

Minute from the Hearing Panel – regarding:

Miraka Limited's (Miraka) Block 3 rebuttal evidence.

Miraka has lodged three rebuttal statements of evidence. These are from Mr Jackson, Ms Addenbrooke and Ms Hardy¹. The Hearing Panel (Panel) questions whether this evidence is in fact rebuttal.

The rebuttal evidence appears not to rebut any other person's evidence. While referencing the evidence of others, it largely supports that evidence. The evidence of the three witnesses appears to address the substantive matters in Miraka's submission, with Ms Addenbrooke and Ms Hardy offering expert opinion on those matters, and provides detailed 'marked-up' versions of the plan provisions.

The Panel's Hearing Procedures and Directions document (5 November 2018) sets out at section 11 - Pre-circulation of evidence and legal submissions(paragraph 58):

Rebuttal evidence shall only be accepted as evidence before the Hearing Panel if it is strictly in rebuttal to matters already raised in evidence and contains no material relating to new issues not previously raised in evidence. Rebuttal that simply restates primary evidence will not be accepted. (underlying is our emphasis)

It is the Panel's preliminary view that none of the three rebuttal statements of evidence are rebuttal; but more in the nature of 'supplementary' evidence-in-chief. On this basis it is the Panel's view that this evidence has been filed late (after 5 July 2019 when evidence-in-chief was to be filed).

Leave will need to be sought to determine if this evidence will be accepted by the Panel as late 'supplementary' evidence-in-chief. In the alternative, Miraka may seek to address the Panel on why the evidence qualifies as rebuttal evidence.

With respect to late and supplementary evidence, the Panel's Hearing Procedures and Directions document sets out at section 12 - Late or supplementary evidence (paragraph 60):

Late or supplementary evidence will only be accepted at a hearing session:

- a. where circumstances make it necessary for such evidence to be provided; and*
- b. with the leave of the Hearing Panel.*

Miraka is scheduled to be heard on 6 August 2019. Any leave application shall be filed with the Hearing Coordinator not later than **30 July 2019** and will need to address:

- Is the evidence rebuttal?

¹These witnesses have also filed evidence-in-chief.

- Is it supplementary evidence-in-chief?
- The circumstances that make it necessary for this evidence to be provided; and
- Potential prejudice to other parties from its provision at this point in the Block 3 hearing.

If any other party wishes to address any leave application filed by Miraka, they may either file a memorandum with the Council's Independent Hearings Coordinator within 3 working days of that leave application being provided to the parties and/or on the WRC website, or appear at the Hearing at 9.00 am on 6 August 2019.



Greg Hill

Chairman of the Hearing Panel.

25 July 2019