BEFORE THE HEAING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications by Tararua District Council to Horizons Regional Council for application APP-2005011178.01 for resource consents associated with the operation of the Eketahuna Wastewater Treatment Plant, including a discharge into the Mākakahi River, a discharge to air (principally odour), and a discharge to land via pond seepage, Bridge Street, Eketahuna.

REPORT TO THE COMMISSIONERS

DR BRENT COWIE (CHAIR), MR REGINALD PROFFIT AND MR PETER CALLANDER

STATEMENT OF SUPPLEMENTARY EVIDENCE OF

GREGORY JOHN CARLYON - PLANNING

FOR KAHUNGUNU KI TAMAKI NUI-A-RUA TRUST

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12 April 2017

A Introduction

Qualifications and Experience

1. My name is Gregory John Carlyon. My qualifications and experience are outlined in my evidence in chief dated 21 March 2017. This supplementary statement of evidence is given consistent with the commitment made to the Code of Conduct for Expert Witnesses, identified in paragraph 6 of my evidence in chief.

Purpose and Scope of Evidence

2. This supplementary evidence formalises my oral presentation to the Hearing Commissioners, on 6 April 2017.

Submitter Goodwill

3. Throughout the development of the consent application, consultation with submitters via prehearing processes, site visits, and the hearing itself, Ngati Kahungunu has operated in good faith. The Kahungunu ki Tamaki nui-a-rua Trust has professionally resourced its submission and committed time to work with the district council and attend the hearing process.

4. This participation occurred in the context of an incomplete application that has not accurately assessed its effects on the biophysical environment, or cultural values of tangata whenua. While Mr Black, for Kahungunu ki Tamaki nui-a-rua Trust identified a willingness to participate in ongoing engagement during an adjournment process, it is my view this has the potential to provide an inequitable or unrealistic load on submitter parties to co-ordinate or resolve matters that are the responsibility of the applicant.

5. As I indicated in my oral submission, supported by the submissions of Mr Phil Percy for Ngati Ruahine, a deficient application was accepted by the consent authority, and those deficiencies have not been resolved through the process to date. In my view, it is problematic to contemplate resolution of these matters through the hearing process, when the application remains so unclear.

Clarification

6. At paragraph 23 of my evidence in chief I incorrectly attributed the adverse and significant effects, identified by Dr Ausseil, to the discharge from the Eketahuna Sewage Treatment Plant. It is correct that the effects identified by Dr Ausseil are present in the stretch between the upstream and downstream monitoring sites for the sewage treatment plant, but I accept that they could have originated from a number of sources.

7. That said, it is of some concern that the process for obtaining the suite of consents for this activity were initiated in excess of 12 years ago, that these uncertainties have been present for all of that time, but the monitoring and investigations that could have resolved these issues have not been undertaken.

Evidence of Tangata Whenua in relation to Cultural Values

8. Ms Morton for Horizons Regional Council and Ms Manderson for the applicant, identified their planning opinions may be influenced by evidence provided to the hearing by the three iwi to the proceedings. These views were offered in the complete absence of formal assessment of cultural impacts or values by the applicant in the lead up to these proceedings.

9. It is clear from the evidence of Nga Ruahine, Ngati Whakatere and Kahungunu ki Tamaki nui-a-rua Trust, before the hearing, that there are a large number of unquantified and unresolved effects on the relationship of Maori to waahi tapu, sites of significance, water, traditions and tikanga. The submission of the Trust in particular, identifies a wide range of concerns to be addressed.

10. I reflected a view to the Hearing Committee that Policy 5-11, addressing direct discharges of effluent to surface water, was being over analysed in contrast to other explicit objectives and policies contained in chapters 2 and 5 of the One Plan. The view I expressed was that resolution of the requirements of Policy 5-11 (which are clear, and a requirement on the applicant at the time a consent is granted), is not the sole arbiter of resolution of tangata whenua issues.

11. By way of example, Policy 5.6 has an explicit requirement on decision makers and applicants, effectively requiring a determination by the decision maker to grant or decline a consent, consistent with the policy. The use of the term “must” in the policy framework is the consequence of a number of plan making processes tested through to the High Court, and reflects the balance achieved between the parties to those proceedings, through that period. They have been robustly considered.

Conditions

12. In my evidence in chief I did not provide an assessment of conditions, on the basis that the application lacked certainty or clarity, as to the activity to be undertaken. This was still evident during the hearing process, with broad scale conceptual proposals advanced to the hearing committee in relation to development of wetlands, the possibility of lining ponds, no certainty on monitoring sites, no assessment of groundwater impacts, no investigation into other potential sources of contaminants to the river system, etc. Until the first day of the hearing, the applicant had not prepared a consolidated set of conditions, and the normal practice, followed in more recent hearings, of using standardised conditions from other proceedings of a similar nature and caucusing of those conditions with relevant experts, had also not been followed.

Response to Ms Manderson's Supplementary Statement of Evidence

13. Ms Manderson expressed concern in her supplementary statement, that a decline of consent could potentially lead to problems for the community of Eketahuna, that may outweigh the granting of consent. In response to this statement and questions from the hearing committee, I expressed my view that the requirements of section 107 of the Resource Management Act 1991 are not met by the application. In particular, the requirements of section 107(2)(a) are not met. The application does not meet the tests of an exceptional circumstance (and that is broadly agreed by the parties to the hearing), it is not an unusual, uncommon, extraordinary, rare, unexpected, or surprising activity.

14. The very real challenges faced by the applicant, with respect to this discharge, are consistent and common to a very large number of local authorities from throughout New Zealand, with the resolution of those matters being relatively well understood, notwithstanding the significant cost implications of options chosen by parties. Further, the district council has known for a considerable period of time that the effects of its current discharge would need to be addressed through a consent process, and it has seemingly not assessed its impacts or addressed them.

15. With respect to 107(2)(b), it is my view this is a problematic test for the applicant. At no time through the application process has Tararua District Council sought a temporary consent, instead they have sought a shorter term consent late in the piece when it was evident that the granting of a consent may be problematic. In essence, the district council is seeking a period of time to continue the current discharge, while it collects base information for future decision making, a period of time to install plant, and a period of time to optimise and operate that

plant, in order that it can make a future application based on the information collected. I do not consider that approach to be temporary in nature, and as I understand it, it is the applicant's intention to continue operating the discharge for which it has committed its entire budget into the future, beyond the current timeframes sought. This approach from the applicant is a consequence of its assumption that the discharge will generate effects that are not more than minor, and which will meet the requirements of the One Plan framework.

16. With respect to section 107(3). The decision makers have the ability to condition the consent in order to allow activities that would ultimately ensure that upon expiry of the permit, the requirements of 107(1) and the rules of the One Plan are met. It is my opinion there can be little confidence or certainty of this outcome, and I am not aware of evidence that supports a view to the contrary.

17. With respect to Ms Manderson's publicly expressed concern about the stopping of the Eketahuna discharge, in the absence of a consent granted through this process, I think there can be some confidence that will not occur.

18. As explained to the hearing, I identified a prohibited activity discharge with respect to the Dannevirke Wastewater Treatment Plant, which operated for many years; the recently consented Hunterville discharge to the Porewa Stream, which has operated on a non-compliant basis since the day the resource consent was confirmed by the Environment Court; a discharge at Levin Landfill, which is not consented and for which no consent has been sought by the consent authority; a discharge of wastewater volumes, up to 20% in excess of the consented volume at the Foxton Wastewater Treatment Plant for the last 24 months; and a discharge identified by the hearing panel for the Palmerston North City discharge to the Manawatu River, which was found to be effecting life-supporting capacity. With respect to these examples, the regional council has taken no enforcement action, and it could be reasonably considered that the same will apply to Eketahuna. The Resource Management Act 1991 provides a framework to address situations where consent is declined, and I understand the applicant is familiar with the options.

Relevant Case Law

19. In response to questions from the Hearing Committee on the assessment of consents, I reflected on the case law with respect to what constitutes an existing environment. In this regard, the relevant case is Ngati Rangi Trust and Manawatu-Wanganui Regional Council vs NZ Energy, 2016.[1]

[1] NZHC 2948, CIV 206454000035

20. With respect to questions from the panel in relation to assessing cumulative effects, I directed the Hearing Committee to the recent One Plan case[2]. In this regard, the Environment Court made the following comments:

"assessing cumulative effects at catchment levels must be undertaken (even if difficult)"

"in the light of uncertainty regarding catchment loads, a precautionary approach may be required, otherwise HRC cannot possibly be confident water quality is being maintained or improved."

Conclusions

21. The conclusions drawn in my evidence in chief at paragraph 57-60 remain.

Further Consultation with Stakeholders to the Hearing

22. If the Hearing Committee is minded to grant a consent, I offer the view to the Hearing Committee that the provisions of section 41(c) may be an appropriate mechanism to direct the parties to prepare material for further consideration.

23. In my view, it is difficult to contemplate further engagement between the parties where it is not formalised and structured. The evidence in the lead up to this hearing demonstrates that to be the case.

24. On the basis that the applicant accepts the professional costs to parties to discussions and overhead costs associated with the additional resource to address outstanding matters, I would recommend the following:

    - Appointment of an independent facilitator, agreed between the parties (the facilitator must have the experience and skills in these matters to draw issues to conclusion. It was my view that Ms Christine Foster was broadly accepted by the applicant and submitters for this purpose in the prehearing process).

[2] Environmental Defence Society and Wellington Fish and Game Council vs Manawatu-Wanganui Regional Council, ENV-2016-WLG-000038

- That the applicant be directed to clarify its application and formally document that clarification to the submitters.
- That iwi be resourced to prepare and present a cultural impact assessment for consideration by the Hearing Panel. (It is also my view that a CIA should be provided to the applicant at the soonest opportunity, prior to reconvening the hearing).
- That the facilitator convene the water quality specialists, for the purpose of addressing groundwater monitoring and surfacewater monitoring, in order to provide the Hearing Committee with clear, agreed recommendations on these matters.
- That the applicant works with submitters for the purposes of preparing mitigation proposals or offsets where appropriate, in order to address the known and predicted adverse effects of the discharge.
- That the parties be directed to participate in expert caucusing between groundwater, water quality and planning experts for the purposes of providing a suite of conditions for consideration by the Hearing Committee.

25. Notwithstanding my previously expressed view in relation to the difficulty of granting the consents sought, in the event the approach identified above, or similar is directed by the Hearing Committee, it is my view that it requires a period of not less than three months to conclude. I understand that this does not tie with the timeframes set down for other hearing matters, but it remains my view that potential resolution achieved on this matter will assist with the resolution of other hearing processes.

Groundwater

26. In response to questioning from the Hearing Committee with respect to groundwater matters, I reasserted the view in my evidence in chief that the consent sought is not consistent with Objective 5-2 or Policy 5-6. It is my view that the groundwater quality must be managed in and of itself. This application (completely deficient in assessment of groundwater matters), adopts the view that the groundwater network is a transmission corridor for discharge contaminants to surface water. While that is physically correct, the application fails to provide for the matters in the objectives and policies with respect to groundwater. In essence, Tararua District Council is seeking a consent to continue discharging treated waste to groundwater in a way that it will maintain the existing degraded state of the resource. I am open to the view provided in the policy, that this discharge <u>may</u> ultimately be the best practicable option for the

treatment of wastewater, but that position has not been asserted by the applicant, and would be difficult to assert in the light of the:

- light treatment of alternatives assessed,
- lack of investigations with respect to effects on groundwater,
- complete lack of monitoring with respect to groundwater impacts.

Gregory Carlyon

12 April 2017