



TAUTUKU BLOCK X SECTION 3C TRUST

Chairperson: E.J.Palmer 47 Skibo St Kew Dunedin

VERBAL SUBMISSION ERMA 1080 HEARINGS INQUIRY PANEL

KIA ORA TATOU

My name is Ted Palmer and I am chairperson of the Tautuku Block X Section 3C Trust.

After some 50 years of possum hunting experience during which time I have probably skinned 30,000 odd possums I suspect I have a better than average understanding of possum hunting methods. Likewise I also have over 40 years experience using cyanide based poisons.

My initial experience with 1080 occurred during the late 1980's when as a member of the local beekeeping fraternity an issue arose involving suspected poisoning of beehives by 1080 which was subsequently confirmed. Briefly possum contractors were using a bait containing raspberry jam, green dye and 1080. Unfortunately the raspberry jam contained sugar which attracted honey bees and other nectar eating insects and birds that apparently also targeted the seeds. After many experiments with different formulations the use of raspberry jam was banned and a bee warning placed on 1080 paste containers.

I understand a considerable number of beehives were killed in both Islands. To better understand 1080 I spent many evenings in the local University Science Library researching the issue. I will comment on honey issues later

The trust lodged a submission to this process commenting on a number of issues and sort 2 decisions;

- 1 To make it a criminal offence similar to the Firearms Regulations to be on a property with a controlled substance such as 1080 without the owners written consent and secondly;
- 2 To prohibit the use of 1080 within 500 metres of an adjoining property boundary without that owner's written consent. Incidentally I note the SPCA submission has requested 1 kilometre.

In respect of this request I am now aware it is already a mandatory requirement to advise adjoining landowners of 1080 use but believe a written acknowledgement should be obtained. However after reading the Agency's Evaluation and Review report I can find no decision on our first request.

Firstly I would like to state that our trust supports the retention of 1080 in the arsenal of poisons available for pest control purposes however we have some concerns and believe 1080 it should only be used as a method of “last resort” especially for possums when alternative methods are viable.

The trust owns the majority of a 3 kilometre access to the regionally significant coastal tourist icon known as Cathedral Caves for which we charge a small access fee. The last 120 odd metres of the walking track is through a DOC reserve.

Since the commencement of TB possum control programmes on our lands in 2001 the trustees have taken a “hands on” precautionary supervisory approach as in terms of the OSH Act we have a legal duty to protect the paying publics’ safety whilst on our lands. Personally I believe the local AHB Management Agency and some contractors have viewed our approach as obstructive and un-necessary however we have permitted contractors to use every control method except aerial 1080 without restricting public access. Over that period we have detected a number of serious breaches of statutory requirements and as a result 2 contractors will not be allowed back on any property managed by me and a 3rd contractor will be on a “traps only basis.

PROBLEMS

From day one we have had problems and don’t be fooled by the applicant’s spin doctors regarding proactive consultation in our experience it really doesn’t happen.

Property owners are told that we will be consulted by contractors regarding poisoning methods but the first we know of a poisoning programme is reading the contractor’s poisoning notice in the local paper.

Likewise we are also told that we will be consulted annually about poisoning programmes etc by the local Regional Animal Health Committee which incidentally is dominated by farmers. Interestingly the local Otago consultation meeting for next year’s programme was held yesterday afternoon between 1-3pm. When I rang the local AHB office I was told they do not change meeting dates for a few people like me. I suspect I won’t have to worry about typing up poison access permits again.

It is also fair to say that in the past both the Boards’ Otago and Southland management agents have both unsuccessfully attempted to intimidate me into accepting unwanted poisoning programmes.

In the Catlins area where I am currently managing 7 sections of Maori freehold land totalling some 1500 hectares for possum control DOC has a number of land-locked reserves which require access via either Maori owned private roads and land or surveyed paper roads.

Quite frankly we have experienced major on going problems with the department and its contractors. Despite verbal assurances from both of the AHB’s local management agencies that it is a mandatory requirement to obtain written permission from any landowner over whose property access is required not 1 contractor in 6 years has

ever initiated a request for permission and this is despite a written assurances I have from the Minister (dated 10 March and 29 May 2003)

As there is no consulted we naturally have no idea what poisons are being transported through our lands which threatens the integrity of our health and safety processes. Once again this is despite a written assurance from the Minister (dated 7 October 2004) that consultation would occur.

On a number of occasions we have requested the department to insert clauses into its permits reminding contractors of their legal obligations but needless to say there is no co-operation.

Frankly I am appalled by DOC'S Otago Conservancy's arrogant and unco-operative attitude and continuing failure to fulfil their Minister's written undertakings to a Treaty partner. I can assure you this situation will not be re-occurring again.

CONSULTATION UNDERTAKEN BY THE APPLICANTS

Our trust's submission questioned the adequacy of the consultation processes undertaken by the applicants' in Otago/Southland via the Department of Conservation's Kaupapa Atawhai Managers' network.

The trust requested that as a significant number of affected Maori landowners/trustees were unaware of the Dunedin hui the review process should be suspended until such time as the applicants fulfilled their Treaty obligations in terms of the act.

The Nga Kaihautu Tikanga Taiao, Tuputupu Research and Landcare reports all identified issues relating to the adequacy of the consultation process undertaken by the applicants such as:

- (Nga Kaihautu) - Could find little evidence that an appropriate process and sufficient time was used during the consultation process to discuss outcomes of significance to Maori and options for mitigating potential adverse effects
- (Nga Kaihautu Conclusions state) - Inadequacies in the pre-application consultation approach and Maori dissatisfaction with the consultation process appear to reduce the efficacy of the consultation to provide necessary cultural information to the decision making committee.
- (Tuputupuwhenua Research) - The turn-out to many of the hui was very low
- (Landcare Research) - According to ERMA guidelines, nationwide consultation does not require the applicant to consult with all iwi or expect the applicant to go to unreasonable lengths to consult or obtain information

- (Landcare Research) Some participants felt the hui were not widely notified or that notification time was too short.
- The Nga Kaihautu and Landcare Reports also contained comments relating to the Applicants DOC Kaupapa Atawhai consultation process such as:

(The Landcare Report Conclusions)

- The concept of national consultation with Maori on 1080 is good and the use of the Kaupapa Atawhai Manager network to get a wide coverage of appropriate iwi was sound.
- There were marked differences in the way Kaupapa Atawhai managers organized and facilitated hui in their rohe that could have influenced outcomes from each

(Nga Kaihautu)

- The process of using the DOC Kaupapa Atawhai Managers to advertise the hui and disseminate information to Maori is endorsed by Nga Kaihautu as a means to access one of the more comprehensive networks of Maori in New Zealand.

In our submission we stated that we had not been invited to the DOC 1080 and neither had we seen any public notification of the hui.

The Landcare Research report identifies that of the 5 hui they attended 2 of which were in the South Island at Te Waipounamu House CHCH the Head quarters of Ngai Tahu and at the Kaikoura Runanga Marae attendance was low.

One possible explanation for the low turnouts in the Ngai Tahu rohe is contained in correspondence I have from the Minister of Conservation and the Otago Conservator advising me that the Department's sole Treaty relationship within the Takiwa of Ngai Tahu is with Te Runanga o

Ngai Tahu. Despite several years of correspondence and pointing out that the Waitangi Tribunal Te Whanau o Waipareira Report WAI 414 stated *that Treaty was for the protection and benefit of all Maori* nothing has changed

Letters to the CEO of Te Puni Kokori and the Minister of Maori Affairs regarding the matter have gone unanswered for several years. According to the Minister they are still investigating the matter. I'm not surprised.

Seemingly it would appear that local Ngai Tahu Maori landowners were either deliberately not invited to the Dunedin hui or DOC just did not have the so-called "comprehensive network" knowledge of local Maori land owners/trustees which is more likely.

Legally speaking as the wording of HSNO sections 6d and 8 mirrors sections 6e and 8 of the RMA 1991 I suspect we can fairly safely assume similar case law will apply in interpreting the HSNO Act requirements however as ERMA is a Crown entity additional case law may also apply. (ie *McDonald v Arrigato Investments & Ors* HC M 126/00, *Beadle & Ors v Minister of Corrections* A74/2002)

This RAISES A FUNDAMENTAL QUESTION as to how the Panel will be “sufficiently informed” to be able to recognise and provide for the matters listed in section 6d so as to take into account the Treaty principles during the decision making process if the appropriate affected tangata whenua have not consulted

In respect to this issue there a considerable number of Court decisions including *Worldwide Leisure Ltd Symphony Group Ltd* HC M1128/94 Cartwright J stated “Logically, consultation with tangata whenua would be necessary to establish what relationship they have with their lands and how that could be best provided for” (Other cases *Haddon v Auckland R.C* (1994) NZRMA 49, *D.G Conservation v Marlborough D.C* W089/97, *Mason-Riseborough v Matamata-Piako D.C* A143/97)

The Maori consultation process used by the applicants appears to be the standard Crown Iwi model whereby consultation is undertaken with tribal Iwi groups and excludes everyone else which for RMA purposes has been rejected by the Courts.

Section 6d commences All persons exercising functions, powers and duties under this Act shall to achieve the purpose of this act take into account the following matters (d) the relationship of Maori and their culture and traditions with their ancestral lands.

If the Authority is not already aware most ancestral lands in Maori ownership are owned by individual Maori and are often administered by trustees or incorporations.

Iwi groups such as Te Runanga o Ngai Tahu and Te Ao Marama Inc have absolutely no say of these lands. General land owned by Maori organisations such as Iwi do not fall under sections 6d and 8 Maori consultation provisions.

In respect to freehold ancestral Maori lands Justice Goddard stated in the High Court decision *McGuire and Makea v The Hastings District Council* (CP No 11/99) that for the purposes of section 8 of the RMA the owners/trustees of freehold Maori lands had to be consulted for any matter affecting their lands.

In addition there are a number of similar decisions such as *Haddon v Auckland RC* A77/93, *Ngati Kahu v Tauranga DC* 1994 NZRMA 481, *Beadle & Ors v Minister of Corrections* A074/02 to name a few of the many RMA sections 6e and 8 decisions.)

In Court of Appeal decision *New Zealand Maori Council v Attorney General* Lord Cooke stated at page 664 “the duty of the Crown is not merely passive but extends to active protection of Maori People in the use of their lands and waters to the fullest extent possible”

HSNO section 6d also mentions “The relationship of Maori their culture and traditions with their water sites, waahi tapu, valued fauna and other taonga.

To determine who should be consulted for this issue one has to decide who are the tangata whenua for a particular area based on a tikanga Maori concept known as customary authority. Section 2 of the RMA interprets as being the Iwi or hapu of a particular area. This is where the disputes begin. Here in the Ngai Tahu rohe yes it is people of Ngai Tahu Iwi whakapapa but it is local hapu and whanau who hold ahi ka/turangawaewae that determines customary authority and are therefore the manawhenua that exercise the kaitiakitanga function in respect of local natural resources mention in 6d

Locally one of the quickest methods to determine who hold tangata whenua rights is to identify the descendants of the tupuna allocated ancestral Maori land reserved from Crown sales in the area.

One of the clearest statements on the issue was made in the Southland Times on 3 September 2003 in reference to the proposed Foreshore and Seabed Act by Te Tai Tonga MP Mahara Okeroa who stated that:

Customary rights should be determined by whanau and hapu rather than iwi

COMMENT

With all due respect it would seem none Authority's so-called Maori experts has the foggiest idea on what constitutes legal consultation with affected tangata whenua. However I suspect one of the Panel members does.

Having recently successful appealed a Dunedin City Council District Plan change in respect of the failure to undertake RMA section 8 consultation with affected Maori landowners it is my opinion the Applicants' process fails to meet the minimum legal standard required by the Environment Court.

AGENCY EVALUATION AND REVIEW REPORT

Naturally I was very interested to read the Agency's report as to its opinion of the quality and transparency of the applicants' consultation process.

After reading the report twice and printing off all of the relevant sections to ensure I hadn't missed anything it became apparent the authors of the report had in my opinion essentially side-stepped commenting on the adequacy of the applicants' consultation process.

On page 145 the report states;

The purpose of consultation in this context is to lead to the provision of information to the Agency to enable it to evaluate risks, costs and benefits and make informed decisions in accordance with its legal duty under the HSNO Act.

The report then repeats Nga Kaihautu's concerns regarding the process

with a final assessment on page 147 stating

The Agency after assessing all the available consultation information, considers that the applicants were only partially successful in meeting the above aims. Though the discussion document provided good, clear and useful information, its dissemination and the provision of sufficient, well-recorded opportunities for effective discussion were limited. In addition the available information from the applicants provides little or no indication that consultees were given the opportunity to discuss with the applicants options for minimizing, mitigating or remedying any potential adverse effects. The Agency would normally consider consultation of this kind to lead to suggestions or provisions reflecting this discussion to be part of a final application.

Perhaps someone might like to explain the last sentence to me.

However the report did yield one useful piece of information. It would seem the Authority has used the minutes from 9 possibly low turn-out hui and 19 submissions to make informed decisions.

When I counted up the number of individual Maori organisations named in the report only 2 of 15 appeared to be non Iwi again raising a concern as to whether sufficient directly affected tangata whenua have been consulted for the Authority to have any confidence that it has sufficient quality information on which to base its informed decision-making function.

In the High Court decision *Ngati Wai Trust Board v New Zealand Historic Places Trust* HC 3/97 the court rejected the notion that Maori Trust Boards were directly affected tangata whenua unless they held an appropriate mandate. I suspect many of the iwi submitters to this process such as Te Ao Marama Inc are covered by this decision.

BEEKEEPING

Yesterday I heard the AHB chairperson state that 1080 does not build up in food networks. On page 254 of the Application the following statement appears under "Potential Effects";

There is no evidence to indicate that bees exposed to 1080 have contaminated honey supplies.

Perhaps the applicants might like to tell us what the green material was in the bee frame cells taken from dead hives which I am reliably informed MAF had photographs of.

Likewise earlier in my submission I stated that I understood a considerable number of beehives were killed in the late 1980's/early 1990's by 1080 jam baits containing sugar.

I note from list of 1080 formulations being reassessed on page 77 of the Application that items (c) and (e) contain sweeteners. On page 27 of the discussion document titled *The use of 1080 for Pest Control* dated July 2004 it is stated that;

Cereal based pellets are manufactured by compressing a mixture containing bran, kibbled grain and sugar along with 1080 green dye and flavouring such as cinnamon.

List Items (f) and (g) which are pastes apparently contain both sweeteners and apple pastes. Appendix N page 752 would suggest that apple pastes are attractive to bees.

Mr Chairman I would like to pose a question to the applicants what are the risks to beekeepers and to native invertebrates and birdlife from 1080 pellets and pastes containing sugar and apple pastes given past experience?

FINAL COMMENTS

Yesterday I heard a comment made by the Director General Conservation that if they lost the ability to use aerial 1080 the dawn chorus would disappear for ever. From the applicants own figures only 2.3% of NZ is poisoned annually by ground and aerial 1080 operations. If one refers to the NZ area under sustained Management the figure is only 11.8%. Even though these are probably the most at risk areas for many native bird species I have a gut feeling someone has been engaging in a wee bit of scaremongering. If the department wants a magic bullet to protect NZ birdlife and skinks etc either ban cats or require them to be caged. It would be a very cost effective alternative.

Likewise I have also spotted another somewhat incorrect statement for the "without 1080"scenairio (cyanide & trapping) which states the significant most adverse effects are on ground living birds including weka. Perhaps whoever dreamt up that statement could go and find a weka or kiwi on the East Coast of the South Island which has not been re-introduced of recent times.

In my experience the most prevalent bird species caught in leg-hold traps are the introduced black bird and the only native species would be the odd harrier hawk which has been scavenging nearby recently skinned possum carcasses.

Thank you for giving me the time to present this submission.

Kia ora