

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Submissions and Further
Submissions on the
Proposed Wellington City
District Plan

Minute 7:

ISPP Allocation Issues (3)

Introduction

1. We have received a Memorandum of Counsel for Ryman Healthcare Limited¹ and the Retirement Villages Association of New Zealand Inc² (the **Retirement Village parties**) drawing our attention to a procedural issue that we had not fully thought through in our previous Minutes.

Jurisdictional Issue

2. In Minute 1, we foresaw two types of issues around allocation of matters to the ISPP process or the First Schedule process on the face of the notified Plan.
3. The first was where parties sought to content that entire hearing topics were mis-categorised and should be shifted. Because of the implications of such an argument (particularly if accepted, it meant adding hearing topics to the ISPP Hearing Schedule), we directed (paragraph 28) parties to file Memoranda advising of the issue by 30 January.
4. The second scenario was one where the issue arises in relation to individual provisions, and we directed (paragraph 29) that such matters be raised in the evidence for each hearing stream with the intention that they would be addressed in the Hearing Stream to which they related.
5. Counsel for the Retirement Villages parties correctly understood our intention and, given that those parties did not seek to shift an entire topic either into the ISPP process, or out of it, they did not file a Memorandum within the deadline fixed. Counsel is now understandably concerned that if the Hearing Panel determines the issue on the basis foreshadowed in the Section 42A Report, namely that the Panel has no power to alter the classification from that shown on the face of the notified Plan, the right to challenge specific provisions in later Hearing Streams will be rendered illusory. Accordingly, the Retirement Village parties seek the right to be heard on the point of principle as part of the process directed in Minute 6.
6. When we drafted Minute 1, we did not appreciate that the Council would raise the jurisdictional issue summarised above, namely that the Hearing Panel has

¹ Submission #346

² Submission #350

no power to alter the classification from that shown on the face of the notified PDP.

7. Clearly, any party seeking to alter the classification either of an entire topic or a specific provision should be heard on that jurisdictional issue before we make a decision on it. There is the possibility that some submitters may support the existing classification and would therefore seek to support the Council's jurisdictional position. Those parties also have a right to be heard.
8. We direct that any submitter that wishes to take a position, either supporting or opposing the Council's position (that we do not have jurisdiction to alter the classification, as above) should file submissions on that question by 1pm on 15 February. We will hear them along with the parties referenced in Minute 6 at the commencement of the Stream 1 hearing on 21 February.
9. We repeat the message in Minute 6: parties should not expect to address us verbally at length. We will have read their submissions and will seek to explore the issues raised through our questions.

Merits of Amending Classification

10. In Minute 6, we indicated that we would hear argument on the merits of the challenges made to the Plan's classification variously of matters as ISPP and First Schedule as part of this preliminary process.
11. Having reviewed the matters already identified as being the subject of challenge, we have determined that in terms of the division we originally had in mind between challenges to the allocation of entire topics on the one hand (which need to be heard at the outset of the hearing process) and challenges to individual provisions (which might be left to the Hearing Stream in which they arise) almost all of the matters raised are in the second category.
12. Moreover, they are also all currently allocated to Hearing Streams 2-5 and, accordingly, their reclassification (should we determine that we have jurisdiction to consider that and find it to be appropriate) does not have implications for the Hearing Schedule.
13. Accordingly, we direct that the procedural argument at the commencement of the Stream 1 hearing on 21 February will be limited to the point of jurisdiction, namely whether the Hearing Panel has the ability to consider challenges to the current classification of Plan provisions, and to modify same if it finds that appropriate.

14. We apologise to the Council Team for the unnecessary work that this u-turn has caused. If it is able to do so, it has leave to delete its discussion of the merits of reclassification from the submissions we have directed it file today.

Residual Issue- People with Classification Issues in Streams 6-10

15. The Memorandum we received for the Retirement Village parties has alerted us to one loose end that we had not previously considered.
16. This is the potential for a party to contend that a provision currently scheduled for hearing in Streams 6-10 should be reclassified to the ISPP process. There is the potential that if such challenges were left to the hearing stream in which they arise, our ability to reclassify the provision in question, assuming we have jurisdiction to do so, will be compromised because those hearings will occur after the deadline by which we have to submit our recommendations on ISPP matters for determination by the Council.
17. The ability to make such a challenge would therefore be rendered nugatory.
18. We direct that if any party will seek to contend that a provision currently labelled a First Schedule matter and scheduled to be heard in Hearing Streams 6-10 inclusive should be heard within the ISPP process, it file a Memorandum identifying the provision(s) in question on or before 20 February 2023. Our intention is that we will issue further directions for the determination of such challenges following our hearing and determining the jurisdiction issue. In practice, if we determine that we do not have jurisdiction to hear reclassification challenges, that will be the end of the matter, subject of course to any direction we receive from the Environment Court. If, however, we determine that we do have jurisdiction to consider such challenges on their merits, we will make further directions as required. Our intention, at present, would be to have the resulting procedural argument at the commencement of either Hearing Stream 2 or 3.



Trevor Robinson
Chair

For the Wellington City Proposed District Plan Hearings Panel

Dated: 7 February 2023