

## Memorandum

**Date** 29 June 2017  
**To** PC 52 Hearing Panel  
**From** Warwick Goldsmith  
**Subject** Response to Second Minute and Directions

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1. This Memorandum responds to the Second Minute and Directions from the Panel dated 28 June 2017.
2. Counsel respectfully requests that the scheduled hearing dates of 11/12 July be reinstated, for the reasons and on the basis set out in this Memorandum.
3. Throughout the PC 52 process the Requester has been working closely with Council representatives, and has been consulting with submitters, to address a range of issues raised during the process. As a consequence the Requester had formed a reasonably clear anticipation of the extent of issues likely to be raised in the s.42A Report. Therefore, when considering the acceptability of the proposed hearing date, certain assumptions were made about the extent and nature of evidence likely to be needed to be presented at the hearing. It appears that at least some of those assumptions were incorrect. Counsel accepts responsibility for that, and apologises to the Panel.
4. The Second Minute records, in paragraph 11, that it is the Requester's choice as to which witnesses the Requester decides should present evidence. Having considered the Second Minute, and with a desire to retain the scheduled hearing date, the Requester elects to call evidence from four witnesses as follows:
  - a. If the hearing date is reinstated then the hearing will be scheduled to commence at 10 a.m. on 16 July.
  - b. It is anticipated that legal submissions will take perhaps 30 minutes.
  - c. Mr Espie will travel from the Catlins that morning to arrive at the hearing venue between 10-10:30 a.m.
  - d. Mr Munro will fly down from Auckland on the early plane and should arrive at the hearing venue between 10-10:30 a.m.

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- e. Mr Colegrave will be in Sydney. He will make arrangements to be available to answer questions by telephone at an agreed time, which Counsel suggests (subject to any contrary Direction from the Panel) could be 11:00 a.m. (which is 8:00 a.m. Sydney time).
  - f. Jeff Brown will attend the hearing to present his evidence.
- 5. As far as Mr Munro and Mr Colegrave are concerned, they will adopt their respective reports which were prepared and formed part of the Request as their evidence, and will be available to answer questions in relation to that evidence.
- 6. In respect of the other potential witnesses listed in paragraph 4 of the Second Minute:
  - a. The Requester will rely on the information presented as part of the Request, subject to the recommendations of the s.42A Report;
  - b. The Requester will adopt the s.42A Report in its entirety as evidence for the Requester, including all recommendations.
- 7. Counsel acknowledges that allowing Mr Colegrave to give evidence by telephone is a matter for the discretion of the Panel. Counsel submits that the following factors are relevant to the exercise of that discretion:
  - a. It is only one witness;
  - b. It is not unusual for Council Hearing Panels to adopt this procedure when the unavailability of a witness would otherwise delay a hearing;
  - c. As there are no submissions seeking cancellation of PC52, and as none of the submissions lodged have raised issues that are in any way relevant to or informed by Mr Colegrave's report, it is very unlikely that there will be any evidence lodged by submitters on 3 July which challenges any aspect of Mr Colegrave's report;
  - d. Assuming c above is correct, Mr Colegrave's evidence will be uncontested. Questions from the Panel are likely to be in the nature of clarification or testing of Mr Colegrave's evidence and conclusions;
  - e. Such questions should be able to be dealt with reasonably easily by telephone;
  - f. Under all the applicable circumstances, it is reasonable for the Requester to seek this concession from the Panel in order to avoid hearing delay.

8. Counsel submits that:

- a. It is in the general interest of all parties, including the Council, that RMA processes are streamlined, that technology is used to achieve that, and that costs and delays are minimised to those necessary for the process;
  - b. It is unlikely that the process outlined above will not deliver to the Panel all of the information the Panel will reasonably need to make a recommendation to the Council in respect of PC52;
  - c. In the event that there are any outstanding issues, or there is any information missing at the conclusion of the hearing, that can be dealt with by way of adjournment to enable additional information to be supplied to the Panel or for the hearing to be reconvened if considered necessary or otherwise as determined by the Panel. That is not unusual.
9. As any evidence from submitters is not due to be lodged until 3 July, it is not yet known whether any submitters intend to appear at the hearing. However if there are any such submitters, they will presumably have made arrangements to be able to attend the hearing on the scheduled hearing date. Reinstatement of the hearing date would therefore avoid the possibility of other parties being adversely affected by cancellation and rescheduling of the hearing date.



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