

## Minute from the Hearing Panel – regarding:

### Watercare Services Limited (Watercare) seeking to present supplementary expert planning evidence for the Block 1 Hearing.

This Minute formalises the Hearing Panel's (Panel) oral decision made on 26 April 2019 not to accept the supplementary expert planning evidence (dated 24 April 2019) from Mr Scrafton for the Block 1 Hearings. It also responds to the oral application made by Mr Berry, legal counsel for Watercare, for leave from the Panel in relation to parts of Mr Scrafton's rebuttal evidence dated 26 February 2019.

### Supplementary Evidence

Watercare lodged supplementary expert planning evidence for the Block 1 Hearings (dated 24 April 2019). This was received by Mr Rice, the Hearings Coordinator, on the 24 April 2019 and was loaded on the Hearing website.

The Panel issued a Minute requiring Watercare to seek leave to file the supplementary evidence (dated 25 April 2019), and set out the relevant section of the Panel's Hearing Procedures and Directions document (5 November 2018) - being:

#### 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.*

The Panel also set out in its Minute:

*If any other party wishes to be heard on whether Mr Scrafton's supplementary evidence should be received by the Panel, they may either file a memorandum with Mr Rice or appear at the hearing this coming Monday morning.*

Watercare filed its leave application (dated 25 April 2019) setting out "*The circumstances that make it necessary that the evidence be provided*" and the "*Potential prejudice to any party*". Mr Berry addressed the Panel on why it was appropriate for the Panel to accept the supplementary evidence as set out in his memorandum.

Ms Tumai, legal counsel for the Director-General of Conservation (DOC), appeared and gave oral submissions on whether the Panel should accept the supplementary evidence. Ms Tumai did not oppose accepting that evidence, but said DOC's planning witness had not had an opportunity to review and/or comment on it. It was her submission that if the Panel was to accept the supplementary evidence, DOC's planning witness (and other planning witnesses) should be given the opportunity to address the supplementary evidence.

### Panel's Determination on the Supplementary Evidence

While accepting that Watercare (and its planning witness) was attempting to be helpful to the Panel in addressing some of the questions it had been asking of other planning witnesses, the Panel has determined not to accept the supplementary evidence..

The reasons for not accepting the supplementary evidence are:

- The supplementary evidence goes beyond responding to questions posed to other planning witnesses, and adds further reasoning/opinion which we characterise as 'new' evidence. We address this further in some of the following bullet points;
- Section 5 of the supplementary evidence regarding how the long term vision in the Vision and Strategy for the Waikato River should be interpreted in the context of PC1 and applied to point source discharges is largely 'new' evidence, and goes well beyond questions the Panel has asked other planning witnesses;
- The Schedule in the supplementary evidence is also 'new' evidence going further than the Panel's questions, including the inter-relationship between the Values, the Regional Policy Statement, the Operative Regional Plan and the objectives and policies of PC1 (the latter aspect being a Block 2 Hearing matter);
- While sections 2-4 of the supplementary evidence are a reasonable response to questions asked of other planning witnesses, we did not find it was "necessary" as Mr Scrafton's evidence-in-chief was clear in those respects and to the extent the Panel desired further explanation, it could (and did in the event) seek further comment from him;
- Contrary to Watercare's submissions, paragraphs 2.4-2.9 of the supplementary evidence are clearly responding to/rebutting another witness (Ms Marr), accepting it was mostly factual in outlining what is in other regional plans;
- The issue raised by Ms Tumai; that had we accepted the supplementary evidence we would have needed to provide an opportunity to other parties to review and potentially provide supplementary or rebuttal evidence. Given that Watercare was heard on the penultimate day of the Block 1 hearing, that opportunity would necessarily have to be afforded in the course of either the Block 2 or 3 hearings. The range of issues to be addressed in Block 2 in particular, is very substantial, and the Panel is anxious to avoid that range being further expanded.
- Due to the lateness of the filing of supplementary evidence, and on the Anzac day, and Watercare appearing at 9.00 am on the 29 April 2019, there was very limited time for other parties to consider the leave application and the evidence from Watercare, and respond to the Panel. This clearly gives rise

for concern that other parties may have wished to be heard on Watercare's application had they had more notice of it.

The Panel records its oral observation that to the extent that Mr Scrafton's supplementary evidence canvassed matters falling within the scope of the Block 2 hearing, Watercare has the option of resubmitting those aspects in accordance with the hearing directions for Block 2.

### **Rebuttal Evidence**

During presentation of the case for Watercare, the Panel also raised an issue with respect to Mr Scrafton's rebuttal evidence; whether parts in which he agreed with other planning witnesses and added further reasoning/opinion properly fell within the scope of "rebuttal".

Having reflected on the point, Mr Berry accepted that there were parts of Mr Scrafton's rebuttal evidence that were not strictly rebuttal. To the extent that was the case, Mr Berry sought leave to have that accepted as supplementary evidence. He emphasised to us the lack of prejudice to any other party and the assistance to us of knowing Mr Scrafton's views (and reasons) where he agreed with other planning witnesses.

To the extent that Mr Scrafton's rebuttal evidence is supplementary evidence rather than rebuttal, the Panel accepts the evidence. The reason for this is that Mr Scrafton's rebuttal evidence was lodged 26 February 2019, prior to the hearings commencing, so all parties had an opportunity to review it and raise any concerns; none did. On this basis, and given the nature of the evidence (it is a succinct expression of Mr Scrafton's reasons for accepting the primary evidence of other witnesses), the Panel finds that there can be no prejudice to any other party.



Greg Hill

Chairman of the Hearing Panel.

2 May 2019