

Minute from the Hearing Panel – regarding:

Expert Conferencing - Table 3.11.1.

Introduction

Table 3.11-1 is a cornerstone of Plan Change 1 (PC1).

The Hearing Panel (the Panel) is aware, having read the evidence of the freshwater science experts, that there is 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 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

A number of the freshwater science experts raise in their evidence that there has been no opportunity for the various freshwater experts involved in the PC 1 hearings to meet and discuss the issues raised above. Some consider that expert conferencing would be extremely useful to resolve (or attempt to resolve) the concerns raised about Table 3.11.1.

Given the significance of Table 3.11.1 in PC1, the Panel agrees that it is desirable that expert conferencing between the freshwater science experts be undertaken. This is in order to provide an opportunity for the freshwater science 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 therefore intends to direct that expert conferencing occurs in accordance with the Code of Conduct for Expert Witnesses of the Environment Court's Practice Note 2014³. However, prior to issuing directions to that effect, we invite the parties (the council and submitters) to advise:

- Which submitter's expert freshwater science expert(s) are willing to participate in expert conferencing;
- What the brief for the Expert Conferencing should be, including the questions to be posed to the experts;
- The suggested process for, and likely duration of, any expert 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).

- 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?

The Panel proposes that expert conferencing proceed on the basis that scope issues do not constrain the recommendations the experts make⁴ and that, to the extent that those recommendations turn on legal or planning issues, the experts identify the competing positions and provide recommendations in the alternative⁵.

The Panel would be grateful if the Council and submitters (in particular their legal counsel) could take this indication into account and either respond in writing by the 7 March 2019 (i.e. prior to the commencement of the hearing) and/or be prepared to address the matters raised in this minute at the opening day of the hearings (time will be made available to discuss this issue). Any response needs to be filed with Mr Rice, the Independent Hearings coordinator at steve@riceres.co.nz

The Panel requests that legal counsel confer in advance of their responding in order that as far as practicable, the Panel is provided with a joint position on the questions posed above.



Greg Hill

Chairman of the Hearing Panel.

27 February 2019

⁴The Panel will consider scope issues separately.

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