

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 53 – Stream 2 SNA Issues (5)

1. Following issue of Minute 51, Mr Graeme Walker has filed a further Memorandum seeking to reopen the issues raised for Samantha Montgomery Limited in his 4 November 2022 Memorandum in which he records his view that Minute 51 inaccurately reflects the matters and timing of issues raised.
2. Having reviewed Mr Walker's latest Memorandum, we note his assumption that the Panel proposes to ignore health and safety issues that he has previously raised (and reiterated in his 4 November 2022 memorandum). He has made this assumption because of the lack of any response from the Panel on the issues that he has raised.
3. He says further that the point he raised on 4 November regarding rationalisation of boundaries could not have been raised prior to release of the Joint Witness Statement of Mr Goldwater and Mr Fuller.
4. He raises the issue of pest plants degrading the ecological values on the site, with the only potential response, a comprehensive spraying operation which would kill everything in its path.
5. Lastly, Mr Walker queries the consistency of the position taken by the Panel with the principles of natural justice.
6. Responding to the matters raised, we agree with Mr Walker that the health and safety issue he had sought to expand on is not a new issue. He certainly raised it in his commentary filed with us in August of this year. Mr Walker is, however, mistaken when he infers from the lack of reaction from the Hearing Panel that we proposed to ignore the issue he has raised.
7. The nature of the process we are engaged in is that following the completion of each hearing stream, the Hearing Panel deliberates, and forms its own

view on all of the evidence before it. The Hearing Panel's view as to the relevance of health and safety issues in relation to the drawing of the SNA boundary on the Samantha Montgomery Limited land will only be apparent when its decisions are released. Unfortunately, the original timeline for release of the Panel's decisions has been significantly delayed by the need to wait for the Council's Urban Intensification Variation to catch up procedurally, and our decisions will not be released until (probably) July/August 2023.

8. We accept that this is frustrating for parties who appeared before us in late 2021, but as discussed in earlier procedural minutes, the delay has been caused by matters outside the Hearing Panel's (and the Council's) control.
9. The important thing, however, is that parties should not assume from the long silence that their submissions have been rejected, or accepted for that matter.
10. In this particular case, we are not assisted by repeated memoranda seeking to put further information before us on the same issue. In an earlier Minute, we described that approach as parties seeking to have multiple "*bites of the cherry*". The hearing procedures put in place at the outset of this process were designed to preclude that to ensure both an efficient process and a process that is fair to all parties.
11. We observe that if the pine trees on the property are an existing health and safety hazard, the option is open to Mr Walker to make application for a resource consent to enable their removal, including whatever damage that causes to the currently identified SNA.
12. As regards Mr Walker's suggestion that he could not have raised the issue of the practicality of the boundaries identified by the ecological experts, we do not accept that contention. The practical effect of the Joint Witness Statement is that Mr Goldwater agreed with the proposed SNA boundary that Mr Fuller had recommended in his Memorandum dated 12 August 2022 to Mr Walker and that Mr Walker filed in parallel with his own commentary in August. We struggle with the view that if there were practical problems with Mr Fuller's recommended SNA boundary, Mr Walker could not have identified those issues in his own commentary. Mr Walker was certainly aware of what Mr Fuller was recommending when he filed his own memorandum
13. Turning to Mr Walker's third point, he had previously raised the relevance of pest plants (specifically climbing asparagus) on the ecological values of the

site both when we heard him during the Stream 2 hearing and in his August Statement. It appears to the Panel that both Mr Goldwater and Mr Fuller had taken account of that issue in arriving at their recommended boundaries: the Joint Witness Statement makes specific reference of an area being removed from the notified SNA boundaries because of the extent of pest plant infestation.

14. If Mr Walker considers that the only appropriate response to pest plants on his property is an intensive spray programme, then that too might be the subject of a resource consent application.
15. Lastly, we should address the principles of natural justice. An old case describes those principles as seeking to ensure that parties to environmental litigation get a "*fair crack of the whip*". We consider that Mr Walker has had a fair crack of the whip already, and that natural justice does not require us to consider the further memoranda he has sought to file either expanding on the issues that he has already addressed, or raising matters that he previously had a fair opportunity to address.
16. In summary, we do not find anything in Mr Walker's latest commentary to change our view, as set out in Minute 51, that the Joint Witness Statement concluded the hearing record as regards the potential identification of an SNA on 3A Solway Place. We decline to accept Mr Walker's latest Memorandum dated 16 November into the hearing record, or to reconsider the direction in Minute 51 that we would not accept Mr Walker's 4 November memorandum.

Dated 23 November 2022



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