

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an application for resource
consents by Watercare Services
Limited to undertake works
relating to the proposed Huia
Replacement Water Treatment
Plant

SECOND MINUTE OF THE HEARING COMMISSIONERS – KAURI DIEBACK DIRECTIONS

1. Pursuant to section 34A of the RMA, Auckland Council ("**Council**") has appointed Independent Hearing Commissioners Philip Brown (as Chairperson), Juliane Chetham, Hugh Leersnyder, and Michael Parsonson to hear and determine an application for resource consents by Watercare Services Limited ("**Watercare**") to undertake works relating to the proposed Huia Replacement Water Treatment Plant.
2. The application seeks resource consents under the regional rules of the Auckland Unitary Plan: Operative in Part ("**AUP:OP**") and a land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. The proposal involves earthworks, vegetation removal, stream works, diversion and discharge of groundwater and stormwater, development of new impervious surfaces, and the disturbance of potentially contaminated land. The application falls to be considered overall as a non-complying activity.
3. The hearing has commenced and evidence has been heard from the applicant and submitters over eight days comprising 24 February, 26-27 February, 4-6 March, and 11-12 March 2020.

4. Towards the end of the hearing day on 6 March, Mr Loutit for Watercare expressed a procedural concern regarding some of the submitters' expert evidence in relation to Kauri Dieback. In particular, he questioned whether the written and oral evidence of Dr Waipara and Mr Craw complied with the expected standards for expert evidence. We note in that regard that both witnesses had expressly confirmed in their written briefs of evidence that they have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014, and have complied with it in preparing their evidence.
5. We record that the qualifications, expertise and experience of Dr Waipara and Mr Craw are not questioned in relation to Kauri Dieback. Both witnesses clearly have significant knowledge that has the potential to greatly assist the Commissioners to make a robust decision. That said, we have observed some aspects of the expert evidence that deviate from our normal expectations under the Code of Conduct. Dr Waipara addressed this matter, in respect of his relatively emphatic opinions, when he appeared before us for the second time.
6. We have equally had some concerns about an apparent lack of coordination between construction management, erosion and sediment control and kauri dieback management, as described by Watercare. That is unlikely to have assisted any attempts that the submitters' expert witnesses made to gain a full understanding of the proposal, and express their evidence in a manner that we can rely on.
7. In order to address this matter, the Commissioners consider that expert caucusing should take place between all the witnesses with expertise in Kauri Dieback and such other witnesses as are required to ensure that the relevant details of the proposal are fully understood. It is apparent to the Commissioners that the matter of Kauri Dieback is a pivotal issue in determining this application for resource consent, and we consider that clear and informed evidence on this subject is essential to assist us in our decision-making task.
8. A related matter exists in relation to Kauri Dieback testing. Watercare has not undertaken any testing to determine the presence or absence of Kauri Dieback infection in trees or soil, either on the site or beyond the site. As we understand it, the rationale for this approach is that there are (or were) significant delays in the required testing procedure and that the results of such testing may not be accurate or reliable. Instead, Watercare has stated that it has assumed that trees on the site are infected with the pathogen, and is proposing measures to manage potential spread of Kauri Dieback on that basis by treating the whole site as potentially contaminated. Specific Kauri Dieback containment zones are identified, for land falling within three times the radius of the canopy drip line of mature kauri trees, thereby effectively creating two management regimes across the site depending on proximity to those mature trees. Erosion and sediment controls are proposed to be implemented in accordance with GD05.

9. Having considered the evidence on this issue, we share the view of the submitters' Kauri Dieback experts that testing is required in order to inform an appropriate response.
10. We acknowledge that our requirement for expert caucusing and Kauri Dieback testing has necessitated an adjournment of the hearing and will add delay to the process. While that is regrettable for all parties, the Commissioners consider that this is necessary to provide the evidence required to assist us to reach a properly informed decision.
11. Section 41C RMA provides the Commissioners with broad powers to make directions relating to the presentation of evidence at hearings. The Commissioners consider that directions are appropriate in this instance, in relation to the matters discussed above.
12. Accordingly, the Commissioners direct as follows:
 - (a) Pursuant to section 41C(1), expert caucusing shall be convened to consider the issue of Kauri Dieback. That caucusing shall initially involve Dr Flynn, Dr Waipara, Dr Fea, Mr Craw, and Mr Havell.
 - (b) Council shall arrange a suitable and independent person to co-ordinate and chair the expert witness caucusing.
 - (c) In the first instance, the experts shall meet or otherwise communicate to discuss and (ideally) agree on the methodology, extent and scope of Kauri Dieback testing that is to be undertaken. By way of general guidance, the Commissioners' expectation is that the testing should be comprehensive and also occur on the adjacent Manuka Road private properties below the site (subject to agreement from property owners), and on the Waitakere Ranges Regional Parkland below the site (subject to Council's agreement as property owner). The latter testing should include the Clarks Kauri, Bishops Kauri and Alleys Kauri.
 - (d) In the event that the experts cannot reach agreement on the proposed testing regime, a statement shall be prepared setting out the areas of disagreement and the reasons behind each different approach. That statement shall be referred to the Commissioners for a determination as to the testing regime that will be followed.
 - (e) Pursuant to section 41C(3) RMA, Watercare shall undertake testing for Kauri Dieback in accordance with the confirmed scope and methodology.
 - (f) Watercare shall prepare a package of information that summarises all the pertinent information that is required for the experts to have a sound understanding of the proposal and the mitigation that is currently proposed in relation to Kauri Dieback. In particular, the summary information package shall include details of the proposed Kauri Dieback protocols, the earthworks proposed, erosion and sediment control measures to

be employed, vegetation removal and construction methodology. The summary information package shall be provided to the experts prior to substantive expert caucusing taking place.

- (g) Substantive expert caucusing shall commence once the results of the Kauri Dieback testing are available and the summary information package has been prepared. The experts shall consider and discuss the Kauri Dieback management protocols that are proposed for the site. Mr McGregor and Mr Williams (for Watercare) and Mr Tutt (for Council) shall be present for the purpose of confirming or clarifying (if required) any aspects of the proposal related to construction methodology, erosion and sediment control, stormwater management, and earthworks.
 - (h) The Kauri Dieback experts shall produce a joint witness statement (“**JWS**”) setting out areas of agreement and disagreement in respect of the Kauri Dieback management approach and protocols that are proposed for the site by Watercare, and reasons behind the opinion of each expert. The Commissioners’ expectation is that the JWS will also include commentary from the experts on the level of risk of Kauri Dieback infection within or beyond the site as a result of the project, including to Kauri trees on neighbouring properties and the three noted Kauri trees in the adjacent regional parkland.
 - (i) The JWS shall be provided to the Council’s Hearings Advisor for distribution to the Commissioners and all parties that have appeared at the hearing (with a copy posted on the Council’s website).
 - (j) In the event that the expert caucusing and JWS results in any changes to Watercare’s proposed construction methodology, earthworks and stormwater management, or Kauri Dieback containment protocols, Watercare shall provide updated details of these matters in a consolidated and integrated management plan.
 - (k) Given the uncertainty around the timing of Kauri Dieback testing, it is difficult to set a timeframe for compliance with these directions. As such, we have determined that it is more appropriate to confirm a scheduled reporting date. The Commissioners therefore direct that Watercare report back on progress by **Friday 1 May 2020**. If additional time is required at that stage, the Commissioners will determine a further reporting date.
13. The Commissioners anticipate that the experts may need to be available to provide further evidence and respond to any questions we might have arising from the JWS. That may include questioning of the Kauri Dieback expert witnesses together. Further directions will be made at the time of receiving the JWS in that respect, including confirmation of a date for reconvening the adjourned hearing.

14. Any enquiries regarding these Directions or related matters should be directed to Sam Otter, Senior Hearings Advisor by email at sam.otter@aucklandcouncil.govt.nz

For and on behalf of the Hearing Commissioners

A handwritten signature in purple ink, appearing to read 'Philip Brown', with a stylized, cursive script.

Philip Brown

Chairperson

13 March 2020