

Before the Hearings Panels

Under the Resource Management Act 1991 (RMA)

In the matter Proposed Plan Change 1 (PC1) to the Natural Resources Plan for the Wellington Region

And

In the matter Hearing Stream 2 (Objectives and Ecosystem Health and Water Quality Policies)

Memorandum of counsel on behalf of Greater Wellington Regional Council regarding caucusing proposed in Minute 7

Date: 14 May 2025



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MAY IT PLEASE THE PANELS

Introduction

1 This memorandum of counsel is filed on behalf of Wellington Regional Council (**GWRC**) in response to Minute 7 from the Panels (**Minute**), which stated:

38. Having heard mana whenua, community groups and other submitters, we remain concerned about the relaxation of *E.coli* TAS targets and timeframes in the rivers of the two whaitua. Once the information we have requested from Council in paragraphs 19 and 31 is provided, we intend to direct caucusing with Wellington Water Limited, the four affected Territorial Authorities, Mr Walker, Dr Greer and the Officer. The purpose of the caucusing is to see if agreement can be reached on improved TAS states and timeframes for *E.coli* in the rivers of the two whaitua, particularly given the information in the submissions and hearing presentations of Ngāti Toa Rangatira and Taranaki Whānui. The information provided by those and other submitters will inform the caucusing.

39. Specific directions for caucusing will be provided in a subsequent Minute after the information requested in paragraphs 19 and 31 is received. However, at this stage, we anticipate our questions will address the following matters :

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2 The Panels then invited mana whenua, Wellington Water Limited (**WWL**), the territorial authorities and GWRC to suggest issues / matters for their consideration for inclusion on the caucusing agenda. Comments were sought by 4pm on Tuesday 13 May 2025.

GWRC comments

3 It is submitted the purpose of the suggested caucusing session/s and what exactly is proposed would benefit from some further direction. Based on the questions posed/matters set out in paragraph 39 of the Minute, it appears the Panels are seeking the provision of further information from WWL and the territorial

authorities. It is submitted that a specific framework for caucusing should also be set out.

4 GWRC's comments are that:

4.1 Caucusing is an evidential process and usually occurs between expert witnesses of the same discipline to confer on issues within their expertise. Its purpose is usually to aid the decision makers in making a decision on the issues before them, usually through a narrowing of issues and setting out areas of agreement and/or areas of disagreement. Parties and lay witnesses do not usually attend such sessions (as they are about expert engagement).

4.2 The parties the Minute has listed for inclusion in the caucusing are WWL, the four affected territorial authorities, Mr Walker, Dr Greer and GWRC's section 42A Reporting Officer. The expertise is quite different across the witnesses for those parties and does not align on a 'like for like' basis. While there are a number of planning witnesses who would be able to caucus, there is no equivalent witness to Mr Walker or Dr Greer for those experts to caucus with. There is also one witness for Porirua City Council, Mr Mendonça, that is providing evidence as a representative of that Council, rather than an expert witness. This raises process issues, if a caucusing session is proposed between the listed parties.

4.3 A number of the questions listed in paragraph 39 of the Minute are, respectfully, not matters for caucusing, they are matters that WWL or the territorial authorities need to provide information in relation to. For example, items (i) and (j) are specifically referred to as questions for the territorial authorities and in terms of (a), (b), (c), (e), (f) and (h), these are really information requests for WWL

or the territorial authorities to respond to. This leaves (d), which is a question for Dr Greer and (k), which is specifically addressed to GWRC's Reporting Officer.

- 4.4 On the basis of the list of matters that are set out as of interest to the Panels, it is unclear whether the intention is it to fill an information gap in the evidence provided by those parties, or to work towards narrowing the set of issues to be determined by the Panels in making their decision on Plan Change 1, or whether it is to obtain expert evidence of key issues the Panels need to decide on.
- 4.5 It is submitted that it may be more appropriate for the proposed session to be set up as a planning caucusing session of the planners who have already filed evidence, with the parties (ie, WWL, the territorial authorities and GWRC) directed to provide the information requested in paragraph 39 of the Minute before the session (being specific on who is providing which information). This would assist the planners to answer whatever questions the Panels identify for the planners to respond to (which it is submitted should be questions that will aid the Panels in applying the plan change tests to this Plan Change).
- 4.6 It could also be directed that those providing the information requested to the planners are required to be available to clarify the answers to the listed questions at the start of the session, with the session itself being an opportunity to discuss and/or narrow the areas of disagreement and discuss the issues. The intention would be to see if an agreed planning recommendation for appropriate *E.coli* objectives can be reached. It may be that the material provided needs to be provided on a staged basis, with operational information being

provided first, and more technical evidence that relies on that to follow.

4.7 It is also submitted that the mana whenua parties should be included in the parties invited to attend the discussion, to ensure that information on the impact on mana whenua values is available to be taken into account by the planners and that the Panels provide mana whenua with an opportunity to present any further written input on the settings for *E.coli* objectives and impact on mana whenua values they may wish to share in advance of the planning caucusing, as with the other advisers to the planners.

4.8 The ultimate outcome from this session would be a planning joint witness statement, with the Panels providing direction on the issues it would like addressed by the planners to aid them in their decision making. For example:

4.8.1 What are the key planning considerations for informing the most appropriate *E.coli* objectives to achieve the purpose of the RMA?

4.8.2 In considering the above, what is the appropriate balance between affordability and mana whenua expectations/effects?

4.8.3 What are the appropriate timeframes and targets for *E. coli* in light of the plan change tests set out in Appendix A of Hearing Stream 1 legal submissions for GWRC?

4.8.4 Where agreement is reached on appropriate *E.coli* objectives what are they based on?

4.8.5 Where agreement is not reached, what are the remaining matters of contention?

4.8.6 Are there any related matters that would benefit from planning caucusing?

5 Finally, it is noted that some of the issues potentially discussed as part of Hearing Stream 2 and this session may impact on wastewater and stormwater provisions (being addressed in Hearing Stream 4) and may also be relevant in the integration right of reply final hearing. It is submitted that while this does not prevent this caucusing session proceeding, it may be that leave is reserved so that there is an opportunity for the planners to revisit any conclusions based on evidence that becomes available later. If further information or new information comes to light as part of Hearing Stream 4 or the integration right of reply final hearing, this would ensure there is an ability to consider how that impacts any conclusions in a joint witness statement arising from these Hearing Stream 2 issues.

Date: 14 May 2025



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