.pdf](#) ([storage.googleapis.com](#))) will continue to apply except to the extent that they have been varied by a subsequent Hearing Panel Minute. In particular, as has been the case for most of the previous hearing streams, we propose to make provision for pre-circulation of rebuttal evidence.

Hearing Procedures under the ISPP

14. For matters being heard as part of the ISPP, as above, parties have the ability to seek the leave of the Hearing Panel to ask questions of other parties or to cross examine the witnesses of other parties. Leave is open to all parties. Accordingly, that option is open to the Council.
15. If any party wishes to seek leave either to ask questions or to cross examine the witnesses of another party (including Council as a party in both respects) they must give written notice not less than three working days before the hearing commencement of their desire to do so, including with their request:
 - a) the subject matter of the proposed questions/cross examination;
 - b) the length of time they think will be required; and
 - c) the reasons why leave should be granted.
16. Parties considering making such a request should factor in that the Hearing Panel intends to continue its past practice of thoroughly testing the evidence and other representations it hears. Leave to ask questions/cross examine will only be granted if it appears to the Hearing Panel that the party concerned intends to focus on avenues of inquiry that the Hearing Panel does not itself intend to pursue and/or will be asking questions/cross examining with the benefit of information or a perspective that the Hearing Panel will not bring to bear. If leave to cross examine is sought, parties will be expected to explain why the interests of justice will be served by such leave being granted.

17. While parties will not be required to table the questions they propose to ask in advance, requests for leave are expected to be sufficiently particularised to enable the Haring Panel to determine that there will be a material benefit from giving leave in terms of the considerations set out above.
18. Our intention is that a party seeking such leave will be advised whether their request is granted before commencement of the hearing.
19. Leave will only be granted at the hearing in exceptional cases because of the potential for that to disrupt the hearing schedule.
20. Parties should also note that where leave has been granted to ask the questions of other parties and/or to cross examine their witnesses, such questioning/cross examination will occur after the Hearing Panel has asked their questions.
21. In all other respects, the hearing of Variation 1 and Plan Change 19 will proceed in the same manner as for non ISPP topics.

Hearing Arrangements

22. The Hearing Panel intends to convene one hearing for all remaining hearing topics. Parties should plan for that hearing commencing on 13 March 2023 in the Council Hearing Chambers. As with previous PDP hearings, the Hearing Panel intends to sit Monday-Wednesday and Friday.
23. At this point, we have made arrangements for two weeks of hearing (i.e. 8 hearing days). If it appears that that will be insufficient to hear all submitters, we will make arrangements for additional hearing days to be scheduled, probably after a short adjournment following completion of hearings on 24 March 2023.
24. To enable the hearing to proceed on 13 March 2023, we direct the following pre-hearing steps:
 - (a) Council Section 42A Reports and any supporting expert evidence to be lodged with the Hearing Administrator not later than 1pm on 10 February 2023;
 - (b) Submitters to advise the Hearing Administrator whether they propose to appear in support of their submissions, whether they require more than the default 15 minutes (and if so how long they will need and why) and

- whether they will be calling expert evidence (and if so in what disciplines) not later than 1pm on 17 February 2023;
- (c) Submitters' expert evidence and any lay evidence longer than three A4 pages to be lodged with the Hearing Administrator not later than 1pm on 24 February 2023;
 - (d) Any rebuttal evidence to be lodged with the Hearing Administrator not later than 1pm on 3 March 2023;
 - (e) Applications for leave by any party to ask questions of another party or to cross examine any witnesses to be lodged not later than 1pm on 7 March 2023;
 - (f) Legal submissions of any party and any lay representations longer than three A4 pages to be lodged with the Hearing Administrator not later than 1pm on 9 March.
25. It is noted that this is not a Notice of Hearing. Formal Notice of Hearing will be issued by the Council in due course.

National Policy Statement for Highly Productive Land

26. This National Policy Statement (**NPSHPL**) took effect in October 2022. It relates to activities on rural land with a soil classification of LUC1-3 inclusive.
27. The Council has supplied the Hearing Panel with a map showing the location of LUC1-3 soils as attached. While obviously at a large scale and not geo-referenced, it identifies that there are such soils within the District, as follows:
- There is a pocket of LUC class 2 soils in Judgeford Flats/Moonshine Road area. This covers approximately half the Judgeford Future Urban Zone.
 - There is a similar size pocket of LUC class 2 soils up Paekākāriki Hill Road in the Battle Hill area.
 - There is a smaller pocket of LUC class 3 soils in the south-west corner of the Plimmerton Farm Zone predominantly to the north of the High Density Sub Precinct in Precinct A (known as Precinct D in earlier plans).
 - Other pockets of LUC class 3 soils are in the Kakaho Valley, Motukaraka Point, Paekākāriki Hill Road through to Battle Hill, Pāuatahanui Village area (Settlement Zone), the lower portion of Murphy's Road, and the upper portion of Mulhern Road.
28. Our preliminary reading of the NPSHPL is that it is likely to have limited effect on our decisions, principally because it specifically excludes land already zoned urban or Rural Lifestyle in a notified District Plan, or identified for future urban development in a Council Growth Strategy. However, if any submitter

considers that the NPSHPL is relevant to a submission that has already been heard, they should advise the Hearing Panel (via the Hearing Administrator) of the reasons for their view by 1pm on 30 November 2022. Such advice may take the form of legal submissions/ lay representations and/or evidence. The Hearing Panel's current intention is to consider any matters raised pursuant to this leave 'on the papers', but it will review the procedure it adopts in early December when any responses are in hand.

Hearing Administration

29. For those parties who have not previously participated in the PDP hearings, our Hearing Administrator is Ms Ash Morton-Adair. Ash is contactable by email at ash.morton-adair@porirua.govt.nz or by phone on 04-237-1422.
30. If you have any questions about the form of the hearing or your appearance at the hearing, Ash will endeavour to answer your queries. If necessary, she will seek direction from the Chair.
31. Where we have directed that material be pre-circulated, it should be emailed to her at the address above and copied to dpreview@porirua.govt.nz.

Dated 16 November 2022



**Trevor Robinson
Chair
For the Hearings Panel**

