

DIRECTIONS OF THE COMMISSIONERS

MINUTE 1

INTRODUCTION

- [1] Pursuant to section 34(A)(1) of the Resource Management Act 1991 (RMA), the Whakatāne District Council and Bay of Plenty Regional Council (the Councils) have delegated to independent commissioners Fraser Campbell, Rauru Kirikiri, Trevor Robinson and Rob van Voorthuysen the function to hear the submissions on Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan and Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan, at a combined hearing and to make decisions on those submissions for the Councils.
- [2] The following directions and requests relate to the hearing.

HEARINGS ADMINISTRATOR

- [3] The Councils have appointed a Hearings Administrator who is:

Amanda Namara

hearings.administrator@boprc.govt.nz

0800 884 881 extension 8360

HEARING DATES AND TIMES

- [4] The hearing venue (or venues) will be advised in the notice of hearing which will accompany the Councils' Section 42A Report. This report will be available on the Whakatāne District Council's and Bay of Plenty Regional Council's (the Councils') websites (see paragraph 33) and submitters will also receive the notice of hearing by email or surface mail.
- [5] The hearing dates are:
- Monday 2 March to Friday 6 March 2020
- [6] If additional hearing days are required then these will be scheduled subsequently.
- [7] The hearing will commence at 9am each day and generally conclude at 5.00pm.
- [8] Breaks during the day will be as follows:
- Morning tea 10.30 to 10.45am
 - Lunch 12.30 to 1.30pm
 - Afternoon tea 3.00 to 3.15pm
- [9] Councils will be contacting submitters who stated in their submission that they wished to be heard to confirm their attendance at the hearing and to determine an allocation of speaking time. Thereafter, a schedule of appearances will be developed and distributed to submitters. That hearing schedule may be subject to change as the hearing proceeds and any changes will be posted on the Councils' websites.
- [10] The general order of appearance at the hearing will be:
- Procedural matters (if any)
 - Whakatāne District Council a proposer and requester, respectively, of the Plan Changes including any expert witnesses called by it
 - Submitters

- Section 42A report authors
- The Council's reply (which may be given at the hearing or in writing thereafter)

[11] Submitters wishing to be heard (and who are not calling witnesses to support their case) will generally each be allocated up to 45 minutes to speak to their submissions or further submissions, unless a longer time slot is specifically requested.

[12] Submitters raising the same or similar matters of concern are encouraged to group together and make joint presentations at the hearing.

EXPERT WITNESSES

[13] Pursuant to section 41(4) of the RMA, all participants (the Whakatāne District Council as proposer and requester, respectively, of the Plan Changes, the section 42A report author and submitters) are requested to advise the Hearings Administrator of the names of any experts that they intend calling and those expert's respective areas of expertise on or before Wednesday 27 November 2019.

PRE-CIRCULATION OF MATERIAL

[14] Section 42A report¹ will be made available on or before Friday 20 December 2019 and shortly thereafter posted on the Councils' websites, allowing submitters to have regard to its contents when preparing their evidence. It would be extremely helpful to the Commissioners if the District Council as proposer and requester respectively of the Plan Changes and submitters could indicate in their evidence whether or not they agree or disagree (with reasons) with the section 42A report author's conclusions and recommendations.

[15] Pursuant to section 41B(2) of the RMA, the District Council as proposer and requester respectively of the Plan Changes is to provide its briefs of expert evidence to the Hearings Administrator no later than 4.00pm on Wednesday 15 January 2020.

[16] If expert witnesses for the District Council as proposer and requester respectively of the Plan Changes intend to base their briefs of evidence on technical reports that they authored and which have already been made available to the Commissioners and submitters, then the expert witnesses need not repeat material contained in those reports in their evidence. It will be sufficient for the evidence to cross-refer to that material.

[17] Pursuant to section 41B(3) of the RMA, submitters who intend to call expert evidence² in support of their submissions are directed to provide written briefs of that evidence to the Hearings Administrator no later than 4.00pm Wednesday 29 January 2020.

[18] If Submitters intend to provide written evidence themselves, or have non-expert people appear on their behalf, then they are requested and strongly urged to also provide a written statement of that evidence to the Hearings Administrator no later than 4.00pm on Wednesday 29 January 2020.

[19] If expert witnesses for the District Council as proposer and requester respectively of the Plan Changes prepare rebuttal evidence in response to expert evidence lodged by submitters, then the District Council is directed to provide those briefs of expert evidence to the Hearings Administrator no later than 4.00pm on

¹ The s42A Report includes a discussion of the submissions and further submissions. It recommends (with reasons) whether any changes should be made to the notified Plan Changes in response to the submissions and further submissions. Those recommendations do not bind the Commissioners.

² Expert evidence is that written by qualified planners, engineers or scientists, for example, prepared in accordance with the Environment Court's Practice Note 2014 for expert witnesses.

Wednesday 12 February 2020. The Commissioners anticipate that any rebuttal evidence will be concise and not raise new issues.

- [20] All expert witnesses presenting briefs of evidence are to include a summary statement that is no more than two A4 pages long at the beginning of their evidence.
- [21] If the District Council as proposer and requester respectively of the Plan Changes intend to have legal counsel present opening legal submissions, it is requested to provide those submissions to the Hearings Administrator no later than 4.00pm on Wednesday 26 February 2020.
- [22] All original submissions and pre-circulated written evidence will be taken as read at the hearing. Accordingly, pursuant to section 41C(1)(b) of the RMA, the Councils and submitters are directed that they and their experts will not be required to read any such material aloud at the hearing. Reading that material aloud at the hearing would be an inefficient use of time as the Commissioners will have already read it.
- [23] However, experts will be asked to read out their summary statements and submitters will similarly be asked to highlight key points for the benefit of the Commissioners. The Commissioners will then ask any questions they may have.
- [24] Should any submitter wish to speak in Te Reo, utilise Sign Language, or utilise visual aids (PowerPoint, etc) they are requested to liaise directly with the Hearings Administrator, as soon as possible, but prior to Friday 31 January 2020 regarding their needs.

RECORDING

- [25] The hearing will be recorded but the recording will not be transcribed.

PRE-HEARING MEETINGS

- [26] If participants (the Councils, the s42A report author, or submitters) wish to hold pre-hearing meetings³ then resultant pre-hearing reports are to be prepared and provided to the Hearings Administrator by 4.00pm on Friday 14 February 2020. The Hearings Administrator can assist with organising pre-hearing meetings.

EXPERT CONFERENCING / CAUCUSING

- [27] Either prior to or following the exchange of expert evidence as detailed above, the Commissioners request that all participants calling expert witnesses liaise amongst themselves, along with the Hearings Administrator, in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise (including any applicable amendments to the notified Plan Changes).
- [28] If expert conferencing occurs then a Joint Witness Statement (JWS) is to be prepared for each specific topic of expertise and be provided to the Hearings Administrator by 4.00pm on Friday 21 February 2020. The Commissioners anticipate that experts for the Councils will assume responsibility for preparing each JWS, unless the conferencing experts decide otherwise amongst themselves. The Commissioners may request further conferencing during the course of the hearing.
- [29] All expert witnesses, in both preparing and presenting their evidence as well as when attending expert conferencing, are expected to comply with the Environment Court Consolidated Practice Note 2014 – Expert Witness Code of Conduct available at the following website:

<https://environmentcourt.govt.nz/assets/Documents/Publications/Practice-Note-2014.pdf>

³ The Councils may invite some or all of the submitters to attend a meeting, the purpose of which is usually to clarify submitter issues and see if those issues can be resolved.

SITE VISIT

[30] The Commissioners intend to undertake a preliminary site visit prior to the hearing commencing. Participants are requested to inform the Hearings Administrator by 4.00pm on Friday 20 December 2019 of any areas of interest, along with supporting reasons, that they would wish the Commissioners to include within their site visit. A further site visit may be undertaken before the hearing is closed.

CORRESPONDENCE

[31] Participants must not attempt to correspond with or contact the Commissioners directly. All correspondence relating to the hearing must be addressed to the Hearings Administrator.

SERVICE OF DOCUMENTS

[32] All written material (evidence, pre-hearing reports, JWSs and legal submissions) addressed by this Minute must be lodged with the Hearings Administrator by either:

- Preferably email to Amanda Namara at hearings.administrator@boprc.govt.nz or
- Post addressed to Amanda Namara, Hearings Administrator, Bay of Plenty Regional Council, PO Box 364, Whakatāne 3158; or
- Hand delivery to Amanda Namara, Hearings Administrator, Bay of Plenty Regional Council, 5 Quay Street, Whakatāne.

[33] All written material received will be made available as soon as reasonably possible to participants from the Whakatāne District Council and Bay of Plenty Regional Council websites at the following links:

<https://www.whakatane.govt.nz/proposed-plan-change-1>

<https://www.boprc.govt.nz/your-council/plans-and-policies/plans/regional-plans/regional-natural-resources-plan/awatarariki-fanhead-matat%C4%81-proposed-plan-change-17/>

DEVIATION REQUESTS

[34] If any participant wishes to deviate from any timetable or other requirement identified in this Minute a written request to do so (inclusive of reasons) must be addressed to the Commissioners, and be provided to the Hearings Administrator. The Commissioners will consider and determine any such requests.



Rob van Voorthuysen

Independent Commissioner – Chair - on Behalf of the Commissioners

Dated: 1 November 2019