

**BEFORE THE UPPER HUTT CITY COUNCIL
AND
GREATER WELLINGTON REGIONAL COUNCIL**

IN THE MATTER OF

and a related

Resource Consent application for Pinehaven Stream
Flood Protection Works (GWRC),
Notice of Requirement (UHCC)

CONSENT APPLICANT

Upper Hutt City Council

REQUIRING AUTHORITY

Upper Hutt City Council

**2nd MINUTE OF INDEPENDENT HEARING PANEL:
Scheduling, Requested Information, and Other Matters
DATED 10 July 2020**

**Minute #2 of Independent Hearing Panel
Pinehaven Stream Flood Protection Works
[WGN200083 and 351/10/006]**

Hearing Date

1. In an email to the hearing administrators dated 6 July 2020, Save Our Hills (SOH) has requested that the hearing date be postponed. SOH cites a variety of reasons for that request, principally related to scheduling issues around expert witness conferencing.
2. We agree that conferencing of experts will be useful in the lead up to the hearing and trust that the administrators will manage that process efficiently. The Environment Court Practice Note cited by SOH is not an inflexible set of rules, and conferencing is not a specific requirement for a local body hearing process. That said, we expect the Practice Note to be followed to the extent practicable in the circumstances – acknowledging that the limited time between now and the hearing may be a relevant factor in the nature of outputs provided to us.
3. We therefore reconfirm that the hearing to consider the resource consent application and notice of requirement will commence on 3 August 2020, at 9am at the Cosmopolitan Club, 11 Logan Street, Upper Hutt.

New Chair of Hearing Panel

4. In February 2020 commissioner David McMahon was appointed as the Chair of the panel. Subsequently, Mr McMahon has become unavailable and has had to step down as a member (and Chair) of the panel. In his place, the councils have appointed Mark Ashby to the position of Chair.

Scheduling

5. The Resource Management Act empowers the hearing panel to make directions and requests before or at the hearing, including in relation to the order of business at the hearing. The panel must balance the need for a thorough, transparent and fair process with the need to make the best use of time for all parties.
6. For this hearing, in communications to the hearing administrator during April, SOH indicated that they may require a period of 1.5 to 2 days to present evidence / make representations. The requested period included provision for a joint presentation with submitter Alex Ross and submitters Ros and Peter Ross (together 'the Ross submitters'). We understand that the proposed length of time was linked to an assumption that the hearing would be conducted online.
7. We have not yet concluded whether the period previously indicated by SOH and the Ross submitters is appropriate. With that in mind, and to assist the panel in determining what

might be appropriate, we require the following from SOH and the Ross submitters by 5pm 22 July:

- A list of speakers, including their technical expertise (if any) and the topics on which they will be presenting.
 - Whether written evidence (for technical experts) or written representations (for non-experts) will be provided prior to the hearing for each of those persons.
 - A proposed order of appearance and length of time for each speaker.
8. We also anticipate that Wellington Water Limited (in relation to resource consents) and Upper City Council (in relation to the notice of requirement) will require significant amounts of time to present their cases. We therefore require the following from WWL and UHCC to be provided by 5pm 22 July:
- A list of speakers, including their technical expertise (if any) and the topics on which they will be presenting.
 - Whether written evidence (for technical experts) or written representations (for non-experts) will be provided prior to the hearing for each of those persons.
 - A proposed order of appearance and length of time for each speaker.
9. With regard to written evidence from technical experts acting for any party, we require their evidence to be prefaced by a statement of the person's qualifications, its relevance to the matters under consideration, and a declaration that they understand and will abide by the Environment Court code of conduct for expert witnesses (set out by section 7 of the *Environment Court Practice Note 2014*).
10. Either Ainslee Brown or Claire McKeivitt from GWRC will be in touch with all other parties who wish to present at the hearing to ascertain times for their presentations. This is so that scheduling can occur and that the panel can make the most efficient use of everyone's time.
11. Scheduling for a hearing can be a difficult process for all parties involved, especially for affected parties who may need to take time off from their paid employment to attend. Our preference is to conduct the hearing under a standard order of appearance: starting with the applicant and requiring authority (including their various experts); followed by the council reporting officers; and then the submitters and any supporting experts. This standard order is useful to us as a panel as it provides a logical progression.
12. We expect that the applicant, requiring authority, and reporting officers will be able to follow the standard order of appearance. However, for various reasons, individual submitters may not. Where possible, we will work with the hearing administrators to accommodate specific requests from any party related to the day or time of their appearance. An outcome may be that some persons are assigned to appear outside of the standard order. As indicated earlier, in making decisions about scheduling we will be guided by the need for transparency, fairness and efficiency.

Second Pre-Hearing Meeting

13. In an email to the hearing administrators dated 8 July 2020, SOH requested that Mr Daysh (the facilitator of the first pre-hearing meeting) not be re-engaged for the second meeting. SOH cited a perceived bias in Mr Daysh's choice of words used during the meeting.
14. We have read the report prepared by Ms McKeivitt (GWRC) of the first pre-hearing meeting which took place on 20 April 2020. We have also read SOH's own report of that meeting which includes some presumably verbatim quotes of verbal exchanges. We consider that together, the two reports serve the useful purpose of outlining and clarifying the nature of some issues. We expect that a report from the second pre-hearing meeting will be similarly useful to us. We must have regard to the meeting reports when making our eventual decision on the consent application and recommendation on the notice of requirement.
15. We consider that the process would be best served by Mr Daysh continuing in the role of facilitator. The first meeting will have made him familiar with the applications and the issues and it will therefore be more efficient and helpful to us if he continues. We note that being conducted online, the 20 April meeting would have presented some challenges in meeting management. However, based on the records provided by GWRC and SOH, we do not consider that Mr Daysh showed bias in facilitation of the first meeting and do not expect him to show any bias in the second.

Future Land Development and Hydrological Modelling

16. SOH and others have raised concerns about the hydrological model and its relationship to the effects of potential future development. In particular, the concerns are focussed on the management of runoff from development in the hills above Pinehaven, how that is accounted for in modelling, and how (if at all) that has influenced the design of the proposed stream works. This key issue raises two related matters which we require parties to address.
17. Firstly, we require the planning and / or legal experts to set out their positions on whether the commissioners can, should, or to what degree may have regard to potential future development when considering the resource consent application and notice of requirement. We require that advice in two respects:
 - With regard to development applications that have not been received (and potential effects are therefore unknown); and
 - With regard to the general nature of the framework established via plan change 42.
18. In providing us with that advice a range of matters may need to be outlined. It may include the provisions introduced by plan change 42; how proposed future development in the Pinehaven catchment overlay will be assessed; the implications of hydraulic neutrality; how this relates to the physical outcomes of proposed Pinehaven stream works; and the relationship of district plan provisions to the nature of modelling undertaken for the project. Although we have focussed on the Pinehaven Hills, it may also be useful for the advice to cover development in other parts of the catchment.

19. We anticipate that the planning and legal experts will have already intended to cover this topic in their evidence and submissions. We also appreciate that the officer's report is due to be provided on Monday 13 July. In the event that our request would cause a re-write of that reporting, we would prefer to receive the reporting as scheduled followed by the future development issue covered in an addendum. If that is the case, then we direct that the addendum must be provided by 4pm Thursday 16 July.
20. Secondly, we require information from WWL in relation to the hydrological model and its calibration. Our following request relates to Appendix A, Table 1, Item 3 of the Jacobs letter dated 26 February 2020, which was provided as a section 92 response. With regard to the 2008 model using HYDSTRA software – please advise who prepared this model and carried out the calibrations. Please also advise whether this model and the calibrations against the 31 July 2008 storm event and independent flow estimation have been peer reviewed either internally or externally. If there has been a peer review, please provide relevant details.
21. We also require information from WWL which relates to the Beca technical review of flooding dated 2 December 2019. In that review, section 4.2 states that the hydrological model “... *does not differ substantially from the 2015 model and mapping review*”. Please describe the nature of the Beca review and its outcome, and also provide a copy of the review report to the panel. A copy of the review will also need to be provided to the hearing administrators so that it can be circulated to all parties.
22. We require the information requested from WWL to be provided by 4pm Thursday 16 July. We consider that this will provide enough time for it to be circulated and considered in advance of the expert conferencing scheduled for the week of 20th July.
23. With regard to evidence presented at the hearing, we require evidence from Mr Kinley and Mr Law (or a suitable substitute modeller for Mr Law) to address the hydrological model and their confidence in and reasons for its accuracy. We require the evidence to refer to the relevance of infiltration testing carried out by A.K. Ross in July 2019 as presented in the submission by Save our Hills, and to provide their own explanation of how infiltration is accounted for in the model.

Expert Conferencing on Modelling

24. Expert conferencing on modelling has been proposed for the week of 20th July but a date and time has not yet been scheduled. SOH has requested that this be a multi-discipline conference, specifically to include expert input on urban design outcomes and the relationship to stormwater runoff.
25. We consider that the conferencing should be restricted to flood modellers as originally proposed. However, we direct the parties to ensure that their flood experts are well versed in the effects of future land development, are conversant with the provisions introduced to the Upper Hutt District Plan via plan change 42, and how these issues relate to the modelling.

Exchange of evidence

26. All references to “sections” in this Minute are to sections of the Resource Management Act 1991 (RMA). “Working days”, as defined by the RMA, exclude weekends and public holidays.
27. The panel confirms the following schedule for pre-circulation of evidence in advance of the hearing, as previously advised to all parties:

Council evidence

A copy of the planning officer’s recommendation report (section 42A) and any expert evidence prepared by Council officers must be provided to the applicant and submitters 15 working days before the hearing (section 103B(2)). It must be received no later than 13 July 2020.

Applicant’s evidence

A copy of the applicant’s evidence must be provided to the Council 10 working days before the hearing (section 103B(3)). It must be received no later than 20 July 2020.

Submitters’ expert evidence

Any person who has made a submission and who is intending to call expert evidence must provide briefs of this expert evidence to the Council and the applicant at least 5 working days before the hearing (section 103B(4)). It must be received no later than 27 July 2020.

28. Non-expert evidence (including statements by submitters, and legal submissions) need not be provided in advance of the hearing, but we require advance notice of its nature as outlined earlier. It should be tabled and read aloud on the day of the hearing.
29. Pre-circulated reports and evidence should be provided to GWRC electronically by email. Hard copies of the evidence should only be provided on request. If you are providing a written non-expert statement on the day of the hearing, it would be appreciated if you can bring at least 5 copies to the hearing.

Viewing evidence

30. A copy of the Council planner’s recommendation report and any associated expert reports, the applicant’s evidence, and any expert evidence provided by submitters, will be made available on GWRC’s website and at the GWRC offices to meet the timeframes set out above.

Hearing Procedure

31. A useful guide to the conduct of hearings can be found at:

<http://www.mfe.govt.nz/publications/rma/everyday-guide-rma-appearing-council-resource-consent-hearing>.

32. Pursuant to s41C(1) of the RMA, we direct that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:

- The Council planner's report(s) (section 42A) and all pre-circulated evidence will be treated as having been read by the commissioners and all other parties prior to the hearing;
- The applicant or a submitter who has provided pre-circulated expert evidence is to ensure that the witness is present in person (or via audio visual link if not otherwise available – please advise the hearing administrator Ainslee Brown (Ainslee.Brown@gw.govt.nz) if this is necessary);
- The witness should be introduced and asked to confirm their qualifications and experience;
- The witness should be asked to confirm the matters of fact and opinion contained in their statement of evidence;
- The witness will then be given an opportunity to draw to our attention the key points in the statement of evidence. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated statements of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary statement of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the statement of evidence, we will assume that the written statement is the evidence unless the content of the statement is specifically amended by the witness;
- The commissioners may then question the witness.

33. If any party has a question which they would like the Chair to ask any of the hearing participants, they should provide these in writing via Ainslee Brown (Ainslee.Brown@gw.govt.nz), before or at the commencement of the hearing. The panel will then consider the appropriateness of asking the question(s).

34. If any party has a procedural matter that they wish to raise regarding the hearing, we request that they do so, via Ainslee Brown (Ainslee.Brown@gw.govt.nz), in advance of the hearing.

Site visit

35. The panel (commissioners Mark-Brown, Faulkner and Ashby) have undertaken a site visit, accompanied by the hearing administrators. It is likely that we will undertake a follow up site visit after the hearing.

Correspondence

36. Any correspondence with the independent hearing panel should be directed through Ainslee Brown (Ainslee.Brown@gw.govt.nz).



Mark Ashby

Chair of Hearing

For and on behalf of:

Commissioner Nigel Mark-Brown

Commissioner Rawiri Faulkner

Commissioner Mark Ashby