

Before Hawke's Bay Regional Council and Hastings District Council

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Application by Hastings District Council and Napier City Council to Hawke's Bay Regional Council for resource consents authorising the operation of Area B at Ōmarunui Landfill

AND

IN THE MATTER of a notice of requirement by Hastings District Council to Hastings District Council for alteration of designation for the Ōmarunui Regional Landfill

THIRD MINUTE OF HEARINGS PANEL

Dated 19 October 2021

MAY IT PLEASE THE COMMISSIONERS

1. The Hearings Panel appointed to determine the resource application and notice of requirement for the operation of proposed Area B of the Ōmarunui Landfill has received a further memorandum from counsel for the Applicants regarding arrangements for the hearing (**copy appended**).
2. The principal matter raised in the memorandum relates to whether the hearing should proceed using Remote Access Facilities (i.e. an Audio Visual Link (**AVL**) such as Zoom or Microsoft Teams) in light of the continuing uncertainty surrounding the Covid-19 policy settings, and with counsel for the Applicants and the majority of the Applicants' witnesses being resident in Auckland (which currently remains subject of Level 3 restrictions, for at least the next two weeks).
3. Counsel for the Applicants has now expressed a preference for a Remote Access Hearing pursuant to s 39AA of the RMA, which the Panel can direct provided it considers it appropriate and fair to do so, and we are satisfied that the necessary Remote Access Facilities are available.¹
4. Specifically, counsel for the Applicants has requested that all parties and witnesses participate by AVL, rather than some hybrid arrangement where locally based parties and witnesses could attend in person, along with any witnesses for the Applicants that are not resident in areas subject of Level 3 restrictions (or otherwise granted an exemption to travel).
5. Counsel has also proposed a range of helpful directions² suggested to assist a hearing being run efficiently by AVL.
6. It will be recalled that the Applicants previously requested an adjournment of the hearing with the prospect that this would then enable a hearing in person, rather than by way of AVL.
7. That adjournment was granted by the Panel on the basis requested, including having regard to the significance of the Ōmarunui Landfill and the issues raised by the application for the affected community.

¹ Section 39AA(4) of the RMA.

² Paragraph 4 of counsel for the Applicants' memorandum.

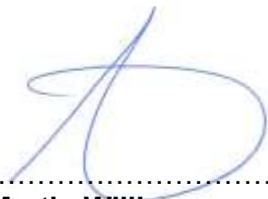
8. Nevertheless, in the circumstances as they remain, the Panel is minded to direct that the hearing proceed using Remote Access Facilities (AVL) as now requested by counsel for the Applicants.
9. We also agree that a hybrid arrangement would not be fair and appropriate i.e., whereby only some of the Applicants' witnesses (and locally based submitters) would be able to appear in person, the remainder by AVL.
10. We are not minded to permit (or require) any Auckland based witness (or counsel) to travel, but thank counsel for the Applicants for noting the potential power to do so.³
11. We consider, as a matter of fair and even handed treatment of all parties, witnesses and evidence, that the more appropriate course of action would be for the Hearings Panel and reporting officers to be physically present at the Regional Council Meeting Chambers in Napier, and for all parties and witnesses (locally based or otherwise) to appear before us by means of AVL.
12. We are minded to direct accordingly and that the Council make the necessary arrangements with the parties for the purpose.
13. We are also minded to make the following directions, generally as proposed by counsel for the Applicants:
 - (a) Any response (rebuttal evidence) to the pre-circulated evidence of Mr Bearsley to be filed by 5.00 pm Thursday 21 October 2021.
 - (b) Counsel for the Applicants' opening submissions to be filed by 5.00 pm Thursday 28 October 2021.⁴
 - (c) That the Applicants file a set of conditions following discussions with the reporting officers for the District and Regional Council, identifying any provisions not yet agreed, by 5.00 pm Thursday 28 October 2021.
 - (d) The Applicants' witnesses to file a short (no longer than two to three page) written summary of their evidence by 5.00 pm Thursday 28 October 2021 (which summary would be addressed orally by the witnesses at the hearing).

³ Paragraph 7 of counsel for the the Applicants' memorandum.

⁴ On the basis that these submissions would be taken as read but subject to questions from the Panel.

14. The Commissioners may pre-circulate questions for the Applicants' witnesses prior to the hearing, including for response in writing.
15. The timing of counsel for the Applicants' submissions in reply can be addressed at the hearing.
16. We record that the proposed directions set out in this memorandum, including to proceed by way of Remote Access Facilities (in the manner summarised at paragraph 11 above) are provisional, with any party who wishes to comment on the proposed directions having until **10.00am Thursday 20 October 2021** to do so, by way of response to the Council Consents Administrator (Ms Tinker).
17. A further minute confirming or revising the directions will then be distributed.

Dated: 19 October 2021



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Martin Williams
Chair of Hearings Panel