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Sewage hearing – legal submission points

1. Section 107 analysis seems deficient
    a. At 11.2 of Martel Letica's evidence, it states that:
        i. '*Operations have addressed potential odour associated with the conveyance, treatment, and discharge of the wastewater. They state at Paragraph 6.d of their evidence, "if odour is an issue at Kohukohu this could be reduced by sealing the pumpstation and installing an odour unit which will look like a dome on top of the pumpstation*
    b. The applicant appears to be arguing that the requirements of section 107(e) are satisfied on the basis that odour can be reduced
    c. Section 107 requires a standard of 'any emission'. It is not a question of reducing.
    d. Section 107 states:
        i. Section 107 of the RMA states that a consent authority shall not grant a coastal permit allowing a discharge of contaminants to water if, after reasonable mixing, the contaminant is likely to give rise to: (e) any emission of objectionable odour.
    e. I also note that there is no comprehensive analysis on this point in NRC's s 42A report.

Start 14.12

2. Council appears to argue in its legal submissions that due to the wording of Policy D.1.4 in the proposed regional plan for Northland appeals version 2022 – that the use of the word **generally** in that Policy means that even if adverse cultural effects are present and cannot be avoided, remedied or mitigated, that the consent can be granted.

    a. This decision to focus on a Policy in such a way, seems to stem from Councils analysis of the *RJ Davidson Family Trust v Marlborough District Council* case [2018] NZCA 316. Council appears to argue that it can absolve itself from consideration of cultural effects within the RMA Part 2 context by referring only to higher policy documents.
    b. I want to note that paragraph 75 of *RJ Davidson* states:
        i. *If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise.* ***Absent such assurance, or if in doubt, it will be appropriate and necessary to do so.*** *That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8.*
    c. My submission is that the wording of Policy D.1.4 in the way the Council has interpreted it – is incredibly ambiguous. For example, if I emphasise the word '**Only**' instead of the word '**Generally**', I come up with a different interpretation of the Policy.

i. Reading it again: Resource consent for an activity may generally only be granted if the adverse effects from the activity on the values of the Places of Significance to tangata whenua in the coastal marine area and water bodies are avoided, remedied or mitigated so that they are no more than minor.

d. My submission is therefore – that in accordance with *RJ Davidson* – there is no assurance that referring to Part 2 would **not** add anything to the evaluative exercise.

e. Quite apart from that, this argument is extremely disappointing from the Council.

f. So, go to Part 2

Refer to written submission for effects that cannot be avoided, remedied or mitigated.

3. It is here that I wanted to pause and address the argument that effects on Mauri are not relevant in this hearing.

   a. Council has argued at 5.3 of its legal submissions – citing *Wakatu Inc v Tasman District Council* that courts would not support the finding of effects on mauri where it was not evidenced that physical effects directly diminished the life-supporting capacity of vitality of the affected river.

   b. Well, in that exact same case, the Court – Justice Newhook stated that it did not consider linking the likelihood of effects on metaphysical values to perceived physical effects to be the only test at [32]. I.e. they are not ruling exclusively that one needs a physical component to accompany a finding on effects.

   c. I also submit that part of the reason for the Court being reluctant to make a finding in relation to mauri, is due to the whakama that the judiciary has to make positive findings in relation to tikanga Maori concepts. In 2022, the High Court was faced with a question on whether it could make a factual finding that Ngati Whatua Orakei has mana whenua in central Auckland. [2022] NZHC 843

      i. In that case, the Court declined to make the declarations sought by Ngati Whatua – because it was reluctant to rule in place of tikanga Maori. The Court considered that existence of one groups mana whenua does not obviate the customary interests of other iwi at tikanga.

      ii. Summed up in the decision itself:At [369]

         1. If a tikanga-consistent resolution is not feasible it may be appropriate for the courts to determine the dispute. However, "[j]ust because a Court can do something does not mean it should."

d. I also wanted to refer to a hearing decision made at Pakari that was released this year – to extract sand from the coastal marine area off shore at Pakari. CST60343373 and DIS60371583
    i. In this decision, mauri **was** considered as part of the evaluative exercise on effects as part of cultural values. The commissioners found that the effects on rangatiratanga and kaitiakitanga flow on to impact the mana and mauri o the environment. (at 234).
    ii. In that case, reference was made to Objective 3.3. of the Auckland Regional Policy Statement which stated that:
        1. 'To sustain the mauri of natural and physical resources in ways which enable the provision for the social, economic and cultural wellbeing of Maori.'
    iii. I want to raise this because there is a similar Objective in the Proposed Regional Policy Statement for Northland. Objectives 3.1- 3.15 of the Proposed Regional Policy Statement are created due to the issue at 2.6 (a) which is:
        1. The decline of the mauri of natural resources – in particular water and land.
    iv. So, the statement that effects on mauri cannot become part of the evaluative exercise is in my submission, incorrect. That is supported by subsequent resource consent decision and policy documents.

4. Go back quickly to the point about alternative land sites in your written submission.

5. Talk about the NPSFM

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