

**IN THE MATTER of
the Resource Management Act 1991**

AND

**IN THE MATTER of
hearing of submissions and further
submissions on the Proposed
Waimakariri District Plan**

AND

**of hearing of submissions and further
submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan**

**MINUTE 2 – RESPONSE TO
PROCEDURAL ISSUES RAISED, SCOPE
OF VARIATION 1, DEFERMENT OF ECO
CHAPTER AND APPOINTMENT OF THE
INDEPENDENT HEARING PANEL**

PURPOSE

1. The purpose of this Minute is to:
 - a. Confirm the appointment of the Independent Hearings Panel to hear submissions on Variation 1
 - b. Respond to matters raised in respect of our Minute 1 – Procedural Issues.
 - c. Update Minute 1 – Procedural Issues
 - d. Request the Council to provide information and legal advice regarding the scope of Variation 1 and the applicability of Clause 16B to Variation 1 and invite parties to respond
 - e. Respond to the appended Council memorandum requesting the deferring of the hearing of the ECO – Ecosystem and Indigenous Biodiversity Chapter.
2. The Hearings Panel received a memorandum from Chapman Tripp in response to Minute 1 on behalf of a number of submitters, regarding expert witness briefs, the scope of Variation 1 process and the merger of Variation 1 and the PDP. This memorandum is available on the Council PDP hearing pages.
3. The Hearings Panel has also identified that there was an error in the timetabling of Hearing Stream 5 in Minute 1. This Minute 2 corrects that timetabling. Hearing Stream 5 will occur from 21 to 25 August 2023.
4. Appended to this Minute is an updated Minute 1 which reflects the content of this Minute 2. Minute 1 may be updated further as a consequence of the matter of the scope of Variation 1 and the applicability of Clause 16B to Variation 1.

APPOINTMENT OF THE INDEPENDENT HEARINGS PANEL TO VARIATION 1

5. The Council has formally appointed Gina Sweetman, Gary Rae, Allan Cubitt and Megen McKay as the Independent Hearings Panel (IHP) to hear submissions and make recommendations on Variation 1.
6. In our Minute 1, the Hearings Panel set out our intent to take an integrated approach to hearing submissions and making recommendations on the PDP and Variations 1 and 2. The Hearings Panel still intends to do this, while ensuring that there is a clear distinction between hearing, deliberating and making recommendations on Variation 1 and doing the same with the PDP and Variation 2.
7. Clearly, however, Variation 1 proposes to amend the PDP and in some cases, we will be hearing from submitters on the PDP and Variation 1 on the same topic. The hearing, deliberations and recommendations processes will be managed so to ensure that Commissioners Mealings and Atkinson do not play a role in respect of Variation 1.

8. So that this can be carefully managed, the Council s42A report authors are requested to ensure that they clearly distinguish between submissions on the PDP and Variation 2 and submissions on Variation 1, both within the body of the report and in appendices when these are addressed within the same s42A report.
9. Going forward from this Minute, where there are specific matters relating to Variation 1 which only impact on the consideration of and making recommendations on Variation 1, the IHP will issue separate Minutes. Where matters relate to the hearings as a whole, the PDP Hearings Panel will issue the Minute. Where there is no need to differentiate between the IHP and the PDP Hearings Panel, they will be referred to generically as the Hearings Panel.

EXPERT WITNESS BRIEFS

10. Chapman Tripp query the logistics of only allowing an expert witness to provide one brief of evidence for each hearing, where that expert witness might be appearing for a number of different submitters. Chapman Tripp have rightly assumed that this requirement applied to each Hearing Stream.
11. The Hearings Panel agree with Chapman Tripp that there are logistical, and potentially confidentiality, difficulties with this approach. Our updated Minute 1 omits this requirement, and rather requires that where an expert witness is appearing for more than one submitter during a Hearing Stream that they clearly identify which submitter their evidence relates to.

SCOPE OF VARIATION 1 PROCESS

12. Chapman Tripp query the Panel's paragraph 106 and whether it was intended to imply that the Panel has scope to make recommendations that fall outside of Variation 1.
13. The IHP agrees with Chapman Tripp's interpretation of clause 99 of Schedule 1. It was not the Panel's intention to imply that submitters on Variation 1 have unfettered discretion to raise matters that fall outside of the scope of Variation 1. Rather, it was intended to relay that submitters do have the ability to raise matters that were not raised in their submission on Variation 1 but are within the scope of Variation 1. Similarly, the IHP also does not in our view have unfettered discretion to make recommendations on Variation 1 in respect of matters that fall outside of the scope of Variation 1. Minute 1 has been amended accordingly so that this is clearer.
14. There is a separate matter, and that is whether submissions themselves are within the scope of Variation 1. The IHP addresses that below.

SCOPE OF VARIATION 1 AND CLAUSE 16B OF THE FIRST SCHEDULE

15. In paragraph 17 of our Minute 1, the Hearings Panel signalled that we would be issuing a separate Minute regarding the applicability of Clause 16B (deeming of submissions) of Schedule 1 to the RMA to Variation 1. Chapman Tripp's memorandum pre-empted that Minute, setting out their clients' position. The IHP is cognisant that there are other

submitters who will have an interest in this matter. This is a matter that affects the hearings as a whole, and is not limited to just Variation 1.

16. The IHP recognises that there are a number of complexities that apply to the implementation of the Intensification Planning Instrument (IPI) and Intensification Streamlined Planning Process (ISPP) and its relationship with the PDP as notified. This is particularly the case on the treatment of submissions to the PDP where there are and are not related submissions to Variation 1 and where Variation 1 changes the PDP. There are also the matters of:
 - a. Submissions to the PDP that seek to rezone land to residential, but there is either no corresponding submission to Variation 1 or the land was not proposed to be rezoned through Variation 1
 - b. Submissions to Variation 1 which seek to rezone land that is beyond what was proposed to be rezoned through Variation 1.
17. Unfortunately, there is little guidance within the RMA itself on these matters.
18. The IHP has been made aware of the recent Environment Court decision *Waikanae Land Company vs Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056 which addresses the scope of what can be included within an IPI, but it does not extend to addressing the matters set out in paragraph 11.
19. Given the importance of this matter, we wish to deal with it proactively with the Council and those submitters who have submissions to the PDP on matters addressed in Variation 1 and submitters to Variation 1. As a first step, we hereby request that the Council prepare a memorandum for the IHP, preferably informed by legal advice, which:
 - a. Identifies specific:
 - i. PDP submissions on "relevant residential zones";
 - ii. PDP submissions on provisions of the PDP substituted by Variation 1;
 - iii. PDP submissions in relation to land that is now proposed new residential zones in Variation 1;
 - iv. PDP submissions seeking new residential zonings outside of the relevant residential zones and proposed new residential zones in Variation 1; and
 - v. IPI submissions seeking new residential zones.
 - b. Sets out how the Council intend to address the interface between Variation 1 submissions and PDP submissions, including:
 - i. The scope of Variation 1;
 - ii. The relevant tests for determining whether Variation 1 submissions are within or outside of the scope of an IPI, including advice on consequential or incidental amendments; and
 - iii. The IHP's powers to make recommendations on Variation 1.
 - c. In responding to a. and b., the Council is requested to set out its position of the applicability of Clause 16B of Part 1 of Schedule 1, and in particular, can submissions on the PDP be deemed to be on Variation 1, and if so, what are the relevant applicable tests.

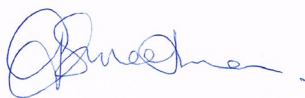
20. Council is requested to provide this response no later than **4 pm Wednesday 31st May 2023**.
21. On receipt of the Council memorandum, submitters are requested to provide memoranda to set out any difference in opinion to the Council's memorandum no later than **4 pm Friday 30th June 2023**. Any response is to include an explanation and rationale for any difference in position or opinion. Submitters may choose to provide their own positions concurrently with the Council providing its memorandum.
22. The IHP will consider next steps once we have received the Council memorandum and any response from submitters and issue a further Minute.

REQUEST TO DEFER THE HEARING OF THE ECO CHAPTER

23. The Hearings Panel has considered the Council's appended request to defer the hearing of submissions on the ECO – Ecosystems and Indigenous Biodiversity Chapter to Hearing Stream 11, scheduled for March 2024. We accept the rationale provided by the Council and do not consider that any party will be disadvantaged by the changing in timing of the hearing of submissions. Accordingly, we have amended the Hearings Schedule as set out in Minute 1.
24. The Council Memorandum is also available on the Council PDP hearing website [Waimakariri.govt.nz/hearings](https://waimakariri.govt.nz/hearings).

CORRESPONDENCE

25. Submitters and other hearing participants must not attempt to correspond with or contact the Hearings Panel members directly. All correspondence relating to the hearing must be addressed to the Hearings Administrator, Audrey Benbrook, on 0800 965 468 or audrey.benbrook@wmk.govt.nz.



Gina Sweetman

Independent Commissioner – Chair - on behalf of the PDP Hearings Panel and the IHP

13 April 2023

WAIMAKARIRI DISTRICT COUNCIL

MEMO

FILE NO AND TRIM NO: DDS-06-10-02-05-17 / 230309032869

DATE: 6 April 2023

MEMO TO: Proposed District Plan Hearings Panel

FROM: Hearing Stream 4 chapter authors – Shelley Milosavljevic, Bryony Steven, and Peter Wilson

SUBJECT: Ecosystems and Indigenous Biodiversity chapter hearing date

1. Hearing stream 4 is set to commence in mid-July this year and comprises the following natural environment chapters:
 - Ecosystems and Indigenous Biodiversity (ECO);
 - Natural Features and Landscapes;
 - Natural Character of Freshwater Bodies;
 - Public Access;
 - Coastal Environment; and
 - Activities on the surface of water.

2. The Ministry for the Environment (MfE) provided an update on 27 February on the proposed National Policy Statement for Indigenous Biodiversity (NPSIB) noting that:
 - Following the release of the exposure draft in June 2022, it is still under active consideration and further decisions are anticipated early this year before potential gazettal.
 - Planning for the NPSIB implementation is underway, reflecting measures outlined in the June 2022 draft implementation plan.
 - The first National Planning Framework will include redrafting to continue the direction of the NPSIB.

3. Based on the June 2022 exposure draft, we consider that giving effect to the NPSIB will require:
 - District-wide identification of Significant Natural Areas (SNAs) and mandatory scheduling of them.
 - Amendments to the ECO chapter provisions.
 - Engagement:
 - with communities and tangata whenua to determine how to give effect to Te Rito o te Harakeke.
 - with tangata whenua:
 - regarding SNAs on Māori Lands (including Māori landowners also).
 - to determine taonga species or ecosystems.

- regarding the management of indigenous biodiversity including and recognition of them as kaitiaki, and investigation of mechanisms to involve them in the management and decision making regarding indigenous biodiversity.
4. The chapter authors for these natural environment chapters consider that given there is potential that the NPSIB is gazetted sometime this year, holding the hearing for the ECO chapter in July would potentially miss the opportunity to align, to the extent possible, the ECO chapter with this national direction. It is therefore sought that the Hearings Panel consider moving the ECO chapter hearing to hearing stream 10 in early 2024.
 5. In addition to the above, resourcing within the hearing stream 4 reports has been completed by the need to divert resources to other workflows, including the Greater Christchurch Spatial Plan pre-engagement that is currently occurring. This workflow has reduced the overall capacity of the team to complete the reports within the required timeframes.
 6. As a result of the above, the report authors seek leave from the Hearings Panel to adjust the hearings timetable to move the ECO hearing to Stream 11. The reason for the identification of Stream 11 is that the topics within this stream (designations and various 'wrap up' matters) would be fit with this relocation.
 7. The chapter authors have considered the impact of this requested delay in terms of the ECO chapters relationship with other natural environment chapters in hearing stream 4. We concluded that the ECO chapter is quite specific to SNAs and general indigenous vegetation clearance, and the only area where with cross-over is the ECO chapter's rule (ECO-R3) relating to planting of indigenous vegetation within outstanding, very high, or high natural character coastal areas identified in the Coastal Environment chapter. However, there are no submissions on this aspect of ECO-R3, as submissions on this rule only relate to SNAs. Also, it is noted that decisions on hearings will not be issued until the completion of all hearing streams thus delaying the ECO hearing will not affect the relationship between decisions issued as it would if decisions were being issued after each hearing stream.
 8. With this in mind, the chapter authors seek that the Hearings Panel consider this request to delay the ECO hearing date from hearing stream 4 (mid-July 2023) until hearing stream 10 (early 2024).

SIGNED



Shelley Milosavljevic (Senior Policy Planner) on behalf of Hearing Stream 4 chapter authors