

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 Water and Land Plan

AND

IN THE MATTER OF

Directions regarding evidence and hearing
procedure

**MEMORANDUM TO THE CHAIR OF THE HEARING PANEL BY COUNSEL FOR THE
BAY OF PLENTY REGIONAL COUNCIL
DATED 10 March 2017
CONCERNING MEMORANDUM 7 & 8 OF THE HEARING COMMISSIONERS AND
EXPERT EVIDENCE RECEIVED FROM SUBMITTERS**

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MAY IT PLEASE THE HEARING COMMISSIONERS

Introduction

1. We refer to Memoranda No. 7 and 8 of the Hearing Commissioners dated 9 March 2017, and 10 March 2017 respectively. The Council is directed to file a memorandum 'listing the expert witness whose evidence they object to, because of late filing'; and 'to identify the party for whom that witness lodged their evidence' ([2] 10 March 2017).
2. In relation to the evidence received 6 March 2017, the Regional Council objects to the following expert evidence called on behalf of the following submitters:
 - (a) The evidence of Christine Bridget Robson on behalf of CNI Iwi Holdings Limited: see paragraphs 1-5 as to expert qualifications, role, scope of evidence and summary, expert witness statement.
 - (b) The evidence of Richard Allen on behalf of Fonterra NZ (and Dairy NZ?): Mr Allen says at 2.6: he is 'not offering evidence as an expert, although I do have considerable practical experience in the use of the OVERSEER model...' and then provides technical evidence on the OVERSEER model and the use of reference files. (I note this evidence is relied upon by LRPPC on the same basis as the technical expert evidence submitted by Dairy NZ: see [28] for example, despite it being filed concurrently on 6 March 2017).
 - (c) The evidence of Justine Young on behalf of Dairy NZ and Fonterra: see qualification as an expert at paragraph 1.2 and 1.3. While Ms Young states she is providing evidence as "a Dairy NZ employee" at paragraph 1.6 the material is discussed and presented as "evidence" throughout (see paragraphs 1.6 and 411), not as a submission by a representative/advocate.
 - (d) The evidence of Colin Maunder on behalf of Timberlands Ltd. See paragraphs 1-5 as to expert qualifications, role, scope of evidence and summary, expert witness statement. This evidence, in my submission, also exceeds the scope of the original submission and if allowed, an additional direction is sought limiting any evidence admitted to that pertaining to the submission filed by Timberlands Ltd. That submission is attached at Appendix A of this Memorandum.
 - (e) The evidence of Elizabeth McGruddy on behalf of Federated Farmers of NZ: this document is 1008 pages long. See section 1.1 as to expert qualifications

and experience. Ms McGruddy states at paragraph 1.2: "I am speaking as a Federated Farmers in support of the Federated Farmers submission" (*sic*). While not 'independent' evidence, this is clearly evidence that should have been properly put to the Council witnesses in the interests of a fair hearing. This voluminous evidence relates to policy analysis/planning/science. The appendices include various scientific papers (including by Dr Rutherford), minutes from Council meetings, statements around evidence filed by Council witnesses or analysis re same.

- (f) The evidence of Kevin Wood, Environmental Manager, on behalf of Balance Agri-Nutrients Ltd: See paragraph 1.1 as to expert qualifications; 1.3 as to expert status re OVERSEER; 2.1 as to scope; 3.3 "I am not a technical expert".
- 3. Lake Rotorua Primary Producers Collective (LRPPC): This submission material provides detailed responses relying upon both the evidence of Dairy NZ and that of Richard Allen on behalf of Fonterra. Although the LRPPC are not providing 'expert' evidence, rather that of an informed industry group; an opportunity to respond is sought if the evidence of Mr Allen is allowed. An opportunity to rebut the assertions made as to the evidence of Professor Hamilton is also sought, as this material should be put to him and an opportunity to respond given.
- 4. The evidence of Lachlan MacKenzie is also challenged. Whilst it is on his own behalf, it appears to go further than the directions for evidence contemplated. Given numerous assertions/evidence are provided that is new and that directly addresses Council evidence, Council seeks an opportunity to rebut this material if it is allowed in.
- 5. It appears that not all of the evidence that was received on the 6 March 2016 may have been provided directly to me/circulated at the time of finalising this Memorandum. (This is because filing with the Committee Advisor is not the same as service upon Counsel.) It may be that there are other briefs of evidence that come within the general penumbra of the objections made above that I have not reviewed. To this extent it may be necessary to add further witnesses to this list.
- 6. Counsel apologies in advance, but seeks that leave be reserved to address such further matters if it considered that this is necessary in order to ensure and fair and efficient hearing.

10 March 2017



S E Wooler

Counsel for the Regional Council

APPENDIX "A": Submission 3: Kaingaroa Timberlands Partnership