

Minute from the Hearing Panel – regarding:

Miraka Limited's (Miraka) Block 3 evidence from Ms Addenbrooke; and whether parts of it are a Block 2 matter in relation to the concept of Land Use Capability as an allocation framework. The Panel's Determination.

Miraka lodged expert evidence from Ms Addenbrooke (Environmental Management) for the Block 3 hearing, largely focused on Policy 7 (future allocation). While Policy 7 is a Block 3 matter, the Hearing Panel (Panel) considered that paragraphs 4.16 to 4.21 of Ms Addenbrooke's evidence addressed an allocation regime proposed by some submitters as part of the rule framework, and therefore part of Block 2.

The Panel issued a Minute (dated 23 July 2019) requiring Miraka to seek leave for paragraphs 4.16 to 4.21 of Ms Addenbrooke's evidence to be filed late, and heard within the Block 3 hearing period. Miraka's legal counsel filed a Memorandum (dated 26 July 2019) setting out: why Miraka considered the evidence was properly Block 3 evidence, but if the Panel did not agree, seeking leave to have the evidence accepted as late Block 2 evidence.

The Panel also issued a Minute (dated 26 July 2019) inviting any party to address the application filed by Miraka by filing a Memorandum.

Legal Counsel for Beef and Lamb New Zealand (Beef and Lamb) filed a Memorandum (dated 31 July 2019) opposing the leave application for the reasons set out in that Memorandum. Beef and Lamb considered they would be prejudiced if the application were granted as the matter of allocation was well signalled (and addressed) in Block 2, and as such Beef and Lamb should not need consider these *“matters afresh in legal submissions or evidence as part of its preparation for Block 3 when ther should be no need to do so. It is of particular concern to it in circumstances where its witnesses do not have the capacity to respond at this time”*¹.

Counsel for Miraka addressed the Panel on the issue at the commencement of the hearing on 6 August, responding to Beef and Lamb's opposition and reiterating Miraka's request for the Panel to accept the evidence as Block 3 evidence or in the alternative accept it as late supplementary primary evidence. The Panel made a determination verbally on this matter, and this written Minute confirms that verbal determination.

The Panel finds that a section of Ms Addenbrooke's evidence (paragraphs 4.16 to 4.21) addresses Block 2 matters, and should have been presented as rebuttal evidence in support of Miraka's Further Submission at the Block 2 hearings, responding to those submitters seeking Plan Change 1 to provide an allocation framework in substitution for the provisions of the notified Plan Change scheduled for hearing as part of Block 2. It notes that other parties opposed to the allocation framework sought by Beef and Lamb in particular

¹ Paragraph 11 of the Beef and Lamb Memorandum.

recognised the need to respond in Block 2 and indeed, Ms Addenbrooke sought to rely on some of that evidence.

While the balance of Ms Addenbrooke's evidence on allocation matters was clearly directed at Policy 7 (which is a Block 3 matter), the paragraphs noted above were focussed on the potential for an allocation regime to be inserted into Plan Change 1, rather than on the position applying after Plan Change 1 (the subject of Policy 7).

The Panel agrees that there would be some prejudice to Beef and Lamb (and potentially other parties) by reason of the new material Ms Addenbrooke sought to put in evidence. Ms Caldwell asked that the Panel consider addressing that prejudice by providing Beef and Lamb with the opportunity to file late rebuttal evidence. The Panel's view was that such an opportunity (if offered) could not be limited to Beef and Lamb and that given the significance of these issues to the parties, there was a real risk that it might turn into a rerun of a substantial section of Block 2 issues. Clearly this would not be satisfactory.

Accordingly the Panel has not accepted that the evidence is Block 3 evidence or that leave be granted to accept it as late supplementary primary evidence.



Greg Hill

Chairman of the Hearing Panel.
8 August 2019