

**IN THE MATTER OF**

**THE RESOURCE MANAGEMENT  
ACT 1991**

**AND**

**IN THE MATTER OF**

**LAKE ROTORUA NUTRIENT  
MANAGEMENT – PROPOSED  
PLAN CHANGE 10 TO THE BAY OF  
PLENTY REGIONAL LAND AND  
WATER PLAN**

---

**MEMORANDUM OF COUNSEL ON BEHALF OF**

**CNI Iwi Holdings Limited**

Dated: 15 March 2017

---

---

**GREENWOOD ROCHE**  
LAWYERS  
CHRISTCHURCH  
Solicitor: L J Semple/M A Thomas  
(Monique@greenwoodroche.com)

Level 5  
83 Victoria Street  
P O Box 139  
Christchurch  
Phone: 03 353 0570

### **May it please the Commissioners:**

- 1 This memorandum is filed on behalf of CNI Iwi Holdings Limited (CNI IHL) and relates to the evidence of Bridget Robson on behalf of CNI IHL. CNI IHL has sought urgent advice from Greenwood Roche in relation to the admissibility of Ms Robson's evidence with particular regard to the Panel's Memorandum dated 13 March 2017 (Memorandum 9).

### **Directions for the Exchange of Evidence**

- 2 The Panel issued directions for the exchange of evidence being 'general directions' in Memorandum 1 and further directions in Memorandum 4 as follows:
  - (a) Expert evidence in chief was to be filed by 22 February 2017 with rebuttal by the Council by 6 March 2017.
  - (b) "Other evidence" was to be provided to the Committee by 6 March 2017.
- 3 Ms Robson lodged her evidence on behalf of CNI IHL as "other evidence" on 6 March 2017, in accordance with the Panel's directions.
- 4 The Regional Council has sought that Ms Robson's evidence be excluded on the basis that the Council considers her evidence to be expert evidence which the Council's experts have not been able to consider or respond to.
- 5 CNI IHL seeks that Ms Robson's evidence be admitted as non-expert evidence. Ms Robson intended her evidence to be non-expert evidence and therefore it was lodged in accordance with the Panel's timeframe for "other evidence".
- 6 As directed by the Commissioners, this memorandum addresses:
  - (a) Whether or not Ms Robson is an expert witness; and
  - (b) Whether undue prejudice could be avoided in the event of the evidence being admitted.

### **Nature of the Evidence**

- 7 Ms Robson is an expert planner, however the scope of her evidence for Plan Change 10 covers a range of non-planning issues (modelling,

for example, in which she has no formal qualifications or training). It also sets out (at paragraphs 147 - 151) the position of CNI IHL, as opposed to her opinion as an expert. In addition, Ms Robson prepared the CNI IHL submission on the plan change. Ms Robson therefore sought advice as to the appropriate categorisation of her evidence from others involved in the process and identified that her evidence was most appropriately categorised as 'other evidence' in support of CNI IHL's submission. Ms Robson lodged her evidence on that basis within the appropriate timeframe.

- 8 Ms Robson has advised that, regrettably and in error as a result of using a previous piece of evidence as a precedent, she included reference to having prepared her evidence in accordance with the Code of Conduct for expert witnesses. Ms Robson intends to address this when she attends the hearing by asking that the Panel delete the relevant paragraph (paragraph 4) from her evidence.
- 9 Ms Robson's advice that she considers her evidence to be non-expert evidence is consistent with her communications to Council (see copy emails attached). On 27 February 2017, Ms Robson emailed the Council regarding the length time CNI IHL required to be heard. Ms Robson received an automatic reply from the Council (subject line: *Proposed Plan Change 10 - Hearing Schedule*) advising that the deadline for lodging expert evidence had passed. Ms Robson immediately queried why she had received the automatic reply when "CNI do not have expert evidence". The Council subsequently confirmed (in an email to Ms Robson later on 27 February 2017) that the Council's automatic reply regarding expert evidence did not apply to her.
- 10 It is also relevant in support of Ms Robson's intention to appear as a non expert that she did not seek to participate in expert conferencing when this was initially proposed by the Panel.

### **Filing**

- 11 The Panel's Memorandum 1 states that 'other evidence', which is all other evidence not being expert evidence, needed to be filed with the Committee Advisor on 6 March 2017 (Direction 18). Ms Robson's evidence was lodged on 6 March 2017. Therefore her evidence was not filed late.

## **Prejudice**

- 12 The issues discussed by Ms Robson in her evidence appear to be at large in the plan change. If that it not the case, any disadvantage or prejudice to other parties can be overcome in the usual way, that is, by allowing those parties to file written rebuttal or supplementary evidence either at the end of the hearing schedule (ie 2 weeks after the evidence was filed) or before the hearing is formally closed if longer than 2 weeks is required.
- 13 As noted by counsel for the Regional Council (at paragraph 12 of her memorandum dated 7 March 2017), ultimately, it is for the Panel to decide what weight it chooses to give Ms Robson's evidence. Ms Robson's evidence sets out CNI IHL's position on the plan change together with commentary to support that position. While Ms Robson is not appearing as an expert she does have expert qualifications in planning and as such it is considered that appropriate weight should therefore be given to her evidence.
- 14 Ms Robson's evidence is that CNI IHL has been disadvantaged in the process of the Council's development of Plan Change 10. Generally any deficiencies in such processes can be overcome by a robust hearing of the evidence on those matters. The prospect of CNI IHL being further disadvantaged by the exclusion of its evidence raises natural justice issues.

**DATED** this 15<sup>th</sup> day of March 2017



---

M A Thomas

Counsel for CNI Iwi Holdings Limited

**Attachment – Email Exchange Between Bridget Robson and Bay of Plenty Regional Council – 27 February 2017**

## Monique Thomas

---

**From:** Rebecca Burton <Rebecca.Burton@boprc.govt.nz>  
**Sent:** Monday, 27 February 2017 4:43 p.m.  
**To:** Bridget Robson; rules; Sue Simpson  
**Cc:** Alamoti Te Pou  
**Subject:** RE: Automatic reply: Proposed Plan Change 10 - Hearing Schedule

Hi Bridget

Yes You have read the email correctly, and based on your assessment you have accurately determined that the email does not apply to you. This was directed to those experts who have not submitted their evidence on time was in place until Friday last week in case we received evidence after the cut of timeframe. It has not yet been removed and will be done so shortly. This is due to a number of submitters not following directions provided in Memos released by the Independent Hearing Panel.

This does not mean your email, which you accurately refer to being about another matter, will not be read or considered. The hearing schedule is released 10 days prior to any hearing, this being in line with our internal hearing processes and the RMA.

You will receive an email later today with advising where to find the time and date you will be appearing.

Sincerely

**Rebecca Burton** | Senior Planner (Water Policy) | Bay of Plenty Regional Council | Rotorua, New Zealand | Ph: 0800 884 881 x7589 | Web: [www.boprc.govt.nz](http://www.boprc.govt.nz)  
*Please consider the environment before printing this email*

---

**From:** Bridget Robson [<mailto:bridget@eland.co.nz>]  
**Sent:** Monday, 27 February 2017 3:53 p.m.  
**To:** rules; Rebecca Burton; Sue Simpson  
**Cc:** Alamoti Te Pou  
**Subject:** RE: Automatic reply: Proposed Plan Change 10 - Hearing Schedule

?? I'm not sure what this auto email is about.

CNI do not have expert evidence. My understanding is that the deadline for written evidence is 6 March.

My question as a reply to the rules@ email was on time allowed for hearing and subject-matter bracketing. Neither of which CNI are happy about.

Regards

**Bridget Robson**

**eLand**

Ph +64 27 224 1574  
+64 7 307 0977

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify us immediately and then delete the email.

**From:** rules [mailto:rules@boprc.govt.nz]  
**Sent:** Monday, 27 February 2017 3:49 p.m.  
**To:** Bridget Robson <bridget@eland.co.nz>  
**Subject:** Automatic reply: Proposed Plan Change 10 - Hearing Schedule

Kia ora,

Thank you for your email attaching expert evidence in relation to Lake Rotorua Nutrient Management – Proposed Plan Change 10.

As outlined in Memo 4, the deadline for receipt of this evidence was 5.00pm on Wednesday 22 February 2017. The decision as to whether or not late expert evidence is accepted will be made by the Hearing Panel.

We will be in touch with you shortly to let you know if they have agreed to accept your evidence.

Regards,

**Sue Simpson** | Planning Coordinator | Bay of Plenty Regional Council | Tauranga, New Zealand | Ph: 0800 884 881  
Ext. 8318 | Web: [www.boprc.govt.nz](http://www.boprc.govt.nz)

*Please consider the environment before printing this email*

---

Disclaimer: This message and accompanying data may contain information that is confidential or subject to legal privilege. If you are not the intended recipient you are notified that any use, dissemination, distribution or copying of this message or data is prohibited. If you received this email in error, please notify us immediately and erase all copies of the message and attachments. We apologise for the inconvenience. Thank you.

---



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)

---

Disclaimer: This message and accompanying data may contain information that is confidential or subject to legal privilege. If you are not the intended recipient you are notified that any use, dissemination, distribution or copying of this message or data is prohibited. If you received this email in error, please notify us immediately and erase all copies of the message and attachments. We apologise for the inconvenience. Thank you.

---