

Minute from the Hearing Panel – regarding:

Waikato and Waipā River Iwi (River Iwi) in relation to:

- Witness unavailability (Dr Olivier Ausseil) in relation to the hearing on the 18 July 2019; and
- Filing late rebuttal evidence from Mr Hamish Lowe (by the 26 July 2019).

The Hearing Panel (Panel) received a Memorandum from the River Iwi's legal counsel on the 3 July 2019 in relation to:

- Dr Olivier Ausseil's inability to attend the hearing in person on the 18 July 2019 in relation to the Joint Witness Statement (JWS) and Table 3.11.1; and
- Mr Hamish Lowe being able to file any rebuttal evidence by the 26 July 2019, where the Panel's Minute (dated 30 May 2019) required rebuttal evidence to be filed by the 19 July 2019.

These matters are addressed below.

Dr Olivier Ausseil's inability to attend the hearing in person on the 18 July 2019

The Panel is aware that Dr Ausseil is unable to attend the hearing in person (as he will be overseas). The Panel is also aware that video or teleconference facilities may be available to enable Dr Ausseil to participate in the hearing and answer any questions the Panel may have of him.

The Panel accepts that if video or teleconference facilities are available, that Dr Ausseil can 'attend' the hearing via that medium (acknowledging the time difference as the Panel understands he will be in the northern hemisphere).

However, in the alternative, legal counsel has requested¹:

Alternatively, should it not be possible for Dr Ausseil to remotely participate in the hearing on 18 July, Dr Ausseil is able to provide written answers to any questions from the Panel (and would restrict such answers to those specific questions consistent with the Panel's minute of 25 June 2019).

The Panel also accepts this alternative. If the Panel has specific questions for Dr Ausseil, these would be provided in writing.

While the Panel accepts both options, the Panel 'suggests' the alternative option of providing written questions to Dr Ausseil would be preferable as this may be more efficient given:

- The time difference between New Zealand and where Dr Ausseil will be.

¹Paragraph 4 of the Memorandum.

- The length of the hearing (up to an entire day), means Dr Ausseil may need to be up all night (see the following paragraph).
- The (high) probability that any video link may 'drop out' over the course of the hearing day, and
- The Panel understands Dr Neale will be video linking to the hearing (from elsewhere in New Zealand), and it is likely to be more difficult to manage two parties remotely.

In relation to the above, the Panel considers that Drs Ausseil and Neale may need to be on a video link for the length of the hearing. This is because the Panel, having initially reviewed the JWS, will likely be posing questions principally about the points of difference between the experts rather than the points of agreement (the latter being explained in the sub group papers). This means the questions will be different for each expert. It also means that the other expert may wish/need to respond to the answers given at the hearing. This means that that all of the experts will likely need to attend the entire hearing.

Given the above, it is the Panel's view that it is likely to be more efficient for Dr Ausseil to respond to any written questions, having reviewed the audio recording of the hearing day.

Mr Hamish Lowe filing any rebuttal evidence by the 26 July 2019.

The Panel accepts that Mr Lowe may file any rebuttal by the 26 July 2019. The reasons for this are:

- The Panel accepts Mr Lowe's inability to meet the 19 July 2019 date for the reasons set out in the Memorandum of legal counsel.
- As it is rebuttal evidence (with all evidence-in-chief being filed within the prescribed time), the late filing will not affect the filing of other (rebuttal) evidence.

The hearings do not commence until 5 August 2019. Accordingly, there is no prejudice to other parties as there is time before the hearing commences for any expert whose evidence has being rebutted, their legal counsel and all other parties (including the Panel) to have reviewed that evidence and address it at the hearing.



Greg Hill

Chairman of the Hearing Panel.

5 July 2019