

**Before Hearing Commissioners at
Waikato Regional Council**

**I mua i te kaikōmihana
ki te kaunihera o te rohe o Waikato**

Under the Resource Management Act 1991
In the matter of Proposed Plan Change 1 to the Waikato Regional Plan and in the
matter of Hearing Block 1

Between

Genesis Energy Limited

Submitter 74052

and

Waikato Regional Council

Consent Authority

**Memorandum of Counsel of behalf of Genesis Energy
Limited**

28 March 2019

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BARRISTERS AND SOLICITORS

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May It Please the Hearing Panel:

Direction that additional attributes are not “on” the plan change

1. Genesis Energy Limited (**Genesis** - submitter 74052) seeks a direction by the Hearing Panel that the submission points requesting the following additional water quality attributes be added to Table 3.11-1 are not within the scope of Plan Change 1 as these submission points are not “on” the plan change:
 - (a) Barriers to fish migration;
 - (b) Water flows and levels;
 - (c) Temperature;
 - (d) pH; and
 - (e) Fish / Fish QIBI.

2. This is consistent with the view expressed in the Section 42A Report that:¹

Barriers to fish migration and water flows and levels are not managed by the provisions contained in PC1, and it is not clear what their relevance is to PC1. For these reasons, the Officers do not recommend amending Table 3.11-1 to include...barriers to fish migration or water flows and levels.

Temperature, pH and toxic heavy metals are also outside the scope of PC1 as the provisions only seek to manage the discharge of nutrients (N and P), *E. coli* and sediment. As such, the Officers recommend Table 3.11-1 is not amended to include these attributes.

3. This position, that some of the additional water quality attributes are not “on” the plan change, is also supported by the legal submissions on behalf of Mercury NZ Limited.

4. Genesis submits expert conferencing should proceed on the basis that the additional attributes identified in paragraph 1 of this memorandum are not the subject of the expert conferencing. The “Principles of the Hearings” set out in the Hearings Procedures and Directions refers to

¹ Page 110 of the s42A Report, except no comment is made in respect of Fish QIBI.

conducting an efficient process which minimises the costs and time to all parties involved in the hearing. It is inefficient, time consuming, and costly if the freshwater experts caucus in relation to these additional attributes, but the Hearing Panel subsequently determines these are out of scope.

5. The Hearing Panel has previously observed that expert conferencing should proceed on the basis that plan and submission scope issues should not constrain the recommendations the experts make.²
6. Genesis accepts all submitters should have an opportunity to make legal submissions on the issue of scope, and agrees with oral submissions by Mercury that perhaps the most efficient way forward is to direct that the freshwater experts caucus on matters clearly within scope, and defer any conferencing on additional attributes which have been challenged in respect of scope until such time as the Hearing Panel makes its decision.

In the alternative, a decision that Genesis can file expert evidence

7. In the event the Hearing Panel determines the experts should proceed to caucus about all of the additional attributes,³ then Genesis seeks leave to file late expert evidence by Dr Jacques Boubée only on the additional attributes for Table 3.11-1 that may affect the operation of the Huntly Power Station, and for Dr Boubée to participate in the expert conferencing on this limited basis.
8. We understand freshwater expert conferencing is scheduled for 4 and 15 April. If the Hearing Panel decides to proceed with expert conferencing about the additional attributes, then we request that these are added to the agenda for the 15 April expert conferencing session.

² Minute from the Hearing Panel regarding Expert Conferencing – Table 3.11-1 Minute 2 on this topic dated 13 March 2019.

³ Including all of those sought by submitters, but which Genesis and Mercury contend are not within the scope of the Plan Change.

9. Genesis considers the Hearing Panel should allow its request to file expert evidence and for Dr Boubee to participate in expert conferencing for three key reasons.
10. First, Genesis' original submission was generally supportive of Plan Change 1 as notified and was broad in scope, and clearly raised that it had an interest in attributes relevant to its assets such as temperature, and the associated management of the Waikato River. In particular, the original submission stated:⁴
- Central to the ability of Huntly Power Station to generate electricity is the abstraction of up to 40 m³/s cooling water from the Waikato River and its discharge back to the river (both authorised by resource consents). The discharge of cooling water has the potential to increase the temperature of the cooling water by some 8 – 9 °C, which in turn can affect the temperature of the Waikato River. Accordingly, the resource consent for the discharge is subject to a comprehensive suite of conditions in order to protect the river's ecology. Genesis Energy also holds resource consents for the discharge of process waters from the station to the Waikato River.
11. Secondly, Genesis holds information about a number of the additional attributes as they apply to the Lower Waikato River which would be of benefit to the freshwater experts and the Hearing Panel if they are to consider these additional attributes. Dr Boubee has been involved with the Huntly Power Station since the 1980s. The Hearing Panel should have the benefit of the best available information to inform its decision.
12. Thirdly, Genesis considers no parties will be prejudiced by the late filing of evidence by Genesis on this limited basis, as other freshwater experts will have an opportunity to record their responses to Dr Boubee's expert opinion as part of expert conferencing. Further, Genesis will not oppose any application to file supplementary rebuttal evidence if considered necessary by other submitters to address matters not within the record of expert conferencing.



Natasha Garvan
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⁴ Page 4 of Genesis Energy submission on Proposed Waikato Regional Plan Change 1.