

**IN THE MATTER of
the Resource Management Act 1991**

AND

**IN THE MATTER of
Plan Change 5 to the Regional Coastal
Plan for Southland**

MINUTE 1 – HEARING PROCEDURES

PURPOSE

1. The purpose of this Minute is to outline the procedures for the hearing of submissions and further submissions on Plan Change 5 (**PC5**) to the Regional Coastal Plan for Southland (**RCP**) under the Resource Management Act 1991 (**RMA**).

INTRODUCTION

2. The Southland Regional Council ('the Council' or 'Environment Southland) publicly notified the PC5 on 18 July 2022.
3. Submissions on PC5 closed on 29 August 2022, with 20 submissions received.
4. The Council notified its summary of decisions requested on 25 October 2022 and five further submissions were received.
5. Hearings are to be held at the Distinction Luxmore Hotel, 41 Town Centre, Te Anau at 9am on 26-27 June 2023.

MEMBERSHIP AND ROLE OF THE HEARINGS PANEL

6. The Council has appointed a four person Hearings Panel of Commissioners under Section 34A (1) of the RMA to hear and make recommendations on the submissions lodged in relation to PC5.
7. The Commissioners appointed are:
 - Sharon McGarry (Independent Commissioner, Chair)
 - Karen Coutts (Independent Commissioner)
 - Councillor Lyndal Ludlow
 - Councillor Neville Cook

8. All of the Hearing Panel members are accredited in accordance with section 39A of the RMA. The Chair holds a current Chair Endorsement accreditation.
9. The Hearings Panel will hear all the submissions and further submissions and prepare a recommendation report for the Council's consideration and adoption in respect to PC5.
10. The Hearings Panel has the power to make directions on procedural matters relevant to the hearing of submissions and further submissions on PC5. The hearing procedures in this Minute, and any future Minutes, are issued by the Hearings Panel, pursuant to those delegations. If the need arises due to any particular circumstances, the Hearings Panel may amend the hearing procedures.

MANAGEMENT OF POTENTIAL AND ACTUAL CONFLICTS OF INTEREST

11. Ensuring a fair and transparent hearing process means that all Commissioners bring an independent and open mind to the role, free of any real, perceived, or potential conflicts of interest that could result in actual or potential conflicts, bias and or predetermination.
12. Conflicts of interest may arise, for example, where a Commissioner:
 - a. Has previously advocated or given evidence in support of a particular position of relevance to PC5; or
 - b. Has previously appeared as a witness or advocate for a party who holds an interest and/or lodged a submission on PC5; or
 - c. Has a private interest, including but not limited to an interest in property, which may result in an actual or perceived conflict of interest and/or bias.
13. As part of the appointment process, the Council required potential Commissioners to declare any conflicts of interest. The Council did not identify any declared actual or potential conflicts as precluding the appointment of the Hearings Panel members.
14. Any party to the hearing process is entitled to raise conflicts of interests with the Chair. This should occur before the hearing commences, through the Hearings Administrator, and at the latest, at the commencement of the hearing.

OVERARCHING HEARING PRINCIPLES

15. The Hearings Panel seeks to ensure that the most appropriate, fair, and efficient hearing process is followed, while complying with the requirements of the RMA.
16. The Hearings Panel will follow a process that:
 - Is appropriate and fair – the Hearing Panel will at all times act in a fair, impartial and transparent manner and ensure that all parties are treated equally.
 - Avoids unnecessary formality - the Hearing Panel will be inclusive and acknowledge the broad range of interests of submitters. They will facilitate a process that provides all parties with the opportunity to hear others and to be heard, whether they are presenting oral or written submissions and/or evidence.
 - Is efficient – the Hearing Panel will conduct an efficient process which minimises time and costs to all parties participating in the hearings. The Hearing Panel will provide both the Council and submitters with an adequate opportunity to be heard, while at the same time avoiding unnecessary repetition and the presentation of irrelevant material.

- Recognises Tikanga Māori and Te Reo – the Hearing Panel will receive written or spoken evidence in Te Reo, if and when requested to do so by a submitter. The Hearings Panel will recognise and provide for Tikanga Māori as appropriate.
- Recognises New Zealand sign language – the Hearing Panel will receive evidence in sign language, if and when requested to do so by a submitter.

COUNCIL INVOLVEMENT IN THE HEARING

17. Council staff and consultants will be involved in the hearings process. These will be:
 - a. The section 42A report author.
 - b. Council experts.
 - c. The Hearings Administrator.

SECTION 42A REPORT AUTHOR AND COUNCIL EXPERTS

18. Section 42A of the RMA provides for preparation of reports summarising and evaluating submissions relevant to PC5, and making recommendations on potential amendments in response to submissions and further submissions.
19. The section 42A Report will be prepared by Council staff or external consultants and supported, where appropriate, by expert evidence. The purpose of the section 42A report is to assist both submitters and the Hearing Panel prepare for the hearing. The section 42A Report will contain a schedule of the primary submission points it addresses, the author's recommendation in relation to each submission point, and the section of the report where the substance of any submission point that is seeking amendments to PC5 is addressed.
20. The section 42A Report, together with any supporting expert evidence, constitute part of the body of evidence to be considered by the Hearing Panel, alongside the evidence of submitters. The section 42A Report recommendations are not binding on the Hearing Panel and carry no greater weight than any other evidence provided by or on behalf of any submitter.

HEARING ADMINISTRATION

21. The Hearings Administrator, Catherine Ongko is the 'point of contact' for submitters and the public regarding the hearing.
22. All communications with the Hearing Panel outside the hearing from submitters and their representatives, section 42A Report author and expert witnesses must be directed through the Hearings Administrator.
23. The Hearings Administrator will oversee the various administrative tasks needed to ensure an efficient hearing process, including:
 - a. Issuing schedules and hearing notifications.
 - b. Making hearing arrangements, including scheduling submitter hearing times.
 - c. Circulating Hearing Panel Minutes and other directions.
 - d. Circulating evidence and reports for the hearing.
 - e. Handling submitter inquiries.
 - f. Handling public and media inquiries to the Hearings Panel.
 - g. Generally assisting the Hearings Panel with logistical and administrative matters as required.

24. The Hearings Administrator is also responsible for managing the Council's website in relation to PC5 to ensure that all necessary information to support an efficient hearing process is available to all participants.

SUBMITTER INVOLVEMENT IN THE HEARINGS

25. All submitters who have given notice of their intention to be heard are entitled to appear at that hearing. All presentations and evidence given at the hearing must be within the scope of the person's submission or further submission. Submitters may appear either in person or through their authorised representative. A submitter's case may also be assisted by their bringing expert evidence before the Hearing Panel.
26. The extent to which a submitter's case would be assisted by expert evidence will depend on the nature of the relief a submitter seeks. If a submitter seeks substantive changes to the notified PC5, their presentation needs to be accompanied by material which enables the Hearing Panel to undertake an evaluation of their relief under section 32AA of the RMA.
27. Submitters who did not give notice in their submission form that they wished to be heard, but now wish to do so, may seek leave from the Hearings Panel, via the Hearings Administrator.
28. The Hearings Administrator will be in touch with all submitters, using the method of communication stated on the submission, who have requested to be heard, seeking confirmation of their hearing time requirements. If submitters have particular preferences for the day or time they wish to be heard, the Hearings Administrator will endeavour to accommodate those preferences on a first come, first served basis. A Hearing Schedule with indicative times for each party's appearance will be available on the Council's website at least five working days before the hearing commences.
29. Submitters may choose to present their submissions themselves or through their authorised representatives (including but not limited to legal counsel). Such presentations may take the form of submissions/representations or lay evidence. The difference between the two is that submissions/representations advocate for a particular outcome. Lay evidence is an objective statement of fact or opinion on matters relevant to the determination of an outcome. A submitter's presentation may combine both elements, but it is important to be aware and be clear of the difference between the two in your own mind.
30. Submitters have the option of presenting written representations on the day of the hearing, and reading it aloud provided it is not longer than three A4 pages in length. If submitters have not sent any written material to the Hearings Administrator electronically prior to the hearing, they need to bring ten copies of any written material to the hearing and supply an electronic copy to the Hearings Administrator within two working days of completing their presentation.
31. The Hearing Panel will already have pre-read your submission, along with all pre-circulated material.
32. If you are to be represented by counsel presenting legal submissions or intend to call expert evidence in support of your submission, you will need to advise the Hearings Administrator, including the number of expert witnesses and their names and expertise.
33. An expert is a person equipped by qualification, training and/or experience to provide expert opinion on issues of relevance to the determination of PC5. While most experts will have academic qualifications, that is not a prerequisite. Kaumatua and kuia are deemed experts in

mātauranga Māori and tikanga by their iwi or hapū rather than through a formalised qualification process. Likewise, many people have acquired significant expertise ‘learning on the job’.

34. An expert witness must be able to demonstrate to the Hearing Panel that they have the expertise to advance the opinions they provide and the ability to act independently of the party/submitter who calls them to give evidence. Expert witnesses are required to confirm they agree to comply with the Environment Court Consolidated Practice Note 2023–Code of Conduct for expert witnesses available at the following website <https://environmentcourt.govt.nz/about/practice-note/>
35. Any expert evidence a submitter proposes to call at the hearing must be provided to the Hearing Administrator and pre-circulated at least five working days before the hearing.
36. All legal submissions, expert evidence and any other written presentations that are longer than three A4 pages in length should be provided in electronic form to the Hearings Administrator not less than five working days before the commencement of the relevant hearing. If legal submissions refer to caselaw, counsel should either insert an electronic link to the cases or provide electronic copies separately.
37. Even if your verbal presentation is going to be short, it is helpful to prepare a written statement, as it will help you to focus on the key issues and assist the Hearing Panel in deliberations.
38. Should any submitter wish to speak in Te Reo, utilise Sign Language, or utilise visual aids (PowerPoint, etc.) they are requested to liaise directly with the Hearings Administrator, as soon as possible, but no later than 10 working days prior to the hearing regarding their needs.
39. The Hearing Panel’s preference is to hear from all hearing participants in person. However, where this is not possible, the participant must advise the Hearings Administrator at least 10 working days before the hearing to ensure that virtual attendance can be organised, via Microsoft Teams. The same requirements for attendance at the hearing apply to virtual attendance.
40. Where a submitter or their representative is unable to attend the hearing, they may choose to table written material in support of their submission. Such written material must be provided to the Hearings Administrator no later than one working day before the hearing commences.

SENSITIVE INFORMATION

41. The Hearings Panel has the power to direct that information presented by a party before it is kept confidential in some circumstances, under section 42 of the RMA. The duration of such orders depends on the reasons for them being made. In cases of commercial sensitivity, confidentiality protections elapse at the conclusion of the hearings. The Hearings Panel has a broader jurisdiction where serious offence to tikanga Māori or the location of wāhi tapu is involved.
42. If a submitter seeks that the Hearings Panel makes an order of this kind, they need to advise the Hearings Administrator of that, and the reasons for the orders sought, as promptly as possible.

PRE-HEARING MEETINGS AND EXPERT CONFERENCING / CAUCUSING

43. Either prior to or following the exchange of expert evidence as detailed above, it may be beneficial for expert witnesses providing evidence to 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.
44. If expert conferencing occurs, then a Joint Witness Statement (JWS) is to be prepared for each specific area of expertise and be provided to the Hearings Administrator no later than one working day prior to the hearing commencing. The JWS will be prepared by the relevant Council expert witness (or section 42A report author) unless the experts agree otherwise amongst themselves.
45. The Hearing Panel may request expert conferencing during or after the hearing, together with the preparation of additional JWSs.
46. All expert witnesses, in both preparing and presenting their evidence as well as when attending expert conferencing, are expected to comply with the Environment Court Consolidated Practice Note 2023.

SITE VISITS

47. The Hearings Panel is unlikely to undertake site visits unless it is requested to do so by parties to the hearing, in order to better understand the context of the submissions that have been lodged.
48. If any submitter believes it would assist the Hearing Panel to undertake a site visit, they are invited to contact the Hearings Administrator at least 10 working days prior to the hearing and provide advice as to what the party considers the Hearing Panel should view and why.

HEARING FORMAT

49. The Chair will give directions as required to ensure the orderly conduct of the hearing.
50. The Hearing will follow the following format:
 - a. The Hearing will commence and end with a karakia.
 - b. The Chair will introduce the Hearing Panel, cover any preliminary issues, and invite any party wishing to raise procedural issues to do so.
 - c. The Section 42A reporting officer will briefly introduce their report and any supporting expert witness. The section 42A Reporting author can address any key issues. The Hearings Panel may ask the section 42A author questions.
 - d. Submitters will be heard in the order set out in the Hearing Schedule.
51. Each submitter will be allocated a time to appear in front of the Hearing Panel. It is recommended that you arrive at least 30 minutes before you are due to speak – partly to provide for the possibility that the hearing may be going quicker than scheduled, but also to enable you to observe the hearing process and get comfortable with the way it works in practice.
52. When it is your turn, the Chair will invite you to come forward with your representatives/witnesses to the table set aside for submitters and invite you to present your case.

53. Any expert witnesses will have the opportunity to speak to a written summary of their evidence, covering the main points. As set out earlier, that written summary should be no longer than three A4 pages. It is not expected that expert witnesses will read the executive summaries in their pre-circulated evidence, as the Hearing Panel will already have read it. Expert witnesses must provide 10 copies of any written summary at the time they present to the Hearing Panel. The Hearing Panel may ask questions of you and/or your counsel or witnesses either during or after presentation of your case.
54. There will be no cross-examination of witnesses by other submitters or Council officers. You must not interrupt other parties presenting their cases. However, questions of clarification may be asked through of the Chair and should be made in writing via the Hearing Administrator. Such requests should be made following the conclusion of the Hearing Panel's questions and the Chair will decide whether clarification should be provided.
55. Following the conclusion of hearing from submitters, the section 42A Report author will provide a written Right of Reply outlining any amendments to their original recommendations, including reasons why. The timeframe for the provision of a written Right of Reply will be agreed at the adjournment of the hearing.
56. The Hearings Panel will release their written report and recommendation to the Council and the hearing parties following the closure of the hearings.
57. The hearing is public, and it will be recorded. The recordings will be available online for public viewing.

SUMMARY OF RELEVANT TIMEFRAMES

58. The following table sets out the key hearing steps and timeframes which are contained in this Minute:

Hearing Step	Action and timeframe for completion
Section 42A report and expert evidence available	Provided by the Council to the parties by 12 pm, Friday 19 May 2023
<ul style="list-style-type: none"> • Submitters confirm request to be heard and advise preferred timing. • Any submitter requests to present evidence in Te Reo, Sign Language, or to use audio-visual equipment. • Requests for submitter or specified witnesses to appear virtually (by Teams) 	Request to Hearing Administrator by 12 pm, Friday 9 June 2023 (10 working days prior to the hearing).
Expert Evidence	Provided electronically to the Hearing Administrator by 12 pm, Friday 9 June 2023 (10 working days prior to the hearing).
Request site visit	Request to Hearing Administrator by 12 pm, Friday 9 June 2023 (10 working days prior to the hearing).

Legal Submissions, written representations longer than 3 A4 pages, and power point presentations	Provided electronically to the Hearing Administrator by 12 pm, Friday 16 June 2023 (five working days prior to the hearing).
Indicative Hearing Schedule	Provided to the parties and uploaded to the Council's website by 12 pm, Friday 16 June 2023 (five working days prior to the hearing).
Expert summaries and written representations three A4 pages or less	When you appear (but earlier electronically to the Hearing Administrator, if possible).
Tabled Evidence and Representations if not attending	Provided electronically to the Hearing Administrator by 12 pm, Thursday 22 June 2023 (one working day prior to the hearing).
Hearing commences	9 am, Monday 26 June 2023

59. All information and evidence in relation to the hearing will be uploaded to the Council's website as soon as possible.
60. All contact regarding PC5 and the hearing process or any clarification required in relation to this Minute should be made to the Hearing Administrator, Catherine Ongko either by email at consultation@es.govt.nz or by telephone on 03 211 5115. Any hearing participant who wishes to deviate from any timetable or other requirement identified in this Minute must make a written request to do so (inclusive of reasons) to the Chair of the Hearing Panel via the Hearings Administrator. The Hearings Panel will consider and determine any such requests, and will respond by way of further minutes.

Dated: 15 May 2023



Sharon McGarry (Chair)

On behalf of the Hearing Panel