

**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 12 – MATTERS AND QUESTIONS  
ARISING FROM HEARING STREAM 6 AND  
THE NEW NES-CF, RESPONSE TO  
MCALPINE REQUEST**

## PURPOSE

- (1) The purpose of this Minute is to:
  - (a) Request that the Council provides a memorandum to the Hearings Panel on the impact of the new National Environmental Standard on Commercial Forestry, which comes into effect from 3 November 2023. The memorandum is to be provided by **Thursday 30 November 2023**.
  - (b) Put questions to the Council s42A Open Space and Recreation Zone report author to respond to in preparing their Reply Report to the Panel, due by **Friday 3 November 2023**.
  - (c) Set out next steps for the Council s42A Rural Zone report author to finalise their response to the Panel's preliminary questions.
  - (d) Respond to the memorandum from McAlpines seeking leave to table further legal advice.

## GIVING EFFECT TO THE NEW NATIONAL ENVIRONMENTAL STANDARD ON COMMERCIAL FORESTRY

- (2) The Hearings Panel is aware that the Government has released an amendment to the National Environmental Standards on Plantation Forestry and renamed it as the National Environmental Standard for Commercial Forestry. As we understand it, it is now expanded to deal with carbon forestry, amongst other matters, and comes into effect on 3 November 2023. We signalled during Hearing Stream 6 that we would be asking the Council to provide us a memorandum setting out their understanding of the requirements of the NES-CS, and based on that understanding, how they intend to proceed in respect to the NES-CS, particularly in respect to matters that have already been heard by the Hearings Panel. This Minute formalises the request to the Council.
- (3) As also discussed during Hearing Stream 6, the Hearings Panel has identified that there has been an inconsistent approach taken to the relationship between the NES-CS and the Proposed District Plan and the extent existing use rights applies to plantation forestry by different report authors. This is a matter that should be traversed by the Council in preparing the memorandum to ensure that the Panel is receiving consistent agreed and robust advice. In preparing the memorandum, the Council is requested to review sections 43 to 44A inclusive of the RMA and the NES-CF itself and may wish to seek legal advice in doing so.
- (4) The Hearings Panel requests that this memorandum be provided no later than **Thursday 30 November 2023**. On receipt of the memorandum, the Hearings Panel will determine if any further information or submitter input is necessary.

## QUESTIONS TO HEARING STREAM 6 OPEN SPACE AND RECREATION ZONE SECTION 42A REPORT AUTHOR FOR REPLY REPORT

- (5) As signalled during and at the end of the hearing, the Hearings Panel has questions that we would like answered in the Section 42A Open Space and Recreation Zone report author's Reply Report. The questions are as follows:
- (6) Having discussed NOSZ-R11 clause 2, do you still recommended that this clause be deleted given that there is no limit on the number of buildings permitted in the zone?
- (7) Do you remain of the view that the relief sought by the House Movers Section of the NZ Heavy Haulage Association [s221] that relocatable dwellings as an activity is addressed through TEMP-R6? The report author is requested to read through paragraphs 13 to 21, 26 and 28 of the full submission in responding to this question.
- (8) Following the questions and discussion around grazing licences, do you consider that grazing on any land can be listed as a permitted activity, without any need to refer to a grazing licence issued by the District Council? Is there scope to remove reference to a grazing licence if the Panel was of a mind to do this?
- (9) We request that the Reply Report be provided no later than **4pm Friday 3<sup>rd</sup> November 2023**, unless otherwise agreed with the Chair.
- (10) This list of questions is not exhaustive and the Section 42A author is invited to respond to other matters arising from the hearing that are not contained in the list of questions. This includes matters that the authors have deferred in their statements of supplementary evidence. The Reply Report is to append a fully updated Appendix B, recommended responses to submissions and further submissions.
- (11) In the Reply Reports, the Section 42A report author is also requested to provide a fully updated Appendix A "recommended amendments" to their chapters showing:
  - (a) Any further recommended amendments to the chapters having read and heard evidence through the hearings process. These are to be shown in a consistent manner across the rights of reply, using the same annotation, which clearly delineates the recommended amendments from the Section 42A report and further recommended amendments following the hearing.
  - (b) Each recommended amendment to the chapter(s) being footnoted to the relevant submission(s) that the amendment(s) relates to.

## NEXT STEPS FOR RURAL ZONE S42A REPORT AUTHOR

- (12) In their supplementary evidence responding to the Hearing Panel's preliminary questions, the Rural Zone S42A report author advised they had been unable to respond to all of the questions and would do so in their reply report.

- (13) The Panel has considered this matter and does not agree with the report author's proposed approach as this does not provide the Panel with the opportunity to discuss the report author's response. Accordingly, the Panel has determined that the following next steps shall apply to the Rural Zone S42A report:
- (14) The s42A report author is to provide a full response to the preliminary questions no later than **4pm 15 November 2023**. In doing so, the report author is reminded that this response is to be limited to the questions posed by the Panel and in fairness to submitters, is not to traverse evidence presented to the Panel through the hearing.
- (15) The Panel will reconvene Hearing Stream 6 for the purpose of hearing from the report author on **Wednesday 22 November 2023**. This will occur online via Teams.
- (16) Submitters and their experts may choose to virtually attend the hearing in an observatory manner in the same way as if it was occurring in person.
- (17) The Panel will subsequently compile a list of questions for the report author to respond to in their reply report. The report author is expected to respond to submitter evidence in this reply report.
- (18) We note that this reconvened hearing is essentially a continuation of the process we have adopted where the S42A report author provides written answers to our questions in advance of, or at, the hearing. The only change is that we have split this into two sessions, necessitating a reconvened hearing. We do not consider any submitters are disadvantaged as all parties had the opportunity to see our questions in advance of the hearing commencing and to respond to those in their presentations if they so wished.
- (19) The Panel would also like to make clear that this timeframe has been set to accommodate the report author's upcoming leave and the Panel's own work diaries and is not to be considered as a precedent by any party to these hearings.

## MCALPINE LTD REQUEST TO TABLE LEGAL SUBMISSIONS

- (20) On Friday 6 October 2023, the Hearings Panel received a memorandum from counsel for McAlpines Ltd seeking leave to file legal submissions in response to legal advice included in the Council S42A reply report for the Noise Chapter. This memorandum is available on the [Council website](#). In summary, the submitter is seeking leave to file legal submissions that respond to the legal advice provided in the Noise Chapter Reply Report. Their position is that no one would be prejudiced by leave being granted.
- (21) The Hearings Panel has reviewed the submitter's legal submissions and note that they did not traverse the matter of scope. The Panel also considered the matter that the submission points that the submitter relies upon in seeking their relief had been

assigned to the Rural Chapter rather than the Noise Chapter, and that the S42A Noise Chapter report referred the points to the S42A Rural Chapter report.

- (22) The Hearings Panel is generally not minded to provide submitters with an opportunity to provide any further information after a hearing stream has been adjourned. However, in this circumstance where the submission was not addressed in the s42A report and legal advice has been provided after the hearing, the Panel does agree to grant the leave sought. McAlpines Ltd has until **4pm Tuesday 24<sup>th</sup> October 2023** to provide legal submissions. The S42A Noise Chapter report author is then requested to respond to any legal submissions in their final Reply Report due on **30 November 2023**.

## REMINDER ON HEARING PROCESS

- (23) There have been a few occasions to date where expert witnesses appearing on behalf of submitters have during the course of the hearing proposed to provide precise wording that they recommend be adopted, or to respond in more depth to the Hearing Panel's questions.

- (24) The Panel appreciates that the witnesses are attempting to be helpful to the Panel. However, while the Panel has provided some leniency for the submitter's witness to provide this within a short time frame after the hearing adjourns, we would remind expert witnesses that we expect their briefs of evidence to be robust, just in the same way we expect the s42A reports to be robust. In particular, if an expert witness requests that a new provision be introduced or a proposed one amended, we expect to see that wording included in the primary evidence in advance of the hearing, or in supplementary on the day. If there is a statement saying that a particular requested new or amended provision is supported by the PDP's objectives and policies, we expect the evidence to state which exact ones those are.

- (25) The Panel is very unlikely to continue to be so lenient in the future.

## CORRESPONDENCE

- (26) 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](mailto:audrey.benbrook@wmk.govt.nz).



Gina Sweetman

Independent Commissioner – Chair - on behalf of the Hearings Panel members

13 October 2023