

**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 under Clause 8B of Schedule 1 to the Resource Management Act 1991.

**Date:** 9 March 2017

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**MEMORANDUM NO 7 – RESPONSE TO COUNCIL’S MEMORANDUM ADDRESSING THE LATE FILING OF EXPERT EVIDENCE BY SUBMITTERS**

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- [1] In memorandum 1 we directed in Paragraph 16 that expert evidence (evidence-in-chief) was to be filed by 22 February 2017, with rebuttal evidence by the Council to be filed by 6 March 2017.
- [2] In memorandum 4 we directed in Paragraph 14 that any party calling an expert witness was to advise the name of any such witness and their area of expertise to the Committee Advisor on Wednesday 8 February 2017.
- [3] In memorandum 1 a schedule of time limits provided directive for submitters to provide “evidence-in-chief” by 22 February (in accordance with Paragraph 16). Copies of evidence, representation or other material to heard at the hearing was to be filed by 6 March 2017. Clearly the latter refers to evidence in support of a submission and not expert “evidence-in-chief”.
- [4] A number of witnesses filed their expert “evidence-in-chief” in accordance with the timetable. Unfortunately, a number of submitters have filed expert “evidence-in-chief” on 6 March which is contrary to the timetable.
- [5] The timetable was set in an endeavor to ensure an efficient and fair hearing. It is clear logic that expert “evidence-in-chief” would need to be filed before the Council’s rebuttal evidence was due on 6 March. Otherwise, it does not give the Council the opportunity of adequately rebutting it.
- [6] Council has filed a memorandum dated 7 March 2017 objecting to the admissibility of the expert evidence filed late.
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[7] The filing of expert evidence at such a late stage creates a significant disruption to the hearing process as there is only four working days between the filing of that evidence, and the commencement of the hearing.

[8] We are not allowing the admissibility of that evidence without an **Application for Leave**. Such an application would need to set out the reasons why the evidence was filed late and whether any party would not be prejudiced by it.

[9] There is insufficient time between now and the time of the hearing for such an application to be lodged, replied to and heard. Accordingly, we will consider the application for the late filing of any expert evidence at the time of the presentation of that evidence to avoid unnecessary delay in the commencement of the hearing. Accordingly, the council need not address the expert evidence filed late unless it is admitted. In the event that it is admitted a new timetable would be put in place to address it.

Retired Judge RG Whiting

**Chairman**

**For and on behalf of the Hearing Commissioners**

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