

Notice is given that an ordinary meeting of a Resource Consent Hearing will be held on:

Date: Friday 4 March 2016
Time: 11.00 am
Meeting Room: Tasman Council Chamber
Venue: 189 Queen Street
Richmond

Commissioner (Resource Consent) Hearing

AGENDA

MEMBERSHIP: Commissioner Rob Lieffering

Contact Telephone: 03 543 8455
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AGENDA

1 OPENING, WELCOME

2 REPORTS

2.1 R and C Johns - Section 357 Objection 5

Reason for Hearing

An Objection under Section 357 of the Resource Management Act 1991 has been received from Richard and Christine Johns, who are applicants for a resource consent being a water take permit. They are objecting to a determination made pursuant to Section 88 of the Act by Council staff with delegated authority, that their application RM150892 is incomplete.

2 REPORTS

2.1 R AND C JOHNS - SECTION 357 OBJECTION

Decision Required

Report To:	Commissioner (Resource Consent) Hearing
Meeting Date:	4 March 2016
Report Author:	Neil Tyson, Consent Planner
Report Number:	REP16-03-01
Attachments:	<ol style="list-style-type: none"> 1. 15 RM150892 S88 Letters 1 (06-11-15) & 2 (19-11-15) 2. 21 Johns Objection Staff Report Questions 3. 23 Bore locations 4. 25 MSGZ consents 5. 27 Johns Objection Staff Response (L Piggot)

1 Purpose of Report

- 1.1 An Objection under Section 357 of the Resource Management Act 1991 has been received from Richard and Christine Johns, the applicants for a resource consent being a water take permit. They are objecting to a determination made on 3 November 2015 pursuant to Section 88 of the Act by Council's Coordinator Natural Resource Consents, Mr Leif Piggott, acting with delegated authority, that their application RM150892 is incomplete [refer **Attachment 1**].
- 1.2 This Objection is being heard by an independent Hearing Commissioner, who has requested a staff report on various matters relating to Council's determination under Section 88 of the Act [refer **Attachment 2**].

2 Background

- 2.1 In August 1992, bore WWD 8031 was legally drilled on the Johns' property for the then landowner (Freilich) by Wilson Drilling Co. The bore was drilled to a depth of 136 metres and penetrates and accesses groundwater within the Moutere Southern Groundwater Zone (MSGZ). Soon after drilling, bore WWD 8031 was step discharge pump tested with the results being analysed by Council Scientist, Joseph Thomas and Council recovered its pump testing/ analysis costs from the applicant (Freilich). On the basis of those test results, water right NN930009 was granted for 772.8 cubic metres per week reflecting the bore's assessed sustainable yield based on 100 days of pumping and for irrigation and storage uses.
- 2.2 In addition to WWD 8031, the Freilichs were separately authorised to take groundwater from a second bore (WWD 8014) located south of Seaton Valley Road for irrigation. A map showing the location of the bores is provided in **Attachment 3**, and a list of consents holders in the MSGZ is provided in **Attachment 4**.

- 2.3 On 16 May 2013, the Freilichs' then water permits NN980020 and NN980023 (relating to WWD 8014 and WWD 8031 respectively) expired, and replacement consents RM120591 and RM130212 were granted for unchanged volumes and for irrigation and storage use.
- 2.4 Council's decision to grant these renewals required recognition of the Freilichs being a *bona fide* user. This decision is disputed by the applicant and the issue is raised in this objection as adversely impacting the Johns' lodging of their application. That issue is beyond the scope of their Objection regarding the Section 88 determination.
- 2.5 The May 2013 decision also granted two additional water permits RM130352 and RM130353 to the Freilichs. An extract from the decision states: "...*Freilichs wish to have the potential to supply groundwater for a community water scheme for an 80 lot residential subdivision. To satisfy the Freilichs, RM130352 and RM130353 are therefore also granted with an agreed reduction in allocation sufficient to sustainably supply the new community supply use of water and a lapsing date mirroring the expiry date of RM120591 and RM130212. The Freilichs will therefore be able to demonstrate the potential to supply water for 80 lots, which is needed to uplift the deferment of the Residential Zone relating to their land. Significant work will need to be undertaken by anyone wishing to use groundwater as a potable supply. This is likely to include the following:*
- *the developer will need to demonstrate the ability of two bores to sustain the authorised rates. Each bore will also need to be pumped and tested and the data provided to Council;*
 - *the Nelson Marlborough Health Board has responsibilities regarding new community schemes to ensure that water supplies are safe and secure. It is likely that changes and upgrading of each bore will be required to satisfy NMHB;*
 - *the applicant (in support of their subdivision application) will also need to demonstrate and confirm the supply is of potable quality;*
 - *the applicant has also been advised that any upgrading of their existing bores needs to include the water meters and the meters need to be fit for purpose and verified as accurate going forward."*
- 2.6 On 23 January 2014, the Freilichs advised of the transfer of their two *community supply* consents RM130352 and RM130353, to Mapua Limited (later CMG Limited). To avoid confusion and because it is not a critical factor for the objection, all future references in this report will be to CMG Limited.
- 2.7 On 2 September 2015, CMG Limited were granted site-to-site transfer RM140798 allowing the take and use of 80 cubic metres per day of groundwater for *community supply* from new bore WWD23931. RM140798 cancelled and replaced both RM130352 and RM130353. New bore WWD23931 became the consented bore to supply groundwater for the proposed 80 lot subdivision (on ex-Freilich land).
- 2.8 As a result of granting CMG Limited's *site-to-site* transfer RM140798, the Johns (as landowners of the bore WWD8031) are entitled to *take and use* 5,000 litres per day of groundwater and additionally for stock drinking water from WWD 8031, subject to the conditions of permitted activity Rule 31.1.2.1 of the Tasman Resource Management Plan. Taking more than 5,000 litres of water per day, requires a resource consent.
- 2.9 On 26 August 2015, CMG Limited were notified by Council that their application RM150782 to take an additional 60 cubic metres per day for an additional 60 lot subdivision from bore

WWD 23931 was being returned incomplete. CMG Limited has lodged a Section 357 objection to that determination, but their Objection is currently “on hold” at their request.

- 2.10 The reasons for application RM150782 being deemed incomplete were as follows:
- *the low transmissivity (T Values) of the aquifer and the effect of the additional 60 m³/day being greater than the predicted sustainable yield of bore WWD 23931 in relation to the triggers and also the yield ability and seasonal allocation based on plan provisions of 181 days maximum pumping;*
 - *the need for a higher security of supply for community supply use;*
 - *inadequate information and concern regarding the localised interference drawdown effects on neighbouring bores and on bore WWD 23931;*
 - *further drawdown effects and high risk of seawater intrusion.”*
- 2.11 Council staff also advised CMG Limited that “..a new application proposal taking from alternative bores etc may result in a different decision and is welcomed as groundwater in this Moutere Southern Zone is currently available. In other words, the rejection of taking the additional water from WWD23931 does not prevent you or anyone else from lodging new applications in this zone.”

3 Johns Application

- 3.1 The Johns’ application RM150892 is to *take and use* groundwater for irrigation and proposed community supply from their existing bore WWD 8031. The Johns propose to take 560 cubic metres per week, of which half (i.e. 280 cubic metres per week), is for irrigation and other water uses on the Johns’ land and an adjacent block owned by a family member. The proposed take of up to 560 cubic metres per week, continues to be available within the MSGZ allocation limits.
- 3.2 It is assumed that the Johns’ are acting as agents for the family member. Regarding that proposed *use* of water (but not the *taking*), the staff assessment is that the application contains sufficient information.
- 3.3 The other 280 cubic metres per week is for proposed water supply to a proposed 40 lot subdivision and residential development across the road on a property owned by Mt Hope Holdings Limited (Mt Hope). Mt Hope have not lodged any applications relating to their proposed subdivision. However, it is assumed that, like Freilichs, they need first to demonstrate to the satisfaction of the Council (including Council’s Engineering Department) that a viable and secure water supply for 40 lots is available and sufficient to justify uplifting of the deferred Residential Zoning relating to the Mt Hope land.
- 3.4 In contrast to the recent Freilich zone uplifting process, Consents staff have had no discussions with the applicant or Mt Hope regarding the proposed water supply and I am unaware of any comment from Council staff including those in the Engineering Department that the water supply arrangement as outlined in the application would be acceptable.
- 3.5 Regarding the proposed water supply to Mt Hope, the Johns’ state that any water quality issue will be addressed in Mt Hope’s (subdivision) proposal. Regarding water quantity issues, the applicant states: “*TDC have approved consent for this bore for 40 house lots recently so we have taken note of TDC’s decisions surrounding that consent and accept*

they still apply". It is assumed the applicant is referring to consent RM130353 (as described above) and that matter is discussed later on in this report.

- 3.6 Regarding Part D of the Johns' application (assessment of effects on neighbouring water users) they state that none are affected and " *TDC have issued previous consents and have not had a problem so I accept their expertise in such matters, non-notification and no affected parties*". Regarding Part F (parties consulted) they advise " *None have been consulted as TDC identified none needed in previous consents on this bore. I am relying on their expertise!*" The fact is, Council's expert (Joseph Thomas) advises that granting consent for 560 cubic metres per week to the Johns will have an adverse drawdown effect on the authorized water take held by CMG Limited and possibly other bore users in the area. Such affects need to be determined and assessed and are required as part of the application.
- 3.7 Regarding proposed water storage tanks, the applicant provided no assessment of what, if any, separate land use consent would be required. The applicant does acknowledge that a Licence to Occupy is required for the pipeline under the road but again, leaves that to Mt Hope to address.
- 3.8 Regarding proposed rationing by the Johns in favour of supply to Mt Hope, it is unclear if these are volunteered conditions, and if they are the wording needs to be robust and precise.
- 3.9 The application is not dated and not signed by Christine Johns.

4 Status of Application In Tasman Resource Management Plan

Water Management Zone: Moutere Southern Groundwater Zone (MSGZ)

Activity	Relevant permitted rule	Applicable rule	Status
Take & Use of Groundwater	31.1.2.1	31.1.2.3	Controlled

5 Processing of Applications for Water Permits

- 5.1 Section 14 of the Act requires a person *taking and using* water to hold a resource consent unless the activity is a permitted activity under a regional plan. It is important to note that Council combines both the *take* and *use* activities within a single decision rather than granting separate consents.
- 5.2 Council has no procedure manual for making determinations regarding completeness of applications but consents staff are required to use a Section S88 Decision Form. For RM150892 and most water take applications, the completeness assessment is undertaken by myself, and my recommendation is discussed with and, if agreed, determined by Consents Co-ordinator Mr Leif Pigott, who has the decision-making delegation from Council. The current form provides some fixed criteria for staff but it is not comprehensive or particularly specific for applications to take groundwater. The major reason for that is the variety and complexity between applications in different water management zones with different issues, allocation limits and effects and issues are changing over time.
- 5.3 For the MSGZ the complexity is such that comprehensive testing and assessment is specified in the TRMP for groundwater take applications. Furthermore, since 1992 the

Council has stopped undertaking actual bore testing and assessment and it now requires it be provided as part of the application. The information/assessment requirements applying to the Moutere groundwater zones is stated in the TRMP policies and objectives, in the matters of Control under Rule 31,1,2,3, in Chapter 32 and in the application form itself.

- 5.4 An assessment of the wording of Section 88 RMA indicates there are many factors which potentially require consideration and I refer the reader to the Ministry for the Environment's *Guide to section 88 and Schedule 4 (2014)*. The relevant consideration under Section 88, in my opinion, is an assessment whether the necessary information was provided and, if not, was the missing information actually necessary for a decision to be made. In Section 7 below, I expand on the reasons for returning the application as contained in my letter of 6 November 2015 (**Attachment 1**).
- 5.5 Council's Consents Coordinator, Mr Leif Pigott, has provided some further comments on the implementation of Section 88 of the Act [refer **Attachment 5**]

6 Key TRMP Provisions

- 6.1 Under Schedule 4 RMA, the information requirements for all applications include an assessment of the relevant provisions in the TRMP. Council's consents staff do not typically require applicants for Controlled Activity water takes to provide an assessment of the TRMP Policies and Objectives. For the John's application, we draw the Commissioners attention to the TRMP requirements because they are not assessed in the application. Particularly relevant are the following:

30.1.3.18 *To avoid excessive localised reductions in bore yields when considering applications to drill bores or applications to take groundwater from an existing bore (provided that in the case of alluvial aquifers, potentially affected neighbouring bores fully penetrate the aquifer), taking into account the:*

- (a) *sustainable yield of the aquifer (see 30.1.3.4);*
 - (b) *depth to the aquifer;*
 - (c) *permeability of the aquifer;*
 - (d) *distance from other bores;*
 - (e) *costs of full penetration;*
 - (f) *effects on connected surface water bodies;*
 - (g) *other uses of the water;*
 - (h) *cumulative effects of water takes from bores, including:*
 - (i) *potential adverse effects of water takes from any bore whether any take is permitted or otherwise;*
 - (ii) *effects of takes from new bores on existing takes;*
 - (iii) *effects of existing water takes on any new take from a bore; and*
 - (iv) *risks for potential water users identified on any Council waiting list;*
- and declining an application for new bores where:*

- (i) *bore setbacks and casing requirements for the Moutere groundwater zones are not met, except in exceptional circumstances.*

30.2.3.10 *Except as provided by policies 30.2.3.11, 30.2.3.12 and 30.2.3.13, when assessing any application to take, use, dam or divert water, to take into account:*

- (b) *effects on other water users, including drawdown of groundwater in neighbouring bores;*
- (h) *for any application to take water for community water supplies:*
 - (i) *the area to be serviced;*
 - (ii) *water demand based on existing and likely residential and non-residential (schools, hospitals, commercial and industrial) demand within the reticulation area, including allowance for meeting demand at peak times and network water losses;*
 - (iii) *measures to manage demand, including water meters, restricted supplies and pressure control, pricing and water saving technology and processes, for both residential and non-residential (schools, hospitals, commercial and industrial) end uses;*
 - (iv) *provisions to manage reduced availability during periods of drought or low flow;*
 - (v) *provisions for demand management.*
- (j) *for any application to take water for domestic use, whether Council intends to provide a reticulated community water supply (as identified in the Long Term Plan);*

30.2.3.26 *When considering applications to take water from any Moutere Groundwater Zone, annual water permit allocations will be calculated as follows, after taking into account the sustainable yield of the bore:*

- (a) *for irrigation uses, the annual total is not to exceed a 100-day pumping limit determined from the step-drawdown pumping test (or equivalent);*
- (b) *for other uses, the annual total is not to exceed the amount calculated by a maximum 181 days pumping based on the extension of the 100-day extension of the 100-day limit determined from the step-drawdown pumping test (or equivalent).*

6.2 TRMP Chapter 32 provides guidelines for the information that may be required to accompany water applications. Particularly relevant are:

32.2.6 *Details of any measures taken to avoid, remedy or mitigate adverse effects.*

32.2.7 *Details of any consultation undertaken with any person or body likely to be affected.*

32.3.2 (e) *distance to any adjacent bore;*

(f) *results of pump tests, including step drawdown test to assess well performance and well yield, constant discharge pump test and results for any monitoring piezometers necessary to assess localised drawdown and long-term effects on nearby bores*

32.3.6 *For applications to take water for community water supply information about:*

- (a) & (b) N/a
- (c) *measures to manage demand including water meters, water saving technology and processes for both domestic and any industrial or commercial end uses, restricted supplies and pressure control;*
- (d) *provisions to manage reduced availability during periods of drought or low flow;*
- (e) *provisions for leakage control*

7 Key Issues

- 7.1 The drilling and testing of the CMG Limited bore WWD23931 identified/confirmed that groundwater in this (Mapua) area of the MSGZ is of relatively poor yield as a result of low transmissivity (T) values. A result of these low T values is interference (pumping) effects between neighbouring bores meaning that for Johns' application the effect that pumping 560 m³/week will have on neighbouring bores including CMG Limited's bore WWD 23931 needs to be determined. This information is required to determine if CMG Limited (and possibly Council's Engineering Department and others) are affected parties requiring notification.
- 7.2 It is common knowledge that it is proposed that Council take over CMG Limited's bore WWD 23931 and the associated *community supply* water permit RM140798. Council Engineering Department required (initially) that the developer provide a backup bore or water supply in case of physical failure of the pump and a backup supply in the event of water rationing. It may not be common knowledge that WWD 8031 was never an acceptable water source for the Engineering Department and whether it can be remains to be determined.
- 7.3 The testing of the CMG Limited's bore WWD 23931 also identified that increased localised taking and use of groundwater will result in increased risk of seawater contamination owing to the proximity of the coast and the potential for groundwater use to draw (groundwater) levels below the Mean High Water Springs level. The seawater contamination risk is of particular concern if localized as it is in Mapua coupled with the change of use of groundwater to household water supply. For consent RM140798 (CMG Limited) this risk was mitigated by volunteered and adopted rationing conditions including a cease take if/when the groundwater level fell to 48.60m below the bore head level.
- 7.4 As required by the TRMP, the applicant similarly needs to demonstrate how they will manage reduced availability during periods of drought and/or seawater intrusion risk including volunteering a back-up water supply and volunteering robustly worded rationing conditions if outside the stated matters of control under Rule 31.1.2.3.
- 7.5 Under the regional plan rules Council also requires determination of proposed consented annual allocation. This has been adopted for RM140798 and under the TRMP is not to exceed the amount calculated by a maximum 181 days pumping based on the extension of the 100-day extension of the 100-day limit.
- 7.6 Bore WWD 8031 may have changed physical condition since it was drilled and pump tested in 1992 owing to the deterioration of the steel casing with the result that both water quantity yield and water quality has deteriorated since drilling. If the bore was just for irrigation by Johns', this would be less of an issue but proposed community supply use requires a secure and reliable water source.

- 7.7 However, given the 1992 Council testing and analysis, it is accepted the same or similar flows are either obtainable from WWD 8031 or from a replacement bore located at or near the current site. Given this, we are not requiring a current pump test. We are requiring that a suitably qualified groundwater consultant assess and determine how the Johns' proposed take may affect neighbouring bores and saline intrusion and answer the questions e.g. annual allocation. If the consultant determines they require further bore testing that will be their decision.
- 7.8 Contrary to my 6 November letter, I acknowledge the water quality testing of WWD 8031 was in 2012 and that the iron content of 0.080 is less than the guideline <0.2. I confirm that Council has no other water quality information for this bore and, ideally, a replacement application will include a recent water analysis from WWD 8031.
- 7.9 The other correction to my (6 November) letter, is that the relevant TRMP Rule is Rule 31.1.2.3, not Rule 31.1.2.2. Both define Controlled Activities but Rule 31.1.2.2 if for "renewal" applications only.

8 Other Issues and Discussion

- 8.1 The applicant has raised various matters in their Objection and these are summarized below and commented on where appropriate.
- 8.2 Johns' claim they have been subjected to a different set of application criteria and that TDC has the information needed to make a decision to grant. As examples: 1) TDC has accepted previously (ie 2013) that the water draw from Johns' bore (up to 720 m³/week) had not affected other bores "*so a reduced take of 560m³ is not likely to change for the worse*"; 2) "*TDC do not have a secondary supply to Mapua, yet you require that of us. Freilichs consent did not require one. Our proposal has the flexibility for us to reduce our irrigation to allow us to continue to supply the houses 1m³/day with a 50% water rationing. Who is able to have a water supply sitting around waiting for a break down and will TDC grant consent on that basis? Trucked water is available the same as covers TDC water supply failures.*"
- Comment:** Regarding consideration of a backup supply, the CMG Limited outcome was not the outcome intended by Engineering Department and they advise it should not be seen as precedent setting. CMG Limited is required to provide 3 days' storage on site and a backup (spare) pump.
- 8.3 Regarding seawater intrusion risk, the Johns state that if TDC allocations are sustainable how can there be a risk particularly where usage graphs show 84% of non-used allocated water.
- Comment:** The MSGZ covers a large area. MSGZ bores have minimum setback/separation distances specified in the TRMP. If minimum distances are met, new bores are allowed as controlled activities. If the zone allocation limit stated in the TRMP is not full new water permits can be granted.
- 8.4 The actual effect of abstractions vary as the properties of the Moutere Gravels differ across the zone and hence, individual assessments of geology and yield/drawdown data are important where water permits are applied for. MSGZ bores have particularly low transmissivity with low yields showing large drawdowns when pumped. Bores nearer the coast (at lower elevation) also have a higher risk of seawater incursion risk in part because the Moutere Gravel aquifers extend out to sea and the freshwater/seawater interface is

unknown. Keeping groundwater levels near the coast positive (ie above mean sea level), is a proactive way to minimise seawater incursion. Consideration also needs to be given to impacts of new abstraction on existing bore owners.

- 8.5 Recent urbanisation is changing the pattern of groundwater demand and use particularly in the coastal areas of the MSGZ and around Mapua and particularly because of the current unavailability of TDC reticulated water. As a result, and despite actual total zone usage being modest, recent testing for the CMG Limited bore has identified a seawater intrusion risk.
- 8.6 Given the current TRMP policies and rules, staff have limited ability to control where complying applications take water from in the MSGZ including in the coastal areas. Currently, only one coastal monitoring bore exists (see Schedule 31C TRMP), which is bore WWD 8109 at Stringer Road with rationing for all MSGZ users when the bore water level reaches 10m Above Mean Sea Level. While it would be expensive, Council could require new dedicated monitoring bores placed strategically along the coastline as additional protection to avoid or minimise seawater intrusion, which could have devastating and long-term effects on coastal bores and users.
- 8.7 The Johns state: *“As TDC were beneficiaries ultimately of the Freilichs/CMG Ltd consents then I believe a state of “conflict of interest” was in play when they were issued at our exclusion”*. Johns’ consider they were an affected party but were not notified.

Comment: Council rejects a conflict of interest with TDC Engineering more likely to consider the scheme a future liability.

- 8.8 The Johns state: *“all I am asking is that we get judged by the same rules and our application be accepted and a consent issued.”*

Comment: Council is requiring very similar information from Johns’ to that required from Freilich/CMG Ltd or would have been required, had WWD 8031 been proposed as the actual community supply bore.

- 8.9 For the record:
- No Moutere Groundwater application in the last 20 years (probably longer) has been granted without a supporting report prepared by a suitably qualified groundwater expert/consultant. This includes the recent application RM151067 (Fenwick) for irrigation.
 - Since March 2015, two applications similar to the Johns’ application (i.e. include household supply) have been returned incomplete. Application RM151073 by Boomerang Farm Limited was returned because there was no existing, tested bore. Boomerang were essentially asking Council to reserve them water (while they drilled and tested), which was not accepted. As previously mentioned, CMG Limited’s RM150782 application is most similar to Johns’ application as it involved an additional 60 lot subdivision from bore WWD 23931. The reasons are not repeated.
- 8.10 The Johns’ dispute the requirement that they assess the adverse drawdown effects on WWD 23931 *“when TDC accepted that they were not required to consider bore 8031. Double standards once again.”*

Comment: Johns’ clearly do not accept the Act’s and the TRMP’s requirement that, as applicants, they need to do exactly that. The Johns’ also clearly do not accept Council and

CMG Limited were required only to have regard at the time of the site-to-site transfer to WWD 8031 insofar as it supplying ongoing domestic supply (ie 5m³/day) and stock water.

- 8.11 In conclusion, I consider that the information is needed to be able to properly appraise the effects of the Johns' application, and that it was appropriate to return the application as being incomplete. I confirm my view that we require a comprehensive report from a suitably qualified groundwater consultant, similar to what was provided by CMG Limited.

9 Staff appearances at hearing

- 9.1 Consents Coordinator, Leif Pigott, and Resource Scientist, Joseph Thomas will be accompanying me to the hearing.



6 November 2015

Richard & Christine Johns
2 Desford Close
Shelley 6148
Western Australia

Dear Richard & Christine

Resource Consent Application Returned Re RM150892, Richard & Christine Johns - Moutere Southern Groundwater Zone Application

Application Number(s):	RM150892
Applicant:	Richard & Christine Johns
Address:	2 Desford Close, Shelley 6148, Western Australia
Proposed Activity:	To take and use groundwater for irrigation & community water supply

Thank you for your resource consent application, which was formally received when payment was made on 3 November 2015.

All resource consent applications must be assessed against criteria in the Resource Management Act 1991 ("the Act") to determine whether or not they are complete. The Council has determined that your application is not complete for the following reasons:

Firstly, please find enclosed a copy of information we hold relating to bore WWD 8031, which may be useful in providing a complete application. You will note that the bore was drilled by Wilson Drilling Co and it was tested and the results analysed to determine the sustainable yield as required under the then plan rules. You will note both Freilich bores (ie, 8014 and 8031) were also tested for water quality and these original test results are included.

It is likely relevant that the bore WWD 8031 on your property may have changed its physical condition since it was installed. For various reasons, the result is that both water quantity yield and quality may well have changed and potentially/likely deteriorated since drilling.

Note: This deterioration issue arose recently for Freilich and was a reason for the drilling (by Mapua Ltd) of a replacement bore WWD 23931. Given your proposed community supply use, consideration of drilling a replacement bore (replacing WWD 8031) would be recommended if it weren't for the two (main) issues discussed below.

Tasman District Council
Email info@tasman.govt.nz
Website www.tasman.govt.nz
24 hour assistance

Richmond
189 Queen Street
Private Bag 4
Richmond 7050
New Zealand
Phone 03 543 8400
Fax 03 543 9524

Murchison
92 Fairfax Street
Murchison 7007
New Zealand
Phone 03 523 1013
Fax 03 523 1012

Motueka
7 Hickmott Place
PO Box 123
Motueka 7143
New Zealand
Phone 03 528 2022
Fax 03 528 9751

Takaka
14 Junction Street
PO Box 74
Takaka 7142
New Zealand
Phone 03 525 0020
Fax 03 525 9972

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6 November 2015
Letter to: R & C Johns

Main Issues and Reasons

My preliminary assessment identified that the requested volumes are likely to be incorrect. Under the plan rules, a property owner may take 5 cubic metres per day from their own bore for "household use" as a Permitted Activity and not 10 cubic metres per day stated in your application. Given there are two households, this will add (5 x 7) 35 cubic metres per week to your requested maximum summer take. Therefore, (560 + 35) 595 cubic metres per week is probably the correct volume.

The two main issues and reasons the application is incomplete are:

- 1 The drilling and testing of the Mapua Ltd (Chris Edmonds) bore WWD23931 identified that groundwater in this (Mapua) area of the Moutere Southern Groundwater Zone is of relatively poor yield as a result of low transmissivity (T) values. A result of these low T values is interference (pumping) effects between neighbouring bores meaning that for your application to be complete we need to know what effect your proposed pumping will have on neighbouring bores including on the new Mapua Ltd bore WWD 23931.
- 2 The testing of the Mapua Ltd (Chris Edmonds) bore WWD 23931 also identified that increased taking and use of groundwater in this area will result in increased risk of seawater contamination as a result of the proximity of the coast and the potential for groundwater use to draw groundwater levels down below the Mean High Water Springs level. This issue was addressed in consent RM140798 granted to CMG Ltd (also Chris Edmonds) by volunteered and adopted rationing conditions including a cease take (ie, cut-off) if/when the groundwater level fell to 48.60m below the bore head level.

Consideration should be given in any complete application to volunteering a similar cut-off and other conditions adopted for RM140798. A copy of RM140798 is included.

Furthermore, if restrictions including cease take are likely and given the use is community supply, consideration should be given in any complete application to volunteering a back-up water supply.
- 3 Under the regional plan rules consideration should also be given in any complete application to volunteering an annual allocation as adopted for RM140798.
- 4 Bore WWD 8031 (your proposed bore to be used) has not been operational for some time and we do not have any information on the physical integrity of the bore or data of recent flow/yield test or usage to assess the nominated flow rates are realisable from the bore.
- 5 There is also no information on the potability aspect of the water. The old test in Council's records (a copy enclosed) indicates the bore water to have quite a high iron content.
- 6 There is no assessment of the policies and objectives in the Council's plan and no assessment of the relevant matters under Rule 31.1.2.2, which is the rule under which the application is likely to be considered.

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6 November 2015
Letter to: R & C Johns

The information we need to accept your application is therefore an appropriate assessment of effects. I can advise that this will entail as a minimum a similarly comprehensive report from a suitably qualified groundwater consultant. I can advise that CMG Ltd employed consultants *Aqualinc* for their report and they will have gained valuable local knowledge as a result.

Application Status

Given the Council has determined that your application is not complete we will not do any more work on it until you lodge an amended application. To assist progress from here, you or your agent can make an appointment with me and more particularly Council's Scientist, Joseph Thomas, who is happy to communicate with your analyst to explain details of the analysis required.

At this stage the Council will retain the balance of the deposit you have paid, on the expectation that a new application will be lodged shortly. Please note that all costs associated with the initial lodging and checking of your application will be deducted from the deposit provided. However, if you are not proposing to lodge a new application and wish to have the balance returned, then please contact the undersigned, who will arrange for a cheque to be sent to you.

Objection

If you disagree with our decision, Section 357 of the Act provides you with the right to lodge an objection with the Council. Any such objection must be made in writing setting out the reasons for the objection and must be lodged with the Council, together with a deposit of \$200.00 (GST inclusive), within 15 working days of receiving this letter.

If you have any queries, my contact details are listed at the top of this letter.

Yours sincerely



Neil Tyson
Consent Planner, Water/Natural Resources



19 November 2015

Richard & Christine Johns
2 Desford Close
Shelley 6148
Western Australia
AUSTRALIA

Dear Richard and Christine

Returned Resource Consent Application RM150892, Richard & Christine Johns - Moutere Southern Groundwater Zone Application

Proposed Activity: To take and use groundwater for irrigation and community water supply

Thank you for your e-mail (18 November 2015), which I have been asked to respond to by my manager, Phil Doole. As outlined below, this letter is to confirm our previous determination that your application is incomplete.

Firstly, please accept my apology regarding Item 1 in my letter. You are correct, the "Freilich" testing of WWD 8031 was in 2012 and showed an iron content of 0.080, which is less than the guideline <0.2. Tasman District Council has no other water analysis for this bore including none from when it was drilled. Ideally, any replacement application will include a recent water analysis from WWD 8031 rather than relying on the Freilich 2012 test.

Regarding your Item 2, Council does have weekly meter readings but the amount Freilichs have pumped has been variable in recent years and does not answer our question relating to the sustainable yield of WWD 8031, ie, in its current state. The following extract from the Freilich consent decision is relevant. The underlining emphasis is mine:

"Significant work will need to be undertaken by anyone wishing to use groundwater as a potable supply. This is likely to include the following:

- *the developer will need to demonstrate the ability of two bores to sustain the authorised rates. Each bore will also need to be pumped and tested and the data provided to Council;*
- *the Nelson Marlborough Health Board has responsibilities regarding new community schemes to ensure that water supplies are safe and secure. It is likely that changes and upgrading of each bore will be required to satisfy NMHB;*
- *the applicant (in support of their subdivision application) will also need to demonstrate and confirm the supply is of potable quality;*

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19 November 2015
Letter to: R & C Johns

- *the applicant has also been advised that any upgrading of their existing bores needs to include the water meters and the meters need to be fit for purpose and verified as accurate going forward.”*

The fact is we are requiring very similar information from you to that required from Freilich, and would have been required had WWD 8031 been proposed as the actual *community supply* bore.

Regarding Item 3, Joseph Thomas is very familiar with the geology encountered and has volunteered that it is very similar and essentially the same.

Regarding Item 4, your assessment of the Tasman Resource Management Plan (TRMP) is incorrect. I confirm if the take is for two houses on different titles from a single bore, under Tasman District Council rules you are allowed to take a total of 5m³/day and not 5m³/day for each house.

Regarding Item 5, Council and Mapua Ltd were required only to have regard to WWD 8031 insofar as it supplying ongoing domestic supply and stock water potentially, which it did.

Regarding Item 7, you are correct that this was the outcome but not the intention of the Engineering Department. Engineering advises that Mapua Ltd is required to provide 3 days' storage on site and a backup (spare) pump. Please also note that applications are dealt with on a "case by case" basis and the Mapua Ltd decision should not be seen as precedent setting. For applications such as these, an applicant is required to include assessment of the effects of pumping on neighbouring bores and their water use.

Regarding Item 8, your calculation is incorrect. Please refer to TRMP Rule 31.1.2.3(12) relating to requirements for other uses including community supply. The pump/bore testing needs to be evaluated based on 180 days of pumping.

Regarding Item 9, the flow rate issue has not been adequately dealt with. See answer to 2 above.

Finally, I confirm the information we need to accept your application is an appropriate assessment of effects. This will entail as a minimum, a comprehensive report from a suitably qualified groundwater consultant, similar to what was provided by CMG Ltd.

Objection

If you disagree with our decision I confirm Section 357 of the Act provides you with the right to lodge an objection with the Council. Any such objection must be made in writing setting out the reasons for the objection and must be lodged with the Council within 15 working days of receiving our letter, which was dated 2 November 2015.

Yours sincerely



Neil Tyson
Consent Planner, Water/Natural Resources

cc Phil Doole, Resource Consents Manager, Tasman District Council

RM150892 Johns' Objection – Matters for Staff Report

The Introduction should confirm exercise of delegated authority for determining s88 return of application.

1) What criteria/considerations does the Council use to decide to return applications, in particular water permits to take groundwater, under section 88 RMA as opposed to receiving them and using the provisions of section 92 RMA to request further information?

- Has the Council changed its assessment of 'completeness' of applications since changes to section 88 RMA came into force in March 2015.
- Has the Council 'raised the bar' since the changes and, consequently, has it returned more applications as being incomplete since March 2015?

2) Provide a brief history summarising the various water permits and transfers referred to in the Objection, including a summary overview map showing the location of the bores and properties in question.

RM150892 – Johns application file.

RM140798 – CMG Ltd site to site transfer

RM130352 (and RM120591)

RM130353 (and RM130212)

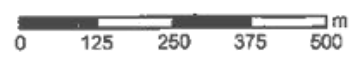
3) The letter from Mr Tyson to the Johns dated 6 November 2015 (being the letter advising that the application is incomplete) states that the Council needs to know what effect the proposed pumping will have on neighbouring bores. Whilst not specifically stated as a requirement for the application to be complete, this would appear to suggest that the Council is requiring that a pump test be undertaken on WWD8031. I note that Mr Tyson asked Mr Thomas a series of questions via an email dated 2 November 2015, including whether a pump test was required to which Mr Thomas responded that such a test had been done (in 1992) and a copy of that test has been put on the Johns' file. I would like clarification whether the Council is requiring another pump test to be undertaken or whether it is just requiring a suitably qualified groundwater consultant to analyse/use the 1992 results to assess how the Johns' proposed take may affect neighbouring bores and saline intrusion?

4) With regard to application RM151067 (Fenwick) which has been referenced as being an example of a complete application for a similar activity to that being applied for by the Johns, has the Council formally accepted as being complete any similar application(s) since March 2015 that did not have a supporting report prepared by a suitably qualified groundwater expert/consultant? Conversely, how many applications similar to the Johns' has the Council returned as being incomplete under section 88 RMA for reasons similar to those of the Johns'?

5) Provide a commentary/response to the specific matters raised in the objection emails dated 21 and 22 November 2015.



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Consent	Applicant	Address	Status	Status Date	Type	Activity Sta Use	Ltr / Seco	Max Weekl	Max Annua	Irrig Area	Bore Log R	Meter
120843	Sunset Valley Vineyard	C/- Ian Nev	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.67	474		4	8163	Y
120858	P A Jones	PO Box 32	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.11	320		8	22871	Y
120933	R J & P I Schweyer	97 Trafalga	Consent Ef	31/05/2013	Water Take	Activity Sta Storage	2.5	750		16	8389	Y
120939	Bronte Properties	10A Naseb	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	2.78	490		3.5	23028	Y
120972	Danielle Josephine Madeline Brun	10 Pages R	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	0.83	125		0.5	8076	Y
130003V1	Charles & Margaret Fraser	133 Bronte	Consent Ef	28/11/2014	Water Take	Activity Sta Water Take	1.39	400		4.6	8002	Y
130009	John & Margaret Ewers	35 Nile Ro	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	0.75	270		9	8441	Y
130017	J & T Family Trust	C/- J G And	Consent Ef	20/08/2013	Water Take	Activity Sta Water Take	0.83	98		5	8018	Y
130020	Woollaston Estates Limited	243 Old Co	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	5.06	1500		21	8029	Y
130030	Fenwick Orchard	15 Dominic	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.53	577.5		18	8044	Y
130033	Tuckerlands Limited & Keban Indal	C/- Tuckerl	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	2.78	1155		11.5	8402	Y
130034	Tuckerlands Limited & Keban Indal	C/- Tuckerl	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	2.78	1155		11.5	8403	Y
130055	Balnagown Estate Ltd - David Ross	244 Georgi	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	4.52	2375		9	8151	Y
130072	Mahana Estates Trust	C/- M & H	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.43	866		5	8086	Y
130073	Mahana Estates Trust	C/- M & H	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	0.67	200		20	8082	Y
130094	Thawley Orchard Company Limite	C/- J Thawl	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	2.22	200			8393	Y
130114	Rowan & Emily Simpson and R N G	PO Box 32	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	2.82	1592		13	8054	Y
130126	Adrian James Reid	141 Gardn	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	2.78	1175		4.7	8380	Y
130127	Adrian James Reid	141 Gardn	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	3.7	2240		14	22895	Y
130136	Tasman Limited	C/- Coastal	Consent Ef	31/05/2013	Water Take	Activity Sta Water Supj	2.31	504			8178	Y
130137	Tapu Investments Limited	13 Tapu Pl	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	3.06	1540		10.5	8020	Y
130153	Scott & Carolyn McPherson	162 Nuttall	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.67	300		2.7	8028	Y
130154	Kevin & Barbara Brown	162A Nuttz	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.67	200		1.8	8028	Y
130207	K J Primmer	59 Neudorf	Consent Ef	31/05/2013	Water Take	Activity Sta Water Take	1.22	736		8	8100	Y
130208	Twin View Gardens Limited	2 Hasbury	Consent Ef	31/05/2013	Water Take	Activity Sta Storage	1.67	500			8033	Y
130534	B K Donald	1217 Mout	Consent Ef	13/08/2014	Water Take	Activity Sta Water Take	1.4	840		3.4	8142	Y
130898	Howardhead Farm Limited	C/- E & G B	Consent Ef	8/01/2015	Water Take	Activity Sta Water Take	2.8	1250		6.6	23751	Y
140798	CMG Limited	C/- Chris Ec	Consent Ef	2/09/2015	Water Take	Activity Sta Water Supj	1.38	560			23931	Y
141055	K P King	38 Pugh Ro	Consent Ef	25/11/2015	Water Take	Activity Sta Water Take	6.9	1750		20	23891	Y
150782	CMG Limited	C/- Chris Ec	On Hold	16/09/2015	Water Take - Undergrc	Water Supply - Private Community					23931	Y
150892	Richard & Christine Johns	2 Desford	Consent Ef	23/11/2015	Water Take - Undergrc	Water Take - Irrigation		595			8031	Y
151067	Brian Fenwick & Tracey Maree Fer	15 Dominic	Decision Ni	18/01/2016	Water Take	Activity Sta Water Take	2.38	1439		18	23964	Y
151073	Boomerang Farm Limited	C/- Tony Hi	Sec 88 App	15/01/2016	Water Take - Undergrc	Water Supply - Private		1400				Y

Johns Objection

Attachment 5

The following is Leif Pigott's response to the following questions from Commissioner Lieferring:

1. Has the Council changed its assessment of 'completeness' of applications since changes to section 88 RMA came into force in March 2015?
2. Has the Council 'raised the bar' since the changes and, consequently, has it returned more applications as being incomplete since March 2015?

In general, more applications are rejected than prior to March 2015. The industry took a while to come to terms with the new requirements.

I don't think the Council has raised the bar so much as the process is now more defined and the ambiguity has been reduced. This is in line with the expectations within the guidance documentation "A guide to section 88 and Schedule 4 of the Resource Management Act 1991" published by the Ministry for the Environment.

Resource Management Amendment Act 2013 (RMAA) aimed to provide clearer information on what an application needs to contain. The amendments revise the two parts of the RMA that set out the necessary content of resource consent applications when they are lodged with councils. These are section 88 and Schedule 4. The aim of changes to section 88 and Schedule 4 was to help ensure applications contain all the necessary information when they are first lodged, and avoid delays that can occur later if councils do not have the information they need.

To provide clarity on information requirements for applications, a new Schedule 4 was included which sets out all the information needed in applications for resource consents when they are lodged (now called Information required in application for resource consent). The new Schedule 4 brings together requirements that were previously included in section 88, the old Schedule 4, and regulations.

In combination with the new Schedule 4, the amendments change section 88 to now simply state that applications must meet certain requirements to be accepted for processing. The requirements themselves are all contained in Schedule 4. This change was to reduce ambiguity and helps avoid disagreement between applicants and councils over the information that needs to be included with a consent application. However, there is still a judgement that needs to be made by the person undertaking the checks.

It should be noted that the applicant, not the council officer, is responsible for providing complete, accurate and appropriate information with an application.

Before an application can be formally 'received' it needs to be checked to ensure it is complete. Checking the applications at the outset identifies and clarifies early on in the process if any necessary information is lacking and help to avoid delays once the application is formally received.

The initial check of an application should ensure it is in the prescribed form and includes an adequate Assessment of Environment Effects (AEE) in accordance with Schedule 4 of the RMA and all information required by regulations (including national environmental standards).

The completeness check needs to be thorough. The check is for completeness in terms of the requirements for an application specified in s88(2) of the RMA. As lodging the application starts the statutory clock ticking, it is critical for councils to only receive applications that are complete

and contain all the information that the council requires in order to make a decision. This is particularly important as:

- the 2013 amendments have removed the ability for consent authorities to stop the statutory clock for section 92 requests following submissions on notified applications. While any number of section 92 requests are still able to be made, the authority may only stop the clock for the first section 92 request and only if it is made prior to notification decision being issued
- time frames can only be extended by section 37A if special circumstances apply or if the applicant agrees to the extension
- councils must give a discount on resource consent charges where the consent is not processed within statutory time frames in accordance with the Resource Management (Discount on Administrative Charges) Regulations 2010.

The pre-acceptance checking of the detail in the application against the information requirements in the plan, regulations (including national environmental standards), section 88 and Schedule 4. The check includes a review of the AEE to ensure the detail provided corresponds with the scale and significance of the anticipated environmental effects from the proposed activity, that it provides all the information required for AEE's in Schedule 4 and that it also meets the particular requirements of the TRMP.

Section 88(3) of the RMA states that, if an application does not include the information required by Schedule 4 or the information required by regulations, a council may determine that the application is incomplete. If it is considered that an application is incomplete, the application must be immediately returned to the applicant with written reasons for the decision. This reflects the fact that applications should be fit for purpose at lodgment and incomplete applications should not be accepted under any circumstances.

However if there is a minor information deficiency only, we follow the defacto good practice of contacting the applicant and provide an opportunity for providing the missing information as soon as possible. (as suggested by www.qp.org.nz) Avoiding some of the administrative burden and time delay involved in returning the application.

It is a practical judgement call in determining whether the information supplied is complete.

Accepting incomplete applications does not promote efficient consenting, as costs and delays are incurred later on due to extensive additional information requests.

It is not in the applicant's best interests to accept inadequate applications as by doing so, consent authorities send a signal to applicants that their applications are 'in-train', even though further (and perhaps significant) additional information is needed before the application can proceed. This can be a source of frustration for applicants, emphasised by a perception that the process is fully in the consent authority's hands at that point and any delays are due to the consent authority's actions.

In general, we are rejecting more applications than prior to the RMAA coming into force. This is particularly apparent when the resource in question is at or close to its sustainable level, be it storm-water disposal or water allocation.

The question has asked "has the Council raised the bar" it is not so much the Council raising the bar as the requirement of the rejection are more defined. This has led to the perception that the bar has been raised. This is even more apparent with more direction coming from Central Government in the form of National Policy Statements and National Environmental Standards.