

BEFORE Waikato Regional Council Hearing Commissioners

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Waikato Regional Proposed Plan Change 1 – Waikato and Waipā River Catchments

**MEMORANDUM OF COUNSEL ON BEHALF OF
THE WAIKATO AND WAIPĀ RIVER IWI**

MAY IT PLEASE THE COURT

1. We refer to the Panel's Minute of 27 February 2019 directing expert freshwater science conferencing on Table 3.11-1. This memorandum responds to the questions of the Commissioners therein.

Which submitter's expert freshwater science expert(s) are willing to participate in expert conferencing?

2. The Panel is aware that the Waikato and Waipā River Iwi have engaged Dr Olivier Ausseil as a freshwater science expert, and we confirm that he shall participate in expert conferencing.
3. The Waikato and Waipā River Iwi understand that an issue has arisen in respect of the ability of Waikato Regional Council freshwater expert, Mike Scarsbrook, to participate in expert conferencing given he has not filed a brief of evidence. We have had the benefit of reviewing draft memoranda of some of the other parties, and understand that Wairakei Pastoral Limited opposes the participation of non-witness experts.
4. The Waikato and Waipā River Iwi support Mr Scarsbrook participating in expert conferencing. He has significant knowledge of the Waikato and Waipā catchments, and has been an integral part of the Plan Change 1 process to date. The Waikato and Waipā River Iwi agree with the Waikato Regional Council that the key objective is to assist the Panel in the best

way possible. Accordingly, the Waikato and Waipā River Iwi consider that the conferencing should proceed on the basis of an informed discussion and therefore strongly support Mr Scarsbrook fully participating in the expert conferencing.

5. The Waikato River Iwi note the proposal of the Waikato Regional Council that the Panel give notice to all submitters that they can seek leave to have an expert participate in the conferencing.¹ If parties remain concerned about what non-witness experts may contribute to the expert conferencing, the Panel may wish to require these experts to produce a “will say” statement before conferencing.

What should the brief for the Expert Conferencing be, including the questions to be posed to the experts?

6. In accordance with the direction of the Panel, the parties have attempted to confer in respect of a joint position on the questions to be posed. Although the parties endeavoured to do so, they have not been able to reach a joint position in the time available.
7. The questions/topics identified by Dr Ausseil for the Waikato and Waipā River Iwi are set out at **Appendix One**.
8. We understand that the Council has taken the position that, given the many questions that have been raised by the parties in their memoranda, determination of the appropriate questions for consideration by expert conferencing should in fact take place as a first agenda item at the expert conferencing.²
9. If the Panel accepts this proposed process, the Waikato and Waipā River Iwi are strongly of the view that the questions that are determined at the conferencing should not extend to comment on Plan Change 1’s objectives and policies, as they are matters for expert planning consideration. This position is also recorded in the memorandum of Beef and Lamb NZ.³

¹ Memorandum of Waikato Regional Council, dated 7 March 2019.

² Ibid.

³ Dated 6 March 2019, at paragraph 5.

What is the suggested process for, and likely duration of, any expert conferencing?

10. A number of parties have raised their preferred process for expert conferencing. The Waikato and Waipā River Iwi generally support the processes proposed by other parties, and will abide the Panel's decision. In respect of the time necessary to complete the required conferencing, Dr Ausseil recommends that, given the complexity of the issues and the number of experts participating, the Panel set conferencing down for two days, but also schedule a third day to accommodate the need for additional time should the experts require it.

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?

11. The Waikato and Waipā River Iwi are in agreement with the Waikato Regional Council, Watercare and the Territorial Authorities that directions about post-conferencing steps are best provided following completion of the joint witness statement.



J P Ferguson / M M E Wikaira
Counsel for the River Iwi

APPENDIX ONE

Questions / Topics to be posed / discussed

1. Definition of current and future state and use in Table 3.11-1
 - 1.1 How was current state defined/calculated, including:
 - (a) Selection of time period:
 - (b) Data processing (e.g. datapoint exclusion criteria, pH correction for ammonia, percentile calculation method, flow exclusion for clarity data)
2. How will future state be assessed against Table 3.11-1 “numerics”- discuss process and methodology
3. TN/TP “numerics”.
 - 3.1 Derivation/formulation method and link with Chlorophyll *a* “numerics”;
 - 3.2 Comparison with natural and 1863 concentrations
 - 3.3 TN/TP numerics for the upper Waikato FMU
 - 3.4 TN/TP numerics for the middle and lower Waikato FMU
 - 3.5 TN/TP numerics at the sub-catchment scale – can they be developed without compromising a future allocation framework?
4. Consideration of additional attributes, including planktonic cyanobacteria, periphyton biomass, dissolved oxygen, temperature, MCI. For each of the potential additional Attribute, discuss:
 - 4.1 Relevance to values in the Waikato catchment
 - 4.2 State of data/knowledge,
 - 4.3 Can numerical Attributes be formulated for relevant FMUs / sub-catchments?
5. Potential corrections to Table 3.11-1. Review nitrate and ammonia “numerics” (median vs. 95th percentile/maxima)
6. E.coli Attribute: should it include or exclude flood flows?