BEFORE THE MANAWATU-WANGANUI REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER hearing of submissions to the Proposed 'One Plan' - Te Ao Maori Section

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STATEMENT OF EVIDENCE
BY
DAVID FORREST

INTRODUCTION

1. My name is David James Forrest and I reside in Palmerston North. I am the Planner Principal of Good Earth Matters Consulting Limited, an environmental engineering, asset management, planning and resource management consultancy practice based in Palmerston North.

2. I hold the degrees of Bachelor of Arts (Hons) and Master of Science (Resource Management) and I am a full member of the New Zealand Planning Institute.

3. I have been engaged in planning and resource management practice for almost 30 years. In particular, I have been involved in the provision of planning and resource management advice for the preparation and administration of a number of District Plans in both the North and South Islands.

4. I have been requested by a Territorial Authority (TA) Collective (comprising the Horowhenua, Wanganui, Rangitikei, Ruapehu, Manawatu and Tararua District Councils) to prepare evidence in relation to common TA submissions to various aspects of the Proposed One Plan (POP).

5. I confirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Consolidated Practice Note (2006). I have approached the preparation of this evidence in the same way that I would for the Environment Court. I agree to comply with the Code of Conduct.

6. The evidence to follow covers the following matter:

   - Part I (RPS) Chapter 4 - Te Ao Maori, Policy 4-1 Hapū and iwi involvement in resource management

TA SUBMISSIONS

7. The TAs' submissions relate only to Policy 4-1(f) and (g), namely:

> *"(f) recognising and taking into account iwi management plans lodged with council*
> *(g) involvement in consent decision-making processes."*

8. The TAs' concerns originate from the asset managers and their responsibilities for consenting TA assets and infrastructure. Given the significant time and costs involved in consenting or renewing consents for a range of TA assets, the asset managers are concerned to know what policies 4-1(f) and (g) will mean in practice and what affect they will have on resource management decision making. In particular, the time and cost of preparing and processing applications is of concern, as is the outcome of the process if unexpected terms and conditions of consent are set by way of any Regional Council decision.

9. Questions which the TAs raised by way of their submissions included the following:

> *"▪ What is an 'iwi management plan'?*
> - *How will an 'iwi management plan' lodged with the Council be recognised and taken into account?*
> - *Will an 'iwi management plan' be subject to a consultation and submission process prior to being "lodged" with the Council?*
> - *What happens if more than one 'iwi management plan' is lodged with the Council and their provisions are not in accord?*
> - *What involvement in consent decision making process by iwi is envisaged?"*

10. As with other subject matters of concern in the Proposed One Plan (POP), the TAs are seeking clarity of intent and purpose and a greater modicum of certainty as to how provisions will be applied. The greater the certainty as to process and outcome, the less cost there will be to district ratepayers in consenting essential community services and infrastructure.

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11. Ms Marr is recommending that the TAs submissions be rejected. In her evaluation (para 4.9.2, pages 58 and 59 of her report), she makes the following statements:

> *"Policy 4-1 identifies the ways in which HRC will foster the kaitiaki role of tangata whenua in this region. It sets out a number of methods that HRC, in partnership with hapu and iwi can use to develop this relationship. This policy is intended to guide the relationship between HRC and hapu and iwi, it is not intended to direct or restrict relationships that district councils, or other resource users (consent applicants for example) may have, or wish to have with iwi or hapu."* (1st para of 4.9.2 on p 58)
>
> *"The role of iwi and hapu in resource consent decision making is referred to in part (g) of this policy. Several submitters (resource users rather than iwi themselves) have asked that this role be clarified. The concerns of both district councils and Genesis may be allayed somewhat by the clarification that this*

policy applies to the relationship between HRC and iwi and hapu and is not intended to restrict or prescribe the relationships any other party chooses to develop" (4th para on p 59)

12. My concern in respect of these statements is that the Regional Council's relationship with hapu and iwi can influence how TAs (as applicants) and other applicants engage in the resource consent process and may strongly influence the decision making process and the outcome of that process. I would be most concerned, for example, if a consents officer were to interpret 'taking into account the provisions of an iwi management plan lodged with the Council' as being the equivalent of a rule (i.e. where the iwi management plan says a particular activity should not occur and the consent authority determines that it shall not occur because it says so in the iwi management plan) and as a consequence an activity is refused consent or is severely constrained. In this situation, an iwi management plan could be seen to be influencing both how the Regional Council would conduct itself in determining the resource consent, and how the TAs (as applicants) would choose to involve themselves in the process (e.g. whether and how they would choose to consult with iwi prior to the lodgement of an application).

13. I accept Ms Marr's statement, in the last paragraph on page 59 of her report, that under RMA Sections 61(2A)(a) and 66(2A)(a) the regional council must take into account any relevant planning document recognised by an iwi authority and lodged with the Council, when preparing an RPS or Regional Plan. Following a recent enquiry to the Regional Council (Mr Munneke), I understand that an iwi management plan may have been lodged with the Regional Council at some stage. Mr Munneke said he would investigate what was lodged, when and by whom and let me know the outcome. (As this outcome was not known at the time of writing, I shall update the Panel at the Hearing of this matter.) If an iwi management plan has in fact been lodged with the Regional Council, it is not obvious that such a plan has been accounted for in the development of the POP. In the future, when an iwi management plan is lodged with the Council, its provisions will presumably be taken into account by means of a change to the RPS [pursuant to S61(2A)(a)] or a Regional Plan [pursuant to S66(2A)(a)]. That is entirely appropriate from the point of view of due process (the RMA 1st Schedule) and the achieving of the "sustainable management" purpose of the Act (S5).

14. What I am unclear about is the significance and affect of Ms Marr's statement that

"Horizons Regional Council has chosen to make a statement that these plans will be recognised and taken into account for other resource management processes (such as resource consents) because that is part of our relationship with those iwi." (p 60 of Ms Marr's Report)

If this "taking into account" is a standard evaluation in terms of RMA S104 and Part 2 (i.e. one of many matters that the consent authority must "have regard to"), then I accept that this statement is appropriate. If, however, it purports to give a greater weight or priority to matters detailed in an iwi management plan, without these provisions having first been afforded such weight or priority by means of due First Schedule process (i.e. incorporation into the POP by way of preparation of or change to the RPS and/or Plan), I would find this unacceptable.

The changes recommended by Ms Marr (p 61 of her report) do not clarify the situation in my opinion.

15. Finally, the TAs raised the question of what happens if more than one 'iwi management plan' is lodged with the Council and their provisions are not in accord. Ms Marr (p 60 of her report) states:

"The issue of lodgement and multiple plans for one area (as queried in the submission) are not unique to HRC and it is probably not appropriate to try and deal with these things in the RPS."

If it is "… not appropriate to try and deal with these things in the RPS", then where and how is it appropriate to deal with them? The question raised is not fanciful. I have had first hand experience on two occasions in this region where consultation has been required by the Regional Council with up to four iwi and hapu in relation to consents for a site specific activity. In both instances, there were differing views as to what was deemed to be an adverse effect and how such an effect could be avoided or mitigated. In both cases, the applications were unreasonably delayed and the additional time and cost required to resolve these differences added significantly to the cost of gaining consent. Had there been an iwi management plan lodged with the Council and taken into account in the RPS and/or Plans by way of the First Schedule RMA, I consider that much of the delay and cost of consultation with iwi could have been avoided. If more than one iwi management plan had been lodged, any conflicts could, as a last resort, have been resolved by means of the First Schedule process.

16. In summary, the Regional Council has an obligation to make it clear [in terms of Policy 4-1(f) and (g)] as to the likely nature and extent of iwi and hapū involvement in resource management planning and decision making, if for no other reason than to provide applicants (including TAs) with greater certainty as to process and outcome.

17. I am available to answer any questions that the Hearing Panel may to put to me.

D J Forrest

23 July 2008