

IN THE MATTER

Resource Management Act 1991,
Subpart 6 concerning Intensification
Streamlined Planning Process

AND

IN THE MATTER

of Plan Change 2, a Council-led
proposed plan change to the Kapiti
Coast District Plan under the Resource
Management Act 1991, Schedule 1
Subpart 6.

**MINUTE NO. 1 / TE PĀNUI TUATAHI TO SUBMITTERS AND
THE COUNCIL**

Dated: 11 November 2022

Greetings

Tēnā tātou katoa,

This Minute is from the Hearing Panel and after the table of contents on the next page contains directions and information for the hearing.

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Panel and Powers

- [1] Under clause 96 of the Resource Management Act 1991, Schedule 1, Subpart 6, the Kapiti Coast District Council (the Council) appointed a Hearing Panel of independent commissioners for the Council's Intensification Planning Instrument called "Plan Change 2" (PC 2).
- [2] The Panel must perform the functions under Schedule 1, clause 8D and Subpart 6 of the RMA. The Hearing Panel's function is to hear the Council's proposal to change the district plan in the notified form, consider submissions and make recommendations in the report(s) to the Council. The Panel's delegations also include addressing any procedural issues.
- [3] The appointed Panel comprises:
- (a) John Maassen (Chair);
 - (b) Rauru Kirikiri;
 - (c) Jane Black.
- [4] In summary, PC 2 seeks to:
- (a) Incorporate the Medium Density Residential Standards (MDRS) into the District Plan and give effect to the intensification policies (Policies 3 and 4) of the National Policy Statement on Urban Development 2020 (NPS-UD);
 - (b) Provide for tangata whenua to develop papakāinga housing;
 - (c) Amend financial contributions provisions;
 - (d) Re-zoning some smaller areas adjacent to existing urban areas as General Residential Zone;
 - (e) Incorporate design guides into the District Plan, and
 - (f) Replace all references to the Council's Subdivision and Development Principles and Requirements 2012 document with references to the Land Development Minimum Requirements April 2022.

Panel's kaupapa or values

- [5] Resource management aims to achieve the common good framed by the legislative and policy framework. There is some scope for choice by evaluation within that framework.
- [6] The Panel will conduct a process that makes people comfortable so the Panel can obtain the best possible information relevant to the Panel's task.
- [7] The Panel will also operate transparently and ensure fairness while meeting its obligation to conduct an efficient hearing.

Council Administrator

- [8] Council's Hearing Administrator will assist the Panel with administration. The email address for the Hearing Administrator is district.planning@kapiticoast.govt.nz
- [9] Any matters involving PC 2 and the process should be directed to the Hearing Administrator.

Purpose of Minute and Panel's preliminary work

- [10] This Minute sets out our directions for expert evidence exchange and a request to file opening legal submissions and non-expert evidence.
- [11] This Minute also informs submitters on other procedural matters and logistics.
- [12] In making this Minute, the Panel notes that it has obtained a general appreciation of the nature and scheme of PC 2 using the RMA s 32 report and a high-level overview of submissions. The Panel has most but not all of the information it must have under RMA, Schedule 1 Subpart 6 cl 97, with some material still to come.
- [13] The Panel had an orientation day on 4 November 2022, during which the Panel travelled around all the Kāpiti urban areas where proposed changes operate. The Panel went with Ms Morris, a Council Administrator and Mr Holland, the Council's planning manager, as guides only.

Hearing date, format and venue

- [14] The hearing is set for 20-24 March 2023 and 27-31 March 2023.

- [15] The hearing will be in-person, allowing parties to present their submissions by audio-visual internet link if required for good reasons or to meet COVID needs.
- [16] The hearing will mostly be held in Paraparaumu based on current planning but the Council may consider other locations.
- [17] Because of the distinctive character of Ōtaki within Kāpiti and the nature of submissions concerning the future planning for Ōtaki Township, we have asked the Council to:
- (a) Liaise with tangata whenua in Ōtaki concerning a possible venue in Ōtaki to hear submitters on Ōtaki township issues.
 - (b) Provide some historical and cultural research as part of its evidence to provide context for the historical development patterns in Ōtaki Township, including setting aside land for native reserves if applicable.
- [18] The Hearing Administrator will notify you of the venues in due course.

Structure of Council planning evidence

- [19] The bulk of the evidence the Council relies upon is within the notified materials available on the Council's website.
- [20] Any new evidence will respond to submissions.
- [21] It would be helpful at an early stage (when primary and further submissions are received) for the Council's planning consultant to prepare a framework for the Hearing Administrator and Panel to classify submissions according to topic or area, as this may inform how the hearing schedule is constructed.
- [22] Also, the Panel would like the Council's evidence, at the time directed in this Minute, to include the following:
- (a) A table of the outcome for each submission point arising from the Council's evidence based on topic and submitter name;
 - (b) A record of the Council's view of out-of-scope requests in that table and a summary by the Council of what it considers are out-of-scope requests.

Directions for the exchange of evidence and other matters

[23] The Panel's directions for the exchange of evidence under the Resource Management Act (RMA), s 41B, are as follows:

- (a) The Council's evidence must be available to the parties and on the Council's website no later than 5.00 pm, Friday, 3 March 2023.
- (b) Under sections 41B(4), submitter expert evidence (evidence from a professional with specialist qualifications and experience) is to be provided to the Council's Administrator no later than midday Friday, 10 March. It will be made available to the parties and on the Council's website no later than 5.00 pm, Monday, 13 March 2023.

[24] The Hearing Panel also encourages parties to pre-circulate any opening legal submissions before the hearing, preferably no later than midday, Wednesday, 15 March 2023. The Hearing Panel and other parties will be assisted if the legal submissions are pre-read.

[25] The purpose of these directions is to provide the opportunity for the Hearing Panel and the other parties to read and consider any legal submissions, evidence or statements in advance of the hearing to assist in understanding the case being presented.

[26] As the Hearing Panel will have read all the pre-circulated material before the hearing, there will be no need for it to be read out. An executive summary may be read out, or the key points highlighted.

Procedure for the hearing

[27] At the start of the hearing, the Council reporting staff and consultants will speak to their reports, and then the submitters can address their submissions. Not all experts providing supporting information in the RMA s 32 report need to attend unless the submissions suggest particular matters are disputed and need a response. The Council will have a right to reply as the plan change applicant.

[28] The Hearing Administrator will keep hearing minutes by noting the speakers, timing and the material the speaker addresses. The hearing will be video recorded and placed on YouTube.

- [29] To assist submitters, the Hearing Administrator will prepare a schedule of speaking times available to slot submitters into the process. The Hearing Administrator cannot necessarily accommodate all preferences. Submitters will need to give a realistic time estimate to present their submissions.

Electronic availability of materials and equipment for the hearing

- [30] Pre-circulated evidence will be published on the Council's website.
- [31] The Council will also publish copies of everything else the Panel receives.
- [32] The materials can be found on the particular part of the Council's website addressing PC 2 at this [URL](#).¹
- [33] The Hearing Administrator will advise submitters by email when evidence is available. The Council will not distribute hard copies unless a hard copy is requested. Therefore, if you need a physical copy, you should advise the Hearing Administrator as soon as possible.
- [34] The Council will have available electronic equipment at the hearing that enables projection onto large screens in the hearing room. If information is to be presented electronically (which is our preference), it should also be included in a portable drive to enable projection during the hearing.
- [35] Our strong preference is that any evidence not previously circulated is also in an electronic format so that the Panel and the Council can easily use it.

Nomenclature for PC 2 versions

- [36] In a plan change process under the RMA, Schedule 1, there are at least the following three versions of the Plan Change:
- (a) PC(N) = the plan change as notified;
 - (b) PC(R1) = the plan change recommendations in the Section 42A Report version 1 that is pre-circulated under Section 42A;

¹ <https://www.kapiticoast.govt.nz/your-council/forms-documents/district-plan/proposed-plan-changes-open-for-further-submissions/proposed-plan-change-2-intensification/>

- (c) PC(R2) = the plan change recommendations in the Council's right of reply, that is, version 2, following consideration of the evidence at the hearing;

And then

- (d) PC(C) = the plan change provisions as recommended by the Panel in its report.

[37] This terminology might be useful for participants, and we will certainly use it in our decision. It helps to know what particular version a person is speaking about.

[38] We have asked the Council that PC(R1) include those PC(N) provisions that are in dispute as a result of submissions and that any tracked changes to those provisions, as a result of Council recommendations in response to submissions, be identified by highlighting. Similarly, PC(R2) should have some method of tracking further changes as a result of the hearing that the Council's reporting planner recommends.

[39] It would be useful for submitters to similarly note any changes to PC(R1) that they recommend. It would be helpful for submitters to use a similar format if they have sufficient time between receipt of PC(R1) and the hearing. If not, it is useful to use the same numbering version for the provision in dispute as that used by the reporting planner.

Other matters

[40] The Council in PC 2 has expanded the residential zone to land not currently zoned residential under RMA, s 77G(4) but to a modest degree.

[41] Some submissions propose re-zoning land beyond the re-zoning in the notified PC 2. Sometimes that raises questions of scope, and there can be procedural fairness issues to be addressed because the analysis of such an outcome is beyond the RMA s 32 report and not foreshadowed by the notification process. The Panel's recommendations are not limited by conventional scope constraints under RMA Schedule 1, subpart 6 cl. 99(2) but it must in its report identify recommendations beyond scope.

[42] It would be helpful to the Panel and better serve fairness to receive the relevant supporting information earlier than we directed in paragraph 23(b) from those

submitters requesting to re-zone new areas. That may also assist the Council in considering the request to re-zone. However, any substantive response from the Council may still only arrive in the Council's reply evidence, given the tight timeframes.

[43] Kāinga Ora (Submitter 122) at [5] – [6] of its submission raised a procedural timing issue saying:

5. *Kāinga Ora has an interest to ensure national and regional consistency in resource management documents across the Wellington Region. From reviewing the Wellington regional plan changes/reviews and associated RMA s32 documentation, it has become apparent that there has been little time for Councils to align their thinking. Accordingly, Kāinga Ora submits that KCDC should take the time to align the PC2 with other regional planning documents ahead of the hearings for those documents.*

6. *Kāinga Ora seeks that the hearing process for the PC2 follows that of Plan Change 1 (PC1) to the Wellington Regional Policy Statement so that consistency can be provided across the Wellington region and RMA s 73 can be met, which requires district plans to “give effect” to the Regional Policy Statement. It is unclear how this has been achieved, as PC1 was notified after PC2.*

[44] The concept is a good one, but as Kāinga Ora identifies, it is challenging to implement with the introduction of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

[45] The Panel will not accommodate Kāinga Ora's request and notes :

- (a) The scheme of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and purpose is to address housing supply promptly by increasing development capacity; and
- (b) To achieve (a) above, Parliament set a timetable for notification and directed the prompt appointment of the Panel so it would not serve the enactment's purpose for the Panel to delay its process;
- (c) The ISP implements MDRS and Policy 3 NPS-UD that are specific, and any benefit by a regular cascade of planning instruments is likely to be found chiefly with implementing other elements in the NPS-UD 2020.



Hei kona ra, _____

John Maassen
Chairperson