

WHO IN THE KDC MISLED THE HEARING COMMISSIONERS? 14/12/2020

The misrepresentations in respect of wastewater capacity made by KDC officers during the process for Plan Change 78, and the earlier supermarket consent process, reveal the ugly underbelly of the KDC.

In both instances KDC officers made statements in respect of the capacity of the Mangawhai Wastewater Scheme (MCWWS) that were indisputably incorrect. More than that, those making the statements must have known that the statements that they were making were incorrect. They also knew that the Hearing Commissioners would be misled if they relied on those statements.

Supermarket consent

In the supermarket consent process a KDC engineer stated in the Resource Engineering Assessment that:

The present Mangawhai waste water treatment plant have capacity to accept the propose loading from the development. (The typos are in the original)

In the section 42A report a planning consultant for the KDC stated:

9.124 The proposed infrastructure a for reticulated wastewater system is able t to service the proposed development as there is capacity within the Council treatment plant for the proposed loading. (The typos are in the original.)

This was confirmed by a KDC engineering expert:

9.128 Council engineering expert, xxxxxxxx confirms all of infrastructure services acceptable. I adopt xxxxxxxx's position, and confirm the proposed servicing appropriate which does not create downstream effects

The content of the section 42A report was reviewed and approved for release by a KDC senior planner.

At the hearing, in response to an inquiry of one of the commissioners, a representative of MCL stated that KDC staff had confirmed that the MCWWS "has capacity" to accommodate the proposed supermarket etc development. This was then orally confirmed by a KDC senior planner.

As a result of these unequivocal statements in respect of wastewater capacity, the capacity of the MCWWS was not an issue. The consent for the supermarket etc was granted without any further consideration of wastewater capacity.

Plan Change 78 process

This was like a game of Chinese whispers with expert engineers and consultants from KDC and Mangawhai Central Limited (MCL) stating unequivocally that the MCWWS had the capacity to accommodate Mangawhai Central, based on advice from the KDC and from expert witnesses.

In his statement of evidence Mr Dufty, and engineer from Chancery Green, stated on behalf of MCL:

4.4 The Council has confirmed during initial planning meetings that there is sufficient capacity in the wider network at the treatment plant to provide for development of the PC78 site.

The KDC's independent experts relied on the same confirmation from the KDC and also relied on conversations with unnamed KDC staff, and also on the conclusions of other expert engineers.

The source engineer, whom the others relied on, had actually read the WSP report of 2019 but his conclusion that the MCWWS “has capacity for additional connections” was incredibly vague and completely misrepresented the principal conclusions of the WSP report.

Another misrepresentation

During the plan change hearing there was some dispute about whether the Mangawhai Central proposal - its capacity and funding etc - had been considered in the Long Term Plan of 2018/2028. This was a vital piece of information. A senior planner at the hearing sought confirmation from the KDC and reported back to the hearing. He advised that a senior manager had confirmed that the Mangawhai Central proposal was considered in the 2018/2028 LTP.

This was not correct. I checked the LTP again and confirmed that Mangawhai Central was not considered at all in the current LTP. I advised the hearing during my oral presentation that the advice from the senior manager was not correct.

WSP report

This report, dated 28 November 2019, sets out in very clear terms that there is a looming crisis in capacity for the MCWWS, especially in relation to the disposal of waste from the plant. And that is without any consideration of the loading required by Mangawhai Central.

It appears that there were two earlier reports obtained from WSP, in 2018 and 2017. The KDC General Manager of Infrastructure Services, Jim Sefton, tabled a report at the Council meeting of 4 December 2019 advising that a further report was being obtained from WSP to look at future upgrades to meet capacity and the impending need for a completely new disposal system. (The report advised that: “We are now at 100% coverage of land that can be discharged to.”)

The Sefton report stated that “*the findings of the investigation will be reported back to Council*”.

That has never happened. Elected members have been left completely in the dark. Since the existence of the WSP report was exposed during the plan change hearing, Councillors have made enquiries of the KDC staff about the report, but without any response.

The WSP report itself also stated that it was to be used as a “*basis for the Mangawhai Master plan to be shared with the community*”.

The important information in the report has not been shared with the community even though it is over a year old.

Not only did the KDC staff keep the report secret from the elected members and the community, they also deliberately ignored the warnings in the WSP report and deliberately misrepresented the capacity of the MCWWS to the Hearing Commissioners.

KDC’s breach of LGOIMA

The KDC has continued to keep reports secret. Immediately after the hearing I made a LGOIMA request to the KDC chief executive, Louise Miller, asking for copies of not only the 2019 WSP report, which I have already, but also the earlier ones of 2018 and 2017.

Louise Miller advised that a response would be made at the end of the 20 working day period allowed for in the legislation. That takes the date of response to 24 December. However, under the legislation any day in “*the period commencing with 20 December in any year and ending with 10 January in the following year*” is not a working day. That means that the response would be delayed until the 11 January 2021.

I have pointed out to the chief executive that she has misquoted the legislation. Section 13(1) states that a local authority shall respond to a request “**as soon as reasonably practicable, and in no case later than 20 working days after the day on which the request is received**”.

As the WSP reports are held in electronic format and easily accessible the reports should be made available without any delay.

The chief executive has not responded. She appears determined that the earlier reports are not revealed in the public arena or even to the elected members.

Who is driving this fundamental failure of good governance?

Who is behind the deliberate misrepresentation? It is certainly not the elected members, who probably know less about the issue than those in the community who keep up to date on social media.

Clearly someone in the KDC made the decision to keep the WSP reports secret, to ignore the compelling facts in that report, and to adopt the position that the MCWWS "has capacity" to accommodate Mangawhai Central. The clear intention was to mislead the Commissioners.

The responsibility for the decision must sit with the chief executive. The chief executive of a local authority employs all the staff. They are answerable to the chief executive, and likewise the chief executive is responsible for the actions of her staff.

No doubt thatr issue is running red-hot in the KDC at the moment.

Response from the KDC

The Commissioners were well aware of the subterfuge carried out by the KDC. The revelations in the WSP report, which were part of my Statement at the hearing, were chilling in the extent to which they contradicted all the conclusions of the expert witnesses on both sides. Several times in the hearing the Commissioners affirmed their independence from the KDC. In respect of the "real picture" presented by submitters of the critically limited capacity in respect of water supply and wastewater, the Commissioners stated time and time again: "*Mangawhai, we hear you.*"

As a result the Commissioners have placed a requirement on the KDC to provide the following information on wastewater and water supply:

With respect to wastewater for the Mangawhai area we request officers provide a written report on:

- *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?*
- *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.*

With respect to water supply for the Mangawhai area we request officers provide a written report on:

- *What is the infrastructure planning being undertaken for water supply/water security given the issues raised in the PC 78 hearing about whether or not there is sufficient water supply/water security to provide for the development within Mangawhai, 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 securing a potable water supply to service the Mangawhai community, (ie 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.*

This is an incredibly onerous task that must be attended to by this Wednesday 16 December 2020.

The Commissioners have confirmed that the information provided will be made available to all submitters to Plan Change 78. I will ensure that it is available to the wider community.

MANGAWHAI CENTRAL Plan Change 78 27.11.2020

The hearing of Plan Change 78 was held in the Domain hall this week. There was insufficient time for a right of reply by the Viranda people so it will continue in late January or early February next year. It may take the Commissioners some time after that to issue their decision.

In simple terms, Viranda was seeking a change to the current Estuary Estates part of the operative District Plan to enable it to proceed with the Mangawhai Central development. The decision that the independent commissioners make is a recommendation to the KDC, and the KDC is not bound to follow it. However, it is very "persuasive".

A big thank you

I would like to extend a big thank you and congratulations to those in the community who attended, and especially those who stepped outside their comfort zones to speak to their submissions. Only three people filed submissions in respect of the supermarket consent, mainly because no one knew about it. With Plan Change 78 there were over 200 submissions objecting to some aspects of the proposed development.

The newly formed Mangawhai Matters was only formed a few months ago yet they managed to put together a superb effort with a lawyer, expert consultants and locals, who presented a compelling presentation of the issues arising from the development as proposed.

There were also many locals who made a terrific impact with their sincerity, their love for Mangawhai as it is now, and the "real facts" about the issues of water, wastewater, and the destruction of the amenity values of our township.

It was a wonderful opportunity for the community to air their grievances about the KDC and how it has failed us by embracing the Mangawhai Central proposal in secret and without the consultation with the community, as required by the law..

What we learnt

Water

It is quite amazing that Mayor Smith comments regularly on the issue of lack of water. We all know the crisis that we faced last summer and is now hitting us again, but earlier in the year. Yet the KDC took the stance at the hearing that there is an adequate water supply for the Mangawhai Central proposal.

Successive speakers told the "real facts" about the crisis in water supply. That was capped by a couple who supply bore water to the community. They spelt out in detail the facts and figures of water issues. The commissioners were left in no doubt what the true situation is.

Wastewater

The KDC through its planners, its engineers and its expert consultants stated unequivocally that "there is capacity" in the wastewater plant to accommodate the Mangawhai Central proposal.

We established that not only was that statement not true, but that the KDC knows that it is not true.

It is beyond any dispute that the KDC deliberately misrepresented the capacity of the wastewater system to the Commissioners.

For years several of us in the community have tried to obtain details of the capacity of the MCWWS (EcoCare/sewerage plant) from the KDC. All efforts have been rebuffed.

With a stroke of luck, a few days before the hearing we discovered a WSP-Opus report on the capacity and future capacity of the plant that was published last year.

The report warns that the plant itself will need upgrading by 2026, but more importantly a completely new disposal field (or other alternative method of disposal) will be required. The startling revelation is that this will happen even with the assumed normal growth of 100 connection per year. That does not take into account the increased growth we are experiencing at present. And that is without a single connection from Mangawhai Central.

The plant only has a capacity for 3,000 connections and there are already 2,230 connections.

The cost of a new disposal field is estimated to be, roughly at today's prices, \$38 million. Discharge to the estuary would cost \$26 million, and discharge to the sea would cost \$47 million.

The original EcoCare plant cost \$63.3 million for a promised 4,500 connections. The debt incurred was \$58 million. The current long term plan states that the "historic" debt will be repaid over the next 30 to 40 year depending on how the debt is attributed to present and future connectors. Most of that debt is still outstanding and will remain outstanding decades after the MCWWC has reached capacity.

So those connected to the scheme will be obliged to pay off the old debt for generations to come, and will also be lumbered with another debt of \$38 million or so.

The frightening thing is that the WSP report states that the KDC should have started planning for the new disposal system in 2020, given that it takes 6 years to look at options, decision-making, consultation with the community through a long term plan, planning, consenting and building. That warning has been spelt out loud and clear in the draft Spatial Plan, yet the KDC is still dithering about considering options.

The WSP report states that the report was intended to inform not only the KDC but "community stakeholders" and was "to be shared with the community".

The KDC kept it secret from the community. Not only that, it also kept secret two earlier WSP reports of 2017 and 2018.

Perhaps even more troubling is that the KDC kept the reports secret from the elected members. They are completely unaware of the crisis in respect of wastewater facing the community.

The upshot is that not only do we have a crisis in water supply and wastewater, irrespective of Mangawhai Central, we also have a crisis of governance within the KDC. The elected members should make all the decisions on behalf of the KDC. Yet they have been side-lined, deprived of vital information and excluded from the decision-making process.