

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions (288) and further submissions (480) by **WINSTONE PULP INTERNATIONAL LIMITED** to the **HORIZONS REGIONAL COUNCIL** on Chapter 6 (water), Chapter 13 (discharges to land and water), Chapter 15 (takes, uses and diversions of water and bores) and Schedule D of the Proposed One Plan

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF
PAUL CAMERON KENNEDY**

**TOMPKINS
WAKE**
L A W Y E R S

WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258, DX 6P20031
HAMILTON
NEW ZEALAND
PH: 07 839 4771

Solicitor: L F Muldowney
Counsel: Marianne Mackintosh
Email: mmackintosh@tomwake.co.nz
Fax: (07) 839-4855

Introduction

1. My name is Paul Cameron Kennedy and I have prepared this supplementary statement of evidence on behalf of Winstone Pulp International Limited ('WPI').
2. Since I prepared by evidence in chief in October 2009, Horizons Regional Council ('Council') staff and their experts have produced a number of supplementary statements of evidence and information to assist the Hearings Panel ('Panel'). In addition, I have been involved in caucusing (Mediated by Mr Richard Thompson) with Council staff (Ms Kate McArthur, Dr John Roygard)) and their experts (Dr Robert Wilcock, Dr John Quinn from NIWA) over a number of water quality issues raised in mine as well as other submitter's evidence.
3. Given that these processes have occurred, I have prepared this supplementary evidence in order to identify where I consider issues in my evidence in chief have or have not been resolved.
4. I have read and will comment on matters raised in the following:
 - Report of a meeting between experts, hereafter referred to as the 'Caucusing Report', prepared by Mr Richard Thompson.
 - Supplementary report prepared by Ms Clare Barton and Ms Natasha James in relation to Chapter 6 and Schedule D;
 - Supplementary evidence of Mrs Kathryn McArthur;
 - Supplementary evidence of Dr Jon Roygard;
 - Supplementary evidence of Dr Robert Wilcock;
 - Supplementary evidence of Dr John Quinn; and
 - Opening submissions of Mr J Maassen on behalf of Council.
5. In this supplementary statement of evidence I set out my comments in response to the supplementary reports and evidence identified above and prepared by Council staff and/or external advisors.

Submission of Mr Maassen

6. One of the key comments made in my evidence in chief related to the use of ANZECC (2000) trigger values in the Proposed One Plan ('POP') and the way that it was intended to use them as 'standards', rather than guidelines. This was the subject of caucusing (refer above), the outcome of which has been provided to the panel.
7. In the following sections I will comment on some outcomes from the caucusing which have been summarised principally in the evidence of Ms Kate McArthur.
8. I have also commented on Mr Maassen's opening submissions as he is the first person to mention water quality 'standards' in the sequence of evidence being presented by Council. There are two matters I will comment upon in relation to Mr Maassen's submissions.
9. In paragraph 11 of his opening submissions, Mr Maassen notes:

"Based on the values for each water body, POP sets (in Schedule D) numerical standards based on 11 water quality parameters".
10. Although, as I understand the situation, Council staff have accepted that the Schedule D water quality values need to be identified, care is required to ensure that their use, in terms of their use as 'standards', is clearly identified in the POP.
11. In Para 14(c) of his opening submissions, Mr Maassen then identifies that the standards are:

"A policy tool for assessing activities where a discretion exists so that decision makers have clear guidance that where the water quality standards are already met, the activities will be managed to ensure they continue to be met and where the water quality standards are not met, then they will be achieved over the life of the plan (20 years)."

12. Mr Maassen then notes in relation to the numerical water quality values/standards presented in the POP in Para 12 that:

“In large part the values are not contested, nor is the science behind the water quality parameters necessary to fully achieve these values”.

13. I would agree that is the case for those general water quality values utilised for which there is a history of use in New Zealand. This was agreed at the caucusing. Where I disagree is that the ANZECC (2000) trigger values that have been adopted by the POP for Schedule D have been, and continue to be, contested.
14. This is a relatively recent phenomenon and there has been a moderate amount of technical discussion about the concerns that lie within the contaminant trigger values presented in ANZECC (2000). This has been reinforced by the current revision of ANZECC (2000) which is now underway and is likely to be completed in 2012. At that time a new set of trigger values will be released. The revisions for the ‘contaminants’ are not required just because they need to be updated as a result of new published data, they need revision because there are significant errors associated with some of the numeric derivations.
15. Consequently, the ANZECC (2000) contaminant values that are incorporated into the final version of the POP will need to be updated when the ANZECC update/revision is released. The mechanisms to implement the revisions of the ANZECC values need to be clear and included in the POP.

Supplementary Evidence of Kate McArthur

16. Kate McArthur has summarised all of the key matters that were raised in evidence and some of the matters discussed during caucusing, and has identified her agreement or disagreement in relation to those matters.

Schedule D

17. One of the key matters discussed and reported in the Caucusing Report, but not in evidence, related to the use of the word standards. For completeness I have provided that section from the Caucusing Report below. The matters discussed relate directly to the utilisation of the ‘standards’ as contained in Schedule D.

“SCHEDULE D (AS RECOMMENDED), STANDARDS KEY, TABLE D.16

Issue: Application of the standards and whether they are standards (bottom lines) or targets.

Matters agreed

- 1. For the purposes of all agreements reached in this meeting it is understood that the standards in Schedule D are targets.*
 - 2. HRC experts will refer back to HRC planners that ‘standards’ is not a good term to use in this context and that clarity is needed.*
 - 3. One way to improve clarity in Schedule D about how the standards will be implemented is to provide reference to the relevant policies in other parts of the plan.*
 - 4. HRC experts will discuss with HRC planners options for clarifying that standards applied as absolute trigger values for permitted activities will be regarded as targets in other situations (e.g. resource consents).”*
18. I have reviewed Schedule D as presented in the ‘pink version’ dated 23 November 2009. As far as I can tell, Schedule D adopts the technical matters and changes as set out in Kate McArthur’s supplementary evidence but does not provide any explanatory wording to ensure that any party referring directly to the table (i.e. Schedule D), or related provisions (i.e. namely policies and permitted activity rules) of the POP, would identify the numeric values as anything other than standards in any situation. Therefore, it is my opinion that the Caucusing Report has not been followed through into the Schedule D and related provisions of the POP.

19. Overall, I still have a number of concerns relating to some aspects of Schedule D and its use. I will re-iterate these for completeness. They are:
- I am uncertain whether the comments made by Barton and James (2009) (Section 16 of my evidence in chief) have been incorporated. These relate to the use of Schedule D as long term targets.
 - I am unclear as to whether Council staff have included and updated wording to reflect the 'agreed' position in the expert Caucusing Report.
 - I am still concerned that ANZECC (2000) numeric trigger values have been adopted for Schedule D. The POP does not acknowledge the hierarchical framework that was established with ANZECC (2000) and that the numeric values are not standards. This was set out in some detail in my evidence in chief. I recognise why Councils look to adopt ANZECC (2000) as their water quality guidance but they should be adopted using the framework that they were set up to be used with not as standards.

Other technical matters

20. Of the technical matters discussed in Ms McArthur's supplementary evidence only my comments about temperature resulted in disagreement. During the caucusing and in the subsequent supplementary evidence and reports I was asked to provide specific technical evidence to support my comments. I would note that my comments regarding a single 3°C (the classic RMA limit) versus the 2/3°C management regime were relatively high level. My comments were directed at whether the difference between the 2 or 3°C regimes were really different given the temporal and spatial variations that occur in most waterways.
21. It is my view that rather than the 2 or 3°C difference, it is the control of maximum temperatures that is the most significant factor. It is my view

that from a water quality management point of view that having the two temperature management regimes across water management units will not result in a significant improvement to water quality.

22. Ms McArthur also made comment in her supplementary evidence in relation to ammoniacal-nitrogen and dissolved inorganic nitrogen (also covered in Dr Wilcock's supplementary evidence). I would only like to make one point in relation to this. It is fine to note (in Schedule D) that ammoniacal-nitrogen (a form of dissolved inorganic nitrogen) concentrations need to be taken into account when looking at the SIN limits to manage nutrients in Schedule D. However, I would note that in reality, given the natural concentrations of SIN in waterways in the region that it will be difficult to interpret the ammoniacal-nitrogen limit (which is a toxicological standard), in relation to nutrient impacts as the ammoniacal-nitrogen standards (e.g., the maximums) are higher than the SIN standards.
23. I would note that in supplementary evidence Ms McArthur identifies that there are situations in the region where natural water quality results in exceedences of the proposed numeric values to be incorporated into Schedule D. I support this recognition but it is my opinion that the recognition needs to go further. A specific reference is made in relation to pH in the Whangaehu River. However there are other parameters (e.g. trace elements and hydrogen sulphide which at times naturally breach the numeric values proposed as 'standards' in Schedule D. As such I would recommend that a generic statement recognising the occurrence of this natural variation be included as a specific advice note which can be referred to in any part of Schedule D.

Conclusion

24. As a result of expert caucusing there have been a number of proposed changes to Schedule D of the POP which I am supportive of.
25. I am still concerned about the use of ANZECC (2000) trigger values as standards in the POP.

26. Schedule D still requires notes regarding allowances to be made for natural variation that falls outside the numeric range or limits set in the Schedule.
27. I am unclear as to whether the matters of agreement arising from expert caucusing that I was involved in concerning the use of the word standards have been adopted by the planners and Council staff and incorporated in wording changes in the pink version of the POP or Schedule D.

Paul Kennedy

29 January 2010

REFERENCES

- ANZECC, 2000: Australian and New Zealand guidelines for fresh and marine water quality 2000. Australian and New Zealand Environment and Conservation Council.
- Barton, C.; James, N. 2009: Planning Evidence and Recommendations Report. Planners Report on Submissions to the Proposed One Plan – (a) Chapter 6 – Water (b) Chapter 13 - Discharges to Land and Water; (c) Chapter 15 - Takes, Uses and Diversions of Water and Bores; (d) Chapter 16 - Structures and Activities involving Beds of Rivers and Lakes, and Artificial Water Courses and Damming; and (e) Schedules B, C and D. August 2009.