

**BOARD OF INQUIRY  
Watercare Waikato River Water Take Proposal**

**IN THE MATTER OF**            the Resource Management Act 1991

**AND**

**IN THE MATTER OF**            a Board of Inquiry appointed under s149J 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

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**JOINT MEMORANDUM OF COUNSEL SEEKING DEFERRAL OF HEARING**

Dated: 24 August 2021

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**WELLINGTON**

## MAY IT PLEASE THE BOARD

1. This joint memorandum of counsel is filed on behalf of the following submitters:
  - (a) Te Whakakitenga o Waikato Incorporated (**Waikato-Tainui**); and
  - (b) the Waikato River Authority (**WRA**).
2. This joint memorandum of counsel responds to the Board's Memorandum No 10 dated 22 August 2021 advising, among other things, that:
  - (a) following the changes to the COVID-19 Alert Levels, the first week of the Watercare Waikato River water take hearing will now be conducted via a video conference; and
  - (b) it is likely that the second week will also need to be held by video conference, although this will be subject to alert level changes.
3. Having carefully considered this proposal, Waikato-Tainui and the WRA are both opposed to the conduct of the hearing by video conference and respectfully seek the deferral of the hearing scheduled to commence on 31 August 2021.
4. In this regard, Waikato-Tainui and the WRA respectfully consider that:
  - (a) due to the very short notice of the current lockdown, both the parties (and, in particular, Waikato-Tainui and the other submitters affiliated with Waikato-Tainui) and their counsel have been compromised in their ability to prepare for the hearing, including but not limited to:
    - (i) the access of the parties, their witnesses and counsel to relevant documents; and
    - (ii) the co-ordination of witnesses and submitters;
  - (b) Waikato-Tainui and, in particular, its witnesses are facing significant challenges and increased commitments directly related to the current COVID-19 pandemic lockdown and related response initiatives which further compromises their ability to prepare for and fully participate in the intended hearing;
  - (c) given the nature of the hearing (which includes multiple parties, witnesses and submitters and likely significant questioning and/or

- cross-examination of several witnesses), a virtual hearing would make it very difficult to participate effectively (including due to the issues experienced in previous virtual hearings);
- (d) as was indicated at the last conference with the Board, several submitters are intending to involve kaumatua and kuia within their presentations and would be significantly compromised in their ability to do so by video conference (if it is possible at all);
  - (e) this application is of significant importance for Waikato-Tainui and the WRA and the evidence and submissions traverse significant cultural and Treaty settlement matters;
  - (f) in this context:
    - (i) it is important that all such witnesses and submitters are able to fully and fairly prepare for, and present, their evidence and submissions, supported by members of their respective groups;
    - (ii) there are concerns regarding the ability to hold and discharge the appropriate tikanga in relation to the presentation of evidence and submissions and, more generally, the conduct of the hearing;
    - (iii) such evidence and submissions should, if at all possible, be presented to and heard by the Board in person; and
    - (iv) an in-person hearing would be more culturally appropriate and in accordance with tikanga;
  - (g) a hearing by video conference would preclude the Board from undertaking the intended site visit immediately prior to the commencement of the hearing which was of significance to a number of submitters associated with Waikato-Tainui and would have provided important context to the later submissions by those groups; and
  - (h) there is no particular urgency that requires the hearing to proceed at a time of so much uncertainty due to the current COVID-19 pandemic and response.

5. In these circumstances, Waikato-Tainui and the WRA consider that it is reasonable and appropriate, and in the interests of justice, for the hearing to be deferred.
6. Waikato-Tainui and the WRA acknowledge the potential issue raised by any deferral of the hearing in terms of the statutory timeframes for the Board's decision under section 149R of the Resource Management Act 1991. However:
  - (a) section 149S of the Act enables the Minister to grant an extension to the time in which a board of inquiry must produce its final report if the Minister considers that special circumstances apply;
  - (b) Waikato-Tainui and the WRA consider that the present circumstances of the COVID-19 pandemic and response would reasonably constitute such special circumstances; and
  - (c) Waikato-Tainui and the WRA would support an application for such an extension of time.
7. Counsel for Waikato-Tainui and the WRA would be pleased to further address the issues raised in this memorandum by video or telephone conference with the Board and other parties.

**Dated:** 24 August 2021



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**J P Ferguson**  
**Counsel for Waikato-Tainui**



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**P Beverley / C Bulow**  
**Counsel for the WRA**