

**BEFORE THE PALMERSTON NORTH CITY COUNCIL, (PNCC) THE MANAWATŪ DISTRICT COUNCIL  
(MDC) AND THE TARARUA DISTRICT COUNCIL (TDC)**

**IN THE MATTER OF**            the Resource Management Act 1991 ('the RMA')

**AND**

**IN THE MATTER OF**            NOTICES OF REQUIREMENT by the New Zealand  
Transport Agency(The Agency) under section 168 of  
the RMA for the construction, operation, maintenance  
and improvement of approximately 11.5 km of new  
State Highway between Ashhurst and Woodville to  
replace the closed section of state Highway 3 through  
the Manawatū Gorge and associated works, known as  
the Te Ahu a Turanga; Manawatū Tararua Highway  
Project ('the project')

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**FIRST MINUTE OF THE HEARINGS PANEL**

**28 JANUARY 2019**

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## **APPOINTMENTS**

- 1 Pursuant to section 34A RMA, Independent Commissioners Paul Rogers (Chair), David McMahon, Liz Burge and Judith Makinson, have as at 20 December 2018 been appointed and assigned as a Panel of Independent Commissioners by PNCC, MDC and TDC (The Territorial Authorities) to hear, determine and make recommendations to the Agency relating to the Te Ahu a Turanga-Manawatū Tararua Project and its related Notices of Requirement (NOR's).

## **INTRODUCTION**

- 2 The NOR's for this project accompanied by fulsome and comprehensive assessments of effects, technical assessments and drawings and plans were lodged with the Territorial Authorities in early November 2018. Prior to lodgement based on materials available from the Agencies website a significant level of consultation with parties interested in the project has been undertaken.
- 3 The NOR's were publicly notified with submissions closing on 13 December 2018. A significant number of submissions have been received, with many submitters seeking to be heard.
- 4 We observe that the NOR's and accompanying materials record that the Agency intends during 2019 to complete works detailed design and to seek the remaining RMA permissions namely resource consents and outline plans with construction commencing urgently thereafter. This two-stage RMA process has, according to the Agency, been adopted with a view to opening the new road as soon as possible.
- 5 The Territorial Authorities have made the Panel aware that following public notification of the NOR's, they have issued the Agency with a request for further information. The Panel understands the request has now been responded to by the Agency.
- 6 Finally we observe given the progress of the NOR's through the application process participants will be expecting the setting of a hearing date. We assume participants would have already undertaken appropriate preparatory steps so they are in a position to continue to participate.
- 7 Our intent is to provide an effective and efficient opportunity for the Panel to receive and test the reliability of information relevant to the project and its related NOR's.
- 8 We also seek to provide a fair and orderly opportunity for the Agency, the Territorial Authorities and all who made submissions on the proposal and stated they wished to be heard, to prepare and put their points of view before the Panel and provide relevant information for the Panel's consideration.
- 9 Given the scale and complexity of the project and its related NOR's we consider it critical that sufficient time is provided in any timetable to allow for preparation of Section 42A reports, which we imagine will include a range of expert reports,

expert and lay evidence and for the holding of prehearing meetings, preparation and circulation of prehearing meeting reports, expert conferencing and caucusing. Also allowing for any informal meetings that the Agency, submitters and the Territorial Authorities may wish to participate in is important.

- 10 The Panel will also need sufficient time to read and consider the NOR's and the supporting materials lodged by the Agency, the section 42A reports and all pre circulated evidence and to undertake a site visit.
- 11 We are also mindful that the indefinite closure of State Highway 3 due to major slips in April 2017 and ongoing geotechnical instability has created significant disruption for travellers between the regions of Manawatū/Whanganui in the west end of the Tararua district, Wairarapa and the Hawke's Bay in the east, and for people living in and around Ashhurst and Woodville.
- 12 The Manawatū Gorge, when open, provided a vital transport connection and operated as an important national freight link connecting the areas mentioned as well as providing a route for those travelling further afield. We are aware that the diversion of traffic to Saddle Road and the Pahiatua Track has increased travel times resulting in increases in travel costs and along with other issues poses traffic safety challenges.

#### **ISSUE – HEARING COMMENCEMENT DATE**

- 13 The Reporting Officers were initially of the view that an appropriate date for the hearing to commence was 5 May 2019. Primarily, this date was considered appropriate because of the scale and complexity of the NOR's, the number of submitters, and to allow sufficient time for an orderly evidence exchange, as well as provide for pre-hearing meetings and formal discussions and expert conferencing.
- 14 However, as at Thursday 17 January 2019 we were provided by the Territorial Authorities with a letter from the Agency dated 11 January 2018, addressed to the CEOs of the Territorial Authorities, to consider before finalising this minute.
- 15 In that letter the Agency expresses its view as to the importance of early implementation of the project and that a hearing should take place as soon as possible. The Agency suggest the hearing could commence in March 2019.
- 16 If the hearing takes place in late April, then the Agency is concerned the planning enabling works, the formation of the construction alliance and the start of the construction programme will all be imperilled. Furthermore the Agency express concern if the hearing commences in late April then there is a risk that the project will miss the 2020 construction season.
- 17 Essentially the Agency wishes the Territorial Authorities and their respective RMA officers, and now the Panel, to understand the significance of delaying the NOR hearing.

- 18 By a subsequent memorandum dated 18 January 2019 from Counsel for the Agency, it is made clear to us the Agency seeks a hearing as soon as possible. In particular the Agency is concerned that if we schedule a hearing in April 2019 then the project would be materially delayed.
- 19 The Agency wish us to expedite the hearing of the NOR's and issue a timetable that provides for a hearing to commence in March 2019 noting that a hearing commencement date of 4 March 2019 would align with the RMA's timetabling requirements.
- 20 In support the Agency referred to the significance of the project to the local community impacted and the need to expedite processes to seek that the new route will be open to the public as soon as practicable.
- 21 In response to our request of the reporting officer's group for information relating to hearing dates we received a memorandum from Counsel for the Territorial Authorities dated 22 January 2019.
- 22 From that memorandum we understand the reporting officers group is able to abide by any timetabling directions issued. That memorandum further records that any hearing date after 4 March 2019 would require a waiver or extension under section 37 so the matters in section 37A (1) and (4) must be considered and addressed. Accordingly we are aware of the need to balance the need to allow sufficient time to provide both a fair and orderly hearing process while ensuring as best we are able that the circumstances described above are speedily addressed.
- 23 By a further memorandum dated 23 January 2018, the Agency agreed with the Territorial Authorities' desire for the NOR's to be evaluated in a robust and fulsome manner. The Agency considers that this level of evaluation can be achieved with a hearing commencing 25 March 2019.
- 24 The Agency considers that there has been a significant amount of engagement between the Territorial Authorities' officers and experts prior to lodgement.

### **CONSIDERATION**

- 25 We record when determining an extension and/or waiver and the consequent timetable for the NOR's as detailed below, we have taken into account the Agency's concerns as expressed in its 11 January letter and its memorandums of 18 January 2019 and 23 January 2019. We have also taken into account the reporting officers' views expressed within the memorandum from Counsel for the Territorial Authorities, dated 22 January 2019.
- 26 Turning to section 37A (1) (a) RMA the interests of the Agency are clear. The Agency seeks a hearing as soon as possible preferably during March. While it is a matter for the Agency, we note that generally seeking NOR is approval not a barrier to lodgement processing and granting of Regional Consents.

- 27 However, while concerned about delay the Agency has not as yet lodged applications for Regional Council consents. Rather, the Agency signals it intends to do so midyear 2019. Clearly if there are delays in lodging those applications and/or complications as to securing consent then the timetabling that the Agency is critically concerned to achieve will be imperilled.
- 28 Turning to section 37A (1) (b) RMA, we need to consider the interests of the community in achieving an adequate assessment of the effects of the NOR's. Already as a result of consultation and pre-application meetings with the Agency, as well having the NOR applications to read and consider, participants will have gained some level of understanding of the effects of the NOR's.
- 29 We accept further information will be available via prehearing meetings, expert conferencing and caucusing and exchange of evidence. We also accept adequate preparation time prior to the hearing is still required to assist in achieving an adequate assessment of the effects of the NOR's, particularly where the project is of significant scale and complexity.
- 30 As aptly demonstrated by the Agency's NOR applications, in particular the included assessment of environmental effects, these NOR's are in our view both of large-scale and complex.
- 31 So we consider that in terms of section 37A(4) RMA we may extend the time period of holding a hearing within 40 working days after the closing date for submissions on the NOR's, as provided by section 169(3)(b) RMA, because of a special circumstance namely the scale and complexity of this project.
- 32 Because we are not extending the time period in which a hearing should take place by twice the maximum time period specified, agreement of the Agency to this extension is not required. We nevertheless have taken into account, as required by section 37A, the interests of the Agency and for that matter any person who may be directly affected by the extension or waiver.
- 33 Some of the following procedures and directions may be subject to further direction or amendment by the Panel depending upon outcomes after certain action steps have been completed by the participants.

### **DECISION**

- 34 Taking into account all of the above described matters and the RMA provisions relating to timetabling inclusive of section 37A RMA we extend the time frame provided under section 169(3)(b) RMA for commencement of the hearing by a further 15 Working days. We consider such an approach recognises the statutory matters we need consider and address, including our duty to avoid unreasonable delay.

## DIRECTIONS

35 So in terms of a timetable we accordingly direct:

### Hearing Date

36 The hearing is to commence on **Monday 25 March 2019 (The Hearing Date)**. At this stage, the hearing is scheduled for fifteen days, **Monday 25 March 2019 to Friday 12 April 2019** inclusive unless otherwise directed by the Panel.

### Hearing Notice

37 A formal notice of the Hearing Date will issue no later than **Monday 4 March 2019**. To assist those presenting at the hearing, presentation aids will be available including a whiteboard, audio and visual equipment and an overhead projector.

### Appointment of Hearings Administrator

38 The Territorial Authorities are, as soon as practicable following the issue of this minute, to appoint and circulate to all participants the contact details including email of a Hearings Administrator to assist the Panel and participants with prehearing and hearing related issues.

### Hearings Schedule

39 The Panel will endeavour to issue a hearing schedule to provide all participants including indicative hearing times and confirmation of the venue on or about **Monday 4 March 2019**.

### Pre hearing Meetings

40 If the participants (the Section 42A reporting officers, the Agency, and submitters) calling expert witnesses, wish to hold prehearing meetings, they are to commence no later than **Monday 18 February 2019** concluding on **Friday 22 February 2019**. A prehearing report is to be prepared and completed by **Friday 1 March 2019** and circulated to all Participants at least **5 working days** prior to the Hearing Date. The Hearings Administrator can assist with the pre hearings.

### Section 42A Reports Due Date

41 Territorial Authorities are to provide their section 42A reports to the participants, by way of email, directing the participants to their websites, so as to access those section 42A reports (or by direct service at the address provided for service) no later than **5 p.m. on Friday 1 March 2019**.

### Agency Evidence Due Date

42 The Agency is to provide written briefs of all of its evidence to the Hearings Administrator, no later than **5 p.m. on Friday 8 March 2019**.

43 As soon as practicable following receipt of any such evidence received pursuant to paragraph 42, the Hearings Administrator is to provide a copy to all participants by way of email (or by direct service at the address provided for service) directing

the participants to the Territorial Authorities websites and advising that hard copies are available at the Territorial Authorities offices on request.

#### **Submitters Expert Evidence Due Date**

- 44 If any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, that person is to provide a written brief of that expert evidence to the Hearings Administrator no later than **5 p.m. on Friday 15 March 2019.**
- 45 As soon as practicable following receipt of any such evidence received pursuant to paragraph 44, the Hearings Administrator is to provide a copy to all other participants by way of email (or letter), directing the participants to the Territorial Authorities websites and advising that hard copies are available at the Territorial Authorities offices on request.

#### **Expert Caucusing**

- 46 Either prior to or following the exchange of expert evidence as detailed above, the Panel requests that all participants calling expert witnesses liaise amongst themselves, along with the Hearings Administrator, in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise (including any applicable conditions of consent).
- 47 All expert witnesses in both preparing and presenting the evidence as well as when attending expert conferencing or caucusing are expected to comply with the Environment Court Consolidated Practice Note 2014 – Expert Witness Code of Conduct available at the following website –  
<http://www.justice.govt.nz/courts/environment-court/legislation-and-resources/practice-notes/expert-witness.html>.
- 48 The s42A reports and all expert evidence shall be provided to the Hearings Administrator electronically in Word format by email, or be made available for downloading from the Territorial Authority websites. Hard copies of the evidence will only be provided if a request to do so is provided to the Hearings Administrator.

#### **Hearing Procedure**

- 49 The hearing will be conducted in the following manner:
- a. The section 42A report(s) will be taken as read, however Officers and experts are to be present to take Panel questions;
  - b. The Agency or submitters, that have provided the pre-circulated evidence, are to call the witness in person;
  - c. The witness should be introduced and asked to confirm his or her qualifications and experience and the content of their pre-circulated evidence;

- d. The witness will then be given an opportunity to draw to the attention of the Panel the key points in the brief. The witness should present a summary of their pre-circulated evidence (supported by power point presentations if desired), endeavouring to be succinct;
  - e. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another participant – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness;
  - f. If there is any variation between what the witness says and what is in the brief of evidence, the Panel will assume that the written brief is the evidence, unless the content of the brief is specifically amended by the witness;
  - g. The witness may then be questioned by the Panel.
- 50 Non-expert evidence (including submitter lay evidence and legal submissions) should be tabled and read aloud on the day that the relevant participant appears at the hearing.
- 51 Subject to any further direction the Panel may issue, the Panel will adopt the following order for the hearing;
- a. Any procedural matters raised by any participant will be dealt with as a preliminary matter;
  - b. Opening submissions from the Agency, followed by the Agency’s witnesses, who are to appear in person;
  - c. Submitters and witnesses who appear in support of the project and related NOR’s;
  - d. Submitters and witnesses who oppose the project and related NOR’s;
  - e. Submitters and witnesses who are neutral but wish to provide relevant materials;
  - f. Section 42A reporting officers presenting summaries and comments on evidence presented;
  - g. Closing or reply from the Agency.

#### **Te Reo Māori and Sign Language Notification**

- 52 Any participant, Counsel or witness may speak in Te Reo Māori or utilise Sign language. At least 10 working days prior notice from the Hearing Date of an intention to use either Te Reo Māori or Sign Language is to be provided to the Hearings Administrator so that the attendance of an interpreter can be arranged. Notice is to be given by **Friday 8 March 2019**.

- 53 However any karaka, pōwhiri or mihi, will not be translated into English language unless the presenter wishes and has given such prior notice. Solely for guidance, we observe that the Māori Language Act 1987 expressly provides that no person may insist on being addressed in Te Reo Māori.

#### **Site Visit Requests**

- 54 Given the Panel will undertake a site visit before the Hearing Date participants are requested to inform the Panel via the Hearings Administrator by **Friday 15 March 2019** of areas of interest along with supporting reasons that they would wish the Panel to include within the site visit for the Panel's consideration.

#### **Deviation and Waiver Requests**

- 55 If any participant wishes to deviate from any timetable or other requirement identified in this minute a written request inclusive of reasons to the Panel, copied to all other participants, seeking to waive compliance will be required. The Panel will consider and determine any such waivers.
- 56 If any participant has any issue with the information/directions contained in this minute, please advise the Hearings Administrator as soon as possible following receipt of this minute.
- 57 Finally we direct a copy of this minute is to be provided by the Territorial Authorities to all participants as soon as possible following the issue of this minute and posted on the appropriate webpage of each Territorial Authorities website.



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Paul Rogers

**Independent Commissioner – Chair- on Behalf of the Panel**

Dated: 28 January 2019