

Canterbury Regional Council (Environment Canterbury)

**Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan and Proposed  
Plan Change 2 to the Waimakariri River Regional Plan**

MINUTE AND DIRECTIONS OF THE HEARING COMMISSIONERS

on prehearing processes

[Minute 5]

[1] By memorandum of 11 May 2020 counsel for two submitters<sup>1</sup> sought directions on three points:

- (a) Potential expert witness caucusing:
- (b) Omission from Section 42A report (revised Appendix E1) of details of submissions said to provide scope for certain changes:
- (c) Clarification of aspects of Part 4 of the Section 42A report and/or recommended changes to Appendix E1.

[2] The Hearing Commissioners invited counsel for Environment Canterbury to give its response to requested directions.

[3] On Point (a), counsel for Environment Canterbury advised that the Council agrees in principle to technical experts caucusing, but considered there would be less value in planning experts caucusing.

[4] On Point (b) counsel for Environment Canterbury responded that certain omissions could be addressed in further errata to the Section 42A report.

[5] On Point (c), counsel for Environment Canterbury responded that where matters raised required reporting officers to form opinions, or would involve discussion of disputed outcomes as opposed to technical dispute, it would decline to clarify them except at specific direction of the hearing commissioners.

[6] The hearing commissioners invoke section 39 of the RMA, and seek to follow a procedure that is appropriate and fair, and avoids unnecessary formality; and not permit cross-examination or questioning by other than themselves.

[7] On Point (a), the Commissioners infer that there is scope for counsel for the two submitters and Environment Canterbury to identify appropriate topics for expert witnesses caucusing, and to agree on arrangements for that to occur. To the extent that counsel can agree on those matters, the Commissioners are content that they proceed with caucusing, and keep us informed of progress. If there are 'further submissions' supporting or opposing relevant points in the submissions, the makers of those 'further submissions' should be invited to have appropriate expert witnesses join the caucusing. If there are aspects on which counsel are not able to reach agreement, recourse may be had to the Commissioners for further directions.

[8] On Point (b), the Commissioners take a similar attitude. Agreement on supplying omissions from the section 42A report can properly result in errata or corrigenda to the section 42A report (including Appendix E). Any failure of agreement in any respect may be referred to the Commissioners for resolution.

[9] On Point (c), the Commissioners are not to permit cross-examination, but may themselves ask questions of witnesses. That would normally be done in the course of the public hearing, but might also be done in writing prior to (or even after) the hearing.

[10] If a submitter makes an appropriate case that it would be appropriate and fair that a witness is asked a certain question (e.g. if there is on the record conflicting evidence on a relevant question of primary fact), a submitter may propose (on notice to Environment Canterbury) that the Commission asks it of an appropriate witness. Any such proposal should be made in ample time prior to the hearing. There is of course no assurance that the Commissioners will ask the question at all, or in the precise terms proposed by the submitter.

For the Hearing Commissioners



David F Sheppard,  
Chair

19 May 2020