

**Subject:** Appointment of Hearing Panel – Water Take Consent – M.W. Judd

**Prepared by:** Reginald Proffit (Consents Manager)

**Meeting Date:** 8 October 2015

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## Report to COUNCIL for decision

### SUMMARY

Mr M. W. Judd has applied to take up to 428 cubic metres of water per day to a maximum of 50,000 cubic metres of water per annum from the Makauri Aquifer for the purposes of irrigation.

The application has been assessed under the Gisborne District Council Regional Policy Statement (2002), Gisborne District Transitional Regional Plan and the National Policy Statement for Freshwater Management. Upon notification of the Proposed Freshwater Management Plan (Proposed Plan) rules that protect or relate to water will have immediate legal effect. The consideration of the application presents significant complexities in the weighting to be applied and it is recommended that a suitably qualified Independent Commissioner who has technical expertise and experience in the Resource Management Act 1991 (RMA) and water management is appointed to hear this application.

The notification of the Proposed Plan presents a significant shift in Council policy regarding water takes. This is the culmination of a significant level of work invested in the development and engagement for the Proposed Plan, by Council. The timing of the notification, the shift in policy direction and regulatory framework to be applied, presents the potential perception of a conflict of interest and bias if the application was heard by a Council committee.

It is therefore proposed that an Independent Commissioner is appointed to hear and decide this application.

### RECOMMENDATIONS

#### That the Council

1. receives the report
2. appoints Mr Brent Cowie as Commissioner and delegates to him, pursuant to Section 34A(1) of the Resource Management Act 1991, all the functions, powers and duties of the Council, under the Resource Management Act 1991, necessary to hear and decide on:

- a. application for resource consent for M.W. Judd to take up to 428 cubic metres of water per day to a maximum of 50,000 cubic metres of water per annum from the Makauri Aquifer for the purposes of irrigation;
- b. any other Resource Management Act matters ancillary or related to the water take land use application.



Reginald Proffit  
Consents Manager



Kevin Strongman  
Group Manager Environmental & Regulatory Services

## **1. BACKGROUND**

The groundwater systems of the Poverty Bay Flats have been subject to a number of studies. The Poverty Bay deep aquifers (the Makauri and Matokitoki aquifers) show seasonal variations in groundwater levels, with groundwater levels declining over the long term. Specialist reports on the Makauri aquifer acknowledge this declining trend and attributes this to groundwater use.

Due to the application being lodged before the notification of the Proposed Plan, the application has been assessed under the Gisborne District Council Regional Policy Statement (2002), Gisborne District Transitional Regional Plan and the National Policy Statement for Freshwater Management. The Proposed Plan if notified prior to the hearing will also require consideration, as the rules within this document protecting or relating to water will have immediate legal effect.

## **2. DISCUSSION AND OPTIONS**

- 2.1 The application was subject to notification and one submission in opposition was received. The resource management issues raised by this submission are around the belief that the application would be contrary to the policies in the Gisborne District Council Regional Policy Statement (2002) as well as the draft objectives, policies and rules outlined in the Draft Freshwater Management Plan for the Gisborne Region.
- 2.2 The application has been assessed under the Gisborne District Transitional Regional Plan and the National Policy Statement for Freshwater Management. Once the Proposed Plan is notified and in accordance with section 86B(3) of the RMA, rules that protect or relate to water have immediate legal effect. As the notification of the Proposed Plan is likely to occur prior to the hearing being held - the rules within the Proposed Plan, which have not been assessed thus far as part of this application, will require consideration alongside the assessment given under the Gisborne District Council Regional Policy Statement (2002), Gisborne District Transitional Regional Plan and the National Policy Statement for Freshwater Management.
- 2.3 This will require detailed consideration as to the weighting to be applied pertaining to the layers of provisions and matrix of planning frameworks that will apply. Suitable RMA experience would be valuable in considering this application.
- 2.4 The Proposed Plan presents a significant shift in the management framework for water allocation. The notification of the Proposed Plan immediately prior to the hearing, the significant work invested by Council in its development, presents the potential perception that a panel comprising of Councillors would have a conflict of interest and possible bias.
- 2.5 To remove any potential perception of a conflict of interest or possible bias it is recommended that an Independent Commissioner is appointed to hear and decide this application.
- 2.6 Mr Brent Cowie has extensive Commissioner and Chair experience primarily with RMA and water management expertise. It is recommended that Mr Cowie is appointed to hear and decide this application. His CV is attached.

## **3. SIGNIFICANCE**

The proposal is not considered significant in terms of Council's significance policy.

#### **4. LEVELS OF SERVICE**

The application will not impact on Council's levels of service.

#### **5. FINANCIAL**

It is important to ensure the commissioner are appointed in line with the Resource Management Act 1991 and the Local Government Act 2002. Should correct procedures not be followed there could be expensive time delays and costs to Council.

#### **6. LEGAL**

The appointment of commissioners is required in line with Section 34A (1) of the Resource Management Act 1991 and Clause 31(4) Schedule 7 of the Local Government Act 2002.

#### **7. CONSULTATION**

No consultation is required in regard to the appointment of commissioners in regard to this application. The application has been publically notified and any submitter will be able to express their views during the hearing process.

#### **8. OTHER CONSIDERATIONS**

None

#### **9. APPENDICES**

- Curriculum Vitae for Mr Brent Cowie

## SPECIALIST AREAS

- ❑ *Policy and Strategic Analysis*
- ❑ *Plan Preparation and Review*
- ❑ *Statutory Approvals under the RMA, including resource consent applications*
- ❑ *Environmental Investigation and Reporting*
- ❑ *Registered Hearing Commissioner with Chairing endorsement.*
- ❑ *Policy Statement, Plan and consent hearings.*
- ❑ *All aspects of water management, particularly surface water and discharges*
- ❑ *Freshwater ecology*
- ❑ *Emergency Management Planning*
- ❑ *Chairing and facilitating meetings*

## EDUCATION

- ❑ *University of Canterbury: Doctorate of Philosophy in Zoology, specialising in freshwater biology, 1980.*
- ❑ *University of Canterbury: Bachelor of Science (Hons) in Zoology 1976.*

## AFFILIATIONS

## INTRODUCTION

Dr Brent Cowie, a resource management consultant, has over 30 years experience in environmental management, consultancy, and senior corporate management in local and central government. Brent's specialist areas include: acting as a hearing commissioner, chairing hearing committees and decision writing, policy analysis and review, preparation of resource consent applications and evidence for hearings, water resource management, investigation and reporting of complex environmental and corporate issues, the development of emergency management plans and procedures, and management of natural hazards. Brent operates his own company, Cowie Resource Management Limited.

## EXPERIENCE

### INTERNATIONAL ANALYSIS AND REPORTING

- Part of an OECD team carrying out an environmental performance review of Australia in 1997. As one of six expert reviewers, drafted the chapter on land, water and coastal management for Australia as a whole, and contributed to preparing the wider review and its recommendations. Took part as the NZ representative in the reporting back in Paris.

## POLICIES AND PLANS

- One of three independent commissioners hearing and deciding submissions on Northland's proposed Regional Policy Statement (2013). Hearing finished in early July and all decisions were finalised by late August for council ratification in September.
- Appointed by Canterbury Regional Council as the sole independent Hearing Commissioner for Chapters 4-8 of the Proposed Natural Resources Regional Plan (2006 -2010). Responsible for writing all (~6,000) decisions, and rewriting the plan and s32 reports.

- *Member, Resource Management Law Association (NZ)*

## **PROFESSIONAL HISTORY**

- *Self Employed Resource Management Consultant (July 2006 on)*

- *Environmental Management Services Ltd : Consultant (July 2001 to June 2006)*

- *Manawatu Wanganui Regional Council, Palmerston North. Director of Resources (September 1989 to June 2001).*

- *Ministry for the Environment, Wellington. Senior Policy Analyst. (March 1988 to July 1989).*

- *Ministry of Works and Development, Wellington. Scientist and later Group Leader, (June 1986 to March 1988).*

- *North Canterbury Catchment Board, Christchurch. Contract Fisheries and Wildlife Consultant (March 1982 to May 1986).*

- Ministry for the Environment (2006). Jointly prepared a s32 RMA report on a proposed National Environmental Standard for drinking water supply catchments.
- Hawke's Bay Regional Council (2005-06). Prepared a consistent hazard reporting format to ensure effects of future events are reported appropriately.
- Ministry for the Environment (2005). Principal contractor preparing a Monitoring and Reporting Strategy on Dairying and Clean Streams Accord.
- Ministry for the Environment (2005). Prepared a review of water resource management in NZ for the upcoming visit by the OECD.
- Department of Conservation (2005). Undertook a review of the water quality policies of the NZ Coastal Policy Statement.
- Ministry for the Environment (2004-06). Principal consultant to a review of how Government can better mitigate flood risks in NZ. Undertook review of current practise, and of relevant work by government agencies. Ongoing involvement after Cabinet approval in April 2005, including preparation of briefs and reviews of reports.
- Hawke's Bay Regional Council (2004). Undertook an independent review of the most appropriate structures for the response to a major emergency in the region. Canvassed the views of five local authorities; recommended solutions for improving and integrating their emergency response.
- Ministry of Research Science & Technology (2004). Undertook a comprehensive survey of the views of local government on the present science system, focusing on their input as end users, their influence on decisions on what work gets done, and information transfer. Subsequently contracted to do similar surveys of central government agencies, and those industries that rely heavily on the environment for their success.
- Ministry for the Environment (2002). Undertook a review looking at any need for and means of achieving a national water strategy for NZ.
- Section 32 report for Auckland Regional Council Proposed Air, Land and Water Plan (July to October 2001). Undertook discussions with staff, prepared report, discussed, reviewed and finalised contents.

- *Cawthron Institute, Nelson. Contract Biologist. (December 1981 to March 1984).*
- *Canterbury Museum. Researcher. (December 1980 to March 1982).*
- *University of the South Pacific, Suva. Post Doctoral Fellow. (May to November 1980).*

## **OTHER SKILLS**

- *Competent user of IT, particularly MS Office.*
- *Competent touch typist.*

- Resource Management Act Policy and Plan Development (1989 to 2001). Project management, direction setting, part drafting and peer review of Manawatu-Wanganui Regional Policy Statement, and Regional Plans.
- Proposed Civil Defence Emergency Management Legislation (1998 to 2001). Chaired Regional Coordination and Advisory Group comprising representatives of local authorities and emergency services (June 1998 to Dec. 2001) managed political and administrative processes of agreeing to form an EMG; oversight of the strategic component of the Regional CDEMG Plan.
- Biosecurity Act (1995 to 2001). Political management and oversight of preparation of regional plant and animal pest management strategies.
- East Coast Project Review (1987). Led an inter-departmental team reviewing the environmental and economic justification for ongoing government support for forestry in the Gisborne District. Led the officials group that guided Government policy for ongoing support for forestry in the District.

## **MANAGEMENT & REVIEW**

- Hawke's Bay Regional Investment Company (2015). Reported on consenting issues associated with Ruataniwha Water Supply Scheme for potential investors.
- NIWA, MPI and Dairy NZ (2013). Reviewed and redrafted a chapter on the effects of climate change on water resources and agriculture.
- Volunteer in Emergency Management Office following the 22 February Earthquake in ChCh. Worked mainly on special projects (2011)
- Ministry for the Environment (2009/10). One of two reviewers carrying out an appraisal of the consents processing performance of Far North District Council.
- Hawke's Bay Regional Council (2009). Reviewed the council's recent consent processing performance at both a staff and political level. Made and followed up recommendations.

- Ministry for the Environment (2009). Carried out and published an independent review of the hearing and decision making on consent applications by TrustPower to build a new HEP scheme on the Wairau River.
- Auckland Regional Council (2003). Carried out a management review of the coastal section of the Council.
- Manawatu Wanganui Regional Council (2002/03). Rewrote the Council's Marine Oil Spill Plan to the standards requested by the Maritime Safety Authority.
- Hawke's Bay Regional Council (2003). Reviewed all Council expenditure during 2002/03 financial year to determine what proportion qualified for funding from endowment land, the monies from which must be spent on activities beneficial to the coastal marine area of the region. Repeated this task annually in 2004 – 2013 inclusive.
- Hawke's Bay Regional Council (2002). Undertook review of benefit of range of activities undertaken by Council to the coastal marine area of the region. Redrafted aspects of the report in 2003 following comment from the Audit Office.
- Manawatu Wanganui Regional Council: Senior Corporate Management (1989 to 2001). Management of 35-55 staff dealing with all aspects of environmental and resource management, emergency management, setting standards for service delivery in river and drainage engineering (1994 to 2000) and biosecurity (1996 to 2001), and transport policy and public transport administration. Responsible for an annual budget of approximately \$5 million.

## **MEDIATION AND NEGOTIATION**

- PPCS Fairton Consent Review (2005-06). Project management for Canterbury Regional Council a review of the consent conditions regarding nitrogen loadings in a discharge to land of meat works effluent.
- Richmond Oringi Limited resource consent applications (2003). Acted on behalf of the Regional Council to negotiate full agreement on seven resource consent applications for activities at a large meat works with applicant and submitters.

- Tongariro Power Development Consultative Group (1992 to 2000). Foundation member of the consultative group. Actively involved in determining and reviewing research needs, and negotiations on proposed mitigation measures.
- Beds of Rivers and Lakes and Associated Activities Regional Plan Appeals (1999 to 2000). Successfully negotiated consent orders, most involving two or more parties, with eight appellants.
- Regional Policy Statement Appeals (1994). Successfully negotiated consent orders, some involving several parties, with the six appellants.

## **ENVIRONMENT COURT**

- Manawatu Wanganui Regional Council (2003). Prepared and presented expert evidence to the Environment Court on the effects of the Tongariro Power Development on water quality, and fish and invertebrate communities.
- Manawatu Wanganui Regional Council (2002). Coordinated Council's evidence to a hearing for a proposed large new meatworks near Marton. Peer review of all expert evidence, review of draft conditions.
- Manawatu Wanganui Regional Council (1996). Acted as expert fisheries witness for a prosecution for illegal discharge of dairymshed effluent.
- North Canterbury Catchment Board (1985). Acted as an expert witness, and coordinated the Board's case, for the Planning Tribunal hearing appeals against the National Water Conservation Order for Rakaia River.

# ADVICE TO HEARING COMMITTEES

- Manawatu Wanganui Regional Council (1991 to 1998). Principal adviser to Hearing Committees hearing and deciding submissions on the Proposed Regional Policy Statement, and three Proposed Regional Plans.
- Ministry of Works and Development (1987) and Ministry for the Environment (1988-1989). Principal adviser to Hearing Committees deciding applications for National Water Conservation Orders for the Manganuiateao, Grey and Mohaka Rivers. Drafted the decisions and the orders.

# NATIONAL WATER CONSERVATION ORDERS

- Chaired the Special Tribunal hearing a water conservation order application for the Oreti River in Southland. Primarily wrote the decision (2008/09).
- Member of a Special Tribunal appointed to hear and recommend a decision on an application for a variation to the National Water Conservation Order for Lake Ellesmere (2011). Primarily wrote the decision

## AEE'S AND HEARINGS

- Various Chicken Farmers in Canterbury (2014 - 15). Prepared six applications and associated AEE's to District Councils and ECan for the construction of new chicken sheds and/or large chicken farms.
- Ngai Tahu Farming (2014-2015). Project Manager of investigations for a proposed new water storage dam in the Hurunui catchment.
- Meridian Energy (2012). Prepared a review of the changes in the proposed Canterbury Land and Water Regional Plan from the existing regulatory framework and how they may affect the company.
- Ngai Tahu Property Limited (2012). Gave evidence on the proposed Hurunui and Waiau River Regional Plan, with a focus on water quality. Also gave evidence on the proposed Land and Water Regional Plan as part of the Ngai Tahu case (2013).
- Ngai Tahu Property Limited (2012-2014). Prepared five applications associated with taking surface water and using land for irrigation and dairy conversion in Balmoral Forest. Managed full hearing process, including preparing witness briefs, co-ordinating and reviewing all evidence (eight witnesses), and preparation and giving of planning evidence.
- Meridian Energy (2012). Co-ordinated all the company's evidence (17 briefs) on the proposed Hurunui and Waiau River Regional Plan.
- Meridian Energy (2011-12). Principal contractor reviewing technical reports and preparing AEE's for the principal consents for proposed new hydro power schemes on each of the Waiau River and Hurunui rivers in North Canterbury.
- Ngai Tahu Property Limited (2011). Lodged and had granted resource consent applications for the conversion of about 7,000ha at Balmoral Forest, North Canterbury to agriculture.
- Shell Todd Oil Services (2001 – 2002; 2003 & 2004). Evaluated preferred option for constructing long sections of pipe onshore in Manawatu to bring gas onshore in Taranaki. Found much better location, prepared full AEE's for consent applications to District and Regional Councils.

## RESOURCE CONSENT HEARINGS AND ADVICE

- MfE hearing commissioner training in March 2005 with chair endorsement. Updated in May 2006; recertification in June 2008 and June 2013.
- West Coast Regional Council (2006). Hearing commissioner for an application from Westland Dairies to vary a permit to discharge milk processing waste to the Hokitika River.
- West Coast Regional Council (2007/08). One of three commissioners for a hydro-electric scheme on the Arnold River; primarily wrote the decision.
- Hawke's Bay Regional Council (2006-07). Appointed as an independent commissioner to the panel hearing applications to continue to discharge to air from the Ravensdown Fertiliser Works at Awatoto. Wrote the decision.
- Auckland Regional Council (2004). Redrafted the Council's consents manual to reflect changes necessitated by RM Amendment Act 2004.
- Canterbury Regional Council (2005-14). Joint Hearing commissioner for many consent applications including: discharges from a new dairy factory in mid Canterbury (Synlait) and Stage 2 of the Fonterra Factory at Darfield, air discharges from the Ravensdown Fertiliser Plant in Hornby, a new discharge of treated effluent from Clandeboye milk treatment plant to the coastal marine area, large water takes from the Waimakariri and Rangitata Rivers, opening of Lake Ellesmere to the sea, and stormwater discharges at Lincoln, Darfield, Governors Bay, Kaikoura and Woodend (Pegasus Town). Sole commissioner for applications to construct a new composting plant in Christchurch, increase the land area to which milk waste can presently be discharged from the Clandeboye plant; applications to take water from the Waimakariri and Waipara Rivers, stormwater discharges at Rolleston, Tinwald and in Lyttelton Harbour, and a discharge to air from a new anaerobic digester at Kaikoura. Chaired many of the hearings and wrote or co-wrote all the decisions.
- Tasman District Council (2005). One of a hearing committee hearing and deciding consent

applications for a hydro scheme in Golden Bay. Primarily wrote the decision.

- Tasman District Council (2009). One of three commissioners hearing and deciding consent applications for a new hydro scheme near Murchison. Co-wrote the decision.
- Manawatu-Wanganui Regional Council (2015). Chaired a hearing committee and wrote sections of decision for a major extension of a regional landfill near Marton.
- Manawatu-Wanganui Regional Council (2003 & 2004). Reported on numerous resource consent applications, including taking for community water supplies, community sewage discharges and local power schemes.
- Wanganui Sewage resource consent applications (2001). Prepared all technical aspects of the staff report. Got virtually full agreement for draft conditions on permits. Drafted technical aspects of resource consent decision and conditions.

## **TIKANGA MAORI**

- Manawatu Wanganui Regional Council (1993 to 2001). Managed the Council's Iwi Liaison Officer and later Iwi Relationships Manager. Involved in detailed negotiations with Iwi representatives on the relationship between Council and Iwi. Took part in many marae visits, very comfortable on marae.