

MINUTE 6

TDC ADJOURNMENT REQUEST

Introduction

- [1] On Monday 25 May 2020 at 7.47pm we received by email a Memorandum¹ from TDC's solicitors (Simpson Grierson) seeking directions from us that the current timetable for PPC36 be placed on hold, and all scheduled steps required by the current timetable be adjourned pending further directions from us.

Reasons for the Request

- [2] The hearing for PPC36 is currently scheduled to commence in Taupō on Wednesday 17 June 2020, to be preceded by a site visit on Tuesday 16 June 2020.
- [3] The “scheduled steps” that remain to be completed prior to the hearing are set out in Minute 4, and they are:
- *Expert witness conferencing is to occur at the convenience of the respective experts. Joint Witness Statements to be prepared by 5pm on **Friday 29 May 2020**. Procedural matters relating to expert witness conferencing set out in paragraphs [35] to [38] of Minute 1 are unaltered;*
 - *Incorporation experts to lodge any rebuttal evidence addressing matters raised in the section 42A report authors and experts' material, or submitter expert evidence, to be prepared by 5pm on **Friday 5 June 2020**;*
 - *Incorporation experts to respond in writing to the commissioners' written questions by 5pm on **Friday 5 June 2020**;*
 - *Council legal submissions to be prepared by 5pm on **Friday 5 June 2020**; and*
 - *Incorporation legal submissions to be prepared by 5pm on **Tuesday 9 June 2020**.*
- [4] The Simpson Grierson Memorandum cited what we interpret to be two reasons for the requested adjournment:
- a) the TDC's most recent invoice to the Incorporation relating to preparation for the hearing is now outstanding; and
 - b) pivotal issues relating to the viability of the plan change request, and our ability to appropriately consider it on its merits. The “pivotal issues” being a perceived “*uncertainty over the proposed road and bridge access to the plan change site*” which is said to affect our “*ability to appropriately consider it [PPC36] on its merits*”.

The Incorporation's View

- [5] In the interests of procedural fairness, we asked counsel for the Incorporation² to advise us of the Incorporation's view on TDC's request. A Memorandum³ from Harkness Henry lawyers in response was received by us on the afternoon 26 May 2020 by email, accompanied by copies of a number of emails between the Incorporation representatives and TDC staff.
- [6] With regard to the issue of the “outstanding invoice” Dr Forret advised that:

The latest invoice from TDC was dated and received by Ms Lewis for the Proponents on 30th April. It was forwarded to the Incorporation on 5th May once Ms Samuel was able to provide some information to support the invoice details (correspondence is attached) It was for the amount of \$67,863.33 (incl GST) and was due on 20th May. It is the only amount outstanding and has now been outstanding for only 6 days. Ms Connolly has today advised this sum will be paid no later than 30th May 2020.⁴

¹ Memorandum of Counsel on Behalf of Taupō District Council Seeking Adjournment of Plan Change Request and Deferral of Current Timetable, 25 May 2020

² Proprietors of Hauhungaroa No. 6 being the Proponents of PPC36.

³ Memorandum of Counsel on Behalf of Applicant in Opposition to Adjournment of Plan Change Request and Deferral of Current Timetable, 26 May 2020.

⁴ Ibid, paragraph 3

The Proponents have engaged professionals and tried to work with Council to progress this Plan Change. All of their bills have been paid within several days of the due date and they sought flexibility this month due to the unusual financial circumstances following Covid19.⁵

- [7] Dr Forret also outlined the process undertaken by the Incorporation to date regarding the proposed bridge over the Whareroa Stream and the option recently explored with Ngāti Tūwharetoa regarding a Māori Roadway.
- [8] In conclusion, Dr Forret advised that the Incorporation opposed the requested adjournment, they wished to have their application heard and decided and they wanted to be able to present their rebuttal evidence, which has already been partially prepared, and to answer our written questions that were set out in our Minute 5. Their experts remained available for conferencing.⁶
- [9] The Incorporation also sought directions relating to the appearance of certain witnesses at the hearing by way of Zoom or other digital means. We will address that issue in a subsequent Minute.

Consideration

- [10] We have reviewed the TDC's delegation to us as it is recorded in the Minutes of the TDC Extraordinary Council Meeting held on 14 April 2020. The resolution and delegation therein read:

TDC202004/09 RESOLUTION

Moved: Cr John Boddy

Seconded: Cr John Williamson

That Council, as per section 34A of the Resource Management Act, delegates the hearing, consideration and decision making powers for Plan Change 36 – Whareroa North Plan Change Request to a panel of Independent Commissioners as per the Joint Management Agreement between Taupō District Council and the Tūwharetoa Māori Trust Board. The Commissioners are:

- Rob van Vorthuysen (sic)
- Rosanne Jollands
- Poto Davies
- Steven Wilson
- Doug Fairgray

- [11] With regard to Simpson Grierson's first reason, any 'adjournment' of the hearing resulting from the non-payment of an invoice from TDC to the Incorporation would fall under s36AAB(2) of the RMA. We do not consider that the delegation from TDC to us extends to s36AAB(2) matters. In our view those matters relate to the executive functions of the TDC and they remain to be exercised by the TDC.
- [12] Instead, we consider that the delegation to us from TDC relates to the hearing of submissions on PPC36, consideration of the merits of those submissions and making a decision on each of them.⁷
- [13] Should TDC itself decide to exercise its s36AAB(2) function so as to not action the holding of the scheduled hearing then that is of course a decision we would have no choice but to abide by.⁸ Having said that, based on the information that we have been provided with to date, we would be rather surprised if that occurred.
- [14] With regard to the second reason for the request; having reviewed all of the reports, submissions and evidence provided by the participants to date; we are comfortable that we are able to assess PPC36 on its merits. We observe that the issue regarding "*uncertainty over the proposed road and bridge access to the plan change site*" is but one of many merits-based matters for us to assess.

⁵ Ibid, paragraph 29.

⁶ Ibid, paragraphs 26 to 28.

⁷ Our previous decision to adjourn the hearing arose from the restrictions imposed under Covid-19 Alert Level 4 and 3 lockdown conditions.

⁸ We note that commissioner hearings are often postponed by an engaging council for all sorts of reasons.

Conclusion

[15] For the reasons set out above we **decline** to issue directions *“that the current timetable for PPC36 be placed on hold, and all scheduled steps required by the current timetable be adjourned”*.

[16] As far as we are concerned the directions contained in Minute 4 remain in place and are to be complied with.



Rob van Voorthuysen

Independent Commissioner - Chair - on Behalf of the Commissioners

Dated: 27 May 2020