

WAIMAKARIRI DISTRICT PLAN REVIEW
MEMO TO HEARING PANEL

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DATE:	18 August 2023
MEMO TO:	Hearing Commissioners
FROM:	Peter Wilson, s42A reporting officer on Variation 1
SUBJECT:	Minute 5 Questions and Scope issue

Introduction

1. The purpose of this memorandum is to respond to the questions asked of the Council by the Hearings Panel in Minute 5 relating to Variation 1 and rezonings.
2. To provide context to the relevant matters in Minute 5, the Hearings Panel in Minute 2 directed the Council to prepare a memorandum identified various categories of submissions, how the Council intends to address the interface between Variation 1 submissions and PDP submissions and whether PDP submissions can be deemed to be on Variation 1 and, if so, what the applicable tests are. I prepared and filed a memorandum in response to Minute 2 on 1 June 2023.
3. A number of submitters have also filed memoranda regarding the interaction of the PDP and the IPI (the Intensification Planning Instrument) (Variation 1). Council considers that it is important to outline its views on this interaction, and to also seek the views of submitters.
4. Paragraph 4 of Minute 5 requests the Council to:
 - Set out their view on how submissions seeking both a Variation 1 rezoning and a PDP zoning should be considered.
 - Set out their proposed approach a PDP submission on a provision that is proposed to be amended by Variation 1 that is not a rezoning submission, for example a change to an objective or policy.
 - Address the merits of providing the additional information requested in paragraph 10 of the Richard and Geoff Spark memorandum.
 - Set out their proposed approach to the format for the hearing of submissions on Variation 1 and submissions on the PDP.
5. Paragraph 13 of Minute 5 requests that Council produce a memorandum on how it intends to address submissions seeking substantive rezonings, as in, those seeking to rezone more than one site or a small land area. The Panel requested the memorandum address timing, information requirements, whether the hearings will be area or PDP/Variation 1 based and any other relevant matters the Council considers necessary.
6. As the Hearings Panel and submitters have identified, the interaction of the PDP and the IPI is complex. It may be important for both procedural and substantive reasons whether a submission is a PDP and/or a Variation 1 submission. For example, there are different decision-making requirements for the PDP and IPI as well as scope and appeal rights.

7. This memorandum addresses the following:
 - a. Consideration of scope generally and scope of Variation 1
 - b. Hearing framework and hearing of rezoning requests
 - c. Approach for PDP provisions amended by Variation 1
 - d. Hearing schedule amendments for subdivision
 - e. Consideration of scope
 - f. Corrections and amendments

Scope

Overall scope

8. Given the challenges and complexities in integrating the PDP and Variation 1, Council's overarching consideration is to ensure natural justice and fairness for all submitters. These considerations have shaped Council's intended approach as outlined in this memorandum.
9. Council has considered whether it is appropriate for Council and/or Panel to make a determination about which process submissions should be heard in. Council's view is that:
 - a. The early determination of scope and assigning submissions to Variation 1 or IPI streams is not appropriate.
 - b. Questions of scope often require substantive consideration of evidence in support of a submission. Council's view is that a preliminary hearing on scope is not a good use of the Panel's, the Council's or submitter's resources.
 - c. Submitters are best placed to decide what relief they are seeking and whether that is in relation to the PDP and/or the IPI.
 - d. Council notes that the hearing panels have not set themselves up into PDP or IPI streams for the purposes of hearing submissions, with the hearing streams being grouped by topic (see paragraph 12 below).
 - e. Questions of scope should be considered and determined, after the hearing of evidence for PDP and/or Variation 1 submissions.

Variation 1 and scope

10. The scope memorandum of 1 June 2023 set out at a high level those submissions that may have either a V1 or PDP component. The reporting officer deliberately took a conservative approach to scope as a merits-based assessment of those provisions had not been undertaken (and would have been unreasonable to do so as would have negated hearing stream approach).
11. Guided by the legal advice attached to the scope memo, Council considers that the Variation 1 intensification streamlined planning process does not mean that PDP submissions automatically get merged with Variation 1 as would occur through the usual schedule 1 variation process¹.

¹ Previous legal advice attached as Appendix 1 to Minute 2 is that Cl 16B, schedule 1, RMA does not apply to the IPI, and as such, submissions on the PDP and the IPI remain separate.

Hearing framework

12. In answering the Panel’s questions on the interface between the PDP and Variation 1, Council considers that provisions changed by both processes should be heard within the same hearing stream as follows:
- a. All residential, large lot residential, Variation 1 intensification and Variation 2 financial contribution matters are scheduled in hearing stream 7.
 - b. Commercial and industrial zones are scheduled in hearing 9.
 - c. Special purpose zones and future urban development areas (FUDA), and the airport noise issue, are scheduled for hearing stream 10.
 - d. Subdivision, currently in hearing 8, is proposed for hearing 10. The reasons are set out in this memo below.
 - e. All rezonings are scheduled for hearing 12.
13. The reason for this is to ensure that provisions that are amended by both the PDP and Variation 1 are considered at the same time, rather than being discussed in a PDP hearing and then a later Variation 1 hearing. For clarity, there will still be separate s42A reports for the PDP matters and a separate s42A report for the IPI matters.

Hearing of rezoning requests

14. In considering the hearing stream set out in Minute 1 of the Hearing Panel, the s42A report authors consider it would be appropriate to hear all rezonings in hearing stream 12 (including where there is also a Variation 1 outcome sought). That is because Council considers that hearing all the rezonings together means that submitters have the opportunity to present evidence in the same hearing stream.
15. The s42A officers also consider that when categorising the zonings outside of urban environments, the most appropriate approach would be to base this categorisation on the new zone proposed by the submitter, rather than the zone proposed in the notified version of the plan, as submitters are likely to be presenting evidence in support of the new zone. The proposed groupings of the rezoning requests are detailed in Table 1 below.
16. Following the timing of other hearing streams, the Council recommends that the due date for each of the rezoning hearing s42A reports fall at the same time. This further avoids potential prejudice with all submitters receiving the s42A recommendations at the same time.

Stream Name	Submissions
12(1)	General Rural, Rural Lifestyle zoning submissions
12(2)	Large Lot Residential Zone/ Overlay including Large Lot Residential Zone infill
12(3)	Rezonings within and around Rangiora
12(4)	Rezonings within and around Woodend/Ravenswood/Pegasus
12(5)	Rezonings within and around Kaiapoi
12(6)	Commercial Rezoning Requests

Table 1: Proposed Groupings for the rezoning requests

17. In order to assist submitters that are seeking a rezoning outcome, Council s42A officers propose issuing a memo with some considerations for submitters prior to the rezoning hearings, including:

- Where information can be found on Council's infrastructure planning, including forward planning,
- Information on natural hazards; and
- Other sources of information that may contain matters relevant to rezonings such as ECan's listed land use register in respect of site contamination matters.

Rezoning Interface with Variation 1

18. There are around 200 PDP submissions seeking rezonings. The Council considers that the scope of these submissions is confined by the PDP unless the submitter has also made a Variation 1 submission or seeks to lodge a late submission on Variation 1. I note that:

- 11 submitters on the PDP also made a submission on the IPI.
- 7 submitters on the PDP make a submission seeking new residential zones on land that is now rezoned as MDRZ under Variation 1.

19. 7 submitters (not necessarily the same submitters as above) made a submission on the IPI seeking new residential zones but did not have a corresponding PDP submission. There are a small number of PDP submitters on the edge of the MRDZ seeking new residential zones, including medium density, but which are currently outside of the MDRZ boundary. These submissions were made before the Enabling Housing Act changes.

20. Where a submitter has submitted on Variation 1/the IPI only, these submissions are relatively straightforward in terms of scope, as scope is confined by the IPI/Variation 1 itself.

Memorandum of Counsel for Richard and Geoff Spark (the Spark memo)

21. The Spark memo sought additional "number crunching" and information to assist in understanding the practical implications of the scope memorandum I prepared and the legal advice it relies on.

22. I am of the view that the further information sought in the Spark memo, regarding the areas of additional residential rezoning, will not assist in further quantification of the issue. The issues are not tied to the areas of land being rezoned or sought to be rezoned but to the processes under which the rezonings are sought.

23. The Spark memo also sought information about how many submissions request additional residential rezoning under Variation 1 only. Along with the statistics in paragraph 10 above, the amended Appendices 4 and 5 of the scope memo (with the corrections outlined below) sets out the overlap between V1 and PDP submissions. I note that there are a relatively low number of these submissions.

Approach to submissions on PDP provisions amended by Variation 1

24. Variation 1 makes changes to relevant provisions in the PDP.
25. Where a submitter has sought amendments to the provisions of the PDP which have subsequently been changed by Variation 1 and they have not made a Variation 1 submission, there is the potential for PDP submitters to be disenfranchised if they not able to be involved in the Variation 1 process. There are approximately 913 submission points of this nature, however this is a conservative assessment based on provisions. If an assessment is done using the MRDZ zone boundary, it is around 115 submissions, however, not all of these submissions are not likely to have content relevant to Variation 1.
26. Variation 1 has overridden, amended, and/or removed substantial components of the PDP, on which there are submissions. The PDP panel may support relief on a PDP provision, but that provision may have been subsequently overtaken by Variation 1. If there is no corresponding Variation 1 submission from the submitter (or another submitter), then the relief that was sought and supported by the PDP panel is effectively potentially redundant, having been overtaken by Variation 1.
27. A specific example relates to the PDP medium density residential zone in the centres of Rangiora and Kaiapoi. The medium density residential zone has been replaced by the Variation 1 medium density zone. There are a number of submissions on the PDP medium density residential zone in the centres of Rangiora and Kaiapoi that under Variation 1 no longer potentially exist. The PDP panel may support relief on a PDP medium residential zone provision, but because that provision has been overtaken by Variation 1, the content of the relief can only be used in the context of Variation 1 at the discretion of the hearings panel.
28. Where a submitter has both PDP and Variation 1 submissions, it is more straightforward, as that submitter will likely have scope under Variation 1 but the question of whether they are seeking their PDP or Variation 1 relief as their ultimate relief may still arise. My view is that this can be addressed by the submitter at the hearing if they wish.

Hearing schedule amendments for subdivision

29. There are additional changes to the hearing schedule.
30. Having considered the above, I have also considered the appropriate location of the subdivision topic, and recommend that it to be moved to hearing 10. Whilst subdivision has its own standalone district-wide provisions, many of the subdivision provisions wrap up the recommendations of the relevant zone chapters, and Variation 1. The benefits of moving the subdivision topic include:
 - Enables the FUDA and the subdivision chapter to be heard together, ensuring integration with the certification issue.
 - Enables integration with the relevant zone chapter recommendations after they have been heard, for instance, rural, residential, commercial, industrial, and housing intensification through Variation 1.
 - Stream 10 has three days allocated and the topics are small, therefore subdivision could be accommodated without the need to reschedule more days

- The hearing schedule has not yet been set, so there is no inconvenience to submitters.

31. I could not identify any drawbacks to moving subdivision to hearing 10.

32. Council expects that the individual topics for hearing stream 10 will have their own s42A report from the Variation 1 s42A author. This includes the airport noise matter component of that hearing, to ensure planning process separation and distinction.

Other changes

33. As outlined in various memoranda, the airport noise/bird strike matter has been recommended for hearing stream 10.

34. Temporary activities is recommended for hearing stream 11, having been left from stream 5 due to a desire to integrate matters within this chapter further.

35. Indigenous biodiversity and significant natural areas were previously withheld from hearing 4, awaiting the gazettal of the NPSIB. Now that this has been gazetted, a hearing for these matters can be scheduled. Hearing stream 11 is recommended. It is noted that the PDP Panel have sought a response on this matter from Council by 29 September 2023.

36. An updated hearing schedule is attached as Appendix 1.

Corrections and amendments

37. Council has amended Appendix 5 of the 1 June 2023 memo (IPI Residential Submissions Seeking New Residential Zones) as 5 submissions were missing. The following rezoning submitters have been added to Appendix 5:

- M & J Schluter
- Richard and Geoff Spark
- Rick Allaway and Lionel Larson
- Rolleston Industrial Developments Limited
- Stuart Allan

38. Council has also amended Appendix 4 – PDP submissions seeking new residential zones, and Appendix 5 with an additional column that states whether that submitter has also sought rezoning in the IPI and PDP respectively, to assist with integration.

Conclusion

39. To assist the panel(s) and to achieve the intention to assist submitters the Council s42A reports will outline:

- a. The planning process the submission was made under.
- b. When the panel, could, if it was minded, consider PDP submission content in its decision-making on a variation 1 matter, and what that content may be.

40. My concluding recommendations are:

- a. Variation 1 provisions will be heard as different processes but within the same stream as the equivalent PDP topic.
- b. For rezonings (including Variation 1 rezonings) will all be heard in stream 12
- c. Council considers that submitters are best placed to determine whether they present their PDP submission, their Variation 1 submission or both.
- d. For submitters that have a PDP submission but not a Variation 1 submission, the s42A officer will consider the content of the PDP submission in the context of Variation 1 where scope is considered to exist.

41. This memo provides a recommendation from the Council s42A reporting officers, however I consider that it is beneficial for submitters to comment on these matters if they wish.

Appendix 1 – Updated hearing schedule



Provisional Hearing Dates



As at: 18/08/2023

Report ID	S42a Report	Start	Finish
S01 - R1	Part 1, General Matters, Cross Plan issues, Definitions, NDI	Monday, 15 May 2023	Thursday, 18 May 2023
S01 - R2	Strategic Directions	Monday, 15 May 2023	Thursday, 18 May 2023
S01 - R3	Urban Form & Development	Monday, 15 May 2023	Thursday, 18 May 2023
S02 - R1	Mana Whenua	Monday, 15 May 2023	Thursday, 18 May 2023
S02 - R2	Sites & Areas of Significance to Maori	Monday, 15 May 2023	Thursday, 18 May 2023
S02 - R3	Special Purpose Kainga Nohoanga	Monday, 15 May 2023	Thursday, 18 May 2023
S04 - R1	Coastal Environment	Monday, 17 July 2023	Thursday, 20 July 2023
S04 - R3	Natural Character of Freshwater bodies	Monday, 17 July 2023	Thursday, 20 July 2023
S04 - R4	Natural Features and Landscapes	Monday, 17 July 2023	Thursday, 20 July 2023
S04 - R5	Public Access	Monday, 17 July 2023	Thursday, 20 July 2023
S04 - R6	Activities on surface of water	Monday, 17 July 2023	Thursday, 20 July 2023
S03 - R1	Hazardous Substances	Tuesday, 25 July 2023	Thursday, 27 July 2023
S03 - R2	Contaminated Land	Tuesday, 25 July 2023	Thursday, 27 July 2023
S03 - R3	Natural Hazards	Tuesday, 25 July 2023	Thursday, 27 July 2023
S05 - R1	Earthworks	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R2	Noise	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R3	Light	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R4	Signs	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R5	Historic Heritage	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R6	Notable Trees	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R7	Energy and Infrastructure	Monday, 21 August 2023	Friday, 25 August 2023
S05 - R8	Transport	Monday, 21 August 2023	Friday, 25 August 2023
S06 - R1	Rural	Monday, 9 October 2023	Friday, 13 October 2023
S06 - R2	Open Space Zones (3)	Monday, 9 October 2023	Friday, 13 October 2023
S07 - R1	Residential	Wednesday, 22 November 2023	Friday, 1 December 2023
S07 - R3	V1 - Intensification	Wednesday, 22 November 2023	Friday, 1 December 2023
S07 - R4	V2 - Financial Contributions	Wednesday, 22 November 2023	Friday, 1 December 2023
S09 - R1	Commercial and Industrial	Monday, 29 January 2024	Friday, 2 February 2024
S10 - R1	SPZ - Kaiapoi Regeneration	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R2	SPZ - Pines Beach and Kairaki	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R3	SPZ - Pegasus Resort	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R4	SPZ - Museum & Conference	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R5	SPZ - Hospital	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R6	Future Development Areas (FUDA)	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R7	Airport Noise	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R8	Urban Subdivision	Tuesday, 20 February 2024	Friday, 23 February 2024
S10 - R9	Rural Subdivision	Tuesday, 20 February 2024	Friday, 23 February 2024
S11 - R1	Council Designations	Wednesday, 13 March 2024	Friday, 15 March 2024
S11 - R2	Other Designations	Wednesday, 13 March 2024	Friday, 15 March 2024
S11 - R3	Ecosystems and Indigenous Biodiversity	Wednesday, 13 March 2024	Friday, 15 March 2024
S11 - R4	Wrap up Hearing	Wednesday, 13 March 2024	Friday, 15 March 2024
S11 - R5	Temporary Activities	Wednesday, 13 March 2024	Friday, 15 March 2024
S12 - R1	Rezoning Requests Pt 1	Wednesday, 10 April 2024	Friday, 12 April 2024
S12 - R2	Rezoning Requests Pt 2	Monday, 29 April 2024	Wednesday, 1 May 2024
S12 - R3	Rezoning Requests Pt 3	Monday, 6 May 2024	Tuesday, 7 May 2024
S12 - R4	Rezoning Requests Pt 4	Monday, 20 May 2024	Tuesday, 21 May 2024