

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications by Rotorua Lakes Council for resource consents associated with the upgrade of the Rotorua Wastewater Treatment Plant

BETWEEN **ROTORUA DISTRICT COUNCIL**

Applicant

AND **ROTORUA DISTRICT COUNCIL**

Consent Authority

AND **BAY OF PLENTY REGIONAL COUNCIL**

Consent Authority

**JOINT MEMORANDUM OF COUNSEL ON THE
DIRECT REFERRAL OF APPLICATIONS
FOR THE UPGRADE OF THE
ROTORUA WASTEWATER TREATMENT PLANT
Date 22 May 2020**

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MAY IT PLEASE THE COURT

1. For the purposes of discussion with the Court and all parties following the close of the section 274 period, counsel for the Applicant and Consent Authorities submit to the Court a preliminary timetable for the hearing of the resource consent applications for the proposed upgrade of the Rotorua Wastewater Treatment Plant (the **Applications**). A copy of the preliminary timetable is set out in **Attachment A**.
2. The preliminary timetable contains procedural options which could be implemented to the exclusion of one or more other options, or all the procedural options could be implemented; for this reason Counsel believe all parties should have the opportunity to contribute to the discussion on procedural options before the individual components and the order of those components are set by the Court in the final timetable.
3. The following paragraphs explain some of the procedural options which are not common components of an Environment Court timetable.

Co-mediation

4. In light of the nature of the key matters of concern raised by submitters, a mediation process convened and facilitated by two co-mediators is one option which could promote a process and dialogue incorporating traditional methods of Māori dispute resolution.
5. For example, one co-mediator could hold expertise in Tikanga Māori and be fluent in Te Reo Māori. Expertise in freshwater quality or wastewater engineering could be contributed by a second co-mediator.

6. Recognising the iwi and hapu affiliations of a large number of submitters, the appointment of nominated kaumatua and kuia advisors may be helpful to assist the co-mediators to select venues, define processes and confirm protocol which uphold the mana and comply with the tikanga of participating iwi and hapu.

Judicial conference

7. A judicial conference conducted by an Environment Court Judge and Commissioner(s) along similar lines to a judicial settlement conference, could assist parties to more clearly define the scope of their issues for hearing which could, in turn, promote more focussed evidence and legal submissions. Exploration and development of further mitigation options or alternative ways to implement components of the Applicant's proposal could also occur with the guidance of the Judge and Commissioner(s).

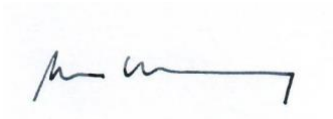
Hearing

8. The nature of the 65 submissions in opposition, being largely focussed on adverse effects on cultural values, indicates the potential for the hearing of the Applications to benefit from the contribution of a Māori Land Court Judge, holding the necessary knowledge of tikanga Māori and expertise in Māori dispute resolution processes.
9. Counsel simply raise this as a preliminary procedural option at this time. It is respectfully submitted that progress should first be made to implement the timetable set by the Court in order to allow issues requiring hearing time to clearly emerge before further consideration of this option takes place.

DATED 22 May 2020



Counsel for Rotorua Lakes Council (Applicant)



Lachlan Muldowney

Counsel for Rotorua Lakes Council (Consent Authority)



Mary Hill

Counsel for Bay of Plenty Regional Council (Consent Authority)

ATTACHMENT A

1. The following preliminary timetable is submitted for the consideration of the Court, the Consent Authorities and those Parties who join the proceedings under section 274 of the Act:

- (a) Any persons wishing to be heard by the Court are to give notice under section 274 of the Act to the Court, the Consent Authorities and the Applicant by **(15 June 2020 or such later date as directed by the Court)**.

(The suggested date of 15 June 2020 is 15 working days, excluding Queen's Birthday, from the lodgement of the Applicant's Notice of Motion.)

- (b) A case management conference be set down on the first available date **after (15 June 2020 or such later date as directed by the Court)**.

It is respectfully submitted that the objectives of the case management conference may include:

- (i) Finalise a timetable to prepare matters for hearing;
 - (ii) Refine the scope of issues to be addressed in evidence and subsequently heard by the Court;
 - (iii) Direct expert witnesses to participate in expert witness conferencing;
 - (iv) Direct parties to participate in mediation to explore areas of agreement and / or clarify or narrow issues to be heard by the Court;

- (v) Direct parties to participate in co-mediation to explore areas of agreement and / or to clarify or narrow issues to be heard by the Court;
- (vi) Direct parties to attend a judicial conference to explore areas of agreement and / or to clarify or narrow issues to be heard by the Court; and / or
- (vii) Such further or other objectives as the Court considers appropriate.

Subject to the outcome of any case management conference, the following timetable steps may follow:

- (c) Expert witness conferencing.
- (d) Mediation and / or co-mediation and / or a judicial conference, be set down for five days in Rotorua.
- (e) Agreed statement of issues.
- (f) Evidence in Chief of the Applicant to be served on the parties and filed with the Court by **(to be advised)**.
- (g) Evidence in Chief of s274 Parties to be served on the Applicant and Consent Authorities and filed with the Court by **(15 working days after the Applicant's Evidence in Chief)**.
- (h) Evidence in Chief of the Consent Authorities to be served on the Applicant and s274 Parties and filed with the Court by **(15 working days after s274 Parties' Evidence in Chief)**.
- (i) Common bundle of documents to be filed with the Court by **(5 working days after the Consent Authorities' Evidence in Chief)**.

- (j) Rebuttal Evidence of any Party to be served on all other Parties and filed with the Court by **(15 working days after the Consent Authorities' Evidence in Chief)**.
- (k) The Consent Authorities are to provide to the Court four copies of all evidence, filed, paginated, tabulated and indexed, along with four copies of all exhibits similarly presented by **(5 working days after Rebuttal Evidence)**.
- (l) A hearing to be held in Rotorua at the Court's earliest convenience after the completion of the above timetable directions.