

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Variation 3 – Taiwawe Catchment Structure Plan, to the Proposed Thames Coromandel District Plan by Hot Water Beach NZ Limited.

### **SIXTH DIRECTION OF THE HEARING COMMISSIONERS**

1. This Sixth Direction is provided to the parties to this matter to keep them informed of proceedings leading to the forthcoming resumed hearing of the Variation under the Resource Management Act 1991 (**RMA**). It includes further direction to the expert witnesses regarding summary statements. It also responds to the Memorandum of 25 August 2021 from Mr Martin Williams, legal counsel for Hot Water Beach (NZ) Limited (**HWBL**), who has requested directions providing for a remote access hearing to be conducted on 9 September 2021, depending on the status of Covid-19 restrictions at that time.
2. In accordance with our Fifth Direction of 5 August 2021 Mr Williams has provided the details required, on the due date of 25 August 2021. The details comprise:
  - (a) Version 13 of the Taiwawe Catchment Structure Plan (**TCSP**);
  - (b) Amended Diagram A and Attachments 1 to 3;
  - (c) Explanatory statement of evidence from Mr Graeme Lawrence (addressing changes made as revealed in Version 13);
  - (d) Māori Values Assessment (**MVA**) as prepared by Ngāti Hei Environ.
3. Mr Williams states, addressing what was earlier directed in the Fifth Direction, that
  - (a) For the avoidance of doubt, HWBL intends to rely on all evidence previously filed (including on 1, 2 and 31 March 2021) for the purpose of the resumed hearing, except to the extent superseded (or amended) through Mr Lawrence's most recent (second supplementary) statement; and
  - (b) HWBL seeks directions to protect the content of the MVA, comprising sensitive information for the purpose of s 42(1) of the RMA, as he explains in his Memorandum.
4. Mr Williams addresses the MVA and the manner it can be addressed. We comment on that matter below.
5. We wish to firstly, advise the parties to Variation 3, to avoid any doubts and in accordance with our discussions with Council, that the resumed hearing will proceed on 9 September 2021 as it has been scheduled. Should the current lockdown restrictions still be in place then, preventing a hearing being conducted in the usual manner, **we will convene the resumed hearing using remote access facilities**, in

accordance with s 39AA of the RMA. In deciding that, we are to consider it appropriate and fair to do so and, to be satisfied that the necessary remote access facilities are available.

6. We have given the matter of the use of remote access facilities careful consideration. We are committed to ensuring that all parties can participate in an effective manner and we will rely on the Council to assist all the parties as may be necessary to do so. The resumed hearing, using an audiovisual link is appropriate, given the current lockdown restrictions and is also fair, on the basis that all parties will be able to participate and hear what others present. We will do our utmost to ensure a fair process is followed.
7. There may be concerns by some persons regarding remote access arrangements for hearings, but this is provided for by the RMA (s 39AA). In accordance with that provision, we are to be conscious of our duty to avoid unreasonable delay (s 21) and to use timely, efficient, and cost-effective processes in carrying out our duties (s 18).
8. We also note that hearings under the RMA can be managed more efficiently when the processes in s 103B of the RMA are followed, as we are bound to do. That section of the RMA provides for pre-circulation of expert evidence meaning it is not required to be read at the hearing and rather, a summary statement is to be presented.
9. The terms of the Fifth Direction now require that:
  - Any submitter or further submitter who intends to call expert evidence at the resumed hearing (generally being evidence given by a professional with specialist qualifications and experience) is to provide that expert evidence to the Council's Hearings Advisor **by or on Wednesday 1 September 2021** for circulation by the Council to the Commissioners, other submitters, other further submitters, the Council's s 42A RMA report author and to Mr Baker.
10. In addition, we now direct that each expert who will be presenting expert evidence at the hearing (for either HWBL or the submitters) shall provide a Summary Statement of their evidence to Council's Hearings Advisor **by or on Monday the 6 September 2021** for circulation to the Commissioners and other parties. Expert evidence given at the hearing is to be limited to the presentation of the Summary Statement which is to address the key issues and be no more than 3 pages. All other pre-circulated expert evidence will have been pre-read by the Commissioners.
11. We point out that Summary Statements are an important procedural requirement to ensure the virtual hearing is conducted efficiently and remains focused on the key issues.
12. The expert evidence is to be sent to the Council's Hearings Advisor, Ms Charmian Nell, by email to [charmian.nell@tcdc.govt.nz](mailto:charmian.nell@tcdc.govt.nz) or other arrangements made with Ms Nell.
13. The expert evidence from HWBL which was earlier directed to be available by 25 August 2021, along with related documents, has been provided by Mr Williams and circulated by the Council in accordance with the Fifth Direction.
14. In relation to the MVA, Mr Williams states, having discussed the matter of the MVA

with Mr Joe Davis for Ngāti Hei, it is HWBL's preference that the MVA not be posted on the Council's website, but instead that hard copies be made available to submitters attending the resumed hearing, on the basis that they would return those copies at the end of the hearing. Mr Williams submits that such arrangements "*strike and appropriate balance between natural justice considerations and the protection of culturally sensitive information in the MVA for the purpose of s 42 of the RMA.*"

15. We consider that we need to hear directly from Ngāti Hei (Mr Davis) in this respect. In the meantime, the MVA has not been posted on the Council's website.
16. We have received the MVA, with the other documents referred to above, and have read it. The arrangement sought is that "*hard copies of that document be made available to submitters attending the resumed hearing, on the basis that they would return those copies at the end of the hearing*". Given the request by HWBL for the resumed hearing using remote access facilities, and our agreement, we enquire of HWBL, who would likely need to confer with Mr Davis, as to how we can make those arrangements regarding the MVA? It is our preference to circulate the MVA to all submitters and to the s 42A RMA report author prior to the hearing unless it contains culturally sensitive information that would warrant the making of a protection order under s 42 RMA. We will however wait to hear from Mr Williams and/or Mr Davis before taking any action in this respect.
17. Any correspondence or similar in relation to this Sixth Direction is to be directed to Ms Nell at the Council.



for the Hearing Commissioners,  
Paul Cooney and Alan Watson

27 August 2021