

BEFORE INDEPENDENT HEARING COMMISSIONERS

AT HAMILTON

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the hearing of submissions on Proposed Plan
Change 1 to the Waikato Regional Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF FONTERRA CO-
OPERATIVE GROUP LTD SEEKING LEAVE TO FILE EVIDENCE**

17 JULY 2019

RICHMOND
CHAMBERS

Counsel Instructed
B J Matheson
Richmond Chambers
PO Box 1008
Shortland Street
Auckland 1140

MAY IT PLEASE THE COMMISSIONERS

1. INTRODUCTION

- 1.1 A core element of PC 1 is Table 3.1.1-1, and of particular importance to the current hearings is the identification of those attributes that should be included within that table. Some parties had suggested quite significant changes to that table, and there was a direction made on 13 March 2019 that expert conferencing be undertaken to provide an opportunity for the 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.
- 1.2 On 17 June 2019, the Panel received the outcome of that conferencing process, which was a joint witness statement, that, together with all the attachments, came to in excess of 200 pages (**JWS**).
- 1.3 In terms of the parties' ability to comment on the contents of that JWS, the Panel made various directions. However, on 25 June 2019, the Panel made the following direction by way of clarification (emphasis added):
- The Panel wishes to clarify that it does not wish to receive any further expert 'technical' evidence. However, it accepts that expert planning evidence may need to be updated in relation to the implications of the JWS and suggested changes to Table 3.11.1 for the objective, policy and rule framework.
- Given the date of this Minute, the Panel requests that any evidence be provided by the 5 July 2019 with the evidence-in-chief for the Block 3 hearing. **However, if this is not possible, the Panel extends the time for lodging the evidence in relation to the JWS and suggested changes to Table 3.11.1 until no later than 12 July 2019.** Any rebuttal evidence must be lodged by 19 July 2019.
- 1.4 Fonterra has participated extensively in the PC 1 hearings, however it has chosen not to call directly any water quality evidence (relying instead on the water quality expertise of other parties).
- 1.5 On 5 July 2019, Fonterra filed its evidence for the Block 3 hearings. Subsequent to doing so, and upon reviewing planning evidence by other parties addressing in particular the JWS and after reviewing the very lengthy JWS, Fonterra's advisers considered it prudent to file a short

statement of planning evidence to provide an appropriate foundation for legal submissions to be presented at the Block 3 hearings.

- 1.6 A short statement of evidence was prepared under urgency, and was filed on Tuesday afternoon, 16 July 2019. Pursuant to the Panel's directions, this evidence should have been filed on Friday, 12 July 2019. Accordingly, leave is sought to file that evidence 1.5 working days late.
- 1.7 In my respectful submission, leave is appropriate for the following reasons:
 - (a) There is no material prejudice to any party, as the period for rebuttal evidence to be filed does not close until 19 July 2019 and the evidence filed in respect of the JWS is very short (only 4 pages of evidence). Accordingly, to the extent any party wishes to respond to that evidence by 19 July 2019, that will be easy for them to do.
 - (b) While the scope of matters lawfully able to be included within Table 3.1.1-1 at this stage in the process is primarily a legal question, in answering that question there will inevitably need to be an analysis of how the changes proposed to Table 3.1.1-1 fit within (or may be said to fall outside of) the broader planning framework of PC 1. Accordingly, planning evidence on this aspect will be of assistance to the Panel.
- 1.8 This memorandum is filed on behalf of Fonterra's manufacturing interests.

B J Matheson
Counsel for Fonterra Co-operative Group Ltd