

Minute from the Hearing Panel – regarding:

Expert Conferencing - Table 3.11-1.

Minute 2 on this topic

Introduction

This Minute directs expert conferencing, as was indicated in the Hearing Panel's (the Panel) Minute dated 27 February 2019. That Minute was discussed with parties at the commencement of the hearings of submissions to Plan Change 1 (PC 1) on 11 March 2019.

As set out in the 27 February 2019 Minute, Table 3.11-1 is a cornerstone of PC 1. It also set out that the Panel was aware, having read the evidence of the freshwater science experts, that there was significant concern about the robustness of Table 3.11-1; including the process through which it was developed; errors in the Table; the level of 'uncertainty' and 'completeness'¹ of the provisions in the Table; and whether the current² attributes/objectives collectively ensure that PC 1 will "give effect to" the National Policy Statement for Freshwater Management (NPS – FM) and the Vision and Strategy (to the extent this is possible within the life of PC 1).

A number of freshwater science experts have provided revised (marked up) versions of Table 3.11.1 as part of their evidence. Differences between and among these versions will need to be addressed during the hearing.

Expert Conferencing

Given the significance of Table 3.11-1 in PC1, the Panel directs that expert conferencing between the freshwater science experts (listed below) be undertaken. This is in order to provide an opportunity for those 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 directs that expert conferencing occurs in accordance with the Code of Conduct for Expert Witnesses of the Environment Court's Practice Note 2014³.

The Brief

As discussed and agreed at the hearing, the Expert Conferencing Brief will be developed by Mr David Hill (facilitator) in conjunction with the experts listed below; taking into account the matters (and questions) raised in Legal Counsel's memoranda filed with the Panel, and the timing and number of days for expert conferencing – noting the desirability of conferencing on consecutive days, and sufficient time between conferencing for the experts to consider the outcome of conferencing and

¹For example, has it included all required and/or appropriate attributes?

²i.e. as notified.

³As set out in the Panel's **Hearing Procedures and Directions** document (5 November 2018) - Section Expert Conferencing (Clause 8AA - Schedule 1 of the RMA).

to respond. We accept that the format and timing of conferencing will be subject to the availability of the experts.

The Panel determined this was a more appropriate way to develop the brief than for the Panel to prescribe it, but sets out its expectation that:

- The brief must be developed so as to be able to give effect to the NPS- FM and the Vision and Strategy;
- The experts should use best scientific methods throughout the conferencing process;
- Expert conferencing proceed on the basis that plan and submission scope issues do not constrain the recommendations the experts make⁴ and that, to the extent that those recommendations may differ depending on legal or planning issues, the experts identify the competing positions and provide recommendations in the alternative⁵; and
- At minimum, one set of numeric values be provided for:
 - Safe swimming, and
 - Safe food gathering along the entire length of both rivers (Waikato and Waipa), including their tributaries.

The Panel requests that conferencing occur as soon as is possible. It also requests that once the brief is agreed, the facilitator report back to the Panel and set out the likely timing of expert conferencing and the reporting back of the outcome of conferencing. This is to assist the Panel as to the likely timing of receiving any joint witness statement and timing of the process to follow particularly in terms of providing an opportunity for parties to review and comment on the outcome of the expert conferencing.

It is likely that the Panel will provide all parties to the PC1 hearings, with the opportunity to review and comment on the outcome of the expert conferencing, and

- convene a special day(s) of hearings to enable the Panel to ask any questions of the expert witnesses or counsel arising from the joint witness statement of evidence (including any revised Table 3.11-1)

A more detailed minute of the process the Panel will follow will be provided once the outcome of expert conferencing is known.

Experts to Conference

The following experts are invited to attend the expert conferencing:

- Dr Mike Scarsbrook, Mr Bill Vant, and Dr Bryce Cooper (for the Regional Council) – see note 1 below in relation to Mr Bevan Jenkins;
- Dr Craig Depree (for Dairy NZ);

⁴The Panel will consider scope issues separately.

⁵That is to say, not assuming any particular position is correct.

- Ms Kathryn McArthur, Dr Hugh Robertson, and Dr Ngaire Phillips (for the Director General of Conservation);
- Mr Dean Miller (for Mercury Energy Ltd);
- Dr Martin Neale and Mr Nicholas Conland (for Wairakei Pastoral Ltd) - see note 2 below in relation to Mr Nicholas Conland;
- Mr Anthony Kirk (for the Waikato Regional Territorial Authorities);
- Mr Garrett Hall (for Watercare Services Ltd);
- Dr Hannah Mueller, Mr Gerry Kessels, and Dr Chris Dada (for Beef and Lamb);
- Dr Adam Canning and Dr Adam Daniel (for Auckland/Waikato & Eastern Region Fish and Game Councils);
- Dr Olivier Ausseil (for Waikato and Waipa River Iwi); and
- Ms Gillian Holmes (for HortNZ).

Note 1 – The WRC has suggested that Mr Jenkins might be able to assist the expert conferencing process. The Panel has no objections to this provided the facilitator and other experts agree to his attendance.

Note 2 - Wairakei Pastoral Ltd has requested that Mr Conland be able to attend expert conferencing. The Panel has no objections to this provided Mr Conland produces a “will say” statement in accordance with the Code of Conduct for Expert Witnesses of the Environment Court’s Practice Note 2014.



Greg Hill

Chairman of the Hearing Panel.

13 March 2019