

BEFORE THE WAIKATO REGIONAL  
COUNCIL HEARING COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Proposed Plan Change 1 to the Waikato Regional Plan and  
Variation 1 to that Proposed Plan Change: Waikato and Waipā  
River Catchments

Leave Request for Late Supplementary Evidence

Dated: 25 June 2019

Block 2 Hearings

Submission Number: 71759

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**MAY IT PLEASE THE COUNCIL HEARING COMMISSIONERS:**

**Introduction**

1. On 20 June 2019 Counsel, on behalf of the Director-General of Conservation (Director-General), filed legal submissions in relation to the Block 2 hearings. Attached to the submissions was a further evaluation of relief sought under s 32AA of the RMA prepared by the Director-General's expert planner, Ms Kissick (the s 32AA analysis).
2. The Hearings Panel correctly consider this further evaluation to be supplementary evidence and, in a Minute dated 21 June 2019, required the Director-General to seek leave, in accordance with paragraph 60 of the Panel's Hearing and Directions document (Hearing Document), for the supplementary evidence to be considered in the Block 2 hearings.
3. In seeking leave under paragraph 60 of the Hearing Document, the Hearings Panel requires the Director-General to specifically address:
  - a. *'The circumstances that make it necessary for this evidence to be provided (including why it was not provided as part of Ms Kissick's evidence-in-chief); and*
  - b. *Potential prejudice to other parties from its provision at this point in the Block 2 hearing.*

**Background to the Director-General's s 32AA analysis**

4. During the presentation of the Director-General's Block 1 legal submissions the Hearings Panel inquired whether the Director-General would be submitting a cost benefits analysis to support the Director-General's expert evidence.

5. At the presentation of Waikato Regional Council's (WRC) officers report for the Block 2 hearings, in response to questions from the Hearings Panel, and as discussed in paragraph 42 of Counsel for the Director-General's legal submissions for Block 2, Mr McCallum-Clarke expressed the view that there would be a gap, in terms of a cost-benefit analysis, if WRC, (and/or the Hearing Panel for that matter), were inclined to accept the recommendations for stock exclusions from water bodies proposed by the Director-General. Mr McCallum-Clark was understood to confirm that no cost-benefit analysis of potential stock exclusion provisions had been undertaken by Council and that he considered there wasn't any need to.
6. It was not until WRC presentation of its officers report at the Block 2 hearings that Counsel for the Director-General fully appreciated that a cost-benefit analysis would not be undertaken by WRC in relation to the water bodies setbacks proposed by the Director-General, or potentially in relation to any of the other relief sought by the Director-General.
7. By the time it became apparent that no further analysis would be provided by WRC, (as evident in the response to questioning of Mr McCallum-Clark by the Hearings Panel as part of the Council's Block 2 presentation), evidence-in-chief for Block 2 had already been lodged. As such, the Director-General was unable to commission and lodge the s 32AA analysis as part of Ms Kissick's evidence-in-chief for Block 2.

**Is providing the s 32AA analysis 'necessary'?**

8. I submit it is necessary (and appropriate) for the s 32AA analysis to be received and considered by the Hearings Panel because:
  - a. the Hearings Panel inquired whether the Director-General or WRC would provide this type of analysis, and
  - b. the s 32AA analysis provides a costs benefits analysis for the relief sought by the Director-General which has not been provided, and it appears will not be provided by WRC, and

- c. s 32AA and 32(1)(b)(i) of the Act require, amongst other matters, that evaluation under these provisions identify other reasonably practicable options for achieving the objectives of a proposal. Such options include the relief sought in the Director-General's submission.
  - d. the s 32AA analysis is relevant and material to the matters before the Hearings Panel, and it is submitted it will assist the Hearings Panel in its deliberations.
9. However, the question remains, whether filing the s 32AA analysis now, and considering it as part of Block 2, would cause any party unreasonable prejudice?

#### **Potential prejudice to other parties**

- 10. Counsel acknowledges that, by providing the s 32AA analysis at this stage in the Block 2 hearing process, other parties will have limited opportunity to comment on, or rebut, the analysis as part of Block 2.
- 11. As such, Counsel accepts there will be other parties interested in commenting on or rebutting this evidence, but who will not have the opportunity to do so, particularly those parties who have already presented in the Block 2 hearings.

#### **Option for the Hearing Panel to consider the supplementary evidence in the Block 3 hearings**

- 12. Counsel notes the Topics for Block 3 include (my emphasis)  
*'C10 Miscellaneous (forestry, wetland and lakes, other miscellaneous consequential changes) and any other matters not heard as part of Block 1 and 2'*

13. If the Hearings Panel decides not to accept the s 32AA analysis in the Block 2 hearings, I submit that it can properly be refiled and considered by the Hearings Panel as part of the Director-General's evidence-in-chief for the Block 3 hearings.
14. I submit that, if the Hearings Panel were to take this approach, it would give other parties the opportunity to comment on, or rebut, the evidence in the Block 3 evidence and hearings process, thereby removing any risk of potential prejudice.
15. This approach would also provide the Director-General with the opportunity to request Ms Kissick update the s 32AA analysis, by taking into account Block 3 evidence (or any other relevant developments in the hearings process).
16. Accordingly, it is my submission that if the Hearings Panel does not grant leave for the s 32 AA analysis to be accepted in the Block 2 hearing, then the s 32AA analysis (or an updated version) can and should be considered through the Block 3 evidence and hearing process, and that this will address any potential prejudice issues for any other party.
17. Counsel thanks the Hearings Panel for considering this leave request.



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Legal counsel for the Director-General of Conservation