COMMISSIONER REPORT

TITLE:	Environment & Planning Subcommittee Commissioner Hearing
DATE:	Monday, 28 March 2007
VENUE:	Heaphy / Wangapeka Rooms, 189 Queen Street, Richmond
COMMENCING AT:	9.30 am
COMMISSIONER:	Dr Brent Cowie
IN ATTENDANCE:	Dr R Lieffering (Coordinator Resource Consents), Mr J Butler (Senior Consent Planner Natural Resources)

Decision of the Hearing Commissioner Dr Brent Cowie

Appearances

Objectors

- Mr Ron Crosby, Legal Counsel, Gascoigne Wicks
- Mr Paul Morgan, chair of the Wakatu Incorporation and the Ngati Rarua Atiawa Iwi Trust.
- Mr Graham Thomas, Graham Thomas Resource Management Consultants Limited.

Council Staff

- Mr Jeremy Butler, Senior Consent Planner (Natural Resources)
- Dr Robert Lieffering, Coordinator Resource Consents

1 Introduction

1. This is the decision of a hearing commissioner Dr Brent Cowie appointed to hear and decide two objections to the Tasman District Council (TDC; the Council) pursuant to s357 of the Act. The objectors were Wakatu Incorporation (Wakatu), Ngati Rarua Atiawa Iwi Trust (NRAIT) and Rore Lands. The objections related to the Council's determinations, made under s88(3) of the Act, that two water permit applications, made sequentially for the same resource, were incomplete.

2. I heard the objections at the offices of the TDC in Richmond on Wednesday 28 March 2007. The hearing commenced at 0930h closed at approximately 1430h.

3. I heard submissions from legal counsel, Mr Ron Crosby, and evidence from the chair of the Wakatu Incorporation and NRAIT, Mr Paul Morgan and Mr Graham Thomas, a resource management consultant based in Richmond for the objectors. Mr Jeremy Butler, a senior consent planner who had prepared a report similar to one made under s42 of the Act, spoke on behalf of the TDC. Some additional commentary was provided by Mr Keith Palmer for the applicants, and Dr Robert Lieffering for the TDC.

4. I have decided to dismiss the objections. This is because in my view both applications are woefully deficient in terms of the requirements of s88, and in

particular the Fourth Schedule of the Act and the provisions of the Proposed Tasman Resource Management Plan (PTRMP; the Plan). I detail my reasons later in this decision.

5. The TDC must ensure that as a Unitary Authority it is “squeaky clean” in exercising its regional council functions to process resource consent applications from potential competitors. There are some minor matters in the way these applications were processed that could be improved in future.

2 Background to the Objections

6. On 20 December 2006 Mr Thomas applied on behalf of the objectors for a water permit to take groundwater from the Central Plains aquifer of the Motueka/Riwaka Plains at a rate of 383.8 litres per second (l/s). The application was allocated the number RM061071. The stated basis for the availability of the water resource and the justification for the application was some limited promotional/consultative material from the Council’s Engineering Department, and it was claimed that the data to support the applications were held by the Council.

7. The PTRMP currently sets an allocation limit of 855 l/s from the Central Plains aquifer. Currently 741 l/s is allocated. Any application to take over the application limit is one for a non-complying activity. There is evidence that the allocation limit may able to be raised as recharge is apparently higher than previously thought. No application has been made by any party for a plan change to vary the PTRMP allocation limit.

8. Acting under delegated authority Mr Butler returned the application to Mr Thomas on 11 January 2007. This was done under the provisions of s88(3) of the Act as Mr Butler did not consider that it met the requirements of Section 88. This was primarily because the Assessment of Environmental Effects (AEE) that accompanied the application was determined to be inadequate, and so the application was incomplete.

9. The AEE comprised some information on how the water taken would be used to irrigate land owned or leased by the objectors. It however relied primarily on a Power Point presentation made to Iwi by staff of the TDC in June 2005. This was titled “Motueka Water for Community Supply”.

10. On 24 January 2007 the Council received an objection under Section 357 of the Act to Mr Butler’s determination that the application was incomplete and could not be received.

11. On 30 January 2007 Mr Thomas lodged a second application for the same resource on behalf of his clients. This application was allocated the number RM070083. On 7 February 2007 Mr Butler returned this application to Mr Thomas as it too was deemed to be incomplete pursuant to s88(3) of the Act for similar reasons as the first application.

12. On 13 February 2007 the Council received a second objection under Section 357 to Mr Butler’s determination to return the second application. This present decision deals with both s357 objections.

13. The objections to Mr Butler's determinations raise 12 points, contending that among other matters:

- All of the information necessary to receive the application is available to the Council through its own records;
- Sufficient information on the intended use of the water is provided;
- The assessment of effects on the environment (AEE) is adequate when data held by the Council is taken into account;
- All information requirements as set out in the PTRMP have been satisfied; and
- An assessment of those parties affected is not required as the work has been done and data is held by the Council.

3 The Relevant Law

14. Section 88(3) of the Act reads:

"If an application does not include an adequate assessment of environmental effects, or the information required by regulations, a local authority may, within 5 working days after the application was first lodged, determine that the application is incomplete and return the application, with written reasons for the determination, to the applicant"

15. Mr Crosby, and to some extent Mr Butler, canvassed the relevant case law. The most relevant case cited is that of AFFCo NZ Ltd vs Far North District Council, where the Court stated that:

> *"Advisers to consent authorities and would-be submitters should not themselves have to engage in detailed investigations to enable them to assess the effects. It is the applicants' responsibility to provide all the details and information about the proposal to enable this to be done. The application and supporting material deposited for public scrutiny at the consent authority's office should contain sufficient detail for those assessments to be made: AFFCO NZ Ltd v Far North DC (No 2) [1994] NZRMA 224."*

16. Mr Crosby submitted to me that the effects of an abattoir would be much greater than that of the present applications. These include land use consents for site construction and the composting of solid wastes, and a discharge permit to discharge contaminants to air.

17. The take of groundwater from a confined aquifer with limited yield in an area where a large number of domestic, commercial and agricultural uses rely on that water has, in my view, very significant potential effects on those users. The take sought is for well over 40% of the current allocation limit of the aquifer, and, if granted, would result in a total authorised take well over the present sustainable yield for the aquifer. There are also potential effects on flows in the Motueka River and spring fed streams.

18. In my view the scale and significance of these potential effects are at least as significant, and arguably more so, than those associated with the construction and operation of an abattoir. The proposed take potentially affects a large number of resource users over a significant area in and to the south of Motueka. Accordingly, I do not accept Mr Crosby's submission that the case law in "AFFCO" is not directly relevant to the present applications.

19. Mr Crosby also cited four cases where AEE's had been considered adequate by the Court for the purposes of decision making on a resource consent application. These related to:

   - the take of a relatively small quantity of water from a Northland river for irrigation;
   - extensions to a building and sewage disposal in a hazard prone area
   - construction of motel units; and
   - the taking of gravel.

20. In my view the scale and significance of the potential effects of these activities are all much less than is the case for the present applications. The Court said as much in the first case cited by Mr Crosby:

   "The Affco case concerned a proposal for a new abattoir, and its scale and significance and potential effects on the environment called for a full design of the proposal. That may be contrasted with the present proposal to abstract a relatively small quantity of water from the Kaihu River for farm irrigation. The scale and significance of the actual and potential effects of that activity on the environment are not such as to cause a fully detailed design: D L Newlove Ltd v Northland RC A30/94".

21. This review of the case law leads me to two conclusions:

   - There is a clear onus on the applicant to have engaged in detailed investigations to enable them, the consent authority and potential submitters to assess the actual and potential effects of the take of groundwater sought in the applications.
   - The size and scale of the actual and potential effects of the application to take groundwater from the Central Plains aquifer requires a comprehensive assessment of those effects be made in an AEE.

4 The Objectors

22. Mr Morgan chairs both the Wakatu Trust and NRAIT. He is also chair of the Federation of Maori Authorities, which is a political lobby group. He has a degree in Business Administration and has been involved in Iwi development for over 25 years.

23. The Wakatu Trust, which was formed in 1977, has some 3,000-3,500 beneficiaries. It contains members of Ngati Rarua and Te Atiawa and two other

iwi. The trust has significant land holdings totalling nearly 4,000 acres, mostly around Motueka. Their primary role is to manage that land in the interests of the owners. Mr Morgan told me that the trust is today a substantial contributor to the economy of Motueka. He said that tangata whenua in and around Motueka had been marginalised, but that in the last 30 years they had rebuilt their land base in the area.

24. The owners of NRAIT are whanau and extended family members. The Rore Trust is whanau based.

25. A claim was made to the Waitangi Tribunal four years ago. The report is due out this year.

26. Mr Morgan said tangata whenua believed that the water should go with the land, and that they were concerned that some leaseholders would not seek to continue their takes of water once their leases expired. This matter cannot be addressed here, apart from saying that ownership of land does not confer any associated legal rights to take and/or use water.

27. The relationship between the Wakatu Trust and the TDC has, in Mr Morgan's words, "waxed and waned". He spoke highly of the Trust's relationship with the Council's groundwater scientist, Mr Joseph Thomas, and with the Crown Research Institutes working on the Integrated Catchment Management Programme in Tasman Bay.

28. In 2004 TDC granted a consent to itself to construct a bore and pump test water from the bore, which is on the north side of Motueka, for the purposes of aquifer testing. That bore is on land owned by the Wakatu Trust. The consent allowed the taking of up to 70 l/s for pump testing. Condition 11 of that consent required that a "copy of the full report on the aquifer bore testing shall be provided to the Council not later than three months following completion of the testing".

29. A peer review of the information from the pump test was carried out by Dr Hugh Thorpe, a leading groundwater scientist. Through Mr Crosby and Mr Thomas the objectors made strong allegations that the TDC has withheld the information from the pump testing from them. That is a separate legal matter for which an enforcement order has been lodged in the Environment Court, and is not one I can traverse here.

30. It is however relevant in so far that the objectors asserted strongly that if the results of that pump testing had been made available to them, they would have been able to carry out a more complete assessment of the effects on the environment of the applications made. I will return to this matter later.

31. As Mr Morgan expressed it there was an "understanding" between the Council and the objectors that the bore on the land of the Wakatu Trust would be used to take water for supplementary supplies in the Motueka area. He implied that the Council and Iwi were working jointly on this.

32. At a meeting however in mid November 2006 between the Chief Executives of the Council and the Wakatu Trust the TDC advised the Trust that it would be applying for resource consent to take water from another nearby bore. This water

would be used to supplement existing water supplies in areas such as Mapua, Tasman, Dovedale, Motueka and Riwaka.

33. At this time the objectors briefed Mr Thomas to prepare a resource consent application for the current proposal. My understanding is that the main purpose of this was to get "priority" for the objector's application ahead of the TDC.

34. A comprehensive resource application, prepared by Montgomery Watson Harza (MWH), a large multi-disciplinary company with input from a specialist groundwater consultancy (Aqualinc) was lodged with the TDC on 8 March 2007. After an initial evaluation to ensure that the application met the requirements of s88, the application was handed to another multi-disciplinary consultancy, Sinclair Knight Merz (SKM), to process the application. SKM deemed that no further information was necessary pursuant to s92 of the Act to notify the application, and it was publicly notified on 24 March 2007. Because pump testing had shown the potential for significant interference effects on other users, and because many Motueka residents rely on bores for domestic supply, some 1,800 individual property owners and occupiers were notified individually of the application.

5 The Applications Made

35. The applications by the objectors to take water from the Central Plains aquifer were prepared and lodged by Mr G Thomas. He is a consultant who has worked locally for many years, including 30 years working for local Councils. Mr Thomas is a Registered Engineering Associate and an Associate Member of the Planning Institute. He has provided continuous planning advice to the objectors since 1999.

36. Mr Thomas represented Wakatu on the Motueka Iwi Resource Management Advisory Komiti (MIRMAK), which was established to represent tanagata whenua in consultation required under the Resource Management Act and Local Government Act. Through this committee and its successor, Tiakina Te Taiao, Mr Thomas said he has represented the objectors in dealings with the TDC on numerous issues.

37. Mr Thomas said he has no background in water resource management, and previously has only prepared "minor" applications to take and use groundwater. He was briefed to prepare the first application in mid or late November 2006, and worked less than one month on that application.

38. The TDC encourages early consultation by applicants for resource consents. Mr Thomas advised me that he did not approach the Council to discuss the application before it was lodged. He also told me that he took no advice from any geohydrological expert, did not commission or carry out any pump testing, carried out no assessment of the effects of the proposed take on other bore users, and sought no advice on the effects of the take on surface water bodies.

39. The application lodged on 20 December comprised the following:

- The TDC's standard application form, where much of the information sought is included by reference to attached documents.

- A legal opinion from Mr Crosby to Wakatu outlining what he considers the obligations of the TDC under Part II of the Act and the PTRMP to Iwi regarding the statutory basis for processing the application.

- An assessment from Mr John Bealing of AgFirst Consultants outlining some basic proposals as to how the water is to be used to irrigate the land owned and leased by the objectors.

- A letter from Davis Ogilvie providing a preliminary assessment of how much water may be needed to service an area near Motueka that the objectors wish to have rezoned (no application has been made to change the PTRMP to provide for such rezoning, and it is likely to be contentious).

- Land titles and the like.

- A copy of a Power Point Presentation entitled "Motueka Water for Community Supply" presented to MIRMAK in June 2005 by Mr Joseph Thomas, a groundwater scientist employed by the TDC.

40. The application was lodged with the Council on 20 December 2006. This is the first "non working" day before the Christmas break, as specified in Part 1 (Interpretation and Application) of the Act. TDC had five working days, calculated from 11 January 2007 (being the first "working day" after the Christmas break) to determine if the application met the requirements of s88.

41. The application was handed to Mr Butler to make a determination on s88 matters. As a senior consent planner he holds delegated authority to make decisions on whether an application should be accepted or returned under s88.

42. I asked Mr Butler a series of questions about how he handled this delegated function, in which he was exercising the powers of a regional authority. This is because I was particularly concerned that the TDC, as a unitary authority, also has water supply functions and so is a commercial competitor for the Central Plains groundwater resource. I wanted to be very certain that there was no undue pressure exerted on Mr Butler from senior managers responsible for asset management to return the application.

43. I have no doubt that Mr Butler provided totally honest answers to my questions.

44. Mr Butler has worked for the Council for only 18 months and so was not very familiar with the background to the present applications. He told me he was "surprised" to receive the application. He discussed the merits of the application with his immediate manager, Dr Robert Lieffering, and with Mr Dennis Bush-King, the Environment and Planning Manager. Mr Butler also sought background information from Mr Jeff Cuthbertson, an Asset Engineer, and the Council's groundwater scientist Mr Joseph Thomas.

45. Asked how influential Mr Bush-King was in making his decision, Mr Butler said he and Dr Lieffering put forward their view that the application should be returned and Mr Bush-King supported that. There was no similar discussion held with Council Asset Management Staff. The merits of contracting an outside consultant

to make the decision were considered, but Mr Butler and Dr Lieffering believed the application to be so inadequate that step was unnecessary.

46. I asked Mr Butler if he had considered using the provisions of s92 of the Act to require the applicant to provide further information. He confirmed that he had, but did not consider this was appropriate as much of the information would need to be provided from scratch. After reading all the relevant information provided in the applications, I support fully Mr Butler's assessment in this regard.

47. The second application made on behalf of the objectors by Mr Thomas was also returned by the Council. It made reference to the reasons why the first application was returned, primarily by referring more explicitly to sections of the power point presentation made by Council in 2005. Mr Butler told me that he was also surprised to receive this application, and that on this occasion he only really discussed it with Dr Lieffering.

48. I find that within the context of a Unitary Authority Mr Butler acted appropriately in how he handled discussions he had with other staff members about whether the applications met the requirements of s88. There is no suggestion that any pressure was placed on Mr Butler by either the managers to whom he reports or Asset Managers to return the applications. I also support the staff's decision not to contract out the s88 appraisal, as in this case, for reasons I will come to, it is very clear that both the applications are woefully deficient.

49. I do have some concerns however about the roles played by Mr Joseph Thomas, who as the Council's groundwater scientist advises both the Environment and Planning Department and Asset Managers. This compromises his independence in providing advice to people like Dr Lieffering and Mr Butler. I know Mr Thomas well and have the utmost respect for his integrity. The Council needs to be certain however that he is not compromised by wearing "two hats" at times, particularly in cases where TDC is applying to itself for resource consents to take groundwater. There is a cost in ensuring separation, and Mr Thomas has local knowledge and expertise that very few others share, but these are not compelling reasons for ensuring he is not compromised.

50. In this context I support the decision of the TDC to use an external consultancy (SKM) to help process the Council's recent application to take groundwater from the Central Plains aquifer.

6 Do the Applications Meet the S88 RMA Tests?

51. This is the core issue addressed in this decision. I have already outlined why I have concluded that this is an application with potentially very significant adverse effects, and that the case law is that the AEE should include a comprehensive evaluation of those effects.

52. The matters that should be included in an AEE are listed in Schedule 4 of the Act. Those matters are subject to the provisions of any policy statement or plan, which in this case is the PMTRP. Information requirements for resource consent applicants are listed in Section 32 of the Plan, where it notes that these are guidelines as to what may be required and the matters listed may not be relevant in every case. The general requirements for taking, using damming or diverting

water are listed in Section 32.1.2 in the Plan and states that applicants must submit specified information when seeking consent.

53. I do not intend to traverse all the matters listed in the Schedule or the Plan; rather I will concentrate on those that relate primarily to the assessment of effects of the proposal on the environment.

Maps and Plans

54. Matter (c) in the PTRMP requires a site plan showing, where appropriate, details of, among other things: drains, watercourses, bores, wetlands, lakes and other water bodies, position of existing water takes and topography. I would expect all these matters to be addressed in an application to take a large amount of groundwater from a confined aquifer with limited capacity to supply water.

55. No such site plan or plans were provided with either application. Rather the only plans were a historical map from the native trustee, and four general maps from the Council's presentation to Iwi. These latter maps show the proposed community supply area, the Motueka urban supply water area, the general direction of groundwater flow and the water management zones around Motueka and Riwaka. Aerial photographs also show Wakatu and NRAIT land holdings in the area, and those that hold current water permits. The latter map gives no indication of the take allowed by those permits, or what other permits exist in the general area.

56. I find the applications to be substantially deficient in that they provide little in the way of relevant site plans or other information that can be used to put the application in the context of local water resources and the use of the those resources. These are basic requirements in any AEE for a significant water take. In themselves the absence of such maps and plans make the application incomplete and would alone warrant it being returned under the provisions of s88(3).

Effects on Other Uses of the Aquifer

57. A comprehensive assessment is clearly required on the effects of the proposed take on other uses of the Central Plains aquifer. This need is reinforced by the proposed take being for much more than the remaining balance of the current allocation limit in the PTRMP. This limit is 855 l/s, of which 741 l/s is already allocated. The present applications are for 384 l/s, which is 270 l/s over the current allocation limit.[1]

58. The Council's own information indicates that the sustainable yield from the aquifer may be greater than the allocation limit currently specified in the Plan. For instance the presentation made to Iwi included the statements that:

"recent testing confirms additional aquifer capacity of a further 230 l/s hence new total availability in the Central Plains Zone is 855 + 230 = 1085 l/s."

[1] I understand that this part of the application above the current allocation limit set in the plan would be one for a non-complying activity, although this is not specified in either application made by the objectors.

“the revised unallocated water in the Central Plains Zone on a conservative basis is hence 96 + 230 = 326 l/s.”

59. I understand the Central Plains aquifer is widely used for domestic supply purposes in and around Motueka. As such takes are long standing permitted activities, the extent to which its waters are used for domestic supply are not well known.

60. Neither the present applications, nor those made for the same water resource by TDC have applied to change the current allocation limit from the aquifer. In the present context it remains at 855 l/s.

61. Mr Crosby tried to persuade me that the Council’s June 2005 presentation to Iwi constituted an assessment of effects on the Central Plains aquifer. I will quote the words he cited to me under the heading of *Water Availability Findings* in italics, with my comments in text.

“The testing indicates high flow availability in the area with the bore able to pump up to 80 l/s”.

“Shallow bores show a much smaller localised drawdown effects than deeper bores”.

“The drawdowns are smaller than the regional natural water fluctuations experienced in the area.

62. The first statement simply indicates that water is available, albeit at a rate of just over 20% of what is sought by the applicant. The second says that the effects on deep bores are greater than shallow bores, and the third indicates that at the rate at which pump testing was carried out, drawdowns are less than natural variations. This latter statement was highlighted by Mr Crosby.

63. I cannot see how quoting such information contributes to an assessment of environmental effects of taking an additional 384 l/s from the aquifer. I note that even at the rate at which the aquifer was pump tested there is an indication of localised drawdown on deeper bores. This should surely trigger an assessment of taking nearly five times this volume on other water users by a competent geohydrologist. No such assessment was undertaken.

64. I also note that anyone with even a rudimentary knowledge of groundwater hydrology would understand that a large take of 35-40% of the allocation limit of a confined aquifer would almost certainly have significant interference effects on other nearby water users. This is particularly the case where the amount of water sought would take the allocation from the aquifer well over the current allocation limit. Either Mr G Thomas did not have this rudimentary understanding or, if he did, he chose to ignore it. I suspect it is the former as asked to explain Council policy on interference effects for groundwater takes, Mr Thomas could not do so.

65. The fact that the drawdown in the pump test was less than natural variation is rather meaningless without context. The pump test was conducted for a relatively short time at a rate well within the present current allocation limit of the aquifer. If this allocation limit is either accurate or conservative, then no major drawdown

effect should be expected. This is quite different from the potential effects of an application to take a large volume of water much in excess of the current allocation limit.

66. The objectors made much of the Council's alleged refusal to provide detailed information from the pump testing. As I have already noted this is the subject of Environment Court action.

67. It is ironic that if this information had been provided to the objectors **it would have shown that there are potentially major interference effects from the proposed take on other water users.** This should in turn have suggested very strongly to them that comprehensive geohydrological investigations are essential to determine the likely scope and magnitude of these effects, and how those effects could be avoided, remedied or mitigated. In other words, the provision of this information would have demonstrably proven a need for a much more comprehensive assessment of environmental effects. The information would not have supported the present applications, which both Mr Crosby and Mr Thomas asserted it would.

68. There are also potentially very serious effects from saline intrusion into the aquifer should it be over abstracted. Saline intrusion can render the water in a confined aquifer unusable, and can be very hard to rectify once it has occurred. Given the amount of water sought, and that it is much over the current allocation limit for the Central Plains aquifer, I would have expected the objectors to address how saline intrusion can be avoided, and bores monitored to ensure early detection and rapid remediation.

69. The objectors also claimed that as the Council had much of this information they should themselves analyse it on behalf of the applicants. There is no support for this in the law. Rather, the onus is very clearly on the applicant to obtain and analyse the relevant information in their assessment of environmental effects. Not even the most rudimentary attempt to do so has been carried out.

70. Mr Crosby also asserted that the Council in returning the applications had no regard to the matters in s6(e) and 8 of the Act, particularly its duty to actively protect Maori rights. There is however no legal grounds for the associated premise that Maori applicants be treated differently from any other applicants for resource consent. Nor is s88 specifically subject to Part II of the Act in the way that s104, which relates to decisions on applications, is. Accordingly, I reject the inference made that in returning the applications the Council somehow failed in its obligations to Maori under the Act.

71. I find that the greatest single deficiency of the applications made is their lack of assessment of the effects of taking 35-45% of the sustainable yield of the Central Plains aquifer on the many other users of the same water resource. In failing to make such assessment, and in failing to address how adverse effects can be mitigated, both the applications made by the objectors are woefully deficient.

Effects on Surface Water Resources

72. The PTRMP requires an assessment of actual and potential effects on other users of the water body, including aquatic ecosystems.

73. Central Plains groundwater is hydraulically linked to the Motueka River, which is very highly valued as indicated by its waters being protected by the provisions of a National Water Conservation Order.

74. Mr Thomas acknowledged that the present applications make no assessment of the effects of the proposed take on the Motueka River, any local wetlands or any spring fed streams. As such, they are deficient in meeting these requirements of the PTRMP.

Mitigation Measures

75. Both Schedule 4 of the Act and the PTRMP require that an application require details of mitigation measures to be undertaken to "help prevent or reduce the actual or potential effect" (Schedule 4) and "details of any measures to avoid, remedy or mitigate adverse effects" (PTRMP).

76. The information highlighted by Mr Crosby from the Council's presentation to Iwi stated that mitigation would be necessary:

    "Localised mitigation measures would need to be considered for any well field abstraction, especially the shallow irrigation wells – it is not water availability but access to water"

    "The coastal margins of the High Street South area where there is already a current localised domestic water problem with salinity would also need to be considered, i.e. reticulation".

77. In answer to a question Mr Thomas acknowledged the applications included no suggested or proposed mitigation measures. He said he expected the applications would be notified, and at that time mitigation measures could be developed.

78. The information presented to the objectors by the Council in 2005 clearly showed there would be adverse effects on other users of the aquifer, and that mitigation would be essential. I find the applications deficient in that they make no mention of possible mitigation.

Consultation

79. The objectors undertook no consultation. They had not discussed the application with the Council, who surely would have strongly advised them to do so. Again Mr Thomas said that this would take place once the application was notified.

80. My understanding of legal requirements regarding consultation is that for a significant application such as this an applicant should have endeavoured to talk

to and inform the local community about what was proposed, what effects it may have on them, and how those effects may be mitigated.[2]

81. Additionally, no attempt was made to identify parties who may be affected by the applications made.

82. I find the applications deficient in that no consultation at all was undertaken prior to either application being lodged, and no attempt was made to identify affected parties.

Monitoring and Recording

83. Both Schedule 4 and Section (e) of the information requirements in the PTRMP require that details of how "the effects will be monitored and by whom" (Schedule 4) and the "method used to measure and record abstraction rate" and "measures taken to conserve water use" (PTRMP).

84. As acknowledged by Mr Thomas there is no detail of any proposed monitoring in the application. I find the application deficient in this regard also.

Comparison with the TDC Application

85. Mr Crosby invited me to make comparisons with the application and AEE lodged by the Asset Management group of the TDC in early March 2007 to take groundwater from the central plains aquifer to supplement community water supplies in and around Mapua, Dovedale, Tasman, Moutere, Motueka and Riwaka. This application is for a similar volume of water to that sought by the current objectors from the same aquifer at virtually the same location.

86. Although not strictly a matter relevant to the objections being considered, I have compared these applications briefly. The first thing that strikes me is that the TDC application, and its associated AEE, is far more detailed and comprehensive. It was prepared by several staff of a multi-disciplinary engineering and resource management consultancy, with input from a specialist groundwater consultancy. The AEE includes a comprehensive description of the water resource, an evaluation of the legal and policy framework, and a reasonably detailed assessment of effects on the environment. Importantly, it also details potentially significant interference effects on other users of the Central Plains aquifer.

87. Candidly the applications do not bear comparison. One is comprehensive and, at first glance, reasonably thorough; the others, as lodged by the objectors, woefully deficient.

7 Determinations

88. I make the following determinations:

    a) Within the context of a Unitary Authority with both district and regional council functions, Mr Butler acted appropriately in making his determinations that both

[2] Noting that under s 36A of the Act consultation is not strictly required but is certainly good practice.

applications RM 061071 and RM070083 were incomplete and should have been returned to the applicants.

b) Pursuant to Section 357D of the Act the objections made by Wakatu Incorporation, Ngati Rarua Atiawa Iwi Trust and Rore Lands on the determinations to return applications RM 061071 and RM070083 to the applicants are **dismissed because, given the scale and significance of the adverse effects that the proposed activity may have on the environment**, **the applications demonstrably fail to meet the tests of s88(3) of the Act.** More particularly the applications fail to meet the tests of both Schedule 4 of the Act and the information requirements of Section 32.1.2 of the Proposed Tasman Resource Management Plan.

c) The most serious single deficiency in the applications is the total absence of assessment of the actual and potential effects of taking over 40% of the current allocation limit from a confined aquifer on the many other resource users in the area. Other serious deficiencies include: the lack of adequate maps and plans, the lack of any assessment on the effects on surface water resources, no discussion of potential mitigation measures or how the effects of the proposed take may be monitored, and the lack of consultation either with affected parties or the consent authority. Taken in total, these deficiencies mean both applications are woefully deficient, and I fully support the Council's determinations to return both under the provisions of s88(3) of the Act.

Dated this 10th day of April 2007

Dr Brent Cowie
Hearing Commissioner

Confirmed:	**Chair:**