

**Waikato Regional Council - Proposed Plan Change 1 (and Variation 1) -
Waikato and Waipā River Catchments**

Hearing Procedures and Directions

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1. Introduction

1. These Procedures and Directions address the hearing of submissions on Proposed Plan Change 1 and Variation 1 (Plan Change) to the Waikato Regional Plan. They may be updated from time to time as necessary.
2. The Waikato Regional Council (Council) has appointed the Hearing Panel, which comprises Independent Commissioners:
 - Greg Hill (Chairperson);
 - Sheena Tepania;
 - Trevor Robinson;
 - Basil Morrison; and
 - Greg Ryder
3. The Hearing Panel is required to make recommendations on the Plan Change after it has heard the submissions; on whether to accept or reject the submissions received and any amendments to the provisions of the Plan Change. The Council is then required to decide whether to accept or reject the Hearing Panel recommendations.
4. This Hearing Procedures and Directions document may be updated from time to time through the hearings process.

2. Principles of the Hearings

5. The Hearing Panel will establish a hearing procedure that:
 - a. is appropriate and fair;
 - b. avoids unnecessary formality; and
 - c. recognises tikanga Māori.
6. In addition, the Hearing Panel will:
 - a. be inclusive and acknowledge the broad range of interests, capability and capacity represented in submissions;
 - b. where practicable use collaborative and active participation processes to enhance/complement the formal hearings process;
 - c. act in a fair and transparent manner in proceedings;
 - d. conduct an efficient process which minimises the costs and time to all parties involved in the hearing;
 - e. provide submitters with an adequate opportunity to be heard, while, where necessary, limiting the length of oral presentations, avoiding repetition of information, and/or the presentation of irrelevant material;
 - f. give effect to the Māori Language Act 1987, and receive evidence written or spoken in Māori, and
 - g. recognise New Zealand sign language where appropriate, and receive evidence in sign language if required.
7. Timeframes and deadlines stated in this document are intended to balance competing considerations arising from:
 - a. ensuring that submitters who wish to be heard have a fair hearing; and
 - b. conducting an efficient hearing process.

8. Failure to meet stated or directed timeframes and deadlines without good reason may result in late material not being considered by the Hearing Panel or exclusion from expert conferencing, mediation or hearing sessions (as applicable).

3. Communications from the Hearing Panel

9. Communications from the Hearing Panel may include:
 - a **Procedural Minute**;
 - a **Direction**;
 - an **Advisory notice** – information applying to one or more of the parties;
 - a **Notice of pre-hearing meeting**;
 - a **Notice of expert conferencing**;
 - a **Notice of Mediation** (or other alternative dispute resolution process);
 - a **Notice of Hearing** – which sets out the dates, times and places (venue) of the hearing sessions; or
 - **Interim Guidance**.
10. Communications from the Hearing Panel relating to procedural matters generally will be issued by the Council's Hearing Coordinator and will also be on the council's website or, in some circumstances where the matters affect only a limited number of parties; they will be notified by email or post.

4. Communications to the Hearing Panel

11. No person should communicate directly with the Hearing Panel or any member of the Panel except during a hearing session.
12. All communications (including all general enquiries, procedural requests and documents to be provided) to the Hearing Panel are to be sent to the Council appointed Independent Coordinator, Mr Steve Rice of Rice Resources Limited:

Email: HealthyRiversHearingCoordinator@waikatoregion.govt.nz

Postal Address:

Healthy Rivers Hearing Coordinator

Democracy Services.

Attn: Steve Rice

Waikato Regional Council

Private Bag 3038

Waikato Mail Centre 3240

Phone: 078465267 or 0211912346

13. Every communication to the Hearing Panel must clearly state in its heading or opening paragraph:
 - a. the name of the submitter who or on whose behalf the communication is from;
 - b. the submission number (if known); and
 - c. the relevant Hearing Topic name.

14. Any communication or request made to the Hearing Panel or any document provided to it will, unless good reason for withholding it exists, be treated as official information which is publicly available. Where appropriate in the opinion of the Hearing Panel, such communications, requests or documents may be posted on the Council's website.
15. Any communication that directly affects other parties (including a communication in relation to an issue, plan provision or site in which other submitters are interested) must be provided by the sender of that communication to those other affected parties by way of the Council website unless submitters have been advised by the Hearing Panel or the Independent Hearing Coordinator that another form of service is required.

5. Service and provision of documents

16. Formal service of documents by all parties for the hearing process will be by way of the Council website unless submitters have been advised by the Hearing Panel or the Independent Hearing Coordinator that another form of service is required.

6. Pre-hearing meeting(s)

17. There may be a pre-hearing meeting(s) prior to hearings on particular topics. Formal notice will be given for these if and when they are required.
18. Following a pre-hearing meeting the Hearing Panel may require all or any parties (or their representatives) to meet to clarify or narrow the matters/issues.
19. Any pre-hearing meeting will be open to members of the public to attend as observers.

7. Expert Conferencing (Clause 8AA - Schedule 1 of the RMA)

20. The Hearing Panel may, at any time prior to or during the hearings, direct that a conference of experts be held. Expert conferencing will normally only be directed where one or more specific issues which are the subject of expert evidence require separate conferencing.
21. Participation in expert conferencing (including communication related to any conference) is limited to the experts. Submitters (who are not experts) and lawyers are not entitled to participate in this process. The Hearing Panel will require that the contact details of experts be provided so that its facilitators can make direct contact with experts to organise expert conferencing. Failure by a submitter or their lawyer to supply contact details for experts is likely to result in those experts not receiving communication about expert conferencing.
22. The Hearing Panel will decide whether a person has appropriate qualifications, independence, expertise and experience to be qualified to attend as an expert at an expert conference.
23. In order to enable all experts to know in advance the opinions and reasons for opinions of other experts, a person appointed by the Hearing Panel may direct the experts to prepare a summary of expert opinion in advance of the expert conferencing. All summaries of expert opinion are to be prepared in accordance with the Code of Conduct for Expert Witnesses of the Environment Court's Practice Note 2014. All summaries of expert opinion are to be served on the expert conference facilitator and participating experts via the Hearing Coordinator no later than five (5) working days prior to the expert conference.
24. The Hearing Panel will have the same expectations of expert witnesses as set out in the Environment Court's Practice Note, including in particular:

- a. an expert witness has an overriding duty to assist the Hearing Panel impartially on matters within the expert's area of expertise;
 - b. an expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.
25. In addition, every person at an expert conference who is participating in his or her role as an expert witness must agree to comply with the Code of Conduct for such witnesses and not act as an advocate for the party who engages the witness. The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person.
26. An expert conference may be facilitated by a person appointed by the Hearing Panel, or if appropriate, the expert conference may be self-managed. The facilitator or appointed member of the conference must prepare a report on the conference and provide it in writing or electronically to the Hearing Panel and the persons who attended the conference via the Hearing Coordinator no more than five (5) working days after the conference.
27. The report on the expert conference will take the form of a joint statement signed by the experts and will include the following matters:
- a. the matters and issues that are agreed between the experts (including key facts and assumptions and identification of any methodology or standards used by the experts in arriving at their opinions and reasons for differences in methodology and standards (if any));
 - b. the issues upon which the experts cannot agree and the reasons for their disagreement;
 - c. identification of published standards or papers relied upon in coming to their opinions, including identification of all material regarded by the experts as primary data;
 - d. confirmation that in producing the statement the experts have complied with the Code of Conduct for Expert Witnesses.
28. Expert conferencing will not be open to non-experts observers, but may be attended by the section 42A officer, especially if the experts are preparing track changes to the plan.

8. Mediation (Clause 8AA - Schedule 1 of the RMA)

29. The Hearing Panel may refer a matter to mediation or to another alternative dispute resolution process. The parties (including the section 42A officer) will be advised of the scope of a mediation session and of the time, date and venue of the mediation by way of email, or by telephone.
30. The Hearing Panel will appoint a mediator(s) or a person(s) to facilitate the mediation or other process, and the person who conducts the mediation must report the outcome to the Hearing Panel. However, material will not be included in the report without a person's consent if the material was communicated or made available by the person on a without-prejudice basis.
31. This report will take the form of a joint statement signed by the parties in attendance that will include the following matters:
- a. The names and contact details of the people who attended;
 - b. the matters and issues that were agreed among submitters and the resource management reasons supporting that agreement;

- c. any matters or issues that were not agreed and a concise summary of the outstanding issues between the submitters.
32. Parties attending a mediation session must be authorised to be able to agree, or otherwise settle, the matters and issues that are the subject of the mediation.
33. Mediation will be undertaken in a pro-active way by the appointed mediators. This may involve parties being contacted by mediators prior to scheduled mediation. Mediators may also present questions to participants and/or request that certain matters be addressed prior to mediation.
34. With the agreement of parties, mediation may focus on a marked up version of the relevant provisions of the Plan Change. This may be provided in advance by the Council but any other party may bring a marked up version to the mediation.
35. Mediation is undertaken to arrive at joint statements of proposed changes to the proposed plan wording that address the relevant matters within s32AA RMA. Mediation towards joint statements may not involve all parties being called upon to contribute to mediation.
36. Mediation can include the use of expert conferences to determine matters of fact or expert opinion. This can occur as a sub-set to the mediation with agreed positions on facts (between expert witnesses) contributing back into ongoing mediation.
37. Attending the mediation session(s) is not compulsory, but the Hearing Panel encourages parties to attend where the matter relates to issues raised in their submissions.
38. Mediation will not be open to members of the public or to submitters who are not directly involved in that mediation, but may be attended by the section 42A officer, especially if the mediation is likely to result in track changes to the plan.

9. Hearing sessions

39. Hearing sessions will be arranged according to topic. Council's report (prepared in accordance with s42A of the RMA) will be available on Council's website at least twenty (20) working days prior to the relevant hearing session.
40. Submitters who indicated on their submission that they wish to be heard will be advised of the date, time and venue of hearing sessions generally twenty (20) working days in advance (at the time the section 42A report is available). Some flexibility is required as some submitters will not have access to the internet and/or email.
41. The Hearing Coordinator will contact submitters to arrange a time to attend the hearing. However, the Hearing Panel may make changes to the hearing schedule and to the order of speakers and may request submitters to come at a specific time. In addition, all notices of hearing sessions for each topic, and any updates, will be available on the Council's website. Note this will be updated regularly and submitters should always check for the latest version, or if there are any uncertainties contact the Hearing coordinator.
42. The Hearing Panel expects every submitter to organise their case to be succinct and focussed on the key issues and the specific changes that are sought to the Plan Change. Where demand for hearing time exceeds supply, the Hearing Panel may limit presentations in order to ensure that all submitters who wish to be heard get a reasonable opportunity for that to happen.
43. Hearing sessions will be open to members of the public to attend as observers unless there are reasons in terms of s42 of the RMA for protecting sensitive information by requiring that the whole or part of a hearing session be held with the public excluded or

by prohibiting or restricting the publication or communication of any information supplied to or obtained by the Hearing Panel.

44. In the event that a submitter has failed to pre-circulate expert evidence as required by the Hearing Panel's directions, then a decision will be made by the Hearing Panel as to whether any evidence will be accepted, but hard copies of any evidence to be presented at a hearing session must be provided on the day. These shall be given to the Hearing Coordinator on arrival, and an electronic copy shall be provided to the Hearing Coordinator within 24 hours of the submitter's appearance.

10. Format of Evidence

45. It is important for submitters to ensure that evidence is succinct and clearly sets out the issues and the changes being sought. Submitters are requested to:
 - a. Provide an effective summary statement;
 - b. Focus the evidence on matters not agreed at mediation (if mediation was held) or disagreement with the position and/or recommendations in the s42A report(s);
 - c. Clearly separate the matters agreed from the matters not agreed;
 - d. Set out the relief sought in an appendix.
46. All statements of evidence and legal submissions shall be:
 - a. headed clearly with:
 - i. the name of the submitter who or on whose behalf the document is being lodged;
 - ii. the submission number(s);
 - iii. the Hearing Topic name;
 - iv. whether they contain primary or rebuttal evidence;
 - v. if containing the evidence or submissions of someone other than the submitter, the name of that witness or counsel; and
 - vi. the date; and be:
 - b. on single sided white A4 paper in Arial 11 point font with sufficient margins and line-spacing that the content is readily legible;
 - c. sequentially numbered paragraphs with coherently numbered or lettered sub-paragraphs; and
 - d. lodged electronically in either unsecured and searchable pdf or unsecured docx format.
47. The content of all statements of evidence or legal submissions must commence with a summary statement of the content of the document which is no more than three (3) pages long. Parties are strongly encouraged to be succinct, to focus on matters that are at issue, to state clearly the reasons for their support of or opposition to the provisions of the Plan Change and to state clearly the outcome they seek. Incidental or background material or references should be placed in appendices.
48. The content of evidence and legal submissions should include, in appropriate places, cross-references to the submission point numbering as set out in the Summary of Decisions Requested.
49. Any tables, figures or diagrams in any statement of evidence shall be numbered, titled and cross-referenced to the relevant text of the evidence.
50. Each submitter must present as part of their evidence an appendix which lists the changes they seek to the provisions of the Plan Change, supported by amended text and/or drawings.

51. Changes to text shall be shown in marked-up format as underlined additions and struck-through deletions. Changes to text should not be presented using a tracked-change word-processing tool because of the problems created by such tools for numbering and formatting. Submitters must identify which submission(s) (and submission point) they are relying on for scope for those changes.
52. All expert evidence is to be prepared in accordance with the Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2014.
53. Where a witness is giving the same or similar evidence for more than one submitter on the same topic, all such statements of evidence should identify all submitters for whom the evidence is being given and whether there are any material differences between the statements.

11. Pre-circulation of evidence and legal submissions

54. The purpose of pre-circulation of evidence is to ensure all parties, and the Hearing Panel, understand the issues that are to be presented prior to the hearing session commencing. It will also enable a much more efficient hearings process.
55. The Hearing Panel issues this as a formal Direction requiring the pre-circulation of all submitter statements (lay evidence) and expert evidence (pursuant to section 41B (3)) for any particular hearing session. Pre-circulation of evidence shall be in accordance with the paragraphs below.
56. All submitters shall provide their primary statements of evidence (both expert and non-expert) to the Hearing Coordinator at least ten (10) working days prior to the hearing to which such evidence relates;
57. Any rebuttal evidence shall be provided to the Hearing Coordinator for uploading to the website at least five (5) days prior to the hearing to which such evidence relates.
58. Rebuttal evidence shall only be accepted as evidence before the Hearing Panel if it is strictly in rebuttal to matters already raised in evidence and contains no material relating to new issues not previously raised in evidence. Rebuttal that simply restates primary evidence will not be accepted.
59. The Hearing Panel encourages all parties to pre-circulate their opening legal submissions in advance of the hearing session (preferably at least three (3) working days prior to the hearing session). Both the Hearing Panel and submitters will be assisted if the Panel is able to pre-read legal submissions. Counsel can address 'late-breaking events' by way of addendum tabled at the hearing.

12. Late or supplementary evidence

60. Late or supplementary evidence will only be accepted at a hearing session:
 - a. where circumstances make it necessary for such evidence to be provided; and
 - b. with the leave of the Hearing Panel.

13. Pre-reading of the submissions and the evidence

61. The Hearing Panel will pre-read submissions and evidence in advance, provided it is received within the times specified above.
62. Before or at a hearing session, the Hearing Panel may:
 - a. direct the order that submissions and evidence are to be presented;

- b. direct that submissions and evidence be recorded, taken as read, or limited to matters in dispute;
- c. direct a submitter, when presenting a submission or evidence, to present it within a time limit;
- d. request a submitter to provide further information.

14. Possible time limits for submitters presenting evidence

- 63. The Hearing Panel has not, at this stage, limited submitter's hearing time. When scheduling the hearings, the Hearing Coordinator may contact submitters to discuss - how long they think their presentation before the Hearings Panel will take, if they have legal representation and/or any witnesses (including any experts). At this time a decision will be made if there is a need to limit submitter's hearing time. Submitters will be informed prior to the hearing if a time limit has been imposed.
- 64. In terms of time limits, the relevant provisions of the RMA govern the proceedings of the Hearings Panel. Particularly relevant to this issue are the following:
 - (a) the Hearings Panel must hold a public hearing into submissions (s 39(1));
 - (b) for that purpose the Hearings Panel must establish a procedure for hearing sessions that is appropriate and fair in the circumstances and avoid any unnecessary formality (s39(1) and (2)).
 - (c) the Hearings Panel may direct:
 - i. the provision of briefs of evidence in writing before a hearing session (s 41B (3));
 - ii. that submissions and evidence be taken as read or limited to matters in dispute (s41C (b));
 - iii. a submitter, when presenting evidence or a submission, to present it within a time limit (s41C(d)).

15. Hearing session presentation

- 65. All expert and non-expert witnesses must attend hearing sessions in person and confirm that the statement of the evidence they have produced is true and correct, unless otherwise directed by the Hearing Panel in any particular case.
- 66. Witnesses may read their summary statement and/or present a brief summary having reviewed other evidence (this may include a PowerPoint or other forms of visual material where this would better assist the Hearing Panel). Witnesses shall not read the balance of their statement/evidence. If PowerPoint or other forms of visual material are to be used, they are to be provided to the Hearing Coordinator three (3) days before the specific hearing session so they can be loaded before the hearing. On request by a submitter or counsel and with the leave of the Hearing Chairperson, a witness may take the Hearings Panel to any key diagrams, maps or other visual material that would assist the Hearings Panel to understand the evidence.
- 67. No person may produce additional evidence that is not in a statement of evidence lodged according to the timetable set by the Hearings Panel other than as specifically allowed by the Hearings Panel.
- 68. All submitters or their representatives will need to be prepared to:
 - a. explain relevant figures, plans and tables in their evidence; and

- b. summarise any changes to their evidence for any reasons including as a result of facilitation or conferencing.

16. General procedural power

69. The Panel may reconvene any hearing or call for any expert conferencing or mediation to be undertaken on any hearing topic.

17. Hearing Location and recording of hearings

70. All hearing sessions will be held at the Distinction Hamilton Hotel and Conference Centre, 100 Garnett Ave, Te Rapa, Hamilton. Proceedings will be digitally recorded. While this will be primarily for the Hearing Panel, its support staff, and the Hearing Coordinator's use, it may be made available to submitters by written request to the Hearings Panel.

18. Presenting in Te Reo

71. Any party, representative or witness may speak in te reo Māori at a hearing session. The Hearing Coordinator must be informed of the intention to use te reo Māori at least 10 working days prior to the hearing session so that an interpreter can be arranged. Any karakia or mihi will not be translated into English unless requested before the hearing.

19. Presenting in New Zealand Sign Language

72. Any party, representative or witness may present in New Zealand Sign Language. The Hearing Coordinator must be informed of the intention to use New Zealand Sign Language at least 10 working days prior to the hearing session so that an interpreter can be arranged.

20. Assistance

73. Any person seeking assistance in relation to the Hearing Panel's procedures may contact the Hearing Coordinator.

21. Glossary

74. When used in this Hearing Procedures document, these words are intended to have the following meanings:
 - a. **chairperson** means the chairperson of the Hearing Panel;
 - b. **expert conferencing** means a process by which expert witnesses confer and attempt to reach agreement on issues, or at least to clearly identify the issues on which they cannot agree, and the reasons for that disagreement. Such a conference is a structured discussion between peers within a field of expertise which can narrow points of difference and save hearing time (and costs). All experts have a duty to ensure that any conference is a genuine dialogue between them in a common effort to reach agreement about the relevant facts and issues;
 - c. **expert witness** means a person who would be recognised by the Hearing Panel as an expert in his or her field by reason of relevant qualifications and/or experience;
 - d. **Hearing** means the overall process undertaken by the Hearing Panel under Part 4 of the LGATPA;

- e. **hearing session** means a particular session at which submissions are heard by the Hearing Panel as part of the hearing;
- f. **mediation** is a process of assisted negotiations to discuss a dispute and work toward a solution that is acceptable to all parties rather than have the Panel impose an outcome on the parties;
- g. **member of the public** means any person who is not a submitter, a witness, a representative of the Waikato Regional Council, a member of the Hearing Panel or one of the support staff assisting the Hearing Panel;
- h. **non-expert witness** means a witness who is not an expert witness and includes a submitter giving evidence;
- i. **off-line mediation** means mediation or direct discussions between parties that occurs outside the schedule for mediation set by the Hearing Panel;
- j. **representation** means the case or arguments advanced in support of a submission and may include legal submissions;
- k. **RMA** means the Resource Management Act 1991;
- l. **submission**—
 - (a) means a written or an electronic submission received by Waikato Regional Council on the proposed plan change; and
 - (b) includes a further written or electronic submission on the proposed plan;
- m. **submitter** includes a person representing a submitter or further submitter;



Greg Hill - Chairperson

5 November 2018