

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 submissions and the further submission by **WATERCARE SERVICES LIMITED** in relation to **BLOCK 1** topics

**MEMORANDUM OF COUNSEL FOR WATERCARE SERVICES LIMITED
SEEKING LEAVE TO FILE SUPPLEMENTARY EVIDENCE**

Introduction

1. On Wednesday, 24 April 2019, we filed a supplementary statement of planning evidence from Chris Scrafton on behalf of Watercare Services Limited (“Watercare”), which company is due to appear before the Panel on Monday, 29 April 2019.
2. The evidence was filed as soon as it was completed in order to give time for the Panel to review it ahead of Watercare’s appearance. Counsel apologises for the lateness of the evidence but it only became clear relatively recently (in preparation for Watercare’s appearance) that sufficient further material existed to warrant the preparation of a supplementary statement for the assistance of the Panel and other parties rather than to elicit the evidence via a series of questions at the hearing.
3. In that regard, we refer to the minute issued by Chairperson Hill on 25 April 2019 indicating that:

“Watercare will need to seek leave for Mr Scrafton to present the supplementary planning evidence. This would need to address:

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 1 hearing.”

Purpose and scope of memorandum

4. The purpose of this memorandum is to address those issues. (Indeed, this memorandum was in the course of preparation when the minute was received.) In doing so, it is proposed to:
 - (a) Address the nature of Mr Scafton's supplementary evidence;
 - (b) The circumstances that make it necessary (or at least highly desirable) that the evidence be provided; and
 - (c) Whether any other party would be prejudiced by the introduction of the evidence at this stage in the proceedings.

Mr Scafton's supplementary evidence

5. The introduction to Mr Scafton's evidence states:

"1.2 I have attended a number of hearing days that I considered to be relevant to Watercare's submission. During those hearing days, I noted the Panel's questioning of a number of expert planning witnesses and their responses to questions that relate to either my primary or rebuttal statements of evidence.

1.3 To assist the Panel in relation to these lines of questioning, I have prepared this supplementary statement of evidence."

6. The evidence then goes on to addresses four discrete issues under the following headings:
 - (a) Whether the values should be included in the regional plan;
 - (b) Values can be all things to all people;
 - (c) What are the freshwater objectives of PC1?
 - (d) How should the Vision and Strategy for the Waikato River be interpreted?
7. The first two issues are related insofar as they relate to the Values contained in PC1. The commentary in relation to values is supported by a comprehensive table that analyses the Values by reference to the V & S, the objectives of the Waikato Regional Plan ("WRP"), and the objectives and policies of PC1 by reference to the relevant provisions of the National Policy Statement for Freshwater Management ("NPS:FW").

8. Mr Scrafton had undertaken this analysis to assist his own thinking in relation to the Values but counsel considered that the analysis was of sufficient probative value to provide in written form to the Panel and parties.
9. Given Mr Scrafton's qualifications and experience, the quality of the analysis and the subtlety and complexity of the issues arising it is submitted that the evidence has significant probative value. As a result, it is submitted that there would need to be significant prejudice to another party for the evidence to be excluded. In that regard, the evidence could still be introduced via questions to the witness but this approach would be significantly more time consuming and less convenient. Indeed, that was one of the primary reasons for having Mr Scrafton prepare the supplementary statement.

The circumstances that make it necessary that the evidence be provided

10. It is submitted that it is necessary (or at least highly desirable) that the evidence be provided for the reasons outlined above; to recap:
 - (a) The evidence directly addresses issues that the Panel has consistently raised with planning experts;
 - (b) It represents careful analysis by a highly qualified witness so that it has significant probative value; and
 - (c) It is more efficient and effective to reduce the analysis to writing than to elicit the information via questions to the witness as Watercare would be entitled to do.

Potential prejudice to any party

11. It is significant that the supplementary evidence was directed towards addressing issues directed by the Panel to expert planning witnesses rather than responding to or rebutting evidence given by any other specific party. To that extent, there is no direct prejudice to any party.
12. The Waikato Regional Council reporting officers may not agree with the comments made but to the extent that the entire hearing process is directed towards addressing the provisions of PC1, including its manifest shortcomings, this cannot be seen as prejudice to "a party" to PC1.

Principal submission

13. It is submitted that the late evidence should be accepted on the basis that:
- (a) The evidence contains substantive analysis from a highly qualified witness that addresses issues that the Panel has raised with planning experts throughout the course of the Block 1 hearings. As such, it has significant probative value.
 - (b) It is more convenient for the Panel and parties to receive the evidence in written form than for the information to be elicited from the witness via oral questioning.
 - (c) No party will be prejudiced by receiving the evidence outside the directed timetable, particularly insofar as the supplementary evidence is directed towards addressing issues raised with planning experts by the Panel.
 - (d) Having regard to the above factors and, in these circumstances, it is respectfully submitted that:
 - (i) The balance of convenience lies in favour of giving leave to accept the late evidence rather than excluding it; and
 - (ii) Giving leave is "appropriate and fair in the circumstances" in the context of section 39 of the Resource Management Act 1991.
14. Counsel apologises for the lateness of the evidence and for not having sought leave in advance. It was considered more important to make the supplementary evidence available as soon as possible.
15. Watercare is grateful to the Panel for its consideration of this issue.

DATED this ^{25th} day of April 2019


SJ Berry

Counsel for Watercare Services Limited