

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

**IN THE MATTER of Private Plan Change 78 by Mangawhai Central Limited
to the Operative Kaipara District Plan 2013.**

MEMO OF SUBMITTER CLIVE BOONHAM

Introduction

1. I wish to question whether the Hearing Panel's direction of 27 November 2020 requesting officers of the Kaipara District Council (KDC) to provide further information in a written report on the KDC's wastewater infrastructure and water supply is compliant with clause 41C of the RMA.
2. There are two concerns:
 - Does section 41C of the RMA authorise such a request of the KDC?
 - Is the information requested "further information" that relates directly to submissions made by the applicant in the request for the plan change, or is it new evidence? If it is new evidence then it should be disallowed.
3. In this Memo I deal only with the wastewater issue. The principles applying to that issue also apply equally to the water supply issue.

DOES SECTION 41C OF THE RMA AUTHORISE SUCH A REQUEST OF THE KDC?

4. The relevant provisions are:

41C (2) Before or at the hearing, the authority may request a person who has made a submission to provide further information.

(3) At the hearing, the authority may request the applicant to provide further information. (Underlining added)

5. There is no provision for the authority to request further information from the local authority, in this case the KDC.
6. If that view is correct then any information provided pursuant to the request should be disregarded.

IS THE INFORMATION REQUESTED “FURTHER INFORMATION” OR NEW EVIDENCE?

7. The information requested is as follows:
- *What is the infrastructure planning being undertaken for wastewater disposal given the issues raised in the PC 78 hearing about whether or not there is disposal capacity or potential capacity in the existing scheme, or an alternative scheme, to accommodate further development within Mangawahi, including the additional capacity that would be enabled should PC 78 be approved as notified?*
 - *In relation to the above bullet point, what are the funding decisions that have been made or are being contemplated by the Council in relation to the provision wastewater treatment/disposal (i.e. what has been committed and what is contemplated in the Council’s Long Term Plan (LTP) or the next review of the LTP?*
 - *We request this information be provided in relation to a 30 year time horizon, given this is the ‘long term’ as defined in the NPSUD.*

RMA provisions

8. The request for a plan change is made under clause 21 of Schedule 1 of the RMA. That request must include an environmental effects report under clause 22(2) of Schedule 1. Those effects must be described taking into account [clauses 6](#) and [7](#) of Schedule 4 of the RMA.

Clause 6 of schedule 4

9. The Information required in the assessment of environmental effects includes a description of the mitigation measures to be undertaken to help prevent or reduce the actual or potential effect (clause 6(e)).

Position of MCL and KDC

10. In respect of the provision of wastewater services the applicant took the position that the MCWWS has, at present, the capacity to accommodate the proposed loading from any development undertaken pursuant to plan change 78. Because that stance was accepted by MCL, the KDC and all the expert witnesses, there was clearly an expectation that the Panel would accept that any adverse effects that could arise from wastewater were adequately mitigated. Wastewater capacity would not be an issue in the plan change process.
11. In the earlier process for the supermarket (and other matters) consent, the Hearing Panel accepted the similar advice of the expert witnesses on wastewater capacity. No contrary evidence was provided, and it was not an issue that was considered when consent was granted.

12. In the plan change process there were several expert witnesses representing MCL and KDC. In the reports provided, the experts were all in agreement that the MCWWS “has capacity” (in the present tense) to accommodate Mangawhai Central.
13. In reaching this conclusion the experts relied on the conclusions of the other experts, on conversations with KDC staff or the plant operators, and confirmation from the “KDC” that there is capacity at present.
14. In other words there was no “hard evidence”. The experts relied on the conclusions of other experts. And those experts relied on advice from the KDC or KDC staff or plant operators. It appears that the advice from the KDC was all verbal advice that was not recorded in writing, and the names of those giving the advice was not recorded.
15. None of the experts obtained crucial figures that were necessary for an accurate analysis of the capacity of the MCWWS and its ability to accommodate Mangawhai Central. All of the experts’ reports referred to “adequate capacity”, “capacity for further connections” or other similar vague statements.
16. Adequate wastewater treatment capacity is pivotal to the Mangawhai Central development, but none of the experts did the simple maths. This required an analysis of the state of the MCWWS and its current capacity. It was then necessary to assess the capacity required by Mangawhai Central to see if there was adequate capacity for the new development. It appears that none of the experts were aware of or were referred to the various detailed reports on the limited capacity of the MCWWS obtained over the previous few years. (Some of these have been disclosed by the KDC pursuant to a LGOIMA request subsequent to the hearing.)
17. Mr Rankin of Chester peer-reviewed the expert reports for the KDC. He referred to the 2019 WSP report and actually noted some of the compelling information about capacity in that report in his Memo. However, despite the clear warnings in respect of capacity, his conclusion reiterated the common thread:

It is my opinion that the existing wastewater treatment plan does have sufficient capacity to cater for additional connections from either within, or outside the plan change area;

This vague conclusion was adopted by the other experts.

18. The truth of the matter is that the MCWWS has serious issues of capacity even as it is now, and that is without considering a single connection from Mangawhai Central. That is startlingly apparent from the 2019 WSP report and the other reports not referred to at the hearing.

Issue

19. The first bullet point requires the following information:

What is the infrastructure planning being undertaken for wastewater disposal given the issues raised in the PC 78 hearing about whether or not there is disposal capacity or potential capacity in the existing scheme, or an alternative scheme, to accommodate further development within Mangawhai, including the additional capacity that would be enabled should PC 78 be approved as notified?

20. The Panel is therefore seeking from the KDC information on infrastructure planning in respect of:

- Is there disposal capacity at present?
- Is there potential disposal capacity in the existing scheme?
- Is there disposal capacity in an alternative scheme?

Disposal capacity at present?

21. The important point is that the request for the plan change was made on the basis that the effects of wastewater would be mitigated by discharge to the MCWWS because the scheme has capacity, at present, to accommodate the loading from Mangawhai Central.
22. Importantly, no other mitigation measures were advanced for wastewater.
23. Affected persons made their submissions on the basis that the current capacity of the MCWWS was the only mitigating measure advanced by MCL.
24. During the hearing the submitters adduced evidence to establish beyond any doubt that the MCWWS does not have the capacity, at present, to accommodate the loading from Mangawhai Central.
25. The Panel would be entitled under section 41C to seek further information from MCL on the capacity of the plant at the present time, as argued at the hearing. However all the evidence at the hearing, and the reports obtained after the hearing, establish beyond any doubt that the MCWWS does not have the capacity, at present, to accommodate the load from Mangawhai Central, and in fact is struggling to meet current demand. The KDC has just authorised \$2.1 million for a balance tank because of overflows into the system at peak periods. In the next few years there will be major issues with the plant and especially with the disposal field which is now at capacity. This is evident from the 2019 WSP report and from the Mangawhai Spatial Plan.

26. The request for further information on the disposal capacity, at present, serves no purpose. The request is also directed at the wrong party.

Potential disposal capacity in the existing scheme or in an alternative scheme?

27. These are alternative mitigation measures that were not advanced in the request for the plan change. Affected persons were not therefore in a position to make submissions on those proposals.
28. The alternative proposals only arose because of the failure of MCL in the hearing to establish that the MCWWS has capacity, at present, to accommodate Mangawhai Central.
29. It follows that the “further information” requested is not information about a mitigation measure advanced in the request for the plan change, and the request is therefore outside the scope of section 41C of the RMA. The request actually purports to allow MCL, through the KDC, to advance new evidence to support alternative measures for mitigating the effects of wastewater.
30. Affected parties would not have the opportunity to make submissions on those new proposals and the evidence supporting those proposals.

Funding decisions

31. The Panel’s request states:

In relation to the above bullet point, what are the funding decisions that have been made or are being contemplated by the Council in relation to the provision wastewater treatment/disposal (i.e. what has been committed and what is contemplated in the Council’s Long Term Plan (LTP) or the next review of the LTP?

32. I suggest that the same argument applies to the funding issue as applies to the capacity issue. The applicant based the request for the plan change on there being adequate capacity in the MCWWS. Now that that proposition has been shown to be incorrect, it should not be possible for the applicant to adduce new evidence to support alternative mitigation measures, and to provide details of the funding for those measures.

Summary

33. All information provided by the KDC pursuant to the Panel’s request should be disregarded.