

From: [Plan Hearings](#)
To: Hans@hansvanderwal.co.nz
Cc: "[Jamie Robinson](#)"
Subject: RE: Memorandum of Counsel for As One Incorporated - Procedural Matter as to Expert Evidence to be Given on 20 November 2020
Date: Wednesday, 18 November 2020 3:13:00 PM

Kia ora Hans van der Wal

The Chair of the PC7 hearing committee have asked that I pass this minute on to you.

"Having considered Mr Vanderwaal's memorandum, the hearing commissioners accept that it would be consistent with our duty of fair and appropriate procedure to allow As One to adduce additional evidence of its witnesses Dr Freeman and Mr Hawkins on matters within their expertise that responds to Dr Metherells evidence given on Monday."

I will ensure that the memorandum and this correspondence is posted to our website and circulated as required.

Nga mihi

Tavisha

From: Hans@hansvanderwal.co.nz <Hans@hansvanderwal.co.nz>
Sent: Tuesday, 17 November 2020 4:20 PM
To: Plan Hearings <planhearings@ecan.govt.nz>
Cc: 'Jamie Robinson' <jamie.robinson@duncancotterill.com>
Subject: Memorandum of Counsel for As One Incorporated - Procedural Matter as to Expert Evidence to be Given on 20 November 2020

Dear Travisha

Please find **attached** by way of filing a memorandum of counsel for As One Incorporated arising from matters raised by Dr Metherell for Melbury Ltd on 16 November 2020. This memorandum has not been served on any other parties, but filed with you, as I am concerned that if I endeavour to serve it on other parties I may inadvertently omit parties who are entitled to see it. On this basis I consider it more appropriate to leave making it available to other parties to you in the same way that other matters arising from the hearing have been shared with all parties.

I am available to provide further clarification tomorrow and Thursday if that is required or helpful.

Kind regards

Hans van der Wal
Barrister
027 787 8052
Hans@hansvanderwal.co.nz
40 Walker Street Chambers

DX WX11109

Christchurch

www.Hansvanderwal.co.nz

BEFORE HEARING COMISSIONERS OF THE CANTERBURY REGIONAL COUNCIL

In the matter Proposed Plan Change 7 to the Canterbury Land and Water
Regional Plan

And

In the matter A submission by:

AS ONE INCORPORATED

Submitted

**MEMORANDUM OF COUNSEL FOR AS ONE INCORPORATED AS TO ADDITIONAL
INFORMATION TO BE RAISED BY EXPERT WITNESSES**

2020

Duncan Cotterill
Solicitor Acting: Jamie Robinson
148 Victoria Street
Christchurch 8140

Counsel:
J M van der Wal
Barrister
40 Walker Street Chambers
Christchurch

MAY IT PLEASE THE HEARING PANEL

- 1 As One Incorporated (As One) is scheduled to be heard on 20 November 2020 by the Hearing Panel on its submission on Proposed Plan Change Seven to the Canterbury Land and Water Regional Plan (PC7).
- 2 As One is mindful of the requirements for fairness in s39(1) Resource Management Act 1991 and the duties of expert witnesses not to omit information of which they are aware and which they consider relevant to the evidence they are giving.
- 3 On Monday 16 November 2020 Dr Metherell for Melbury Ltd gave evidence of changes to what Counsel understands to be key inputs for Overseer modelling that will affect the manner in which it estimates Nitrogen losses to water. These are the S-Map¹ Profile Available Water (PAW) estimates. As One expert witnesses Dr Freeman and Mr Hawkins consider that these have implications for the Overseer modelled N losses. They consider that these changes are information that is therefore relevant to the evidence they are giving.
- 4 At the time that they filed their evidence and also on 16 November 2020 when they finalised their outlines for their presentation of evidence on 20 November, they were not yet aware of Dr Metherell's evidence on these changes. There has therefore been no notice or indication that they intended to address these changes. This has been for reasons beyond their or As One's control.
- 5 Counsel is conscious that this may raise issues of fairness, but also considers that it is these witnesses' duty to the Panel to assist it by addressing the impact of these changes.

¹ An online GIS-based system for providing technical soil information. Overseer is able to link directly to S-Map so that changes to S-Map information are incorporated into Overseer modelled estimates of N loss to water.

- 6 Counsel therefore considers it appropriate to raise this issue with the Panel beforehand so that the Panel can consider in advance how and when these witnesses can best address these changes. They are ready and able to address them when they give evidence on 20 November 2020, if that is of assistance to the Panel. However, As One accepts that this is ultimately subject to how the Panel considers it appropriate to ensure this happens in a procedurally fair manner.
- 7 As One's position is that these witnesses' views on the impact of the changes to the S-Map PAW estimates is relevant evidence that should be taken into account by the Panel, but subject to the Panel's determination as to how and when this is best to occur in accordance with procedural fairness.



J M van der Wal

Counsel for As One Incorporated