

## Government Inquiry into Havelock North Drinking-Water

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UNDER

The Inquiries Act 2013

IN THE MATTER OF

Government Inquiry into Havelock North  
Drinking-Water

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EVIDENCE IN REPLY OF  
IAIN DONALD MAXWELL  
Dated 24 January 2017

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## EVIDENCE IN REPLY OF IAIN DONALD MAXWELL

### Introduction

- 1 My name is Iain Donald Maxwell and I am the Group Manager of the Resource Management Group at Hawke's Bay Regional Council ("**HBRC**").
- 2 This brief of evidence responds to evidence provided on behalf of Hastings District Council ("**HDC**"), dated 22 December 2016, by Brett Chapman, Anthony Peter Cussins, Dylan James Stuijt, and Matthew Peter Kersel. I am authorised by HBRC to do so. This evidence is further to briefs I have filed on 18 November 2016, 1 December 2016, and 22 December 2016.
- 3 I have also read the evidence of Darryl Donald Frederick Lew dated 22 January 2017. I have also read the evidence in reply of Stephen Swabey dated 23 January 2017, and the evidence of Wayne James Wright dated 23 January 2017, and I agree with it,

### Response to Mr Chapman

- 4 Mr Chapman, at his paragraph 6.4, notes the only changes to the Brookvale borefield catchment were at the TMMC site, being the farm dairy effluent ("**FDE**") consent and the earthworks to the unnamed stream. It is unclear which consent(s) Mr Chapman refers to regarding earthworks, as TMMC holds several consents, and has carried out extensive earthworks that were consented by HDC, not HBRC (I refer to paragraphs 13 to 20 of the Brief of Evidence of Michael Alebardi dated 22 December 2016 which address various consents at TMMC). HDC therefore appears to have been aware of earthworks at TMMC.
- 5 The FDE consent has not to date been exercised by TMMC, so it and the activity permitted by it is not relevant to the August 2016 contamination event. In any event, TMMC is extremely unlikely to have caused the contamination because *Campylobacter* types found in the clinical population were not found in samples taken from paddocks around the TMMC property, as set out in the Report of the Investigation into the Cause of Havelock North Water Supply Contamination (**CB082**), at page 10. In addition, the TMMC site is physically too far away from Brookvale bores 1 and 2 to have caused the contamination in August 2016. The Science Caucus Report concludes on 20 January 2017 at paragraph 1 that the TMMC site is "very unlikely" to have been a possible source of the August 2016 contamination.
- 6 At paragraph 6.6, and again at 9.2, Mr Chapman states that bores 1 and 2 had tested clear when bore 3 had findings of E.coli. This is further evidence that the contamination incidents were bore specific and not source related. If it were the

source, then bores 1 and 2 would also most likely have tested positive for E.coli. given the hydraulic connection between the three bores.

- 7 At paragraphs 6.7 and 6.8 Mr Chapman addresses the depletion effect of the water take on the Mangateretere Stream. Mr Chapman states that HDC “had no understanding that the operation of the bores would actually draw water from the stream” at the time HDC was re-applying for the water permit for the Brookvale bores (i.e. in 2007 and 2008). This issue is relevant to issue 2 of the issues the Inquiry is considering. I have read the evidence of Darryl Lew dated 22 January 2017 that confirms that no evidence was presented by HDC indicating that the Brookvale bores drew water from the Mangateretere Stream.
- 8 At paragraph 8.3 Mr Chapman refers to his review of HDC’s records of the 1998 campylobacter incident, and the recommendations of Stu Clark at the time. Mr Chapman does not, however, mention what measures or steps were put in place to respond to the recommendations made following the review. It appears that not all recommendations were implemented. I refer to Dr Swabey’s evidence in reply dated 23 January 2017 and page 45 of **CB082**. Mr Chapman has not set out details of any ongoing maintenance by HDC to ensure continued compliance with Stu Clark’s recommendations. I refer to page 9 of the MWH Bore Head Security Report (**CB008**), which sets out further required and recommended improvements to the Brookvale bore’s bore heads in August 2014, and I refer also to the evidence in reply of Wayne Wright in reply dated 23 January regarding HDC evidence of bore maintenance.
- 9 At paragraph 8.12, Mr Chapman notes the clause in resource consent WP070080T regarding routine monitoring by HBRC. This specifically states it will be at a frequency of no more than once a year. Mr Chapman suggests that, due to the Officers Report to the Regional Council Hearings Committee for the 2008 consent (Appendix A to the Brief of Evidence of Darryl Lew), up to four site inspections would be carried out per year.
- 10 I spoke to Darryl Lew about Mr Chapman’s paragraph 8.12 where he implies that HBRC should have been doing more site inspections. I have also read Darryl Lew’s second brief of evidence dated 22 January 2017. As can be seen from Mr Lew’s evidence, the note recommending up to four site inspections per year was added to the Officers Report for the consent as there was a need to regularly re-rate the Mangateretere Stream gauging site to accurately assess the effects of the takes on stream flows. This meant that the field staff would need to visit the site and do work on a regular (quarterly) basis. It was not for inspections of the infrastructure or wellheads as Mr Chapman seems to imply.
- 11 At paragraph 8.14, Mr Chapman refers to the Compliance Monitoring Reports (**CB012 – CB016**). Mr Chapman states that condition 21 was reported as

complied with, and that HDC were “charged for this monitoring”. The evidence of Andrew James Gass dated 21 December 2016 and Jeffrey Joseph Cooke dated 22 December 2016 says that the bores were not physically inspected unless there was a reason to do so. This is part of HBRC’s risk-based approach, as I discussed in my brief of evidence dated 18 November 2016. HDC was aware of this, and was also aware that condition 21 was ‘deemed compliant’ or ‘assumed compliant’ unless there was an indication to the contrary. In terms of HDC being charged, this was for time spent monitoring the consent (rather than any physical inspections), such as assessing data, correspondence, and the preparation of reports. This is standard across all consents that HBRC monitors.

- 12 I have been informed by Stephen Swabey, who attended the Joint Working Group (“**JWG**”) meeting on 19 January 2017 that there was a generally held view by the JWG that the triplication of responsibilities is not sensible when obligations concerning borehead security overlap between the Resource Management Act 1991 (“**RMA**”) and Health Act 1956/Drinking-water Standards for New Zealand 2005 requirements. Thus, Mr Chapman suggested at the JWG that if HDC had provided the MWH report on borehead security to HBRC, then HBRC should be able to rely on that report to satisfy itself that the RMA requirements for condition 21 of the consent were satisfied.
- 13 At paragraph 8.16, Mr Chapman states that there was no basis for HDC to be concerned about the security of the Brookvale bores 1 and/or 2 or that they might be compromised, as HBRC and others had “confirmed the bores as being compliant.” The responsibility to comply with condition 21 is HDC’s, as per the terms of its consent.
- 14 At paragraph 9.5 Mr Chapman refers to HBRC becoming aware of an issue with Brookvale Bore 3. HBRC only became aware of this by reading about it in the newspaper, and not by way of notification from HDC. We would expect that if HDC was concerned about source contamination, they would notify us immediately. We have no record of HDC notifying us of any source contamination in the Brookvale area.
- 15 In response to Mr Chapman’s paragraph 11.11, the report of the investigation by HBRC prepared by Dr Swabey was not “for ‘use in the prosecution against the [Hastings] District Council”. Rather, it was background information that was considered before ultimately deciding to prosecute for a breach of a condition of the water permit but not to prosecute for a breach of section 15 of the RMA. In terms of the subsequent decision to prosecute for a breach of the conditions of the water permit, I refer to the Evidence in Reply of Wayne Wright dated 23 January 2017.

**Response to Mr Stuijt**

- 16 Mr Stuijt, at his paragraphs 2.10 and 2.11, raises a Memorandum of Understanding (“**MOU**”) entered into between HDC and HBRC. The MOU was put in place to ensure data was received from HDC’s meters via telemetry prior to the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 coming into effect. Generally this was satisfied by way of compliance reports, where the use of ‘deemed compliant’ was prevalent.
- 17 At paragraph 4.8, Mr Stuijt states that he only deals with HBRC officers on significant issues. However he did not notify HBRC staff of previous transgressions within the HDC network (such as the transgression in October 2015 at Brookvale bore 3), which would appear to me to be a significant issue.
- 18 At paragraph 4.10 Mr Stuijt states that HBRC had not, prior to 2016, sought access to inspect a water supply works. There has not been any need for HBRC to inspect previously as HDC have never advised of problems in the network, consistent with our risk based approach. HBRC has also relied on the fact that HDC needs to comply with the Health Act and the DWSNZ, which are more onerous than the RMA with respect to borehead security.
- 19 At paragraph 9.5 and 9.6, Mr Stuijt notes his residual concerns about earthworks at TMMC. However it does not appear that he had raised those concerns with HBRC at any time until after the 2015 contamination event, and even then only after he was contacted by Dougall Gordon of HBRC. I refer to paragraphs 15 to 19 of the Brief of Evidence of Mr Gordon dated 22 December 2016, and **CB071**, for further detail.

**Response to Mr Wood**

- 20 Mr Wood, at his paragraph 6 and forwards, suggests that being able to access additional information would allow him to undertake trend analyses. He does not refer to paragraph 13 of my Brief of Evidence dated 22 December 2016 regarding the development of the Land, Air, Water Aotearoa (LAWA) website, which was in response to his earlier evidence on the same point. I have contacted Mr Wood by email and raised these issues and will make it my job to put it on the next JWG meeting so we can collaboratively discuss what information would best assist Mr Wood and his colleagues. Trend analyses are difficult to complete and you need to suitably skilled and be clear what you are analysing the data for to do it correctly.
- 21 At paragraphs 32 and 39, Mr Wood says that a DWA would only inspect a bore if he or she felt it necessary, and that a DWA does not have time to inspect all issues on implementation visits. This is similar to the risk-based approach adopted by HBRC. HBRC would only look to inspect the bores if we were put on notice of a

problem, in that we also do not have resources to look at every condition and/or consent on a regular basis, so we rely upon others.

- 22 At paragraph 33, Mr Wood's position is similar to that of HBRC, in that we do not have staff who are qualified to assess bore head security and so if we felt it was required we would need to engage a suitably qualified company to do this work for us, and to charge the bore owner.

#### **HDC involvement in resource consent applications**

- 23 On page 34 of the transcript of the hearing on 12 December, Mr Thew states that:<sup>1</sup>

Similarly we need to be fully aware of any – the results of monitoring, consent monitoring and new consents going into those catchment areas because every new activity creates a new risk that must be assessed by us to that drinking water supply.

- 24 Mr Thew noted that HDC had asked to be treated as an interested party in resource consent applications received by HBRC in areas where the drinking water supply might be affected. Mr Thew stated that HBRC had not responded to this request.

- 25 Mr Thew also noted that the HDC should be consulted for plan changes as in his view there a large number of permitted activities which do not require a resource consent and which HDC would like to have more understanding of.

- 26 HBRC does not have a record of HDC having requested "affected person" status in relation to the assessment of consent applications for activities which may affect a drinking-water supply. I have asked Mr Thew for a copy of the correspondence by which HDC made this request. Mr Thew has since confirmed that in fact no such request for HDC to be treated as an affected person has at any stage been made. The relevant correspondence is attached.

#### **MoH Situation Reports, August 2016**

- 27 Several of the Ministry of Health Situation Reports (documents MoH-001 – MoH-014) produced in August 2016 and sent to the Inquiry and all parties on 22 December 2016 (referred to in the evidence of Sally Gilbert dated 25 November 2016), contain the following paragraph:

Hawkes Bay Regional Council has an ongoing investigation into the aquifer to determine if any source of contamination can be identified. **Regional Council staff consider the greatest risk of contamination is from a point source contamination close enough to the Council's bores that the microorganisms survived to be introduced into the water reticulation.** Council staff have prioritised bores and surface water sources and are collecting samples which are being analysed in conjunction with other hydrological assessments of the groundwater.<sup>2</sup>

[emphasis added]

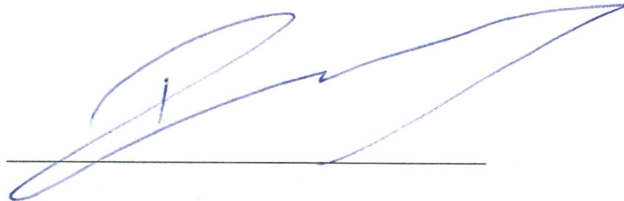
<sup>1</sup> Page 34-35.

<sup>2</sup> Referred to at: MOH-005 para 10; MOH-006 para 19; MOH-007 para21; MOH-008 para 22; MOH-009 para22; MOH-010 para23; MOH-011 para13; MOH-012 para 11; MOH-013 para13

- 28 HBRC has never made a statement to the effect set out in that paragraph, and categorically denies the consideration attributed to it. HBRC was not provided with the Situation Reports to comment on or correct errors, yet they purport to make statements as to HBRC's views.

**Endorsement**

- 29 This statement of evidence is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Inquiry and that it is an offence for me to provide false or misleading information to the Inquiry.



**IAIN DONALD MAXWELL**

Date: 24 January 2017