

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THAMES COROMANDEL DISTRICT COUNCIL**

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

**AND**

**IN THE MATTER** of the hearing of submissions to Variation 3 to the  
Proposed Thames Coromandel District Plan  
(Taiwawe Catchment Structure Plan)

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**MEMORANDUM OF COUNSEL FOR  
HOT WATER BEACH (NZ) LIMITED SEEKING FURTHER DIRECTIONS**

**Dated 9 April 2021**

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## MAY IT PLEASE THE COMMISSIONERS

1. The purpose of this memorandum is to raise a procedural matter regarding the prospect of the Thames Coromandel District Council (as planning authority), commissioning peer review reports in relation to both ecology and hydrology.
2. By way of context and background to this memorandum, the Commissioners are respectfully referred to the **appended** email exchange between counsel and Mr Baker.
3. While not opposed to the prospect of Mr Kessels<sup>1</sup> being commissioned to undertake a site visit, Hot Water Beach (NZ) Limited (**HWBL**) does seek directions from the Commissioners on the broader question of whether expert peer review reports of the nature proposed are able to be received for consideration at the resumed hearing.
4. In the Commissioners' Second Direction (18 March 2021), provision was made for the s 42A report author to provide a short summary statement (five working days prior to the reconvened hearing) setting out whether that author had changed or modified her recommendations, presumably in light of the further expert evidence that would have been received by that point, and the outcomes of the pre-hearing meeting.
5. However, HWBL understood from the Commissioners' Third Direction that, in response to a request from the s 42A report author, there would be no further reporting role of this kind.<sup>2</sup>
6. It is clear from Mr Baker's email of 7 April 2021 appended that the s 42A report author has nevertheless herself specifically requested the proposed peer reviews in relation to ecology and hydrology, with that email stating:

The peer reviews are sought in relation to Council's functions under Schedule 1 of the RMA to assess the variation in order to provide advice *in a hearing report*.  
(Emphasis added)

7. Given no further hearing report is to be received by the Commissioners, as confirmed in the Third Direction, HWBL does not understand why peer review reports would in turn be commissioned to inform such a hearing report.

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<sup>1</sup> Ecologist who produced correspondence appended to the supplementary s 42A report tabled at the hearing on 15 March 2021.

<sup>2</sup> Specifically paragraph 5(g) of the second direction was deleted (along with other subparagraphs of paragraph 5 of that second direction), refer paragraph 5 of the Third Direction.

8. HWBL requests that the Commissioners clarify and confirm their intentions in this regard through further directions, submitting as follows:
- (a) Peer review reports on the topics of hydrology and ecology are neither necessary nor appropriate.
  - (b) The information contained in the supplementary evidence produced by HWBL on these topics comprehensively responds to the issues raised in the supplementary s 42A report tabled at the originally scheduled hearing on 15 March 2021.
  - (c) If any peer reviews of this nature were necessary for the purpose of ensuring an informed decision on the Commissioners' part, that issue should have been raised by the s 42A report author much earlier in the process, rather than now and in response to the further information available as a result of the supplementary evidence filed.
  - (d) The process must at some point come to an end. That is, the proposed peer review reports in question would be a response to HWBL's response to the (already tabled) supplementary s 42A report, itself responding to evidence addressing issues raised in the original s 42A report. The process would become unwieldy if yet a further round of responses were provided for.
  - (e) With respect, the Commissioners have, now with the benefit of the further supplementary evidence (and that to come from submitters), more than sufficient evidence upon which to make a decision regarding the merits or otherwise of Variation 3. The additional costs of the peer review reports would not be warranted, noting the Council's proposal to pass the costs of these reports on to HWBL, as evident in the appended email exchange.
9. On this basis, HWBL directions confirming that as no further s42A report is to be received, the peer review reports in question need not be commissioned, and will themselves not be received at the resumed hearing.



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**Martin Williams**  
Counsel for Hot Water Beach (NZ) Limited

Dated: 9 April 2021