

**HUTT CITY COUNCIL**  
**PROPOSED PRIVATE PLAN CHANGE 47: MAJOR GARDENS, KELSON –**  
**REZONING TO GENERAL RESIDENTIAL ACTIVITY AREA AND GENERAL**  
**RECREATION ACTIVITY AREA**  
**MINUTE 1 OF INDEPENDENT HEARING PANEL**

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**Introduction**

1. This Minute is being sent to you because you are either the Requestor (Applicant), a submitter or a council reporting officer to the above application.
2. Pursuant to section 34A of the Resource Management Act 1991 (**RMA**) we have been appointed by Hutt City Council (**HCC**) to hear, consider, and recommend a decision on an application by Urban Edge Ltd, on behalf of F.L.Y Building Ltd (**the Applicant**) to change the City of Lower Hutt District Plan (**the District Plan**) to enable further residential development at 280 Major Drive, 50 Kaitangata Crescent and 204 Liverton Road, Kelson (**the site**).
3. Proposed Private Plan Change 47 seeks the following amendments to the District Plan:
  - a. rezoning the site to a combination of General Residential Activity Area and General Recreation Activity Area;
  - b. addition of two new policies to the Subdivision chapter of the District Plan (Chapter 11) relating to stormwater management and on Liverton Road;
  - c. amendment to the existing restricted discretionary activity Rule 11.2.3(d) and discretionary activity Rule 11.2.4(l) of the District Plan so that these rules apply to the site; and
  - d. addition of a new non-complying activity rule to the Subdivision chapter of the District Plan.
4. The general function of this Minute is to set out some preliminary matters in preparation for the hearing, which is likely to be held in **mid-late June 2020**. Please note that all parties will be formally advised directly by the HCC hearing administrator of the final hearing date(s) and venue once that is known with certainty.
5. In the meantime, our objective at this preliminary stage is to establish some procedures to facilitate a smooth and effective pre-hearing and hearing process for all parties. This requires some actions from all the parties in readiness for the formal proceedings.
6. In this respect, this minute covers the following matters:
  - (a) Covid-19 matters
  - (b) pre-hearing discussions/conferencing;
  - (c) circulation of evidence;
  - (d) hearing process and presentations; and
  - (e) site and locality visits.

7. It is likely that we will issue additional minutes with further requests and instructions, before, during and/or after the hearing.

### **Covid 19 Matters**

8. In the current circumstances, the Panel will proceed with the lead up to this hearing as electronically as possible. Whether the hearing is held traditionally or via a remote platform such as Zoom will depend on what level of alert the country is in at the time of the hearing. The Council is currently exploring avenues for video-conferencing to allow the hearing to proceed should lockdown requirements still be in force. Further information will be provided by the HCC hearing administrator as it becomes available. Please be assured that whatever forum is used for the hearing it will not be at the expense of giving all parties an appropriate opportunity to fully express their position.
9. In the meantime, this minute sets out directions and guidance for matters regarding the lead up to the hearing and the hearing itself. Where necessary the language chosen is to reflect the current emphasis; that being on an electronic approach.

### **Pre-hearing discussions & conferencing**

10. With most hearings of this nature, all parties (Applicant, submitters and council officers) are encouraged to engage (subject to the relevant lockdown provisos) in constructive discussions where practicable before the hearing commences so as to minimise the range of issues in contention. This may occur through expert pre-hearing meetings, witness conferencing, or other informal exchanges – and all are welcome.
11. Without wanting to prejudge any issues prior to the hearing, it is apparent from our preliminary review of submissions that have been lodged that the following matters may be worthy of discussion between the parties prior to the hearing commencement:
  - (a) the effects of the subsequent development (including earthworks and stream reclamation) of the area subject to the proposed private plan change on habitats, ecology and biodiversity values;
  - (b) the management of stormwater and its effects on stream habitats and ecology;
  - (c) reverse sensitivity effects of the subsequent development (including noise and odour) on neighbouring rural and rural-residential properties; and
  - (d) effects on the safety of the traffic network arising from increased traffic generation (both motor vehicles and cyclists).
12. We are not formally directing the undertaking of, or participation in, formal pre-hearing meetings, discussions or expert conferencing at this stage. We do, however, encourage pre-hearing liaison and extend that encouragement to any parties prior to the commencement of the hearing. This may include general liaison amongst the parties:
  - (a) to discuss any procedural or substantive matters (including those referred to in paragraph 11 above);
  - (b) for submitters to gain a better understanding of what the proposal entails and what the effects and implications may be; and

- (c) for the Applicant, and HCC staff (as council reporting officers), to better understand what the submitters' concerns are and how they might be accommodated.
13. In order to facilitate this, we would suggest that, prior to the hearing, the Applicant endeavour to meet with submitters to discuss issues raised in submissions and resolve any issues where practicable<sup>1</sup>. We understand from the Council hearing administrator that there have in fact been ongoing discussions between the Applicant and some submitters. We fully support this and encourage its continuation with all submitters.
14. It may be that, where issues remain unresolved, some parties may seek to engage experts, where matters relating to biodiversity and ecological effects, stormwater management, noise (as a reverse sensitivity effect) and impacts on traffic safety are concerned. If so, then expert witness conferencing on these matters and the subsequent preparation of joint witness statements confirming the experts' respective areas of agreement and disagreement may prove to be of benefit.
15. The discussions and/or pre-hearing meetings referred to in paragraph 12 above are likely to assist in informing the focus and scope of any such expert conferencing, and so that should be considered a priority by the Applicant. To provide time for any subsequent expert conference and pre-circulation of evidence to occur prior to the hearing, we suggest that discussions and/or pre-hearing meetings are facilitated and concluded **by 20 May 2020 at the latest**. We request that the Applicant prepare a report to the Council hearing administrator on the state of play at that point.
16. In the event that discussions and pre-hearing meetings do confirm that expert conferencing would be of benefit, then we will issue specific directions to that effect. These would include directions:
- (a) obliging the Applicant, Council reporting officers and any submitters intending to call expert witnesses at the hearing to advise the HCC hearing administrator by a specific date, including the name and area of expertise of each witness they intend to call;
  - (b) asking those parties to indicate at the same time whether they will make their respective expert(s) available for conferencing with other experts, and if not, the reasons why;
  - (c) obliging the Applicant to assume responsibility for co-ordinating any conferencing between their experts and those for the Council and submitters; and
  - (d) requiring any conferencing that is undertaken to be completed no later than a specific date so that the witness statements can feed into the pre-hearing timetable for circulation of evidence.
17. We will remain in contact with the HCC hearing administrator to facilitate any pre-hearing processes as required, and will keep all parties informed through additional minutes as necessary.

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<sup>1</sup> These meetings may be of an informal nature, and/or through formal pre-hearing meetings coordinated by HCC pursuant to s99 of the RMA.

## **Circulation of evidence before hearing**

18. Pursuant to Sections 41B and 42A of the RMA we direct that evidence be pre-circulated in accordance with the following timeframes as set out in the Act:
  - (a) the Section 42A Report and any expert evidence called by HCC will be made available a minimum of 15 working days prior to the start of the hearing;
  - (b) the Applicant's expert evidence will be made available at least 10 working days before the start of the hearing; and
  - (c) any expert evidence called by submitters must be made available at least 5 working days before the start of the hearing.
19. We will follow this up with actual dates for the above listed pre-circulations once the hearing dates are confirmed by the HCC hearing administrator. This information will either be emailed to parties or made available on the HCC website. Further detail to this end will be clarified to all parties in due course.
20. To be clear, submitters do not need to pre-circulate any non-expert presentation material they wish to speak to at the hearing. The above circulation requirements only apply to any expert evidence submitters wish to call. For any questions of clarification about professional expertise and the code of conduct for expert witnesses, please contact the HCC hearing administrator in the first instance.
21. Any legal submissions by counsel for the parties can be made at the hearing and are not subject to pre-circulation.

## **Hearing process and presentations**

22. We anticipate that a hearing of this nature may be a new experience for some submitters, so we will take a brief moment here to provide some information about the hearing for context.
23. For starters, we encourage all submitters to refer to the useful guides about the designation process and hearings available from the Ministry for the Environment website. The links below, in particular, are a great source of information:  
  
<https://www.mfe.govt.nz/publications/rma/everyday-guide-rma-designation-process>  
  
<https://www.mfe.govt.nz/publications/rma/everyday-guide-rma-appearing-council-resource-consent-hearing>
24. Consistent with the latter guide, our preference is for proceedings to be relatively informal. However, a degree of formality is inherent in hearings of this nature, and We will speak to that at the outset of the hearing when it commences.
25. More substantively, the hearing enables us to hear the issues raised in submissions in greater detail, and to be able to ask questions to improve our understanding of those issues.
26. As a rule of thumb, parties should target presentations of 15-30 minutes or so. This is less a rigid requirement than it is a rough indication, and all parties appearing will be given sufficient time to present their views.

27. Once the actual hearing date has been formally confirmed by the HCC hearing administrator, we will request an indication from all parties as to the amount of time they require for their presentation so that the HCC administrator can make the necessary arrangements.

### **Site and locality visits**

28. We are familiar with the site and general locality.

29. We expect that we will need to undertake more detailed site and locality visits before (if possible) and after the hearing. In that respect, if any party has a desire for us to visit particular sites/localities they should advise the HCC hearing administrator.

### **Next steps**

30. As summarised above we now suggest that the Applicant endeavours to continue to engage with submitters to discuss issues raised in submissions and resolve any issues, where practical. A report on the state of play to be prepared by the Applicant is requested **by 20 May 2020 at the latest**. Certainly, the prospect of parties fielding expert evidence should be a matter for discussion during this engagement. We will then issue any directions, as required, relating to expert conferencing and the pre-circulation of evidence.

31. We also request that any party wishing us to visit a particular site or locality advise the HCC hearing administrator by **20 May 2020**.

32. The HCC hearing administrator is Jackie Sowry and she can be reached at ([jackie.sowry@huttcity.govt.nz](mailto:jackie.sowry@huttcity.govt.nz))

**DATED** this 10<sup>th</sup> day of April 2020



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DJ McMahon  
Chair - Independent Hearings Panel

For and on behalf of:  
Commissioner EA Burge  
Commissioner DJ McMahon