IN THE WAITANGI TRIBUNAL

Wai 1200 #3.3.56

WAI 1200

UNDER	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of the Central North Island Regional Inquiry

OPENING SUBMISSIONS OF COUNSEL FOR ENVIRONMENT WAIKATO

Dated 14 July 2005

SOLICITORS ACTING:
MAI CHEN/LECRETIA SEALES
CHEN PALMER & PARTNERS
BARRISTERS AND SOLICITORS
TELEPHONE: 04 499 8990
FACSIMILE: 04 499 8992
P O BOX 2160
DX SP26503
WELLINGTON

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INTRODUCTION

1. Environment Waikato greatly values its relationship with Ngati Tuwharetoa. Environment Waikato supports the right of the claimants in the CNI Inquiry to seek redress through the Waitangi Tribunal process, with the Crown Treaty partner.

2. Environment Waikato has only asked to be heard in the CNI Inquiry to respond to allegations made against Environment Waikato, and its performance of its statutory functions, including obligations to take account of the principles of the Treaty of Waitangi under section 8 of the Resource Management Act 1991 ("**RMA**"). Issues have also arisen concerning the management of resources within its statutory jurisdiction, in respect of which Environment Waikato is best able to depose to this Inquiry. Environment Waikato had previously been advised by the Office of Treaty Settlements that the CNI Inquiry would not deal with such issues.

Environment Waikato is Not the Crown

3. Environment Waikato has separate statutory obligations from the Crown, and it is here to speak on its own behalf, with respect to its performance of its statutory functions.

4. Section 30 of the RMA describes the functions of Regional Councils. Those functions include the control of discharges of contaminants into water, the avoidance or mitigation of natural hazards, and the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region.

5. In carrying out those functions, Environment Waikato must take into account:

   - the purpose of the RMA set out in section 5, "to promote the sustainable management of natural and physical resources";

- matters of national importance in section 6;
- the matters outlined in section 7;
- the principles of the Treaty of Waitangi as required by section 8; and
- relevant matters in section 15.

6. Environment Waikato takes very seriously its Treaty of Waitangi obligations under the RMA. It has consulted with Tangata Whenua and worked in partnership, wherever possible. But many of the concerns the claimants have in the CNI Inquiry can only be resolved in discussion with the Crown. They fall outside the scope of Environment Waikato's statutory role.

7. Nevertheless, the RMA requires a balancing of the principles of the Treaty of Waitangi with Environment Waikato's obligations to promote sustainable resource management, which is the key purpose of the RMA.

8. Environment Waikato has struck that balance as best it can in the circumstances, and has fulfilled its statutory obligations under the RMA.

ENVIRONMENT WAIKATO'S EVIDENCE

9. Environment Waikato has 4 deponents: Robert Anthony (Tony) Petch, Bruce Allan Peploe, Mark William Brockelsby; and Brent Herbert Fletcher. Mr Vince Udy, who has knowledge of the forestry operations in the Waitahanui area, is also available for questioning today if that would be of assistance.

10. Environment Waikato has responded to specific allegations made against it in the Tribunal and, in the process of doing so, has provided context and information to assist the Tribunal where other counsel have indicated that this would be helpful.

11. Before cross-examination of each of Environment Waikato's deponents begins, counsel requests that the witnesses have the opportunity to inform the Tribunal of any corrections they wish to make to their briefs of evidence.

Tony Petch

12. Mr Petch's evidence responds to the issues raised in respect of the proposed variation to the Waikato Regional Plan for protecting Lake Taupo.

13. In proposing the variation, Environment Waikato is meeting its statutory obligations under section 30 of the RMA.

14. The key point in Mr Petch's evidence is that the Protecting Lake Taupo Project and the policy approach to protect the lake are only part way through a public process. It is a **proposed** policy, which may be modified.

15. The policy approach has been developed within a project partnership comprising Ngati Tuwharetoa, central Government, Taupo District Council and Environment Waikato. There has been extensive consultation with the project partners, stakeholders and the community.

16. Through work with its project partners, Environment Waikato has attempted to mitigate the impacts of the proposed variation on Ngati Tuwharetoa and on the rest of the community to the extent possible within the RMA.

Bruce Peploe

17. Mr Peploe explains how priority flood management, river management and soil conservation requirements within the Waikato River catchment were identified in the Waikato River and Catchment Services Project. In respect of the Lower Tongariro River, further investigations were required into the natural processes occurring with the River, the management options available, and the aspirations of the stakeholders.

18. Mr Peploe outlines Environment Waikato's extensive consultation with Tangata Whenua in relation to flood and river management, in particular with the Tuwharetoa Trust Board and Ngati Turangitukua, which is continuing.

19. Environment Waikato established the Tongariro River Management Forum in 2003, comprising all key stakeholders. In May 2004, it entered into a Memorandum of Understanding with Ngati Turangitukua. Later that year, it engaged NIWA to prepare a report on the Lower Tongariro River.

20. Mr Peploe explains that the natural processes occurring with the Tongariro River, which carries large volumes of sediment, means that management options are highly complex. A number of options are available, and these were identified in the NIWA report.

21. These options are currently being evaluated, and a Catchment Management Plan is due for completion in November 2005.

Mark Brockelsby

22. Mr Brockelsby's evidence addresses three issues: Taupo District Council's Discharge consent application, run-off from forestry operations and geothermal resource management.

23. Mr Brockelsby outlines the ways in which Environment Waikato has fulfilled, and continues to fulfil, its statutory duties and functions under the RMA in respect of these issues. Mr Brockelsby's evidence illustrates that comprehensive consultation has occurred in relation to Taupo District Council's application for resource consent with many sections of the community, including Tanagata Whenua, and emphasises that the application is still in the process of being considered and a final decision is yet to be made.

24. In relation to run-off from forestry operations, Mr Brockelsby explains that Environment Waikato staff have been advised that there have been historic instances of storm events within this catchment which have led to sedimentation in the lower reaches of the river which may be attributable to both natural processes and to modification of the catchment through roading, tracking, culvert crossings.

25. Mr Brockelsby also explains that there have been conditions imposed limiting suspended solids levels in storm water run-off to trout fisheries and spawning waters to 25 parts per million. At present there are no known non compliance issues with the resource consents granted in terms of this issue. If there are any non-compliance issues identified, then Environment Waikato Staff are able to pursue these.

26. In relation to geothermal resource issues, Mr Brockelsby outlines the development of the Ohaaki geothermal system and gives an overview of Environment Waikato's policy in this area. In particular, Mr Brockelsby outlines the processes and procedures Environment Waikato has in place to ensure that its obligations under the RMA are met, and its relationship with Tangata Whenua is valued and developed to ensure a balance between development of resources and protection of tāonga for future generations.

Brent Fletcher

27. Mr Fletcher is available for questioning on the Taupo District Council's resource consent application for the discharge of treated wastewater from the Waitahanui Wastewater Treatment Plant.

Conclusion

28. In essence, Environment Waikato has provided evidence to show that it has carried out its statutory obligations, and that it has taken into account the principles of the Treaty of Waitangi, as required by section 8 of the RMA.

29. Environment Waikato has struck the appropriate balance between the various matters it is required to have regard to in Part 2 of the RMA.

Mai Chen
Counsel for Environment Waikato