STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Jeremy Butler, Senior Consent Planner, Natural Resources

REFERENCE: RM061071, RM070083

SUBJECT: **WAKATU INCORPORATION, NGATI RARUA ATIAWA IWI TRUST AND RORE LANDS - REPORT EP07/03/04 -** Report prepared for 28 March 2007 hearing

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1. INTRODUCTION AND BACKGROUND

On 20 December 2006 Mr Graham Thomas (Graham Thomas Resource Management Consultants Limited) applied on behalf of his clients, being Wakatu Incorporation, Ngati Rarua Atiawa Iwi Trust (NRAIT) and Rore Lands, for a resource consent (water permit) to take groundwater from the Motueka/Riwaka Plains at a rate of 383 litres per second (L/s). The application was allocated the number RM061071. The stated basis for the availability of the resource and the justification for the application was the promotional/consultative materials from the Council's Engineering Department and it was claimed that the data to support the claims was held by the Council. It is assumed that the data referred to is the same that is currently being collected, compiled and modelled by consultants on behalf of the Council's Engineering Department (see discussions below).

On 11 January 2007, under delegated authority, I returned the application to Mr Thomas under Section 88(3) of the Resource Management Act 1991 (the Act) as I did not consider that it met the requirements of Section 88 for the reasons discussed below. A copy of the letter sent to Mr Thomas is attached as Appendix 1.

On 24 January 2007 the Council received an objection under Section 357 of the Act to my decision that the application was incomplete and could not be received. A copy of the objection is attached as Appendix 2.

On 30 January 2007 a second application for the same resource was lodged by the Mr Thomas oh behalf of his clients. This application was allocated the number RM070083. On 7 February 2007 this application was also returned to Mr Thomas as it too was deemed to be incomplete pursuant to Section 88(3) of the Act for similar reasons as the first application. A copy of the second rejection letter is attached as Appendix 3.

On 13 February 2007 the Council received a second objection under Section 357 of the Act. This objection was to my decision to return the second application. A copy of the second objection is attached as Appendix 4.

It should be noted that the Council's Engineering Department, together with the Council's resource scientists, are currently conducting detailed investigations into the availability of groundwater in the Central Plains Groundwater Zone (as identified in the Proposed Tasman Resource Management Plan [PTRMP]) with an aim to providing an increased allocation limit on the Motueka Plains and to provide a water supply for the Coastal Tasman Area and Mapua. On 22 April 2003 an application was lodged by MWH New Zealand Ltd on behalf of the Council to take 18,000 cubic metres of groundwater per day. No acknowledgement letter was sent and it is doubtful whether a thorough Section 88 assessment of the application was done. The application was allocated the number RM030536. It appears from the record that the application was subsequently withdrawn through lack of information and a recognition that a comprehensive information gathering exercise would need to be conducted before a viable application could be lodged.

2. THE OBJECTION

The objections raise 12 points. It is contended that:

- 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. PHYSICAL CONTEXT

Section 88 of the Act states that an application must include "… an assessment of environmental effects in such detail as corresponds with the scale and significance of the effects that the activity may have on the environment". Therefore, it is considered appropriate to present a brief description of the physical environment so that the scale and significance of the proposed activity is described.

The Central Plains Groundwater Zone of the Motueka/Riwaka Plains Aquifer has a current allocation limit of 855 litres per second as specified in the PTRMP. Currently 741.14 litres per second is allocated.

The coastal margin of the land is characterised by many springs, many of which are of high aesthetic, cultural and spiritual value. The coast is also characterised by a significant risk of salt water intrusion into the aquifer. Furthermore, there is a high dependency upon individual groundwater bores to supply domestic water in and around Motueka.

Thus, overall, the area is considered to have a high vulnerability to changes in geohydrological dynamics. Any changes to the geohydrological environment as a result of a proposed abstraction of groundwater need to be very carefully considered.

4. STATUS OF THE ACTIVITY

The proposed water take is a **non-complying** activity under Rule 31.1.6A of the PTRMP.

Non-complying activities are commonly considered to be those activities that are beyond the normal scope or intention of the plan to allow. In Price v Auckland CC (1996) 2 ELRNZ 443 (EnvC) the Environment Court stated that the purpose of the non-complying status is not to create a type of de facto prohibited activity, but to allow for activities that are acceptable in the sense that they do not oppose or challenge objectives and policies and therefore qualify for further examination under s 104. Clearly, given its non-complying status, the application should be thorough in respect of its assessment of environmental effects and policy analysis.

5. REASONS FOR DETERMINING THAT THE APPLICATIONS WERE INCOMPLETE

Assessment of Effects on the Environment

In assessing the effects that the proposed water take will have on the environment, the applicants made extensive reference to information "already held by the Council". It is the applicants' responsibility to provide the information required with the application rather than requesting the Council staff to obtain and assimilate the information into the application. The Environment Court stated in AFFCO NZ Ltd v Far North DC 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."*

Therefore, it is considered that the applicants should obtain the necessary information and present it in their application with the appropriate interpretations and analyses of that information.

Further, the information held by the Council may, or may not, be comparable with the parameters of the water take applied for by the applicants. While I have not seen the information referred to by the applicants, I have been informed by Mr Joseph Thomas (the Council's Resource Scientist, Water) that the bores tested by the Council were only tested at 65 litres per second. Detailed and complex modelling and up-scaling to the rate of take sought by the applicant would be required in order to use such pump test data. Clearly there is a need here for the applicants to obtain the data themselves, review, adapt and assimilate the data into their own application identifying the actual effects on the environment that are likely to occur, and submit it with their application. As mentioned above, it is not appropriate that the Council's consent staff undertake this entire exercise in order to gain an understanding of the effects that may occur on the environment.

It is acknowledged that the publicity and consultation documents released by the Council's Engineering Department make claims regarding the availability of water in the Central Plains Zone. It is stated that "43,000 cubic meters per day can be taken without jeopardising current use". It is understood that the figures quoted arise from a 2002 Regional Water Study that was conducted at a high and relatively generic level. It is self evident that the figures cannot be taken as an accurate assessment of the available water resource and that detailed testing and modelling is required to determine the actual size of the available groundwater resource.

Given the physical context comments (see above) it is clear that a water take of this magnitude has the potential to have significant effects on the environment. Extensive tests and geohydrological models are required to identify the impact that such an abstraction will have on nearby waterbodies, springs, salt water intrusion into the aquifer, and other groundwater users. If there are to be few effects as stated in the Engineering Department's promotional/consultative material, then evidence for this must be provided.

Also required, especially given the exceedance of the PTRMP allocation limits that would result from such a groundwater take, is the need for modelling of flow reliability and drought security modelling.

None of this has been provided and therefore remains completely unquantified. When these omissions were stated in the Section 88 rejection letter, the Council's consent staff were again informed, via the second resource consent application (RM070083), that the information is already held by the Council. It appears that the Council's staff were expected to find, interpret and adapt information on behalf of the applicants when case law and Section 88 itself clearly show that this is the applicants' role.

Water Needs and Usage

The report by John Bealing of AgFirst (provided in Attachment C of both applications) was intended to provide a calculation and rationalisation of the appropriate water take sought by the applicants. This report provided a basic presentation of the land held by the applicants, the area of those parcels, the existing water take parameters and the current land uses for those properties. This level of information is not considered sufficient to allow the Council to make an adequate assessment of water needs for a water take of this magnitude.

It is acknowledged that in the Section 88 rejection letter for application RM061071 dated 11 January 2007 I stated that "No identification of these existing permits have been included". In retrospect this statement was incorrect as clearly some information was provided. This error was rectified in the equivalent paragraph in the letter rejecting RM070083 dated 7 February 2007. However, the substance of the paragraph in both letters remains undiminished. In order to make an accurate assessment of the needs and use of the water, more information is needed over and above a list of properties, areas, and current water takes. Plans, maps and/or aerial photographs of the properties showing the irrigable areas of the properties are required to enable a thorough and well justified assessment of water needs to be carried out.

Proposed Tasman Resource Management Plan (PTRMP) Information Requirements

Section 32.1.1 of the Proposed Tasman Resource Management Plan (PTRMP) introduces the Chapter that sets out the information requirements for water permit applications. This section states that while the matters listed may not all be relevant, and also may not be exhaustive, "the obligation remains with the applicant to provide sufficient information to meet the requirements of Section 88 and the Fourth Schedule of the Act". It goes on to say that further information may be requested by the Council under Section 92. Therefore, it is clear that it is the Council's expectation, and the responsibility of the applicants, that all relevant information requirements listed in the Chapter should be provided in order for it to be accepted under Section 88.

The major information requirements which were not provided in either application and yet are clearly relevant are:

Section 32.1.2

(c) A site plan showing, where appropriate, details of:

- *(i) property boundaries and ownership of adjoining land or sites*
- *(ii) public roads*
- *(iii) drains*
- *(iv) water courses*
- *(v) bores*
- *(vi) wetlands, lakes and other water bodies*
- *(vii) position of other existing water takes*
- *(viii) topography.*

(e) An assessment of any actual or potential effects on other uses and values of the water body or coastal water, such as:

- *(i) aquatic ecosystems, including aquatic plants, eels and other indigenous fisheries, trout fisheries and other wildlife;*
- *(ii) landscape, cultural, social, recreational and amenity values;*
- *(iii) human health, etc.;*
- *(iv) riparian margins.*

(f) Details of any measures taken to avoid, remedy or mitigate adverse effects.

Section 32.1.3

(d) For irrigation state:

- *(i) area to be irrigated;*
- *(ii) soil type(s) being irrigated;*

(iv) whether there are alternative sources of water available;

(v) type of irrigation system;

(vi) measures taken to ensure efficient use of water;

(vii) method used to measure and record abstraction rate;

(viii) measures taken to conserve water use.

(e) For other uses state:

(i) maximum quantities required;

(ii) whether there are alternative sources of water available;

(iii) measures taken to ensure efficient use of water;

(iv) method used to measure and record abstraction rate;

(v) measures taken to conserve water use.

Clearly, a number of these requirements have been discussed above, but their requirement as set out in this Chapter of the plan serves to reinforce the deficiencies of the applications.

Affected Parties

The applicants have stated that no consultation has been undertaken as it is expected that the applications will be notified. Section 1(h) of the Fourth Schedule of the Act states that an AEE for the purposes of Section 88 should include:

"identification of the persons affected by the proposal …"

The Fourth Schedule does not make an exception for this requirement in the event that an applicant expects notification.

It is commonly accepted practice to expect the identification of persons affected regardless of expected processing pathway. Doing so provides the Council with information on which to gauge the overall scale of effects of the applications, and provides guidance on which parties may need to be served notice of the application directly upon them if the applications are notified.

6. RESPONSE TO SELECTED OBJECTION POINTS

a. A well field design report was contained within John Bealing's report which was attachment "C" to the application.

It is accepted that a description of a preliminary well field design is provided in Mr Bealing's report. While further information on the design would probably be sought under Section 92 the design meets the tests of Section 88.

b. *It is unfair and/or unnecessary to require the applicant's* (sic) *to provide full details of or to seek other consents for reticulating water to all of the properties against a background where other parties including Council itself may seek to file resource consent applications seeking priority over the applicant's application whilst any detail reticulation design is carried out sufficient to enable a reticulation proposal to be filed with the Council.*

c. *There are no effects arising from the activity of reticulation which have any effect on the taking and use of water.*

d. *In Marlborough, the District Council and Commissioners have considered applications for take and use of water on a separate basis having regard to the importance of obtaining priority for water take and use for larger schemes without the necessity of requiring detailed other reticulation or storage consents that might be necessary only if the water take and use consent is obtained.*

The rejection of the application is, in part, on the basis of a lack of information on the way in which the water will be used and the efficiency of that use. It is currently not the Council's policy or practice to offer separate take and use consents for water. Therefore sufficient information, as required by both S88 of the Act and the PTRMP, is required regarding the use. The reticulation is clearly an important consideration when assessing the use of the water given the significant scale of the volume of water applied for.

e. *Most importantly, all of the well field investigations, flow availability reports, detailed well performance, long term yield, localised draw down effects as well as drought security, river/spring flow impacts, coastal sea water intrusion impacts and impacts on current water allocation limits have already been addressed specifically by the Council itself in its own assessments stated in writing as having been verified by Council in the "Motueka Water for Community Supply" documentation attached as Attachment F to the application, which is a document prepared by Tasman District Council itself stating that 326 litres/second is available without any of the effects identified in the letter of rejection.*

It is not sufficient to simply provide statements as evidence of the lack of effect. Data and modelling to demonstrate the alleged lack of effects need to be provided. The Council cannot simply take the word of either the applicants, nor the printed word of the Council's scientific and engineering staff as suitable evidence. An AEE with data and information to back such statements up should be provided. If this data is held by the Council as stated by the applicants then this data needs to be obtained and submitted in an appropriate form in support of the application. Whether the applicant is a Council department or an external party, as is the case here, the information and AEE requirements are the same.

f. *As to the suggestion that there is no information as to water needs and usage the Bealing Report Attachment "C" contained full details of the properties intended to be irrigated for rural purposes and the Davis Ogilvie Report Attachment "D" provided full details of the water use needs for residential/commercial/industrial purposes. The statements in para. 2 of the letter of rejection dated 7TH February 2007 are accordingly simply wrong.*

This issue has been adequately addressed in Section 5 above.

g. All of the matters referred to in the letter of rejection under para. 3 as to the Tasman Resource Management Plan information requirements in ss. 32.1.2 and 32.1.3 are all either contained within the Bealing/Davis Ogilvie Reports or are available to Council within its own records and no inability to assess the effects of the application arises from those minor detail matters.

This issue has been adequately addressed in Section 5 above.

h. The suggestion at para. 4 that no identification has been provided of parties affected ignores the reality that the TDC's own assessment in Attachment "F" indicates that no adverse effect will occur to other parties given the availability of the water and that there are no significant reticulation pumping or geo-hydrological effects. It is wrong to require an applicant, against a background of public information which should be available to the public and is by law required to be made available by the Council, to independently "reinvent the wheel" by carrying out repetitious studies which have already been carried out by the Council.

Although it may be mentioned in the Council's documentation provided, no data accompanies the application to demonstrate or prove the lack of adverse effect on other parties. If the study has been done and the information is available then it should be provided with the application to allow the Council's consents staff to assess it.

i. At most if there were genuinely issues other than the Council's own conflict of interest position warranting further information the application should have been received as occurred with the Council's own 2003 application in relation to exactly the same bore and further information sought, rather than the Council adopting the quite improper approach of rejecting the application for alleged inadequacy of information when that information is available within the Council's own hands.

It is acknowledged that an application by the Council's Engineering Department to the Environment and Planning Department was received under S88 of the Act with similar amounts of information. That application was subsequently withdrawn on the basis that it was not progressing due to gross insufficiency of information. Since that time that application was received, changes in the personnel structure at the Council and a policy of more thorough checks has made the Section 88 check less of a "rubber stamping" exercise and more of an important tool for gauging the adequacy of applications. All applications therefore, from the time the new policy took effect (early 2005) onwards, have and will be subject to more rigorous S88 checks.

j. The Council decision to reject has no proper basis at law. An entirely proper and adequate assessment of effects has been provided and it is wrong for Council to seek in addition what amounts to evidence it holds. An assessment of effects is nothing more than that, i.e an assessment of effects to enable understanding of potential effects does not have to be to the satisfaction of the Council on every minor issue.

This statement is incorrect, no proper or adequate assessment of effects has been provided at all. A statement has been provided – in both the applicants' hand and in the Council's promotional material supplied – stating that the effects will be minor. However, such a statement is completely inadequate give the scope of the application. Evidence of the effects or lack thereof must be supplied.

7. RECOMMENDATION

That the Council's determination that both applications are incomplete in terms of Section 88(3) of the Act should be upheld.

Jeremy Butler
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