

BEFORE THE HEARING PANEL

IN THE MATTER

**of Hearings on submissions
concerning the Proposed One
Plan notified by the
Manawatu-Wanganui Regional
Council**

**END OF HEARING STATEMENT OF CLARE BARTON AND BARRY GILLILAND
FOR THE GENERAL HEARING – SETTING THE SCENE, ADMINISTRATION,
INTRODUCTION TO RULES AND FINANCIAL CONTRIBUTIONS**

1.0 INTRODUCTION

1. The purpose of this report is to answer questions raised by the Hearing Panel during the Hearing. In this report we also respond to some matters raised by experts appearing for submitters at the hearing, which have prompted us to re-visit my recommendations.
2. Where we have not changed the recommendation, it can be inferred that we do not agree with the evidence raised by other experts. This report does not generally detail the reasons for our disagreement and the original reasoning in the previous reports stands in those cases.
3. We are more than happy to elaborate on any of these matters if the Hearing Panel has any questions.

2.0 QUESTIONS RAISED BY THE HEARING PANEL AT THE GENERAL HEARING – 19 JUNE 2009

4. A number of questions were raised by the Hearing Panel during the presentation by the Reporting Officers on 19 June 2009. The following table (Table 1: Questions asked by the Hearing Panel of the Reporting Officers) sets out each of these questions and the Officer's response:

TABLE 1: QUESTIONS ASKED BY THE HEARING PANEL OF THE REPORTING OFFICERS AT THE GENERAL HEARING – 19 JUNE 2009

Questions asked by the hearing panel	Answers from the reporting officers
<p>1. Please clarify the intended scope of common catchment expiry dates. Is it intended to include all consents (s9, 12, 13, 14 and 15 discharges to land, water and air) or just those with impacts on water resources (s13, 14 and 15 discharges to water)?</p> <p>("Green Version" Track Changes, Policy 11A-5.)</p>	<p>Ms Barton responds - The intent is that the following sections of the Resource Management Act 1991 are captured within the common catchment expiry dates:</p> <ul style="list-style-type: none"> (a) Section 13 – Restriction on certain uses of beds of lakes and rivers. (b) Section 14 – Restrictions relating to water (c) Section 15 – Discharge of contaminants into the environment. <p>Section 9 covers restrictions on the use of land. Section 12 deals with restrictions on the use of the coastal marine area. It is not intended that these activities are caught by the common catchment dates</p> <p>The wording within Policy 11A-5 dealing with Consent Duration needs to be amended in light of the above comments as currently the wording would capture all activities covered by these sections of the Act. I propose the following wording:</p> <ul style="list-style-type: none"> (b) Resource consent terms shall be set to the closest common catchment expiry or review date to the date identified in (a). <u>The common catchment expiry or review date shall only apply to resource consent applications required under sections 13, 14 and 15 of the Resource Management Act 1991.</u> <p>A consolidated version of Policy 11A-5 with all of the recommended changes is contained within Appendix Two.</p>
<p>2. Please confirm whether it is appropriate to accept the submission of Royal Forest and Bird Protection Society of New Zealand (460/4) that seeks to change Issue 2, proposed approach to read "Horizons</p>	<p>Ms Barton responds – My recommendation was to reject the submission from Forest and Bird as I considered the words 'minimum <u>environmental</u> flows" did not add to the understanding of the words in relation to water</p>

Questions asked by the hearing panel	Answers from the reporting officers
<p>has set minimum <u>environmental</u> flows and defined core allocations..."</p> <p>(Planning Evidence and Recommendations, pages 46 & 48)</p>	<p>management zones. On reflection I consider the use of the word "environmental" could assist as the minimum flows are the bottom line to sustain the environmental values of the rivers however, where ever the term minimum flow appears within the Plan it does not include the word environmental. I therefore recommend no amendment be made to Issue 2 Proposed Approach otherwise there would be an inconsistent use of terminology across the Plan.</p>
<p>3. Please confirm whether it is appropriate to accept the submission point made by Mighty River Power seeking inclusion of a cross reference to Chapter 3 under Issue 4, "Look For."</p> <p>(Planning Evidence and Recommendations Report, page 56.)</p>	<p>Ms Barton responds – Mighty River Power seek to have Issue 4 refer to Chapter 3 Infrastructure, Energy and Waste in addition to Chapters 5, 6 and 10 which are already referenced within the Issue. My original recommendation was to reject the submission point as I had mis-read the provisions within the Issue. I now consider it appropriate to refer to Chapter 3 within the Issue 4 Section "Look For" as this Chapter along with Chapter 5, 6 and 10 deal with climate changes matters.</p> <p><i>"Look For</i> <i>Objectives, policies and methods that directly or indirectly address climate change in Chapters <u>3, 5, 6 and 10.</u>"</i></p>
<p>4. Please confirm whether paragraph 1.1 should be amended by adding to the end of that section the following wording as an alternative to Method 10A-3 (Māori/English text translation). <u>Where the meaning of the Māori and English text used in this Plan differs, the English interpretation shall be taken as the correct one.</u></p> <p>("Green Version" Track Changes, pages 1-1 & 2-7.)</p>	<p>Ms Barton responds – I had recommended the inclusion of Method 10A-3 which would record that where the Māori and English text differ in meaning then the English text shall be taken as having the correct meaning. The Panel suggest adding the following to the end of Paragraph 1.1 Scope and Introduction in the Setting the Scene Chapter.</p> <p><u>Where the meaning of the Māori and English text used in this Plan differs, the English interpretation shall be taken as the correct one.</u></p> <p>I consider the suggestion of the Panel to be appropriate as the matter is not a Method but more an issue of</p>

Questions asked by the hearing panel	Answers from the reporting officers
	Plan interpretation. Paragraph 1.1 sets out the approach taken in the Plan and is an appropriate location for the above statement. Method 10A-3 will need to be deleted.
<p>5. Please confirm whether Policy 11A-7 should be reworded (as attached) so that it is clear that the last sentence applies to both clauses (a) and (b).</p> <p>("Green Version" Track Changes.)</p>	<p>Ms Barton responds – The Panel has offered the following wording changes to Policy 11A-7 and seek comment:</p> <p>Policy 2-4-11A-7: Sites with multiple activities, and activities covering multiple sites</p> <p><i>For applications made to Horizons <u>the Regional Council</u> for either:</i></p> <p>(a) <i>a site with a number of different activities requiring consent, or</i></p> <p>(b) <i>a particular type of activity that will be undertaken by the consent holder at a number of sites-</i></p> <p><i>consent applicants may combine some or all activities or sites under umbrella consents, and Horizons the <u>Regional Council</u>. If the Council considers that such an approach is appropriate then it shall establish consent conditions, durations and review provisions which enable an integrated approach to be taken for managing environmental effects from the site or activity as a whole. <u>There may be circumstances where umbrella consents may result in individual consents being are considered at their given status rather than the status of the most stringent consent.</u> <u>There may also be circumstances where specific conditions are required to address site specific circumstances and effects.</u></i></p> <p>I consider the above wording assists in clarifying the matter of umbrella consents and the changes should be made.</p>
<p>6. Please provide a summary table showing the fate of original issues, objectives, policies in Chapters 2 and 11 as re-located into Chapters 10A, 11 and 11A.</p> <p>("Green Version" Track Changes)</p>	<p>Ms Barton responds – Please refer to Appendix 1 which provides a summary table of the existing provisions of Chapters 2 and 11 and where the provisions are proposed to be relocated to or deleted.</p>

Questions asked by the hearing panel	Answers from the reporting officers
<p>7. Can staff please comment on the revised version of Policy 11A-5 from the Panel.</p> <p>(Planning Evidence and Recommendations Report, Recommendation ITR 9, page 218-220.)</p>	<p>Ms Barton responds – The Hearing Panel has suggested the following changes to Policy 11A-5:</p> <p>Policy 2-2 11A-5: Consent durations`</p> <p>(a) Horizons <u>The Regional Council will generally grant resource consents for the term sought by the applicant unless reasons are identified during the consent process that make this inappropriate.</u></p> <p>(b) <u>Resource consent durations will be set to the closest common catchment expiry or review date* to the date identified in (a). Consents granted within 3 years prior to the relevant common catchment expiry date will be granted with a duration to align with the second common expiry date (that is the number of years up to the closest expiry date plus ten years). The dates listed in Table 11A. 1 show the initial expiry or review date* for all consents within the catchment. Future dates for expiry or review of consents within that catchment shall occur again every ten years thereafter. Dates can be extended in 10 year increments where a term longer than 10 years can be granted after considering the following criteria:</u></p> <p>(i) <u>the extent to which an activity is carried out in accordance with a recognised code of practice, environmental standard or good practice guideline</u></p> <p>(ii) <u>the most appropriate balance between environmental protection and investment by the applicant</u></p> <p>(iii) <u>the provision of s128 review opportunities to enable matters of contention to be periodically reviewed in light of monitoring and compliance information</u></p> <p>(iv) <u>whether the activity is infrastructure^ provided for under Policy 3-1</u></p> <p><u>For a consent which is granted a duration longer than ten years, review of the consent shall occur, as a minimum, on the review date* in Table 11A.1 and every ten years thereafter until consent expiry. Extra review dates* may be set in accordance with Policy 11A-6</u></p> <p>(c) <u>Matters to be considered in determining a shorter or longer consent duration than that requested under (a):</u></p> <p>(i) <u>whether it is necessary for an activity to cease at a specified time</u></p> <p>(ii) the extent to which an activity is carried out in accordance with a recognised code of practice, environmental standard or good practice guideline</p> <p>(iii) <u>whether the activity has effects that are unpredictable and potentially serious for the locality where it is undertaken and a precautionary approach is needed</u></p> <p>(iv) <u>the risks of long-term allocation of a resource whose availability changes over time in an unpredictable manner, requiring a precautionary approach</u></p>

Questions asked by the hearing panel	Answers from the reporting officers
	<p>(v) the most appropriate balance between environmental protection and investment by the applicant</p> <p>(vi) <i>in the case of existing activities, whether the consent holder has a good or poor compliance history <u>in relation to environmental effects for the same activity.</u></i></p> <p><u><i>This policy implements Objective 11A-2</i></u></p> <p>I consider the wording suggested by the Hearing Panel in conjunction with the wording changes proposed under points 1 and 8 in this report, provide greater clarity as to the intent of the Policy concerning common catchment expiry or review dates.</p> <p>A consolidated version of Policy 11A-5 with all of the recommended changes is contained within Appendix Two.</p>
<p>8. Please confirm or otherwise through legal advice the Panel's opinion that a consent authority cannot grant a resource consent for a longer term than sought in an application.</p> <p>("Green Version Track Changes, Policy 11A-5)</p>	<p>Ms Barton responds – Please refer to the attached legal opinion obtained from John Maassen and Barbara Pearse of Cooper Rapley – Lawyers. (Appendix Three) Also attached is the Environment Court decision <i>Maher v Marlborough District Council</i> ENV W 0148/05 (Appendix Four)</p> <p>In light of the legal opinion I have to amend my earlier comment under point 7 of the Speaking Notes for Presentation to the Hearing Panel. I stated: <i>"I am not aware of any restriction imposed by the RMA that would prohibit decision-makers from granting consents with a longer term than that sought by the Applicant."</i></p> <p>Case law indicates that the Applicant must specify the consent term sought at the time of making a resource consent application. There would be scope for a decision maker to grant a shorter term but not a longer term than that applied for. In terms of Policy 11A-5 Consent Durations amendments are required to the wording</p>

Questions asked by the hearing panel	Answers from the reporting officers
	<p>within the Policy as follows:</p> <p>(b) ...<u>The Applicant needs to outline in their resource consent application the reasons why the dates could</u>an be extended in 10 year increments where a longer term can be granted after considering the criteria in (c).</p> <p>(c) Matters to be considered in <u>relation to</u> determining a shorter or longer consent duration resource consent term <u>include</u> than requested under (a):</p> <p>I consider it appropriate to retain the policy as it provides guidance for an Applicant in making an application as to the term they should seek. There will be a need for the Council to amend their resource consent application forms to clearly set out the consent terms that can be applied for and the criteria that an Applicant needs to address in applying for a ten year increment on the common catchment expiry terms.</p> <p>A consolidated version of Policy 11A-5 with all of the recommended changes is contained within Appendix Two.</p>
<p>9. Please consider whether it is necessary to provide a reference to "Regional Plans" in Method 10A-2 given that Part II of the Proposed One Plan is the only regional plan for the Region.</p> <p>("Green Version Track Changes, Method 10A-2.)</p>	<p>Ms Barton responds – The description under Method 10A-2 states:</p> <p><i>"Regional Plans (except for Part II of this Plan which already gives affect to Part 1) and District Plans shall be changed to give effect to Part 1 – Regional Policy Statement"</i></p> <p>Section 65 of the Resource Management Act 1991 requires the Regional Council to amend a regional plan to give effect to a regional policy statement. Whilst I cannot conceive of a further Regional Plan that the Regional Council would develop for any of the functions identified in section 30 of the Act there is always a possibility that this could occur. I see no harm in retaining the wording within the Method.</p> <p>No change is recommended.</p>

Questions asked by the hearing panel	Answers from the reporting officers
<p>10. Please confirm the correct title: "district health boards" or "area health boards?"</p> <p>("Green Version" Track Changes, Cross-Boundary Issues, page 2-1.)</p>	<p>Ms Barton responds - The correct title is "district health boards." These have existed since 1 January 2001 when the New Zealand Public Health and Disability Act 2000 came into force.</p>
<p>11. Please check whether any other regional councils have processes documented in a regional plan whereby consent holders can challenge and revoke non-compliance assessments.</p> <p>(Planning Evidence and Recommendations Report, page 12, related to submissions 172/13, 280/14, 346/13 dealt with in Recommendation ADM 1, pages 90 to 109.)</p>	<p>Ms Barton responds – I have checked the following Regional Plans:</p> <ul style="list-style-type: none"> (a) Auckland Regional Plan – Farm Dairy Discharges (b) Proposed Auckland Regional Plan – Air, Land and Water (c) Hawkes Bay Regional Council – Regional Resource Management Plan (d) Greater Wellington – Regional Plan for Discharges to Land (e) Greater Wellington – Regional Freshwater Plan <p>None of the above documents has any process whereby consent holders can challenge and revoke non-compliance assessments.</p> <p>I do not recommend any change in terms of the submissions from Tararua, Horowhenua and Rangitikei District Councils who seek to have a policy which outlines a process whereby consent holders can challenge and revoke non-compliance assessments. I consider Policy 11A-8 is adequate and appropriate.</p>
<p>12. Please re-evaluate the merits of using (or deleting) the word proportional in the phrase "...determined by the Regional Council to be fair, proportional and reasonable." The issue is "proportional" to what?</p> <p>("Green Version" Tracked Changes, Policy 18-2, page18-3)</p>	<p>Mr Gilliland responds - The context for the clause is given by the recommended policy provision</p> <p>"Policy 18-2: Amount of contribution</p> <p>The amount of contribution shall will be an amount determined by the Regional Council to be fair, <u>proportional</u> and reasonable, subject to <u>The amount shall not exceeding the reasonable cost of funding positive environmental effects^</u> expenditure required to offset the net adverse <u>effects^</u> caused directly by the activity. For the purposes of this policy, the "net adverse <u>effects^</u>" shall be a reasonable assessment of the level of adverse <u>effects^</u> after taking into account:</p> <ul style="list-style-type: none"> (a) the extent to which significant adverse <u>effects^</u> will be avoided, remedied or mitigated by other consent

Questions asked by the hearing panel	Answers from the reporting officers
	<p><u>conditions</u>[^]</p> <p>(b) <u>the extent to which there will be positive effects[^] of the activity which may offset any or all adverse effects[^] and</u></p> <p>(c) <u>the extent to which there other environmental compensation is offered as part of the activity to will be positive effects of the activity which which may offset any or all adverse effects[^].</u></p> <p>The intent of including the term “proportional” in this policy was to clarify that there would be some relationship between the amount of any financial contribution and the extent of the net adverse effect it was sought to compensate for. However, on reflection I do not consider it adds value, especially when the sentence that follows clearly states: “<u>The amount shall not exceed the reasonable cost of funding positive environmental effects[^] required to offset the net adverse effects[^] caused directly by the activity.</u>”</p> <p>I therefore conclude that the term “proportional” could be deleted without detracting form the clarity or intent of the policy.</p>
<p>13. What “...more suitable revenue collection power available to the Regional Council” is alluded to in Policy 18-3(d)?</p> <p>(“Green Version” Tracked Changes, Policy 18-3(d), page 18-3.)</p>	<p>Mr Gilliland responds - I have sought advice on what was intended by this clause and understand it was not drafted with a particular collection power in mind, but to simply provide for the option should this be appropriate in the future.</p> <p>I would not be uncomfortable should the Panel decide to delete this clause.</p>

3.0 QUESTIONS RAISED BY THE HEARING PANEL AND EXPERTS AT THE HEARING

5. The following table (Table 2: Table 2: Questions raised by the Hearing Panel and Experts regarding the Admin chapters during the General Hearings – June/ July 2009) sets out the questions raised by the Hearing Panel and asked of submitters during the Hearing, and any relevant matters raised by other Experts at the hearing that I consider it necessary to respond to.

TABLE 2: QUESTIONS RAISED BY THE HEARING PANEL AND EXPERTS REGARDING THE ADMIN CHAPTERS DURING THE GENERAL HEARINGS – JUNE/ JULY 2009

1	<p>Fonterra want to amend paragraph 2.1 in Chapter 2 (now section 10A-1) to refer to primary sector groups rather than farming groups in the section that reads: Non-governmental organisations including environmental, tourism and farming groups.</p>	Fonterra	<p>Ms Barton responds - The use of the term primary sector groups is broader than farming groups and more accurately reflects the groups that the Regional Council would work with. Primary sector groups could include the likes of forestry companies and Fonterra. I therefore consider it appropriate to amend the bullet point within Section 10A-1 as follows:</p> <p><i>“Non-governmental organisations including environmental, tourism and farming <u>primary sector groups</u>.”</i></p>
2	<p>Fonterra want to see the reference to Royal Forest and Bird Protection Society of New Zealand taken out and instead rely on the references to environmental groups (refer paragraph 2.1 now section 10A-1).</p>	Fonterra	<p>Ms Barton responds – I recommended the inclusion of the Royal Forest and Bird Protection Society of New Zealand within the list of groups the Regional Council works with (as listed in section 10A-1). The change was in response to the submission from Forest and Bird (recommendation on ADM 2). Fonterra considers Forest and Bird should be taken out of the list and instead rely on the reference to environmental groups as being adequate to cover Forest and Bird. Fonterra has a valid point to make however, the list includes the likes of Fish and Game and the Historic Places Trust who are other environmental groups. I do not consider it necessary to remove Forest and Bird from the list.</p> <p>No change is recommended.</p>

3	Page 182. RDC 151/27 appears to be in the wrong officer's report?	Ms Barton – Speaking Notes for Presentation to the Hearing Panel 19 June – Point 8	Although I considered the submission point under Recommendation ADM 12, the submission point should be dealt with during the Water Hearing. The Officers reporting to the Water Hearing need to note the additional submission point in their report and my recommendation regarding the submission should be ignored by the Hearing Panel.
4	Page 214. Ministry of Education 43/2 appears to be in the wrong officer's report?	Ms Barton – Speaking Notes for Presentation to the Hearing Panel 19 June – Point 10	Although I considered the submission point under Recommendation ITR 9, o the submission point should be dealt with during the Water Hearing. The Officers reporting to the Water Hearing need to note the additional submission point in their report and my recommendation regarding the submission should be ignored by the Hearing Panel.

APPENDIX ONE

SUMMARY TABLE OF LOCATION CHANGES FOR SECTIONS WITHIN CHAPTERS 2 AND 11

Location in Proposed One Plan	Location as recommended in Planning Evidence and Recommendations Report
Chapter 2, Section 2	New Chapter 10A
Chapter 2, Section 2.1	New Chapter 10A, Section 10A.1
Chapter 2, Section 2.2	New Chapter 10A, Section 10A.2
Chapter 2, Section 2.3	New Chapter 10A, Section 10A.3
Chapter 2, Section 2.4	Deleted
Chapter 2, Objective 2-1	New Chapter 11A, Objective 11A-2
Chapter 2, Policy 2-1	New Chapter 11A, Policy 11A-4
Chapter 2, Policy 2-2	New Chapter 11A, Policy 11A-5 (Combined with relocated Policy 11-4)
Chapter 2, Policy 2-3	New Chapter 11A, Policy 11A-6
Chapter 2, Policy 2-4	New Chapter 11A, Policy 11A-7
Chapter 2, Policy 2-5	New Chapter 11A, Policy 11A-8
Chapter 2, Section 2.8	Deleted
Chapter 2, Section 2.9	Deleted
Chapter 11, Section 11.1	No change
Chapter 11, Section 11.1.1	No change
Chapter 11, Section 11.1.2	No change
Chapter 11, Section 11.1.3	No change
Chapter 11, Section 11.1.4	No change
Chapter 11, Section 11.2	New Chapter 11A
Chapter 11, Objective 11-1	New Chapter 11A, Objective 11A-1
Chapter 11, Policy 11-1	New Chapter 11A, Policy 11A-1
Chapter 11, Policy 11-2	New Chapter 11A, Policy 11A-2
Chapter 11, Policy 11-3	New Chapter 11A, Policy 11A-3
Chapter 11, Policy 11-4	New Chapter 11A, Policy 11A-5 (Combined with relocated Policy 2-2)

SUMMARY TABLE

Policy 2-2 11A-5: Consent durations

- (a) Horizons The Regional Council will generally grant resource consents for the term sought by the applicant unless reasons are identified during the consent process that make this inappropriate.
- (b) Resource consent durations will be set to the closest common catchment expiry or review date* to the date identified in (a). The common catchment expiry or review date shall only apply to resource consent applications required under sections 13, 14 and 15 of the Resource Management Act 1991. Consents granted within 3 years prior to the relevant common catchment expiry date will be granted with a duration to align with the second common expiry date (that is the number of years up to the closest expiry date plus ten years). The dates listed in Table 11A. 1 show the initial expiry or review date* for all consents within the catchment. Future dates for expiry or review of consents within that catchment shall occur again every ten years thereafter. The Applicant needs to outline in their resource consent application the reasons why the dates can be extended in 10 year increments where a term longer than 10 years can be granted after considering the following criteria:
- (i) the extent to which an activity is carried out in accordance with a recognised code of practice, environmental standard or good practice guideline
 - (ii) the most appropriate balance between environmental protection and investment by the applicant
 - (iii) the provision of s128 review opportunities to enable matters of contention to be periodically reviewed in light of monitoring and compliance information
 - (j) whether the activity is infrastructure^ provided for under Policy 3-1

For a consent which is granted a duration longer than ten years, review of the consent shall occur, as a minimum, on the review date* in Table 11A.1 and every ten years thereafter until consent expiry. Extra review dates* may be set in accordance with Policy 11A-6

- (c) Matters to be considered in relation to ~~determining a shorter or longer resource consent term include consent duration than that requested under (a):~~
- (i) whether it is necessary for an activity to cease at a specified time
 - (ii) ~~the extent to which an activity is carried out in accordance with a recognised code of practice, environmental standard or good practice guideline~~
 - (iii) whether the activity has effects that are unpredictable and potentially serious for the locality where it is undertaken and a precautionary approach is needed
 - (iv) the risks of long-term allocation of a resource whose availability changes over time in an unpredictable manner, requiring a precautionary approach

~~(v) the most appropriate balance between environmental protection and investment by the applicant~~

(vi) in the case of existing activities, whether the consent holder has a good or poor compliance history in relation to environmental effects for the same activity.

This policy implements Objective 11A-2

MEMORANDUM

TO: Clare Barton

FROM: John Maassen/Barbara Pearse

DATE: 22 July 2009

RE: One Plan – Hearing Questions – Term of Consent

1. Thank you for your email of 21 July 2009 and instructions to provide advice as to whether or not a consent authority can grant a resource consent for a term longer than the term sought in the application:
 - (a) where the application was notified; and
 - (b) where the application was non-notified.

Amending Consent Term of a Notified Application

2. In *Maier v. Marlborough District Council*¹ Mr Maier had applied to MDC for a water permit to take and use ground water from a well. The water permit was granted but only for a term of 10 years. Mr Maier appealed the term of the consent only, asking for a term of 30 years. MDC initially raised a preliminary issue of law in reply to the appeal, submitting that the relief Mr Maier seeks is not within the jurisdiction of the Court. The reason was that Mr Maier applied for a new water permit to replace an earlier one. The earlier permit had been granted for a 10 year term. The only amendment Mr Maier sought to the earlier permit was an increase in the volume of water. Therefore, the new water permit would be granted as per the proceeding consent and subject to a similar time limitation.
3. Fish & Game, a S.274 party to the appeal submitted that duration of consent is one of the conditions that prescribes the intensity and scale of the proposed activity. As such it must be clearly stated in the application what maximum term is sought so that all potential submitters have the opportunity to consider whether they wish to

¹ W033/06 EC

object. In answer to Fish & Games submission, Mr Maher, by way of letter dated 17 December 2004, noted that the MDC Wairau Awatere Plan allows up to 30 years for a consent for water to provide certainty to applicants.

4. The Court held in *Mayer* that:

"Supplementary information required under S.92 RMA cannot enlarge an application, but it may limit or scope an application [FN4 *Clevedon Protection Society Inc v Manakau City Council* [C43/97 pg 19]. Also where consistent with fairness, amendments to design and other designs of an application may be made up to the close of the hearing [FN5 *Darroch v Whangarei District Council* A18/93 pg 27]. Fish & Game's argument is that term is such a fundamental aspect of an activity that it should have been clearly spelled out in Mr Maher's application that he wished to have a resource consent granted for longer than 10 years. I agree in principle, noting Mr Maher's task was made difficult because nowhere on the Council application form is there a request for term...."

5. In addition, Mr Maher's letter was sent after notification and after submissions had closed. In respect of that the Court held:

"It denied the submitter an adequate assessment of the situation. It was received too late to be considered part of the application....

It will mean the effects arising from the exercise of the resource consent will persist much longer than 10 years. This may have promoted a further response from Fish & Game or other submissions....

The letter of 17 December 2004, does not form part of the application for consent. It post dated the consent and the submission period, and cannot be used as part of the matrix of documents considered in determining the scope of the consent sought. The only inference from the application for consent is that Mr Maher sought a 10 year term in line with his earlier water permit and water rights....

Therefore, the MDC did not have jurisdiction to grant a term of consent longer than 10 years, on appeal this Court likewise does not have jurisdiction to grant a term of consent for longer than 10 years."

6. Applying *Mayer* there is no power to increase the term beyond that sought by the applicant. The Court held that in principle the term is a fundamental aspect of an activity that should be clearly specified. In addition, any further information received subsequent to submissions closing do not form part of the application for consent and cannot be considered when determining the scope of the consent sought.

7. In summary, a hearing committee does not have jurisdiction to grant a term of consent longer than that applied for in the application where consent is notified.

Increasing Term for a Non-notified Application at the Assessment Stage

8. In our view *Mayer* could also be applied to a non-notified consent application.
9. The term of the consent would have been a factor considered by the Council when it determined whether or not to notify the application. It may be possible that a longer term would have meant the application would have been notified. However, that decision cannot be revisited at the assessment stage.
10. It is arguable that applying *Mayer* only that information received up to the time a decision was made not to notify an application is relevant to define the scope of the consent.

John Maassen

Appendix Four

