

BEFORE WAIKATO REGIONAL COUNCIL

Under the Resource Management Act 1991

IN THE MATTER of resource consent applications by Open Country Dairy to discharge contaminants to air and treated wastewater to the Waitoa River from the Waharoa Dairy Processing Facility, Waharoa

**STATEMENT OF EVIDENCE OF LISA GARDINER ON BEHALF OF NGĀTI HAUĀ IWI
TRUST**

1. INTRODUCTION

- 1.1** My name is Lisa Gardiner. I am the General Manager of Ngāti Hauā Iwi Trust. I directly oversee the activities of the Ngāti Hauā Iwi Trust. I was appointed General Manager in July 2013.
- 1.2** My evidence is given on behalf of Ngāti Hauā Iwi Trust in relation to the resource consent applications lodged with the Waikato Regional Council by Open Country Dairy Limited.
- 1.3** The evidence that I provide today is intended to give context from a Ngāti Hauā perspective to the importance of the Waitoa River, its surrounding cultural and natural landscape.

2. SCOPE OF EVIDENCE

- 2.1** This Statement of Evidence provides the following;
- a) A brief overview of Raupatu in the context in Ngāti Hauā of the Project and application;
 - b) Ngāti Hauā Iwi Trust and Ngāti Hauā Claims Settlement Act 2014;
 - c) Ngāti Hauā Area of Responsibility;
 - d) Te Rautaki Tāmata Ao Turoa o Hauā;
 - e) Relevant RMA Provisions and Statutory Documents;
 - f) Consultation with Ngāti Hauā Iwi Trust;
 - g) Overview of cultural and environmental effects;
 - h) Comments on the Planner's Section 42A Report in relation to the Project and submissions by local tangata whenua; and
 - i) Conclusions

3. RAUPATU

3.1 The search for redress and justice for raupatu is well documented and publicly acknowledged. Waikato Tainui became the first iwi to settle its grievances with the Crown, where in 1995 the Waikato Raupatu Claims Settlement Act provided the foundations upon which the tribe could establish itself to progress the cultural, social and economic advancement of its people.

3.2 Ngāti Hauā are a beneficiary of three Waikato raupatu (land confiscation) treaty settlements:

- a) the Waikato Raupatu Claims Settlement Act 1995 which settled land-based raupatu claims;
- b) the Waikato Raupatu Claims (Waikato River) Settlement Act 2010, which settled raupatu claims in relation the Waikato River, from Karapiro to the mouth of the river; and
- c) the Ngāti Hauā Claims Settlement Act 2014.

3.3 In 2008, the Deed of Settlement for the Waikato River was signed. The Waikato River Settlement supports work to protect and restore the health and wellbeing of the Waikato River, its tributaries for future generations.

4. NGĀTI HAUĀ IWI TRUST AND NGĀTI HAUĀ CLAIMS SETTLEMENT ACT 2014

4.1 Established on 16 July 2013, the Ngāti Hauā Iwi Trust is the post settlement governance entity for Ngāti Hauā. The purpose of the Ngāti Hauā Iwi Trust is to receive, manage and administer the assets on behalf of, and for the benefit of, the present and future members of Ngāti Hauā.

4.2 The Ngāti Hauā Claims Settlement Act 2014 (The Settlement) addresses the non-raupatu elements of Ngāti Hauā's historical Treaty claims. The Settlement recognises breaches of the Treaty of Waitangi and its principles in its dealings with Ngāti Hauā:

- (a) the operation and impact of the native land laws, which undermined the traditional tribal structures of Ngāti Hauā, made their lands more susceptible to partition, fragmentation and alienation, and allowed

individuals to sell land against the wishes of other owners;

- (b) the Crown's purchase of over 1,400 acres of Ngāti Hauā land from individuals in the twentieth century, in disregard of the collective decision of the owners not to sell; and
- (c) the cumulative effect of the Crown's actions and omissions, particularly in relation to raupatu, the operation and impact of native land laws, Crown and private purchasing, and public works takings, leaving Ngāti Hauā with insufficient land for their present and future needs.

4.3 The settlement included an apology and agreed historical account; cultural redress as well as financial and commercial redress.

4.4 Cultural Redress also provides for Deeds of Recognition which places certain responsibilities on the Minister for Conservation and The Commissioner of Crown Lands when undertaking certain activities to consult and have regard for the view of Ngā Hapū.

5. NGĀTI HAUĀ AREA OF RESPONSIBILITY

5.1 The Ngāti Hauā Area of Interest spans from Te Aroha, southeast along the Kaimai Range to Te Weraiti; southwest to Maungatautari; northwest to Te Rapa, eastward to Mangateparu and then back to Te Aroha.

5.2 Our rohe is largely defined by our significant landmarks, predominantly our maunga (mountains). These are also referred to as 'nga kohatu whakatu mai te rohe o Ngāti Hauā' or 'the rocks that establish the territory of Ngāti Hauā'.

5.3 Ngāti Hauā Iwi Trust has Mana Whakahaere (authority) over its lands, resources and the water systems and seeks to exercise Mana Whakahaere to ensure the balance, and the mauri [life force] of the land and the resources is maintained to sustain stability for future generations in accordance with Ngāti Hauā tikanga, culture, and values.

5.4 The hapū of Ngāti Hauā are Ngāti Te Oro, Ngāti Werewere, Ngāti Waenganui, Ngāti Te Rangitaupi and Ngāti Rangi Tawhaki. The marae are as follows:

- Rukumoana Marae

- Kai a Te Mata
- Waimakariri Marae
- Raungaiti Marae
- Te Iti o Hauā Marae

5.5 Each Marae have kaitiaki-ā-rohe, who are mandated to represent the best interests of Ngāti Hauā in all environmental matters within their respective kaitiaki boundary. In this case, the kaitiaki-ā-rohe for Raungaiti Marae is Rangitonga Kaukau.

6. TE RAUTAKI TĀMATA AO TUROA O HAUĀ

6.1 The Te Rautaki Tāmata Ao Turoa o Hauā is the Ngāti Hauā Environmental Management Plan which articulates our values, frustrations, aspirations and position statements in relation to our taiao (environment).

6.2 It is a living document and will continue to evolve to meet changing circumstances. It is a process to ensure environmental values, aspirations and concerns are incorporated into local and national decision-making processes.

6.3 The Environmental Management Plan has statutory weight under sections 5-8, 35A, 61, 66, 74 and 108 of the Resource Management Act (RMA). This means that Regional, City and District Councils:

- a) must take into account the plan when preparing, reviewing or changing a regional policy statement, District Plan or Regional Plan; and
- b) must have regard to this Plan when considering a resource consent application.

6.4 It is a living document and will continue to evolve to meet changing circumstances. It is a process to ensure environmental values, aspirations and concerns are incorporated into local and national decision-making processes.

7. RELEVANT RMA PROVISIONS AND KEY STATUTORY DOCUMENTS

7.1 Various pieces of legislation and planning documents including the RMA, Local Government Act 2002 (LGA) and Waikato Regional Policy Statement (RPS) include processes for managing effects (also called impacts) of an activity on a range of values, including Maaori values. My evidence is informed by these statutory documents and the conclusions I have drawn are by reference to these matters.

7.2 The RMA includes a number of sections specifically designed to ensure that the various relationships of Maaori with taonga, kaitiakitanga and the principles of the Treaty of Waitangi are considered and protected. Applicants for consents or permits under the RMA are required to identify all effects of an activity and then demonstrate that, where adverse effects are identified, the applicant has satisfactorily shown they can avoid, remedy or mitigate such effects.

7.3 Consultation assists in satisfying the relevant statutory requirements including:

- (a) Section 6(e) (relationship of Maaori with ancestral lands, waters and sites);
- (b) Section 6(f) (protection of historic (including cultural) heritage from inappropriate use and development);
- (c) Section 7(a), (kaitiakitanga); and
- (d) Section 8 (Treaty of Waitangi).

7.4 The following sections of the LGA are considered the most relevant for the Project:

- (a) Section 4 (Treaty of Waitangi): Recognises and respects the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Maaori to contribute to local government decision-making processes; and
- (b) Part 6 (Planning, Decision-making and Accountability), including the obligations of local authorities in relation to the involvement of Maaori in decision-making processes.

7.5 I consider the following sections of the Heritage New Zealand Pouhere Taonga Act 2014 to be the most relevant in relation to my evidence on the Project:

- (a) Section 3 (the purpose to promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand);
- (b) Section 42 (Archaeological sites not to be modified or destroyed unless authority granted); and
- (c) Section 46 (2)(h)(i) (Application for authority must include details of consultation with tangata whenua has taken place, with details of the consultation, including the names of the parties and the tenor of the views expressed).

7.6 The Open Country Dairy Waharoa development sits within the area subject to the Te Ture Whaimana o te Awa o Waikato (Vision and Strategy for the Waikato River).

7.7 The Vision and Strategy forms part of the RPS, which the proposed plan change must give effect to under s 75(3) of the RMA. However, s 17 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (Settlement Act) means that, in addition, a territorial authority must have “particular regard to” the Vision and Strategy when carrying out its functions or exercising powers under the RMA that relates to the Waikato River or to an activity within the catchment that affects the Waikato River in addition to any requirements specified in the RMA (i.e. the s 75(3) consideration). The overarching purpose of the Vision and Strategy is to restore and protect the health and wellbeing of the Waikato River for future generations.

7.8 The Waikato-Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao (EMP) provides statements of iwi values, objectives, policies, guidance on the relationship of iwi to natural resources and the environment. Waikato-Tainui is recognised as an iwi authority, and their EMP was lodged with several councils, including Waikato Regional Council, in 2015. A territorial authority must take the EMP in account under s 74(2A) of the RMA for any activity within the tribal area of Waikato-Tainui “to the extent that its content has a bearing on the resource management issues of the district”.

8. CONSULTATION WITH NGĀTI HAUĀ IWI TRUST

8.1 Ngāti Hauā encourages and advocates for Industry, developers, and external agencies to undertake best practise early engagement with Waikato-Tainui as set out in section 5 (Te Koorero Tahī me Waikato-Tainui, Consultation and Engagement with Waikato Tainui) of the EMP.

- 8.2** A mutually agreed consultation process was agreed with Ngāti Hauā Iwi Trust on how we wished to be consulted, and what further information we required in order for the consultation process to be meaningful, informative and empowering for us. Consultation has, and continues to be, constructive, and is primarily centred on what the cultural issues are for Ngāti Hauā.
- 8.3** In recognising the Ngāti Hauā history and traditional relationship with the area, Ngāti Hauā Iwi Trust were commissioned to prepare a Cultural Impact Assessment (CIA) report that outlined our specific concerns and opportunities in relation to the Project.
- 8.4** The Cultural Impact Assessment was prepared by Norman Hill (Cultural and environmental specialist) and the report provided an overview of the cultural and environmental significance and importance of the project area, list of meetings carried out throughout the year with Ngāti Hauā kaitiaki a rohe, and recorded matters raised by kaitiaki a rohe. The report also contains recommendations so as to protect and restore the health and wellbeing of the local environs with a specific focus on the Waitoa River.
- 8.5** Eight technical engagement meetings were held between July 2018 and June 2019. The purpose of these hui was to review technical presentations pertaining to the project, including stormwater, ecology, visual and master plans, recording discussion points and providing status updates of project developments as and when they progressed.
- 8.6** Two site visits were undertaken with Ngāti Hauā kaitiaki-a-rohe in 2019 prior to notification of the application in June 2019.
- 8.7** A consultation engagement presentation and hui was held at Ngāti Hauā at Raungaiti Marae on 29 August 2019 involving and inclusive of the local community.

9. CULTURAL AND ENVIRONMENTAL EFFECTS

9.1 Consultation with NHIT and kaitiaki ā rohe identified the following effects:

- (a) Effects on cultural heritage;
- (b) Effects on the relationship with the Waitoa River;
- (c) Effects on the relationship with indigenous ecosystem and biodiversity;
- (d) Air discharge effects

9.2 The following section of my evidence provides some detail on the nature of matters of importance raised by the kaitiaki ā rohe.

10. EFFECTS ON CULTURAL HERITAGE

10.1 Ngāti Hauā's relationship with the environment is founded on relationships formed out of generations of occupation, settlement and use of the cultural landscape over hundreds of years.

10.2 The cultural landscape encapsulating the Waharoa and Waitoa river area includes wāhi tapu/wāhi taonga significance, wai puna, wāhi raranga, mahinga kai, wāhi tohu, wāhi kaitiaki and tauranga waka.

10.3 Potential damage, modification or destruction of cultural heritage or values as a result of land use and development of the wastewater treatment plant infrastructure along the Waitoa river was raised as a concern.

10.4 The heritage issues raised were considered by Open Country Dairy, and appropriate acknowledgement was provided for including:

- a) landscaping design that reflects our cultural perspectives, ideas and materials, contemporary Ngāti Hauā culture preserved as part of the proposed riparian works along Waitoa river.
- b) Inclusion of cultural pou, communicating the history and significance of places at Waharoa.

- c) enhanced amount of rongoā plants and cultural materials within riparian areas of Waitoa River with the ability of kaitiaki access to this rongoā plant resource

11. EFFECTS ON THE RELATIONSHIP WITH THE WAITOA RIVER

- 11.1** We stressed the importance of appropriately managing impacts on environmental and ecological values within the Waitoa river. Kaitiaki ā rohe stressed the importance of potential impacts on natural systems and the life forms those natural systems support. Ngāti Hauā Iwi Trust reaffirmed the need to ensure a balance of mauri (life force / cultural wellbeing) was maintained, generally in relation to wai (water), whenua (land), and taonga kararehe (special native animals).
- 11.2** Ngāti Hauā opposes any discharges (particularly of wastewater) to our local river systems and air that compromise the purity or mauri (spirit/life-force) of Waitoa and our rohe. Other activities potentially compromising the integrity of or access to food resources (mahinga kai) and food gathering areas, activities that disturb indigenous flora and fauna, wetlands, rivers and tributaries are also vehemently opposed.
- 11.3** Ngāti Hauā acknowledges Open Country Dairy Ltd for the significant investment in upgrading the Wastewater treatment discharges and air discharges from the Waharoa site. Ngāti Hauā reinforced that any discharge be treated to the highest possible standard in order to reduce the potential for short- and long-term impacts on water quality and mauri of the Waitoa River.
- 11.4** Ngāti Hauā has relied on technical specialist reports provided by Tonkin & Taylor Ltd, Babbage Consultants Ltd, and BPO Ltd in forming a view as to the viability and reliability of the proposed system to treat wastewater and air from the Waharoa site.
- 11.5** Assurances were given by Open Country Dairy Ltd that treated wastewater and air discharge will be managed in accordance to best practice Waikato Regional Council regulations.
- 11.6** Ngāti Hauā Iwi Trust believe in the ability to sustain and enhance natural fauna and flora and sustain indigenous life within these local ecosystems and trust that science and technical modelling and reports as presented by the technical experts (as listed above) prevails in this application.

- 11.7** The s42A Report considers the water quality of the Waitoa River upstream of the discharge point is an important consideration in determining the existing environment against which the proposed discharge should be considered during the summer months.
- 11.8** We also understand the key effects of concern to the consent authority (and submitters) relate to potential increases in nutrients to the receiving environment, particularly phosphorus and nitrogen during the summer low flow conditions.
- 11.9** Our ultimate position is such that Ngāti Hauā supports the scientific proof that provides for the betterment and enhancement of the mauri of the Waitoa River.
- 11.10** Cultural Health Index Monitoring is to be carried out as set out in the proposed conditions of consent in order to monitor the proposed science monitoring methodologies.

12. EFFECTS ON THE RELATIONSHIP WITH INDIGENEOUS ECOSYSTEM AND BIODIVERSITY

- 12.1** We are concerned about the potential effects on mahinga kai activities that could result from the impacts on the Waitoa River. In particular, we are concerned for risk/loss of native fish and native flora and fauna.
- 12.2** The proposal is likely to have low impacts on those ecological values, which is a matter of importance for mana whenua.
- 12.3** Ngāti Hauā are actively involved in the restoration of Waitoa habitats such as extensive re-vegetation of riparian margins, as well as ecosystem restoration and enhancement.

13. AIR DISCHARGE EFFECTS

- 13.1** For Ngāti Hauā, the air is the domain of Ranginui and Tawhirimatea. It is a taonga and valued for its life-supporting capability. Our cultural knowledge and practices have been shaped by our connection to Rangi and Tawhiri.
- 13.2** We are disappointed and fed up with continued emissions of offensive odour within the realm of Ranginui and Tawhirimatea. During consultation, it was raised that OCD has a damaged reputation with the local community and a history of creating offensive odour within the local area because OCD has not been able to consistently manage the plant without impacting on the neighbouring community.

13.3 Ngāti Hauā understands upgrades/improvements to the WWTP will result in capturing of odour emitted from the plant and treatment activity will be enclosed in a building that will capture and extract potential odour emissions. This extracted discharge will be passed through a biofilter prior to removing odorous compounds prior to discharge to air.

13.4 As part of the mitigation of cultural effects for the Project, Ngāti Hauā Iwi Trust has entered into a Memorandum of Understanding with Open Country Dairy Ltd. The purpose of the agreement is to foster and preserve a closer relationship between NHIT and OCD. The focus is ensuring that the cultural needs, future aspirations, operational requirements and financial goals of both parties are acknowledged and recognised.

14. COMMENTS ON 42A REPORT AND SUBMISSIONS

14.1 The s42A Report records a recommendation to decline the Application to discharge treated wastewater to the Waitoa River, and associated discharge of contaminants to air.

14.2 Ngāti Hauā Iwi Trust reaffirm that should the science debate in evaluating the near field impacts relating to nitrogen, phosphorus and ammoniacal nitrogen be at levels that destroy the water course by way of further eutrophication due to mixing levels in summer periods, then we also oppose the application. We acknowledge however that the debate lies in the expert scientific evidence.

14.3 Submissions received in relation to cultural matters have been acknowledged by Ngāti Hauā Iwi Trust. I note two submissions were received from local mana whenua opposing the application.

14.4 In response to these submitters I make the following comments.

14.5 Ngāti Hauā Iwi Trust adopted a best practise early engagement approach with OCD to gain a comprehensive understanding of the application. We reaffirmed our cultural concerns/impacts directly. OCD acknowledged our issues and provided mitigants to remedy and mitigate effects but also reinforced our role as kaitiaki within our tribal rohe.

14.6 We do however note our opposition to any further decline in the health of the Waitoa River, should science prove that the approval of the consent application will contribute towards this.

15. CONCLUSION

- 15.1** The longstanding and current issue of the decline of the mauri of Waitoa River lies at the heart of the impact as well as the ongoing odour issues, and there is acknowledgement that these issues must be dealt with.
- 15.2** The Waharoa area has significant historical, cultural and spiritual importance to Ngāti Hauā Iwi, hapū and marae. Prior to colonisation, the area surrounding and including present-day Waharoa was held by Ngāti Hauā. In 1830, Ngāti Hauā chief Te Waharoa established the Matamata pā a few kilometres north of the current settlement. The protection of heritage, identity and environmental attributes, such as mauri, are vital to our well-being and our role as kaitiaki.
- 15.3** A comprehensive process of engagement and consultation with Ngāti Hauā Iwi Trust has occurred from March 2018 to September 2019. My evidence has shown key matters have been identified by way of non-opposed position.
- 15.4** Various mitigation recommendations provide for the active and effective implementation of kaitiakitanga principles pertaining to the resource consent application from a cultural monitoring responsibility.
- 15.5** NHIT acknowledges the significant commitment by OCD and its shareholders to mitigate potential impacts on the cultural landscape and localised environment in and around the Waharoa site and further afield. This will be achieved through a ongoing multiple layered partnership approach towards long term benefits and outcomes.
- 15.6** Ngāti Hauā Iwi Trust aims to continue strong and meaningful discussions with OCD on all aspects of the development of the Waharoa Plant to ensure accountability towards cultural, environmental and holistic well-being.

Lisa Gardiner

18 March 2020