Reto Blattner on behalf of Rhiannon Abbott-McGregor

Submission regarding Resource Consent Applications APP.003839.01.03 AND APP.002667.01.04

1. Introduction

1.1 In my submission I will make two points, both of which argue that the consent applications should not be granted as they are currently proposed.

1.2 The first point argues that under the Resource Management Act (RMA), the circumstances are such that granting consent would not meet the purpose of sustainable management.

1.3 The second point argues that from a holistic standpoint, Aotearoa's legal/policy framework is no longer one that seeks to discharge wastewater into the CMA if contrary to community visions.

2. Granting consent would not meet the purpose of the Act

2.1 Section 104(1)(a) provides that you must have regard to any actual and potential effect on the environment. Environment is defined in the Act, and includes cultural conditions which affect other aspects of the environment, and amenity values. In this case, the applicant Council's own Cultural Impact Assessment (*CIA*) finds that the current discharge from the Opononi/Omapere plant is culturally unacceptable.[1] For Kohukohu, the findings of the CIA confirmed that discharge causes significant adverse effects that cannot be avoided, remedied or mitigated.[2]

2.2 Section 104(1)(b) also provides that you must have regard to any relevant planning provisions. Just in the interests of time, the main ones I identify are:

[1] Cultural Impact Assessment of the Opononi Omapere Wastewater Discharge to the Hokianga Harbour, Te Arani Te Haara, page 47.
[2] S 42a report page 15 at 71.

- NZCPS Objective 3 requires that the role of tangata whenua as kaitiaki is recognised;
- Regional Policy Statement states that the relationship of tangata whenua and their culture and traditions with their ancestral land, water sites, wahi tapu and other taonga is to be recognised,[3]

2.3 What im hopefully demonstrating here is that significant cultural effects *cannot* be avoided, remedied or mitigated by any system that still puts treated wastewater into the Harbour. Any proposed conditions which seek to involve tangata whenua in the administration of such a treatment system is *not* providing for kaitiakitanga and it certainly does not remedy, avoid or mitigate. All it does do, is ensure tangata whenua are brought closer to the machinery involved that actively desecrates their wahi tapu.

2.4 The Regional Council appears to argue in its s 42A report that the maintenance of the treatment system, creating a site management plan, a septage management plan, creating a kaitiaki liaison group will mitigate adverse cultural effects.[4] This is reinforced in Martel Letica's evidence where she states at 12.1 that *subject to the amendments to Councils recommended consent conditions, the activity will promote the sustainable management of natural and physical resources in accordance with Part 2 of the RMA*.[5]

2.5 It is my submission that this conclusion fundamentally misunderstands the cultural issue. It is not a question of reducing the quality of discharge into the Harbour. Any discharge of human effluent into the Harbour is offensive. Even if highly treated effluent from the WWTP filters through a wetland system which drains into a watercourse and then into the Harbour – the cultural concern still exists.

2.6 In these circumstances, granting consent under section 104B would not:

- Promote the sustainable management of natural and physical resources, in that while the proposal may have been designed as to avoid and remedy adverse

[3] Northland Regional Council *Regional Policy Statement for Northland* (Northland Regional Council, May 2016) at 133 and 135.
[4] S 42A report page 32-33.
[5] Martel Letica evidence at 12.1.

effects on the physical environment, but will certainly not avoid, remedy or mitigate important cultural effects on the environment.

- Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga,
- Display a particular regard to kaitiakitanga.

2.7 I note that this position is supported by case law. Far North District Council itself has been put in an almost identical position in the past and I refer you to *Te Runanga o Taumarere v Northland Regional Council*[6] and a decision at a commissioner hearing in Akaroa.[7]

2.8 In the Akaroa decision – which I note is at the same level of this hearing, commissioners Collins and Langsbury declined to grant consent for the wastewater outfall into the Akaroa Harbour on the basis of significant cultural concerns, and a lack of thorough investigation into alternative options.[8] Collins and Langsbury went on to state that the strong policy theme that disposal of even highly treated human effluent into the CMA is no longer regarded as a good option, rather it is to be regarded as an option that may be necessary in some circumstances after other options have been thoroughly investigated.

2.9 It is my submission that the circumstances that we have here today are analogous to the Akaroa decision.

2.10 I submit that you as the Commissioners must be satisfied that the applicant's assessment is truly of "any possible" alternative methods of discharge.

2.11 I note that the Council has conducted 'desktop' analyses – the 'MacDonald' report and 'Jacobs' report which conclude that the cost of land-based disposal would be 18

[6] *Te Runanga o Taumarere v Northland Regional Council* [1996] NZRMA 77.
[7] Decision of Hearing Commissioners, David Collins and Hoani Langsbury. CRC150048.
[8] Decision of Hearing Commissioners, David Collins and Hoani Langsbury. CRC150048 at 292.

million, more than four times the capital cost of upgrading the existing plant and continued discharge on the outgoing tide.[9]

2.12 As pointed out by the Opononi and Omapere Ratepayers and Residents Association[10], the Jacobs report (2020) attributes $3.67 million to the purchase of land and $12.42 million as to the construction, with no reasons provided as to how these figures were arrived at. There has been no consultation with potential landowners to ascertain the possibility of land purchase or lease, nor has there been any investigation into easements over property and the ability to discharge to land on those easements. The Jacobs report itself **explicitly** acknowledges this, stating that 'no site investigations have taken place and no landowners have been approached to ascertain the possibility of and purchase or lease'.[11]

2.13 I analogise this to the Akaroa decision by commissioners Collins and Langsbury. The Akaroa case *also* concerned a desktop study which evaluated possible sites. The Commissioners agreed that the desktop study demonstrates:

> "*a snap-shot in time and may not give a true indication of the potentially suitable land area for irrigation at the sites identified.*

2.14 The commissioners concluded by stating:

> *"that until a wider investigation is undertaken it cannot be said that land disposal has been investigated and is not feasible or economic.*

2.15 This is exactly the point. On this basis I disagree with the evidence presented by Martel Letica at 13.2 of her affidavit where she states that the lack of viable alternatives at present require the continued use of the treatment plants to discharge wastewater. There hasn't been an adequate investigation.

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[9] Andrew Slaney and Jessica Daniel. 2020. Opononi/Omapere WWTP Upgrade at 51.
[10] Opononi Omapere Ratepayers and Residents Association 'Hokianga Harbour Health' Roger Brand 15 February 2021.
[11] Andrew Slaney and Jessica Daniel. 2020. Opononi/Omapere WWTP Upgrade at 34. (on NRC website as part of the s 92 response to request) < https://www.nrc.govt.nz/consents/resource-consent-hearings-documents/far-north-district-council-opononi-wastewater-treatment-plant/>.

2.16 There is simply no reason that the applicant's consideration of alternatives should be partial – its current consent can continue under section 124 of the Act in the interim.

2.17 For these reasons, granting consent under section 104B would not promote the sustainable management of natural and physical resources.

3. Discharge to the Harbour is inconsistent with broader national policy trends.

3.1 The National Policy Statement for Freshwater Management (NPSFM) came into force on the 3rd September 2020. Underpinning this policy statement is the concept of Te Mana o te Wai which recognises that protecting the health of freshwater protects the health and well-being of the wider environment. The NPSFM applies to all freshwater and, to the extent they are affected by freshwater, to receiving environments (which includes the wider coastal marine area).[12]

3.2 The NPSFM is relevant due to the requirement for every regional council to develop long-term visions for receiving environments and include those long term visions as objectives in its regional policy statement.[13]

3.3 Long term visions may be set as an FMU and must set goals that are ambitious but reasonable and identify a timeframe to achieve those goals. NRC is currently working through that process.

3.4 The overall theme from submissions from nga hapu o Hokianga and the broader community, is that discharge into the Harbour is abhorrent. This is an example of community groups and tangata whenua establishing a long term vision for a catchment. Setting a goal, such as having zero waste going into the Harbour is completely consistent with the NPSFM framework. It is absolutely the type of vision that is anticipated within the freshwater plan process.

[12] New Zealand Government *National Policy Statement for Freshwater Management 2020* (August 2020) at 8.
[13] At 3.3.

3.5 The fact that this vision of no waste in the Hokianga Harbour is compatible with current policy frameworks, demonstrates the grossly disproportionate term length of this consent renewal- that being 20 years as recommended by NRC, and 35 as sought by FNDC. Those timeframes are deeply concerning, and show no commitment to resolving the problem.

3.6 It's also important to keep in mind that with the new Natural and Built Environment Bill – the intrinsic relationship between hapu and te taiao and the health of the environment are front-footed in the purpose section of the Bill as part of Te Oranga o te Taiao.

3.7 These issues are no longer ones that can simply be swept away. Central government and councils are fundamentally changing the way that we relate to the environment. It's clear that the way forward envisages tangata whenua in the driving seat, and the environment prioritised.

4. Conclusion

4.1 The application does not meet the purpose of the RMA. Cultural effects are significant and cannot be avoided, remedied or mitigated by making adjustments to a system that discharges into the Harbour. Even if all mitigation measures specific in the proposed conditions take place, they still will not avoid, remedy or mitigate adverse effects so long as the discharge goes into the Harbour.

4.2 There has not been a sufficient investigation into alternative methods of discharge.

4.3 The application is inconsistent with Aotearoa's broader statutory/policy framework.

4.4 A short term consent should be granted that allows alternative methods to be investigated/land owners to be consulted as to land based discharge.