

**BEFORE COMMISSIONERS
APPOINTED BY WELLINGTON
CITY COUNCIL**

**WELLINGTON CITY COUNCIL PROPOSED DISTRICT
PLAN**

IN THE MATTER of Hearing Stream 2 –
Residential

AND

IN THE MATTER of a submission by Pukepuke Pari
Residents Incorporated

MEMORANDUM OF COUNSEL FOR PUKEPUKE PARI RESIDENTS INC.

3 April 2023

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1. This memorandum of counsel is on behalf of Pukepuke Pari Residents Inc (the **Submitter**) in response to matters raised by the panel on 30 March 2023.
2. During the hearing, the Panel pondered the scope of their reporting obligation under s32AA and clause 100 of Schedule 1. Specifically, they questioned how they might fill any efficiency and effectiveness (economic) gap relating to options that have arisen from evidence received leading up to and during the hearings.
3. Under clause 98(1) of Schedule 1, an independent hearings panel has the same duties and powers as a local authority under:
 - (a) s39 (except s 39(2) (c) and (d), and
 - (g) 41C.
4. 39(1) the Panel is "...person given authority to conduct hearings in relation to a plan, a change, or a variation....and shall establish a procedure that is appropriate and fair in the circumstances."
5. Under s43AA *change* means "...a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1, including an IPI notified in accordance with section 80F(1) or (2); and ...".
6. S 41C applies to the Panel and provides it with a discretion to "...request the applicant to provide further information."¹
7. "Applicant" is not defined, but on any reasonable interpretation it would include the proponent of a plan change including, in this case, the Council. If it did not apply to a council proponent, then it would be confined to private plan change applicants and applicants for resource consents which would undermine the intention of s 39(1).

¹ But not commission a report as in 41C(4) – which is specifically excluded.

8. Accordingly, the Panel has the power to request the Council to provide it with a report that addresses any new efficiency and effectiveness matters arising from the hearings and that must be the overarching intention of the provisions.
9. A s32AA report as required under clause 100 of the First Schedule must include the matters in s32 (1) to (4) which includes assessing the efficiency and effectiveness of the provisions in achieving the objectives.²
10. However, rather than request further information from Council at this stage, and in fairness to the submitter, the panel could give the submitter a reasonable opportunity to fill any s32 gap rather than treat the evidence matrix as deficient.
11. A reasonable opportunity would include time to do the work and an opportunity to be heard on it. Mr Hayward has a speaking slot on 4 April during which he will be able to address the gaps as he perceives them and provide content on qualifying matters. Such an opportunity would be consistent with s39 (1) "...a procedure that is appropriate and fair in the circumstances".
12. Should the Panel find that gaps in the assessment still remain, it would be open to request Council to provide a report on those.
13. Counsel can be available to speak to the content of this memorandum if that might assist the Panel.



IM Gordon
Counsel for the Pukepuke Pari Residents Inc.
31 March 2023

² s 32 (1)(b)(ii)