

PALMERSTON NORTH CITY COUNCIL
PROPOSED PLAN CHANGE G: AOKAUTERE URBAN GROWTH
MINUTE 4 OF INDEPENDENT HEARING PANEL

1. This is the fourth procedural Minute (Minute 4) issued in relation to submissions on proposed Plan Change G Aokautere (PC G) notified by the Council.
2. The purpose of the Minute is to update parties on some matters regarding expert conferencing and related hearing administration matters.

Background

3. On 7 November 2023 the third Minute (Minute 3) was issued to provide some directions on Expert Conferencing. In this respect, the Hearing Panel directed expert conferencing on the following topics:
 - a. Transport (Safety);
 - b. Stormwater; and
 - c. Planning.
4. We stated that conferencing should be undertaken in accordance with the Environment Court Practice Note 2023 and that agreed Joint Witness Statements (JWS) should be produced outlining all matters of agreement and disagreement reached between the participants in each conference. We also stated that the Council would arrange an independent facilitator for the expert conferences, which were to be scheduled across 14 to 16 November 2023, and that the facilitator may wish to organise a scribe to assist with the effective and efficient recording of the conferences and subsequent reporting.

Joint witness statements

5. I am pleased to advise that a JWS on each of the **planning** and **transportation** matters has been filed and these appear on the Council web page. The Panel wish to thank the planning and transportation witnesses for undertaking this exercise. The Panel's preliminary and cursory examination of the two JWS has shown that there has been a narrowing of the issues for these two topics.
6. There has been no expert conferencing, and thus no JWS, on the **stormwater** topic. At the request of the submitter (Heritage Estates 2000 Ltd) and the Council, the reason(s) for this has been conveyed to the Panel by the Hearings Administrator (Ms. Figioli) by way of

several email trails between the Council experts (Mr. Sam Dowse and Ms. Allison Reiko Baugham) and the consultants representing Heritage Estates Ltd (Mr. Jack Out and Ms. Amanda Coats). The environmental engineering expert (Mr. Out) representing the Heritage Estates 2000 Ltd has stated in his email to the Council that he did “not see the point in conferring”, had “not seen any agenda from Council for the conferring” and indicated that “I now have other commitments for the rest of the week on site and to other clients.”

7. The information from the Council was captured in the following extract from an email from Ms. Baugham:

I have been attempting to agree an agenda with Mr. Out for conferencing. He advised me yesterday that he did not see any point in conferencing and despite my efforts to engage with him via email yesterday afternoon and again this morning (I have let him know my view that we could use the time to discuss his concerns and record any views, and to sensibly narrow issues, for the benefit of the Hearing Panel) I have not heard anything further. I am sorry but it looks like you will need to cancel this afternoon's session. I remain willing to conference with Mr. Out should he take up the opportunity.

8. The willingness of Ms. Baugham to conference is appreciated. The position of Mr. Out is difficult to fathom. In any event, the absence of any stormwater conferencing is unfortunate and disappointing. Whilst we accept that we cannot compel expert witnesses to attend and participate in expert conferencing sessions, the Hearing Panel in Minute 3 strongly recommend they do so. We provided such encouragement because (as has been shown with the planning and transportation conferencing) such sessions can enable issues to be clarified and narrowed, and this can have a positive impact on the efficiency and effectiveness of the hearing process.
9. When witnesses cite their willingness to comply with the code of conduct in the Environment Court Practice Note 2023 in their brief of evidence, we expect that to be followed through in practice. Experts under that code of conduct have a duty to assist the Panel (as opposed to the client) and in this instance the Panel's direction was clear.
10. Notwithstanding the above, the opportunity still exists for Mr. Out to voluntarily participate in some non-facilitated conferencing with Ms. Baugham ahead of the commencement of the Hearing. The draft list of topics supplied by Ms. Baugham (and supplemented by any additional matters Mr. Out might wish to add) would appear to be appropriate the Panel. The production of a JWS on the stormwater topic would be appreciated even if only to identify the points of contention albeit any points of agreement should also be recorded. The Panel would strongly encourage that.
11. If conferencing does occur, then ideally the receipt of the JWS prior to the commencement of the hearing would be preferable; say by noon on 1 December 2023. Whilst this is after the date for rebuttal evidence (1pm on 28 November 2023), it would still

be welcomed by the Panel.

Hearing schedule

12. The Hearing Administrator is currently in the process of finalising the hearing schedule and by now will have been in contact with many, if not all, parties who wish to be heard at the hearing. The general approach has been to schedule the Council as the proponent of the Plan change to proceed first followed by the submitters with experts, followed by lay submitters. That approach will result in the hearing commence at 1pm on Monday 4 December with the Council case running until 12pm on Wednesday 6 December. Experts with submitters would follow for the remainder of Wednesday and much of Thursday with lay submitters filling the remainder of the hearing through to midday on Friday 8 December.
13. There is traditionally an opportunity for the Council to exercise their reply at that point but it may be acceptable to have that provided in written form following the adjournment of the hearing.
14. On the above basis it is possible that the second week of the hearing may not be needed but the venue has been retained in the event that there are some overruns into week 2. The schedule will become clear closer to the hearing and the Panel just asks the parties to accommodate some flexibility with that.
15. The above aside, Reply evidence for the Council is to be filed by 1pm on 28 November and legal submissions are to be filed by 4pm on Friday 1 December.

Next Steps

16. The PNCC Hearing Administrator will confirm the final hearing schedule in due course. This information will be emailed to parties and made available on the PNCC website: <https://www.pncc.govt.nz/Council/Official-documents/District-Plan/Proposed-Plan-Change-G>.
17. Any enquiries regarding these directions or any related matters should be directed to the Hearing Administrator, Susana Figlioli, by email at susana.figlioli@pncc.govt.nz

DATED this 24th day of November 2023



DJ McMahon, Chair

On behalf of the members of the Hearing Panel