

**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 15 – Hearing Stream 4 Issues**

1. The Hearing Panel has received three Memoranda relating to Hearing Stream 4, two from Ms Robyn Smith (submitter #168), both dated 6 December, and one from counsel for Transpower New Zealand (submitter #60) dated 7 December.
2. Addressing each in turn, the first Memorandum from Ms Smith relates to an aspect of the Section 42A Report on the Infrastructure chapter of the PDP. Ms Smith's submission (#168.105) raised an issue about the zoning in the PDP maps of the eastern half of State Highway 1 north of Plimmerton and west of the land covered by Plan Change 18 to the ODP (aka Plimmerton Farm) as Future Urban Zone. It is addressed at Section 3.5.2.2 of the Section 42A Report. The Report writer agrees with the submission that the FUZ zoning is incongruous at this location because the PDP states specifically that it does not apply to the land the subject of Plan Change 18. His recommendation (at paragraph 117) is that in the relevant area "*the zoning of State Highway 1 should reflect the zoning on the eastern side of the road for the entire width of the road corridor*".
3. As Ms Smith points out, the Report recommendation appears to be contradictory and unclear (because there is no zoning to the east that might apply to the State Highway, at least not in the PDP).
4. We suspect that this is nothing more than a typographical error, and that the reference to the whole of State Highway 1 reflecting the zoning on the eastern side of the road, should in fact refer to the "*western side*". However, we agree that it would be desirable if the Section 42A Report writer could circulate a brief addendum to his Report clarifying:

- (i) Did he intend to refer to State Highway 1 taking the zoning of the land to its western side in paragraph 117; and if not
  - (ii) What is the zoning on the eastern side that should be applied to State Highway 1 at this location and why should that be applied in this instance, given the reasoning set out in paragraphs 115-117?
- 5. The Section 42A Report writer is directed to file an addendum addressing these questions by Wednesday 15 December.
- 6. Before leaving this point, we should note Ms Smith's description of our Minute 10 as having indicated that the Hearing Panel will not be considering any further representations in respect of "*spatial mapping issues*". That description suggests that Minute 10 related to all spatial mapping issues. That is not correct. While we could perhaps have made it clearer, we were referring (in Minute 10) to spatial mapping issues raised in a memorandum of Ms Smith dated 15 November relating to mapping of Mean High Water Springs. The point sought to be made in Minute 10 was that Ms Smith had already been heard in Hearing Stream 1 on that submission point, and that having been heard on the substance of the issue, it was inappropriate for Ms Smith to have multiple '*bites of the cherry*' in subsequent hearing streams, after the Council had replied on the relevant submission point.
- 7. There are of course multiple spatial mapping issues that arise in relation to the PDP. Some of those issues have been heard in Hearing Stream 1 and some will be heard in other hearing streams. We will hear each submission on spatial mapping issues in the hearing stream to which it has been allocated. While Minute 2 identified the broad distribution of hearing topics, and has since been supplemented by the indicative breakdown of submission points into individual topics the Council; has provided, as noted in Minute 2 (at paragraph 26), the list accompanying each section 42A report of the submission points it covers confirms what submissions are being heard in that stream (subject, we note, to any further directions the Hearing Panel may make).
- 8. Turning to Ms Smith's second Memorandum, this relates to references in Hearing Stream 4 to "*the Plan*", when that is not a defined term, and could be taken to be a reference to the Operative District Plan given the definitions in Sections 43AA and 43AAC of the Act, or alternatively could be a reference to the PDP.

9. Ms Smith's Memorandum requests that we direct the Council to withdraw the relevant Section 42A Reports and amend and resubmit new reports, clarifying the references to "*the Plan*".
10. The defined term in Section 43AA is "*District Plan*". That is not the term the Section 42A reports use, and even if it were, we do not find that to be decisive as Section 43AA says the defined meaning applies "*unless the context requires another meaning*". Interestingly, we observe that Ms Smith's own submission seeks a number of amendments to the "*District Plan*" when it is perfectly clear that she means the PDP.
11. We have reviewed (by electronic search) the examples where the Hearing Stream 4 Section 42A Reports refer to "*Plan*" without stating whether this is a reference to the proposed or operative Plan. In each case, we had no difficulty discerning what meaning was intended, and almost invariably, it is clearly a reference to the PDP.
12. If we have missed any genuine cases of ambiguity, submitters can note the lack of clarity in their evidence/representations on the specific point in issue.
13. Given the apparent lack of materiality in the point, however, we think it would be a completely disproportionate response to direct that the Hearing Stream 4 Section 42A Reports be revised and reissued.
14. The third Memorandum on behalf of Transpower New Zealand Limited raises two issues. The first is to note a personal issue for Transpower's planning witness, Ms Whitney, who is on leave over the period within which rebuttal evidence (if any) is required to be filed. Transpower seeks an extension for Ms Whitney to file rebuttal evidence to 1pm on 2 February 2022, noting its acceptance of the potential need to make consequential extensions for other parties whose submitter statements and legal submissions are due on 4 February.
15. The request made is reasonable and Transpower's readiness to accommodate other parties who might be prejudiced by the extension sought is noted.
16. We therefore direct that Transpower has leave to file Ms Whitney's rebuttal evidence (if any) by 1pm on 2 February and give leave for any party who feels that it is prejudiced by that extension to make application for consequential orders to address that.

17. The second point raised by Transpower seeks clarification as to when it might respond to the evidence of Mr La Cock for Department of Conservation, that was the subject of Minute 13. Mr La Cock's evidence clarified the relief sought by DoC in a further submission (supporting in turn a Royal Forest and Bird Protection Society submission) to add reference to effects on indigenous biodiversity as a matter of discretion in Restricted Discretionary Activity Rules and a matter of control in Controlled Activity Rules across the PDP. The effect of Mr La Cock's evidence was to limit DoC's relief by excluding specific nominated rules from the list in respect of which the Department was seeking amendment as above.
18. Transpower seeks confirmation that the "*relief sought by DOC will be able to be addressed as each relevant rule comes up in its respective hearing stream*".
19. Transpower was not a further submitter on the primary submission of Royal Forest and Bird Protection Society (#225.42) that DoC supported, and that was the subject of Mr La Cock's evidence. Accordingly, it does not have a general right to oppose that primary submission, or the more limited relief sought by DoC. It can only do so if it has made a specific submission on a relevant rule either supporting the terms of the rule as notified, or seeking amendments on the rule in a manner that would effectively exclude the relief sought by Royal Forest Bird Protection Society (and DoC). Submissions in these categories will be heard in the hearing stream considering the chapter within which the relevant rules sit.
20. In summary, therefore, the Hearing Panel's answer to Transpower's request is a qualified version of the confirmation sought.

**Dated 10 December 2021**



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