**Bay of Plenty Regional Council**

# DIRECTIONS OF THE COMMISSIONER

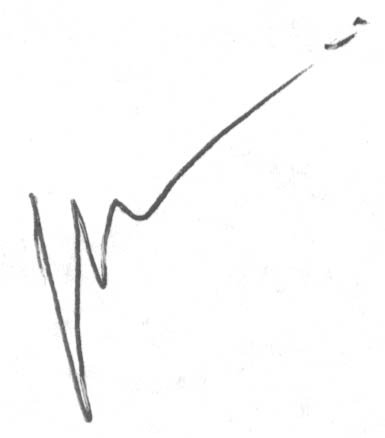
**Minute 2**

**Introduction**

1. I have received and read the Section 42A Officers Report for Western Bay of Plenty District Council’s Eastern Catchments Comprehensive Stormwater Discharge Consent applications.

# Questions for the Section 42A Report Author

1. My questions for the Section 42A Officers Report author are attached.
2. I would appreciate it if these questions are answered in writing on or before Friday 15 May 2020.
3. The majority of my questions relate to recommended Conditions 10.1 to 10.7 of consent 67481-DC. As will be evident from those questions, at this stage I have concerns regarding the clarity, certainty, legality and appropriateness of this suite of conditions.



Rob van Voorthuysen

Hearing Commissioner

6 May 2020

| **Paragraph** | **Agenda**  **Page** | **Question** |
| --- | --- | --- |
| 9.7 | 33 | What process is proposed for addressing Mr Kelly’s residual concerns?  In the event that agreement on recommended wording is not achieved for the 67481-DC conditions which have comments from Mr Kelly attached, can you please provide comparative consent condition wording that:   1. The S42A author considers appropriate; and 2. The Applicant considers appropriate. |
| **Technical Review** | | |
|  | 102 | Why is the Technical Peer Review still in draft form? |
| 4.2 | 106 | Has the Te Puke model culvert issue been fixed? |
| **Condition** | **Page** | **Question** |
| **Resource consent No. 67481-DC** | | |
| 6.6 to 6.9 | 55 | How do these conditions relate to and interact with conditions 10.1 to 10.7? |
| 7.3(d)  7.3(g) | 57 | How do these conditions relate to and interact with conditions 10.1 to 10.7? |
| 10.1 | 60 | What does “stormwater effects” mean?  What does “peak stormwater levels” mean? |
| 10.2 | 60 | What does “downstream farmland” mean?  Is there a map or aerial photograph showing the extent of this “downstream farmland”? |
| 10.2(a)(A) | 61 | What does “greater soakage” mean?  What does “less runoff” mean? |
| 10.2(a)(B) | 61 | What does “as it was in the 1980’s” mean? |
| 10.2(c) | 61 | What does “proposed future development sites” mean?  Proposed by whom?  Shown or mapped where?  How does this relate to District Plan land use zonings? |
| First Advice Note | 61 | In a) and b) what assets are being referred to in each case – Kaituna Scheme assets or WBPDC stormwater assets?  In c) what does “consider land use changes” mean? |
| Second Advice Note | 61 | What is the “current urban limits” model?  Who owns and operates this model? |
| 10.3 | 61 | Is this condition clear, certain and enforceable?  What does “likely critical storm” mean?  Would the second half of this condition be better expressed as an Advice Note? |
| 10.4 | 61 | What “asset data” is referred to?  What does “design standard combinations” mean? |
| 10.5 | 61 | Is it legally permissible to impose consent conditions that purport to bind a third party – in this case the BOPRC Rivers and Drainage Asset Manager? |
| 10.6(a) and (b) | 62 | What does “major waterways and canals” mean?  What are their names?  Is a map or aerial photograph of them available? |
| 10.6(c) | 62 | What exactly is to be compared to both Baseline scenarios? |
| 10.6(d) | 62 | What does “adverse effects” specifically mean?  What does “downstream farmlands developments” mean?  Is it appropriate to require a consent holder to undertake an options analysis for a flood control scheme that they do not own or operate (assuming I have interpreted this condition correctly)?  Would it be more appropriate for WBPDC to quantify the current and maximum future stormwater input that this consent will authorise and provide that information to BOPRC so that BOPRC can model the effects of that on the Kaituna Scheme themselves? |
| 10.6(e) | 62 | What does “increased storm frequency” mean?  What does “changes in land-use activity in the catchment and development” mean? |
| 10.7(f) | 62 | In terms of potential adverse effects of the discharges for which consent has actually been sought, should this be limited to assessing the worst case (say 1% AEP event) effect of the authorised stormwater discharges (current discharges and maximum future discharges based on full development of residentially and commercially zoned areas in the District Plan) on existing flood flows immediately downstream of the Te Puki urban area – namely the marginal impact of the stormwater discharged from Te Puki residential and commercial areas on flows in the Waiari, Ohineangaanga and Raparapahoe Streams? |
| 10.7(g) | 62 | Can a consent condition be imposed that requires a consent holder to undertake works on assets or land not under their direct ownership and control?  Can a consent condition be imposed that requires a consent holder to undertake works that may require resource consents? |
|  |  | Has WBPDC unreservedly offered conditions 10.1 to 10.7 on an *Augier* basis? |