

PALMERSTON NORTH DISTRICT COUNCIL
NOTICE OF REQUIREMENT: ROAD CONNECTION BETWEEN ABBY ROAD
AND JOHNSTONE DRIVE, PALMERSTON NORTH
MINUTE 1 OF INDEPENDENT HEARING COMMISSIONER

Introduction

1. 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.
2. Pursuant to section 34A of the Resource Management Act 1991 (“**RMA**”) I have been appointed by Palmerston North District Council (“**PNCC**”) to consider, hear and determine a Notice of Requirement sought from PNCC, by PNCC (“**the Requiring Authority**”) to enable the construction of a two-lane ‘link road’, approximately 180 metres long, connecting Abby Road and Johnstone Drive.
3. The general function of this Minute is to set out some preliminary matters in preparation for the hearing, which likely to be held in **late May 2020**. Please note that all parties will be formally advised directly by the PNCC hearing administrator of the final hearing date(s) and venue and/or electronic forum.
4. In the meantime, my 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.
5. In this respect, this minute covers the following matters:
 - (a) Covid-19 matters
 - (b) pre-hearing discussions/conferencing;
 - (c) circulation of evidence;
 - (d) hearing process and presentations; and
 - (e) site and locality visits.
6. It is likely that I will issue additional minutes with further requests and instructions, before, during and/or after the hearing.

Covid 19 Matters

7. In the current circumstances, I will proceed with the lead up to this hearing as electronically as possible. Whether the hearing is held traditionally or via a remote platform such as Zoom will depend on what level of alert the country is in at the time of the hearing. The Council has experience in conducting hearings using video-conferencing and this will allow the hearing to proceed should lockdown requirements still be in force. Further information will be provided by the PNCC hearing administrator as it becomes available. 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.

8. 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 chosen is to reflect the current emphasis; that being on an electronic approach.

Pre-hearing discussions & conferencing

9. 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.
10. Without wanting to prejudge any issues prior to the hearing, it is apparent from my preliminary review of submissions that have been lodged that the following **substantive** matters may be worthy of discussion between the parties prior to the hearing commencement:
 - (a) the effects on landscape values and visual amenity associated with the location of the link road;
 - (b) the effect of the road on the viability of undeveloped residential lots;
 - (c) the cost benefit assessment and rationale for the link road in the context of alternatives; and
 - (d) specific aspects relating to the link road’s design including the proposed width of the carriageway.
11. Please note that I am aware from the material attached to certain notices of submission that there have been some **procedural** issues raised in respect to:
 - (a) the legality of the NOR (and the submissions correspondingly seek its withdrawal); and
 - (b) the valuation of residential lots subject to the notice of requirement.
12. I am not in a position to make a determination on these two procedural matters but would, for the sake of transparency, say to the parties that in respect to the legality question, this is not a matter that I have jurisdiction over in terms of the delegation I hold from the Council. There are other more appropriate avenues to have that legal issue determined if that is to be pursued at all. Therefore, I have a strong expectation that counsel for the respective parties (requiring authority and relevant submitters specifically) endeavour to resolve this legal issue in advance of the hearing so that the actual proceedings that I do have jurisdiction over can focus on substantive RMA matters under s171 of the RMA.
13. Similarly, it is trite law that the effects on property values is not an effect that can be considered in determining consents under the RMA. The appropriate method is consider effects on the amenity of a property which in turn could affect a property’s valuation – to consider both matters would, in the view of the Courts’, constitute a double counting of the effect.
14. Returning to the substantive issues, I am not formally directing the undertaking of, or participation in, formal pre-hearing meetings, discussions or expert conferencing at this stage. I 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 substantive matters (including those referred to in paragraph 10 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 PNCC (as the Requiring Authority) to better understand what the submitters' substantive concerns are and how they might be accommodated.
15. In order to facilitate this, I would suggest that, prior to the hearing, the Requiring Authority endeavours to liaise with submitters to discuss issues raised in submissions and resolve any issues where practicable¹. We understand from the Council hearing administrator that there have in fact been ongoing discussions between the Requiring Authority and some submitters. We fully support this and encourage its continuation with all submitters.
16. It may be that some parties may seek to engage experts, where matters relating to landscape and visual amenity effects, cost benefit analysis, consideration of alternatives and the necessity for and proposed design of the link road are concerned. If so, then expert witness conferencing 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.
17. The discussions and/or pre-hearing meetings referred to in paragraph 14 above are likely to assist in informing the focus and scope of any such expert conferencing, and so should be considered a priority by PNCC as the Requiring Authority. To provide time for any subsequent expert conference and pre-circulation of evidence to occur prior to the hearing, I suggest that discussions and/or pre-hearing liaison are facilitated and reported on **by 1 May 2020 at the latest**. All submitters should be invited to participate in any such discussions and/or pre-hearing liaison. We request that the Requiring Authority prepare a report to the Council hearing administrator on the state of play at that point (and earlier if possible); even if it is only an interim update. Further liaison and updates leading up to the hearing can be accommodated and will be encouraged.
18. In the event that discussions and pre-hearing meetings do confirm that expert conferencing would be of benefit, then I will issue specific directions to that effect. These would include directions:
- (a) obliging the Requiring Authority and any submitters intending to call expert witnesses at the hearing to advise the PNCC 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 PNCC 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;

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

- (d) obliging the Requiring Authority to assume responsibility for co-ordinating any conferencing between its experts and those for submitters and the PNCC; 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.
19. I will remain in contact with the PNCC administrator to facilitate any pre-hearing processes as required, and will keep all parties informed through additional minutes as necessary.

Circulation of evidence before hearing

20. Pursuant to Sections 41B and 42A of the RMA I 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 PNCC 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.
21. I will follow this up with actual dates for the above listed pre-circulations once the hearing dates are confirmed by the PNCC administrator. This information will either be emailed to parties or made available on the PNCC website. Further detail to this end will be clarified to all parties in due course.
22. 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 PNCC administrator in the first instance.
23. Any legal submissions by counsel for the parties can be made at the hearing and are not subject to pre-circulation (unless the hearing is being held via a form of visor conference) .

Hearing process and presentations

24. I anticipate that a hearing of this nature may be a new experience for some submitters, so I will take a brief moment here to provide some information about the hearing for context.
25. For starters, I 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>

26. Consistent with the latter guide, my preference is for proceedings to be relatively informal. However, a degree of formality is inherent in hearings of this nature, and I will speak to that at the outset of the hearing when it commences.
27. More substantively, the hearing enables me to hear the issues raised in submissions in greater detail, and to be able to ask questions to improve my understanding of those issues.
28. 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.
29. Once the actual hearing date has been formally confirmed by the PNCC administrator, I will request an indication from all parties as to the amount of time they require for their presentation so that the PNCC administrator can make the necessary arrangements.

Site and locality visits

30. I am familiar with the site and general locality.
31. I expect that I will need to undertake more detailed site and locality visits both before and after the hearing. In that respect, if any party has a desire for me to visit particular sites/localities they should advise the PNCC administrator.

Next steps

32. As summarised above I now suggest that the Applicant/Requiring Authority endeavours to liaise with submitters to discuss issues raised in submissions and resolve any issues, where practical, and to provide a report on the state of play **by the 1 May at the latest**. Certainly, the prospect of parties fielding expert evidence should be a matter for discussion during this engagement. I will then issue any directions, as required, relating to expert conferencing and the pre-circulation of evidence.
33. I also request that any party wishing me to visit a particular site or locality advise the PNCC administrator by **1 May 2020**.
34. The PNCC administrator is Carly Chang – the Council’s Democracy & Governance Administrator. She can be reached at carly.chang@pncc.govt.nz.

DATED this 17th day of April 2020



DJ McMahon
Independent Hearings Commissioner