

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Hearing of Submissions
and Further Submissions
on the Proposed Plan
Change 3 (Urban Form &
Development) to the
Manawatū-Whanganui
Regional Plan (Horizons
One Plan)

Minute 1:

Hearing Procedures and Directions

Introduction

1. Proposed Plan Change 3 (**PC3**) to the Horizons One Plan amends the Regional Policy Statement provisions related to Urban Form & Development.
2. PC3 is the subject of 19 submissions and 3 further submissions.
3. A Hearing Panel made up of three independent Commissioners and one Councillor has been appointed by Horizons Regional Council to hear those submissions and further submissions and to make recommendations to the Council.
4. The Panel is made up of:
 - Trevor Robinson – Barrister based in Napier;
 - Liz Burge – Planner based in Wairarapa;
 - Miria Pomare – Independent Hearings Commissioner based in Porirua;
 - Councillor Fiona Gordon

Principles of Hearing Process

5. The Hearing Panel will seek to ensure that to the greatest extent practicable, the most appropriate, fair and efficient hearing process is established while complying with the requirements of the RMA.
6. To this end the Hearing Panel will establish and conduct hearing processes that:
 - **Are appropriate and fair:** the Hearing Panel will at all times act in a fair and transparent manner;
 - **Avoid unnecessary formality:** the Hearing Panel will be inclusive and acknowledge the broad range of interests of submitters and facilitate a process that provides all parties with the opportunity to be heard, whether they are presenting oral or written submissions and/or evidence;
 - **Are efficient:** the Hearing Panel will conduct an efficient process which minimises time and costs to all parties participating in the hearings. The Hearing Panel will provide both the Council and all submitters with an adequate opportunity to be heard, while at the same time, avoiding unnecessary repetition and presentation of irrelevant material;
 - **Recognise Tikanga Māori:** the Hearing Panel will receive written or spoken evidence in Te Reo, if and when requested to do so by a submitter who has given at least one week's notice to enable an interpreter to be available. Other methods to recognise and provide

for Tikanga Māori in the hearing process will be incorporated, as required.

- **Recognise New Zealand sign language:** the Hearing Panel will receive evidence in sign language, if and when requested to do so by a submitter who has given at least one week's notice to enable an interpreter to be available.

Management of Potential Conflicts of Interest

7. A fundamental pre-requisite to a fair and transparent hearing process is the obligation of all Commissioners to bring an independent view and open mind to the role, free of any conflicts of interest that could result bias and/or predetermination.
8. The Hearing Panel will accordingly prepare and maintain a Register of Interests which records any potential conflicts of interest they are aware of, a copy of which will be available to any party who wishes to see it.

Council Involvement in the Hearing

9. Council staff will assist the Hearing Panel in two ways. Firstly, Council staff will prepare a report pursuant to Section 42A of the RMA summarising and evaluating the submissions that have been received on PC3, and making recommendations on potential amendments to it in response to those submissions. Ms Leana Shirley is the Council Reporting Officer for this purpose.
10. It is important to record that from the Hearing Panel's perspective, the Section 42A Report assists the Hearing Panel in its consideration of submissions. The Hearing Panel is not bound by the recommendations in the Section 42A Report and will make its own determination of the appropriate provisions for PC3.
11. The Section 42A Report may be supported by independent expert evidence.
12. Ms Shirley and any supporting expert witnesses will appear at the hearing and will have the ability to prepare a written reply following the conclusion of the hearing.
13. The second way in which the Council will participate in the hearing process is by providing administrative assistance. Ms Priscilla Jeffrey will fulfil this role. Ms Jeffrey will be the primary contact for submitters seeking to communicate with the Hearing Panel outside the hearing. Her direct dial number is 06-352-8700, email priscilla.jeffrey@horizons.govt.nz.

Pre-circulation of Submitter Expert Evidence

14. All submitters who have given notice of their intention to be heard on PC3 are entitled to appear at the hearing. Submitters may appear either in person or through their authorised representative and a submitter's case may also be assisted by their providing expert evidence.
15. An expert is a person equipped by training and experience to provide expert opinion on issues of relevance to the determination of the final form of PC3. While most experts will have academic qualifications, that is not a pre-requisite.
16. The key thing for an expert witness, is to demonstrate to the Hearing Panel both that they have the expertise to advance the opinions they provide, and the ability to act independently of the submitter who calls them to give evidence. Expert witnesses are required to confirm that they agree to comply with the Environment Court Code of Experts, which reinforces these points.
17. To assist an efficient hearing process, any expert evidence a submitter proposes to call must be pre-circulated in accordance with the timetable set out below.

Expert Conferencing

18. The Hearing Panel may direct that expert conferencing should occur either prior to or during the hearing. The Panel will identify the issues on which conferencing is required and indicate its view as to the experts required to attend.
19. Conferencing, if directed, will occur in accordance with the Environment Court Practice Note.

Rebuttal

20. The Hearing Panel intends to make provision for filing of expert rebuttal evidence. This is not an opportunity to repeat evidence that has already been provided but rather, an opportunity to provide a succinct response to expert evidence that has been provided by other parties. To the extent that consideration of third party evidence has prompted a witness to alter their view, this also should be set out in rebuttal evidence.

Submitter Representations and Non-expert Evidence

21. Submitters may choose to present their submissions themselves or through their authorised representatives (including but not limited to legal counsel).
22. Again, to assist an efficient hearing process, all legal submissions and other written presentations that are longer than three A4 pages in length are required to be lodged with Ms Jeffrey in accordance with the hearing timetable set out below. If legal submissions refer to caselaw, counsel should either insert an electronic link to the cases or provide electronic copies separately.
23. Submitters have the option of presenting written submissions on the day of the hearing, and reading them aloud provided (as above) they are not longer than three A4 pages in length (or equivalent in time). If submitters are going to do this, and have not sent their written representations to the Hearing Administrator electronically prior to the hearing, they need to bring six copies of any written material to the hearing and supply an electronic copy to Ms Jeffrey within two working days of completing their representation.
24. It is noted that submitters are limited to the points raised in their original submission/further submission. In other words, submitters cannot ask for changes to PC3 that were not sought either generally or specifically in their submission (or are not somewhere between what was sought in submission, and PC3 as notified). Similarly, further submitters cannot go outside the scope of the primary submission they supported or opposed (i.e. the relief sought must be somewhere between the relief sought by the primary submission and the PDP as notified). Submitters can, however, come up with additional reasons why the relief supported is well founded.
25. Submissions are most effective, and of most assistance to the Hearing Panel, if they identify exactly what changes the submitter wishes be made to PC3, and why those changes are appropriate.

Tabled Evidence/Representations

26. If a submitter or their representative is unable to attend the hearing, they may choose to table written material in support of their submission. Such written material must be provided to Ms Jeffrey not later than **9am on the first day of hearing (18 October)**. Submitters should be aware that tabled evidence may be given less weight, because the Hearing Panel has been unable to ask questions of the witness/submitter.

Additional Evidence

27. Once the hearing is completed, the Hearing Panel will not accept additional material from submitters other than in exceptional circumstances, which will require the approval of the Chair.

Hearing Schedule

28. The Hearing will commence at 9am on 18 October. A Notice of Hearing formally advising the parties of the hearing details, including venue will follow. As above, to ensure an efficient hearing process, the Hearing Panel directs the following steps be taken before and after the hearing:
- (a) Section 42A Report and any supporting expert evidence – provided to Ms Jeffrey **before 1pm on 20 September**;
 - (b) Submitters expert evidence – provided to Ms Jeffrey **before 1pm on 4 October**;
 - (c) Any rebuttal evidence – provided to Ms Jeffrey **before 1pm on 11 October**;
 - (d) Legal submissions (including from the Council, if applicable) and non-expert presentations/representations longer than three A4 pages – provided to Ms Jeffrey **before 1pm on 13 October**;
 - (e) Council's written reply – provided to Ms Jeffrey **before 1pm on 17 November**.

Other Administrative Arrangements

29. Ms Jeffrey will be in touch by email with all submitters who have requested to be heard, confirming that they still wish to appear and seeking advice as to how much hearing time they think they will require. If submitters have particular preferences as to the date and/or time when they are heard, Ms Jeffrey will endeavour to accommodate those preferences in consultation with the Chair on a 'first come, first served' basis.
30. The starting point for time allocation will be a default allocation of 20 minutes per submitter, which reflects the fact that the Hearing Panel will have read all submissions beforehand, along with all pre-circulated written material. The purpose of a submitter appearing is, accordingly, to highlight key points the submitter wishes to draw to the Hearing Panel's attention and to provide the Hearing Panel with an opportunity to ask the submitter, their representatives and/or witnesses questions arising from their evidence.

31. Submitters who think that the default 20 minute period will be insufficient should advise Ms Jeffrey of that and seek provision of additional time, with reasons. Those reasons do not need to be extensive. The Chair will seek to ensure that all submitters have the time they require (within reason) to adequately present their evidence and submissions given, as above, that the Hearing Panel will have read all written material that has been provided prior to the hearing.
32. If the reasons why a submitter seeks more time to be allocated to them than the default of 20 minutes include the fact that the submitter will be calling expert evidence, the number of expert witnesses, their expertise (and desirably names) will need to be advised to Ms Jeffrey. For those submitters seeking extra time on the basis that they will be represented by counsel presenting legal submissions, that too will then need to be advised to Ms Jeffrey.
33. To enable preparation of a detailed Hearing Schedule, submitters wishing to be heard are requested to advise Ms Jeffrey of their desire to participate and (if applicable) their request for additional time to be allocated to them **by Monday 2 October**.
34. The Hearing Panel's preference is to hear submitters and their witnesses 'in person'. However, if this is not possible, for whatever reason, Ms Jeffrey should be able to make arrangements for people to be heard virtually, by a suitable platform if there is good reason to do so and provided adequate notice is given beforehand.
35. More generally, it is understood that emergencies arise, and the Hearing Panel will do its best to accommodate submitters and/or witnesses who are unexpectedly unable to make a scheduled hearing slot. The options available will be enhanced early if Ms Jeffrey is advised of a problem in this regard.

Format of the Hearing

36. The hearing will commence with consideration of any procedural issues any party wishes be addressed.
37. Following that, the Hearing Panel will hear the presentation by the Section 42A Reporting Officer, Ms Shirley, and any supporting expert evidence the Council has provided.

38. The Hearing Panel intends to allocate the morning of 18 October to hear the Council.
39. Hearing of submitters will, accordingly, commence in the afternoon (from 1pm) on 18 October. At this point, the Hearing Panel anticipates that the hearing should be able to be completed not later than noon on 20 October. While the hearing will continue, as required, to ensure that all parties are heard, hearing slots will not be allocated after noon on 20 October unless it is clear the hearing will not be able to be completed in that time.

Conduct of the Hearing

40. Any expert witnesses whose evidence has been pre-circulated has the option of preparing a brief (three A4 pages maximum) summary of their evidence which should be provided to Ms Jeffrey in advance of their appearance, or at latest when they appear. If expert summaries have not been provided electronically in advance of the hearing, six hard copies will need to be provided.
41. The Hearing Panel may ask questions of parties and their witnesses either during or after presentation of their case. If a party would prefer not to be interrupted, the Chair should be advised of that before commencement of the hearing presentation.
42. There is no opportunity to cross-examine other witnesses in this hearing. Therefore, it is not appropriate to interrupt other submitters presenting their case, or the Section 42A Reporting Officer presenting her report. If a party feels that any aspect of a submitter or Section 42A Reporting Officer's presentation requires clarification, they should ask the Chair whether that point might be clarified following conclusion of the Hearing Panel's questions of the submitter/Reporting Officer. The Chair will decide whether clarification should be provided, and if so, what process should then be followed.

Post Hearing

43. Following the end of the hearing, the Council has an opportunity to file a written reply, as above. The Hearing Panel will then deliberate in private. The Hearing Panel will formulate its recommendations on what if any amendments to PC3 it believes to be appropriate in order to respond appropriately to submissions and further submissions in a single report.

44. All submitters will be notified of the Hearing Panel's recommendations, and the decisions of Council on those recommendations. Those decisions are then open to appeal to the Environment Court. The Council's public notification of its decisions will include details regarding the appeal process.

Dated 26 July 2023

A handwritten signature in blue ink, appearing to read 'TR', with a large vertical stroke extending downwards from the middle of the signature.

**Trevor Robinson
Chair
PC3 Hearing Panel**