

**GREATER WELLINGTON REGIONAL COUNCIL WGN200083**

**UPPER HUTT CITY COUNCIL 351/10/006**

**RESOURCE CONSENTS AND NOTICE OF REQUIREMENT: PINEHAVEN  
STREAM FLOOD PROTECTION WORKS**

**RE-ISSUING MINUTE 1 OF INDEPENDENT HEARING PANEL**

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***Re-issue of Minute 1/ Covid-19***

1. *We would like to take this opportunity to update and re-issue Minute 1 relating to this matter. The re-issue is due to some uncertainty as to whether our directions still apply in light of the Covid-19 arrangements.*
2. *We confirm that the original directions still apply; albeit that in line with national practice for RMA hearings there is now an emphasis on conducting RMA proceedings remotely.*
3. *In the current circumstances, the Panel will proceed with this hearing as electronically as possible. The Council is currently exploring avenues for video-conferencing to allow the hearing to proceed on the set date. Further information will be provided by the GWRC administrator as it becomes available. In the meantime, please be assured that whatever forum is used for the hearing it will not be at the expense of giving all parties an appropriate opportunity to fully express their position.*
4. *In the meantime, this minute sets out directions and guidance for matters regarding the lead up to the hearing and the hearing itself. Where necessary the language has been modified to reflect the emphasis on an electronic approach.*

**Introduction**

5. This Minute is being sent to you because you are either the applicant/requiring authority, a submitter or a council reporting officer to the above application/notice of requirement.
6. Pursuant to section 34A of the Resource Management Act 1991 (“**RMA**”) we have been appointed by Greater Wellington Regional Council (“**GWRC**”) and Upper Hutt City Council (“**UHCC**”) to hear and make recommendations on:
  - (a) applications to GWRC for land use consents, reclamation, water permits and discharge permits to enable the construction, operation and on-going maintenance of stream flood protection works; and
  - (b) a Notice of Requirement sought from UHCC by Wellington Water Ltd, made on behalf of UHCC (“**the Requiring Authority**”) to enable the construction works to occur and to provide for the on-going maintenance of the works.

7. The general function of this Minute is to set out some preliminary matters in preparation for the hearing, which is currently scheduled to be held **between 19-21 May 2020**. Please note that all parties will be formally advised directly by the GWRC hearing administrator of the final hearing date(s) and methods for participation should the hearing be held electronically.
8. In the meantime, our objective at this preliminary stage is to establish some procedures to facilitate a smooth and effective pre-hearing and hearing process for all parties. This requires some actions from all the parties in readiness for the formal proceedings.
9. In this respect, this minute covers the following four matters:
  - (a) pre-hearing discussions/conferencing;
  - (b) circulation of evidence;
  - (c) hearing process and presentations; and
  - (d) site and locality visits.
10. It is likely that we will issue additional minutes with further requests and instructions, before, during and/or after the hearing.

## **Pre-hearing discussions & conferencing**

11. With most hearings of this nature, all parties (requiring authority, submitters and council officers) are encouraged to engage in constructive discussions where practicable before the hearing commences so as to minimise the range of issues in contention. This may occur through expert witness conferencing, pre-hearing meetings or other informal exchanges – and all are welcome; albeit that in this instance the current approach will be confined to electronic communication.
12. Without wanting to prejudge any issues prior to the hearing, it is apparent from our preliminary review of submissions that have been lodged that the following matters may be worthy of discussion between the parties prior to the hearing commencement:
  - (a) submitter experience with flood events, the basis for flood modelling and flood hazard assessment and the necessity for and proposed design of the works; and
  - (b) the effects on amenity trees and the ecology of the stream arising from the works.
13. We are not formally directing the undertaking of, or participation in, formal pre-hearing meetings, discussions or expert conferencing at this stage. We do, however, encourage pre-hearing liaison and extend that encouragement to any parties prior to the commencement of the hearing. This may include general liaison amongst the parties:
  - (a) to discuss any procedural or substantive matters (including those referred to in paragraph 11 above);
  - (b) for submitters to gain a better understanding of what the proposal entails and what the effects and implications may be; and

- (c) for the Requiring Authority, and GWRC and UHCC (as consent authorities) to better understand what the submitters' concerns are and how they might be accommodated.
14. In order to facilitate this, we would suggest that, prior to the hearing, the Requiring Authority continues to make electronic contact with submitters to discuss issues raised in submissions and resolve any issues where practicable<sup>1</sup>.
15. We also understand that some parties are likely to be engaging experts, where matters relating to the basis for flood modelling and flood hazard assessment and the necessity for and proposed design of the works are concerned. If so, then expert witness conferencing (undertaken electronically) on these matters and the subsequent preparation of joint witness statements confirming the experts' respective areas of agreement and disagreement may prove to be of benefit.
16. The discussions and/or pre-hearing meetings referred to in paragraph 13 above are likely to assist in informing the focus and scope of any such expert conferencing, and so should be considered a priority by the Requiring Authority, GWRC and UHCC. To provide time for any subsequent expert conference and pre-circulation of evidence to occur prior to the hearing, we suggest that discussions and/or pre-hearing meetings are facilitated and undertaken electronically and concluded and reported back to the GWRC administrator **by 20 April 2020 at the latest**. All submitters should be invited to participate in any such discussions and/or pre-hearing meetings regardless of whatever electronic platform is used.
17. In the event that discussions and pre-hearing meetings do confirm that expert conferencing would be of benefit, then we will issue specific directions to that effect. These would include directions:
- (a) obliging the Requiring Authority, GWRC, UHCC and any submitters who are intending to call expert witnesses at the hearing to advise the GWRC administrator by a specific date, including the name and area of expertise of each witness they intend to call;
  - (b) asking those parties to indicate at the same time whether they will make their respective expert(s) available for conferencing with other experts, and if not, the reasons why;
  - (c) obliging GWRC and UHCC to advise the Requiring Authority of the list of experts to be called by parties at the hearing as soon as practicable and no later than a specific date, and to confirm whether those experts are available for conferencing;
  - (d) obliging the Requiring Authority to assume responsibility for co-ordinating any conferencing between its experts and those for submitters and the GWRC and UHCC; and
  - (e) requiring any conferencing that is undertaken to be completed no later than a specific date so that the witness statements can feed into the pre-hearing timetable for circulation of evidence.
18. We will remain in contact with the GWRC administrator to facilitate any pre-hearing processes as required, and will keep all parties informed through additional minutes as necessary.

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<sup>1</sup> These meetings may be of an informal nature, and/or through formal pre-hearing meetings coordinated by GWRC and/or UHCC pursuant to s99 of the RMA.

## **Circulation of evidence before hearing**

19. Pursuant to Sections 41B and 42A of the RMA we direct that evidence be pre-circulated in accordance with the following timeframes as set out in the Act:
- (a) the Section 42A Report and any expert evidence called by GWRC and UHCC will be made available a minimum of 15 working days prior to the start of the hearing;
  - (b) the Requiring Authority's expert evidence will be made available at least 10 working days before the start of the hearing; and
  - (c) any expert evidence called by submitters must be made available at least 5 working days before the start of the hearing.
20. We will follow this up with actual dates for the above listed pre-circulations once the hearing dates are confirmed by the GWRC administrator. This information will either be emailed to parties or made available on the GWRC website. Further detail to this end will be clarified to all parties in due course.
21. To be clear, submitters do not need to pre-circulate any non-expert presentation material they wish to speak to at the hearing. The above circulation requirements only apply to any expert evidence submitters wish to call. For any questions of clarification about professional expertise and the code of conduct for expert witnesses, please contact the GWRC administrator in the first instance.
22. Any legal submissions by counsel for the parties can be made at the hearing and are not subject to pre-circulation.

## **Hearing process and presentations**

23. We anticipate that a hearing of this nature will be a new experience for some submitters involved, so we will take a brief moment here to provide some information about the hearing for context.
24. For starters, we encourage all submitters to refer to the useful guides about the designation process and hearings available from the Ministry for the Environment website. The links below, in particular, are a great source of information:
- <https://www.mfe.govt.nz/publications/rma/everyday-guide-rma-designation-process>
- <https://www.mfe.govt.nz/publications/rma/everyday-guide-rma-appearing-council-resource-consent-hearing>
25. Consistent with the latter guide, our preference is for proceedings to be relatively informal. However, a degree of formality is inherent in hearings of this nature, and we will speak to that at the outset of the hearing when it commences.
26. More substantively, the hearing enables us to hear the issues raised in submissions in greater detail, and to be able to ask questions to improve our understanding of those issues.
27. As a rule of thumb, parties should target presentations of 15-30 minutes or so. This is less a rigid requirement than it is a rough indication, and all parties appearing will be given sufficient time to present their views.

28. Once the actual hearing date has been formally confirmed by the GWRC administrator, we will request an indication from all parties as to the amount of time they require for their presentation so that the GWRC administrator can make the necessary arrangements.

### **Site and locality visits**

29. We are familiar with the site and general locality.

30. We expect that we will need to undertake more detailed site and locality visits after the hearing. In that respect, if any party has a desire for us to visit particular sites/localities they should advise the GWRC administrator.

### **Next Steps**

31. As summarised above we now suggest that the Requiring Authority/Applicant endeavours to complete their electronic liaison with submitters to discuss issues raised in submissions and resolve any issues, where practical, **by 20 April 2020 at the latest**. Certainly, the prospect of parties fielding expert evidence should be a matter for discussion during this engagement. A report back on this by the Requiring Authority/Applicant is required at that time. We will then issue any directions, as required, relating to expert conferencing and the pre-circulation of evidence.

32. We also direct that all parties wishing to call expert evidence provide a list of the names of such experts to the GWRC administrator by no later than **13 April 2020**.

33. The GWRC administrator can be reached at [notifications@gw.govt.nz](mailto:notifications@gw.govt.nz).

**DATED** this 20<sup>th</sup> day of March 2020  
Re-issued 6 April 2020



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DJ McMahon  
Chair – Independent Hearings Panel

For and on behalf of:  
Commissioner Nigel Mark-Brown  
Commissioner Rawiri Faulkner  
Commissioner DJ McMahon