

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Board of Inquiry appointed under s 149J of the Resource Management Act 1991 to consider the application for resource consents by Watercare Services Ltd to increase abstraction of water from the Waikato River.

**MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL AND WAIPA
DISTRICT COUNCIL**

Dated: 25 August 2021

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MAY IT PLEASE THE BOARD:

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) and Waipa District Council (**WDC**).
2. It responds to the joint memorandum filed by Te Whakakitenga o Waikato Incorporated (**Waikato-Tainui**) and the Waikato River Authority (**WRA**) dated 24 August 2021, and the subsequent request from the Board that parties that have a view on the memorandum communicate this promptly.

BACKGROUND

3. On 24 August 2021, the Board confirmed that as a result of the current COVID-19 alert levels, the first week of the two-week hearing scheduled to commence on 31 August 2021, would be conducted via video conference, and likely the second week also (subject to alert level changes).
4. Subsequently, Waikato-Tainui and the WRA filed a joint memorandum opposing the proposal to conduct the hearing by video conference, requesting that the hearing be deferred for the reasons set out in paragraph 4 (a)-(h).

POSITION OF HCC AND WDC

Prejudice to Waikato-Tainui and the WRA

5. HCC and WDC are supportive of a procedural outcome which ensures that all participants in the Board of Inquiry process are properly heard, and are not prejudiced as a consequence of the current COVID-19 Level 4 lockdown.
6. Waikato-Tainui and the WRA have both indicated that the application is of

significant importance to them and that the evidence and submissions traverse significant cultural and Treaty settlement matters. They claim that they will suffer prejudice if the hearing is conducted by way of video conference. Those parties assert that the prejudice arises in respect of their pre-hearing preparation, their participation in the conduct of the Watercare Services Limited (**Watercare**) case, and in the presentation of their own submissions.

7. In respect of the prejudice to the presentation of the Waikato-Tainui and the WRA submissions, HCC and WDC recognise the cultural importance of ensuring those presentations are conducted as those parties wish, and in accordance with tikanga Māori. If that requires that their presentations be in person, then HCC and WDC support that procedural outcome.

Presentation of HCC and WDC submission

8. While both HCC and WDC would prefer to present their submissions in person, they are willing to present by way of video conference. They are also willing to participate in all other aspects of the hearing, including cross-examination, by way of video conferencing.

A spilt-hearing part-video conference/part-in person

9. Counsel apprehends that Watercare may wish to proceed with its case via video conferencing commencing 31 August, and then adjourn for other parties to present in person.
10. HCC and WDC are open to that outcome, but question the overall efficacy of that approach. While Watercare will be concerned to get the hearing started, in reality the critical date is the day the hearing closes. A start on 31 August, adjourned to allow parties to present in person, does not speed the process in any material way.

11. While it will allow the Board to get underway and begin to deal with the evidence and the issues, it may make for a stop/start hybrid hearing that may not serve the interests of justice in the long run, particularly if adjourned part-heard for a significant period of time. HCC and WDC will accept the Board's overall evaluation of these competing interests.

Ongoing temporary assignment of water from HCC to Watercare

12. For completeness, and so the Board is fully informed on issues concerning the immediate availability of water, it is noted that the current assignment arrangement between HCC and Watercare, whereby HCC temporarily assigns to Watercare 25,000 cubic metres of water per day during the summer period, has recently been renewed by the parties. Accordingly, Watercare will continue to be able to take this additional water during the summer period from 1 October 2021 to 30 April 2022.

Dated 25 August 2021



L F Muldowney/S K Thomas
Counsel for Hamilton City Council and Waipa District Council