

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of **PROPOSED PLAN CHANGE 1** to the Waikato Regional Plan – hearing of **BLOCK 1** topics

**AND**

**IN THE MATTER** of the hearing of the submissions by **WATERCARE SERVICES LIMITED** and **WARTA** in relation to **BLOCK 1** topics

**MEMORANDUM OF COUNSEL FOR WATERCARE SERVICES LIMITED AND  
WAIKATO REGION TERRITORIAL AUTHORITIES IN RELATION TO  
CONFERENCING OF WATER QUALITY EXPERTS**

**1. MINUTE OF HEARING PANEL REGARDING CONFERENCING**

1.1 In response to evidence from freshwater scientists raising issues regarding Table 3.11-1 of Proposed Change 1, the Hearing Panel ("Panel") issued a Minute dated 27 February 2019. In that Minute, the Hearing Panel stated the following:

*"Given the significance of Table 3.11.1 in PC1, the Panel agrees that it is desirable that expert conferencing between the freshwater science experts be undertaken. This is in order to provide an opportunity for the freshwater science experts to clarify the issues with Table 3.11.1 and address (and resolve if possible) the concerns regarding its robustness and the level of 'uncertainty' and 'completeness' of the provisions.*

*The Panel therefore intends to direct that expert conferencing occurs in accordance with the Code of Conduct for Expert Witnesses of the Environment Court's Practice Note 20143. However, prior to issuing directions to that effect, we invite the parties (the council and submitters) to advise:*

- *Which submitter's expert freshwater science expert(s) are willing to participate in expert conferencing;*
- *What the brief for the Expert Conferencing should be, including the questions to be posed to the experts;*

- *The suggested process for, and likely duration of, any expert conferencing; and*
- *What opportunity (if any) should be provided to all parties to the PC1 hearings to review and comment on the outcome of the expert conferencing?*

1.2 The expert who will attend conferencing for Watercare Services Limited is Garrett Hall. The expert who will attend conferencing for the Waikato Region Territorial Authorities is Anthony Kirk. The remainder of the Panel's questions are addressed in Section 2 below.

2. **BRIEF FOR FRESHWATER SCIENTISTS, CONFERENCING PROCESS AND DURATION, AND REVIEW AND COMMENT**

2.1 Counsel has sought comments from Mr Hall and Mr Kirk regarding the brief for the freshwater scientists and the process to be followed for conferencing and we address these matters below. The opportunity to review and comment on the conferencing statement is also addressed below.

**Brief for freshwater scientists**

2.2 At the Information Forum in November 2018, NIWA personnel referred to a report that detailed how the 'current state' values were arrived at that were included in the section 32 report. This report should be distributed to the freshwater experts prior to conferencing.

2.3 The brief should cover the process used to define the current state in terms of detection limits, precision and accuracy of laboratory tests, units of measurement, statistical methods, and the period over which the current state was defined.

2.4 In addition, the brief should cover the full process of how the water quality targets / limits were derived and how they are represented within Table 3.11-1.

2.5 It would likely be most helpful if Waikato Regional Council ("WRC") experts addressed the above matters at the commencement of conferencing.

2.6 A range of questions are likely to arise following that, depending on the level of detail provided during the briefing, for example:

- (a) Where is the water quality and derivation of water quality targets / limits documented to allow review?
- (b) How were non-detects dealt with?

- (c) Was a process applied to identify anomalous data and outliers?
- (d) Was statistical distribution, range of climatic conditions and representativeness of monitoring times considered in determining the appropriateness of the data set?
- (e) What do the ammonia (toxicity) limits represent and is sufficient referencing provided to allow these to be used in practice?
- (f) Whether all required attributes been included? (some submitters have suggested other attributes are included such as MCI, dissolved oxygen, periphyton etc.)
- (g) Whether the attributes apply to the main stem only or tributaries?
- (h) What is the relationship between the water quality modelling (undertaken by NIWA, for example) and the long term objectives?
- (i) What process was used in arriving at the long term objectives – application of NOF attribute bands?
- (j) What are the relationships between attributes – for example, the relationship between total nitrogen, total phosphorus, and chlorophyll-a?
- (k) What is the relevance of nutrient limitation and the relative importance of total nitrogen/total phosphorus on chlorophyll-a?
- (l) What process will be followed for future monitoring of the attributes?

**Process for conferencing and duration and timing**


- 2.7 Following the briefing from WRC, the experts should then identify the questions that need to be conferenced on. A preliminary list, including the matters set out above, would assist the experts, as, following the briefing, questions can be crossed out or added. An independent facilitator may also be of assistance.
- 2.8 It is estimated that conferencing could take up to three days, but that depends very much on how long the list of questions ends up being.
- 2.9 It is preferable that the freshwater experts conference as soon as possible. Having said that, Wairakei Pastoral is preparing an alternative model and the evidence of Phillip Jordan for Wairakei Pastoral refers to that modelling being available prior to the Block 2 hearings. It may therefore be necessary to have

conferencing before that model is available as well as after it has been provided to other parties.

**Opportunity for parties to review conferencing statement and comment**

- 2.10 It is difficult to say what opportunity (if any) should be given to parties to review the conferencing statement and comment on it in the absence of seeing the finished statement. At the least, parties should be able to present legal submissions on the conferencing statement. They would have to be supplementary legal submissions for those parties who have already presented their cases in the Block 1 hearings. There may also be a need for supplementary evidence, but that will depend on the content of the conferencing statement and whether issues arising from it can be addressed solely in legal submissions.

**DATED** this 5<sup>th</sup> day of March 2019



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