

HAWKE'S BAY REGIONAL COUNCIL
PROPOSED PLAN CHANGE 9 (PPC9) – TŪTAEKURĪ, AHURIRI, NGARURORO AND
KARAMŪ CATCHMENTS (TANK)

MINUTE 8 OF THE INDEPENDENT HEARING PANEL

INTRODUCTION

1. This is the eighth minute of the independent hearing panel. It relates to a request to review our decision regarding the late expert evidence from Ngāti Kahungunu Iwi Incorporated.
2. Evidence was filed late on behalf of Ngāti Kahungunu Iwi Incorporated (NKII), following an earlier extension to the timeframe by the Panel. This evidence was provided three working days late, but more than five working days before the hearing (being the minimum timeframe provided for expert evidence where it is directed to be pre-circulated in section 41B of the RMA).
3. The Panel originally proposed treating the evidence as “lay” evidence (which was not required to be pre-circulated), but subsequently received confirmation from NKII it was intended to be expert evidence.
4. The Panel invited Hawkes Bay Regional Council and submitters to respond to us in writing with any views regarding this matter. The Panel received responses from 11 parties supporting acceptance of the late expert evidence and one submission from Lowe Corporation opposing the late evidence.
5. Following receipt of submissions from the parties, the Panel determined (after hearing the evidence in the first week of the hearing) not to accept the evidence.

REQUEST TO REVIEW DECISION TO NOT ACCEPT THE LATE EVIDENCE

6. During week 3 of the hearing Royal Forest and Bird Protection Society Incorporated submitted to the Panel a request to review our decision on the late evidence, and further set out in their legal submissions the reasons it should be accepted. These included that the NKII evidence complied with the requirements of section 41B of the RMA, was not inadmissible, and therefore should be given fair and proper consideration.

REVIEW OF DECISION TO NOT ACCEPT LATE EVIDENCE

7. The Panel has been delegated powers by HBRC under section 34 of the RMA to issue a decision on PPC9. Where a local authority holds a hearing in relation to a plan change, it is required to hold the hearing in public, and establish a procedure that is appropriate and fair in the circumstances. Such a procedure will try to avoid unnecessary formality, recognise tikanga Māori where appropriate, and not permit any questioning by persons other than the hearing body. In conducting the hearing, we have wide powers to receive statements and documents that in our opinion may assist us to deal effectively with PPC9, whether or not it would be admissible in Court.
8. Although the evidence was provided late, after an extension had already been granted, it is necessary to consider whether the principles of natural justice may require acceptance of the evidence and recognition of tikanga Maori.
9. Given the quasi-judicial nature of hearings and decisions under the RMA, it is important that the principles of natural justice are adhered to, as these decisions can affect the rights and interests of people in the community.
10. We are particularly mindful that, given the expertise of tangata whenua in tikanga, and the fact that persons who hold mana whenua are best placed to identify impacts of the proposal on the physical and cultural environment valued by them, the evidence of NKII may provide important information that will be useful to us in making our decision on PPC9. We consider that the Panel's ability to consider and weigh this evidence (alongside other evidence received) will contribute to a better quality decision.
11. We have also considered potential issues of prejudice for other parties. In this case, while the evidence was filed late according to our previous direction, it was still filed in advance of the hearing commencing. The evidence was heard by the Panel and placed on the Council website. A large majority of the parties that responded to the Panel's minute regarding the approach taken to the evidence were in favour of the evidence being accepted on the basis that there was limited prejudice to other parties.
12. The Panel's timetable only provided an opportunity for the section 42A report writers to respond to submitter's expert evidence. There was no additional step

for the submitters to respond to each other's expert evidence, other than through comments when they presented at the hearing.

13. In its reply filed on 23 June 2021 the Council responded to the matters raised in the NKII evidence. The only party to have raised any objection to the evidence being considered was Lowe Corporation, and they were heard in the second week of the hearing prior to the decision being made not to accept the evidence.

14. For these reasons, the Panel has reconsidered its earlier procedural direction and will receive (and weigh accordingly) the evidence filed by NKII in its decision on PPC9.

CONTACT

15. The administrative contact for the plan change is Maggie Brown at Hawke's Bay Regional Council. All hearing and administrative matters should be directed to Maggie at etank@hbrc.govt.nz or on 027 214 9871. She will confer with the Commissioners as necessary.

Thank you, ngā mihi.



Antoine Coffin

Chair of Plan Change 9 Hearings Panel

Date: 20 July 2021