

BEFORE THE HEARINGS PANEL

IN THE MATTER

of the Resource Management
Act 1991

AND

IN THE MATTER

of Proposed District Plan for
Waimakariri District Council
2023

MEMORANDUM RESPONDING TO MINUTE 18 OF THE HEARINGS PANEL

ANDREW CARR (SUBMITTER #158)

21 February 2024

1. INTRODUCTION

- 1.1 Minute 18 of the Hearings Panel invited submitters and the Council to respond to the indicative timetable provided for Stream 12. This memorandum responds to the invitation.

2. BACKGROUND TO COMMENTS ON TIMETABLE

- 2.1 The comments made on the proposed timetable are informed by the events following the Submitter's previous memorandum.
- 2.2 In short, in that earlier memorandum the Submitter requested that the Panel direct the Council to provide prompt and early feedback on technical reports relating to larger-scale rezoning requests, as a means of streamlining the process for the review of incoming technical reports and to make the production of the 42A reports more efficient. In response, the Panel noted that it did not have the powers to make such a direction, but specifically requested that the Council was to be responsive to any technical information supplied by submitters, and encouraged it to take a proactive approach to expert conferencing and the preparation of Joint Witness Statements.
- 2.3 Subsequently, on 15 November 2023 the Submitter provided a package of technical information to the Council. No substantive response was received to this until 8 February 2024, despite multiple written requests for updates and feedback. This represents a period of 10 working weeks (allowing for the Christmas break).
- 2.4 Additionally, the Council was unable to provide any feedback or comment on 7 of the 14 documents provided, stating that this was because there was not the appropriate expertise available. The Submitter is therefore left wondering whether Council will ultimately seek any additional information for half of the documents which were intended to have early comment and feedback.
- 2.5 The Submitter understands that the situation of a partial response from the Council is not unique.
- 2.6 There is a very real potential for the situation to arise that the Submitter highlighted in the previous memorandum, of the Council only seeking additional information through the s 42A report. As

stated in that memorandum, it simply might not be possible for (any) submitter to provide the additional information requested within the 10 working days available after the s 42A report is issued.

2.7 It is also relevant background that the Submitter sought early engagement with the Council to discuss the technical reporting necessary to support the submission. A meeting request was made on 2 June 2023 but the earliest that the Council was able to meet was 31 August 2023, more than 12 weeks later.

2.8 The Submitter appreciates that Council staff are under pressure, and no criticism is intended or should be inferred of any persons. However the upshot is that the Council has not been responsive, nor been able to take a proactive approach, to reviewing information provided or engaging with submitters as the Panel requested.

3. COMMENTS ON PROPOSED TIMETABLE

3.1 The proposal is for Stream 12 to be split into five parts, running between 4 June and 2 September 2024.

3.2 The Submitter supports the direction of the Panel that the s 42A reports are to be provided in a staged manner, and provided (no later than) 20 days in advance of the relevant sub-stream.

3.3 However, as to date the Council has been unable to provide any comment or feedback on a range of technical areas for reports provided to them in advance, this prejudices those submitters that are to be heard in earlier sub-streams. This is because:

- a. In order to produce the s 42A reports for the first of the sub-streams, within the next month the Council must source the breadth of expertise necessary to address each technical area;
- b. At this point, the full suite of technical expertise will then be available to the Council;
- c. Submitters that are being heard in later sub-streams have a large window of time in which to engage with the Council and their experts across all of the technical disciplines (as the

Panel has encouraged). These submitters also have a longer period of time to undertake expert conferencing, and identify, commission and provide any further information needed. It is not unreasonable that these submitters may then be able to provide any additional information or Joint Witness Statements in time for them to be taken into account in the preparation of the relevant s 42A report.

- d. Conversely, submitters that are being heard in early sub-streams have not received feedback on all disciplines to date and have a substantially reduced timeframe to undertake any engagement with the Council (even assuming that the Council is able to source experts in relevant technical areas quickly). This then means they have less ability to provide any additional information, and less opportunity for expert conferencing means that the relevant s 42A report would not be informed by Joint Witness Statements.

3.4 In the interests of natural justice, it is considered that all submitters should have the same ability to engage with the Council, receive feedback, and have the same opportunities to engage in discussions, expert witness conferencing and to provide any additional information necessary, irrespective of the sub-stream in which they are allocated.

3.5 Further, it is considered that the Council should treat any information received from submitters and their advisors fairly and equitably, uninfluenced by the timing of the hearings. A situation should not arise, for example, where Joint Witness Statements or additional technical information are taken into account in the s 42A report for some sub-streams, but not for others.

3.6 In order to ensure that natural justice is served, it is requested that the Panel considers a refinement to the proposed timetable, to require and formalise Council engagement with submitters. This would be easily achieved through providing dates in advance of the relevant s 42A report whereby Council staff or their advisors are expected to be available for expert conferencing with submitters' professional advisors.

- 3.7 The Submitter appreciates that the Panel's powers are bound by s 41C of the Resource Management Act, and that such direction may not be possible. However it is also clear that the Panel's encouragement of a responsive and proactive approach has not been achieved to date.
- 3.8 It is open to the Panel to make a direction under s 41C(b)(iii) that evidence and submissions are limited to matters in dispute. Such direction can be issued under s 41A, if the Panel considers it is justified in view of the scale and significance of the hearing. Given the number of submitters seeking rezonings, and the function and role of the District Plan, it could reasonably be considered to be of large scale and highly significant.
- 3.9 It is extremely likely that the s 42A writer will rely on evidence of the Council's professional advisors. If those advisors are limited to reporting only on matters that are in dispute, they would be required to promptly identify additional information that is required and inform the submitter (since an absence of information is not the same as it being in dispute). Practically speaking, the most efficient manner to robustly identify matters in dispute is through expert conferencing, and this would necessarily have to take place well before the Council's expert evidence is written.
- 3.10 Such an approach will also ultimately assist Council staff through narrowing the scope of their reporting, thereby reducing their workloads.
- 3.11 The Submitter considers that it would not result in an efficient hearing process to preclude any submitters from engaging with the Council. However without any specific direction for engagement with submitters, it is possible (indeed likely) that submitters will be treated differently simply because of the timing of their respective hearings. This outcome would be unreasonable and unfair, and not in the interests of good resource management outcomes.
- 3.12 Consequently, in the alternative and if it is not possible to make directions for engagement as noted above, the Submitter requests that the Panel sets out directions to ensure that all submitters are treated equitably. As a minimum this should ensure that there are no

differences in submitters' ability to engage with the Council, nor in the information considered by the Council's s 42A reports, that arise solely due to the different timings of the sub-streams.

4. MATTER FOR CLARIFICATION

- 4.1 In Minute 1, the Panel stated (paragraph 97) that the reporting s 42A officer shall file a written Reply Report within 10 days of the adjournment of "*the hearing*".
- 4.2 Minute 18 does not set out any revised timeframes for the provision of this Reply Report, and the wording of Minute 1 suggests that this could be 10 days after the entirety of Stream 12 has ended, that is, in mid-September.
- 4.3 It is considered that this timing would be prejudicial to submitters that have been heard in earlier sub-streams. Consequently, it is requested that the Panel clarifies that the Reply Report is to be produced 10 working days after the relevant sub-stream is adjourned.

5. SUMMARY OF OUTCOMES SOUGHT

- 5.1 The splitting of Stream 12 into sub-streams, and the staggered provision of s 42A reports, are both supported.
- 5.2 It is respectfully requested that the Hearing Panel:
 - a. Considers how the proposed sub-streaming might adversely affect submitters that have earlier hearing dates. Relevant matters include (but are not limited to) the ability to engage with the Council, receive feedback, participate in discussions, undertake expert witness conferencing and to provide any additional information necessary;
 - b. Issues directions as appropriate to ensure that all submitters are treated equitably and have the same opportunities for engagement, discussion, provision of additional information and the like, irrespective of the sub-stream in which they are to be heard;

- c. Issues directions as appropriate to ensure that the s 42A reports are prepared on a consistent basis for each of the proposed sub-streams, including (but not limited to) whether and how additional information or Joint Witness Statements are to be taken into account;
- d. Considers whether a direction under s 41C(b)(iii) of the Act would be a suitable mechanism to achieve early expert witness conferencing, ensure the most robust technical information is available, and reduce the scale of reporting by Council staff;
- e. Clarifies the timing of the written Reply Report for the sub-streams in light of the wording of Minute 1.

Andy Carr
21 February 2024