**Summary of key points of evidence for presentation at hearing**

**Anna Sintenie**

**Hearing for Project Martha: APP139551**

15 November 2018

1. Fish and Game has opposed this application because the water take proposed will have effects on the Ohinemuri River, its habitats and fish populations which have not been assessed in the AEE or avoided, remedied and/or mitigated.

2. In this summary I present an overview of how I consider matters fit together for the assessment under s 104, and the relief Fish and Game seeks.

***104(1)(a) - Any actual or potential effects on the environment***

3. Dr. Daniel has summarised the effects of flow changes on sensitive species, but the potential effects of temperature changes as a result of reduced flow have not been assessed. The prolonged and substantial abstraction will have an ecological impact below the abstraction point which is highly likely to impact trout habitat and will significantly impact torrentfish habitat.

4. In determining the scale of these effects, i.e. whether these effects are 'significant' or, are 'more than minor', *Ngati Rangi Trust v Manawatu-Whanganui Regional Council* applies; they should be assessed against a counterfactual of 'no take' rather than environment as it would include the existing consented take.

5. Cumulative effects, which arise in combination with other effects[1], should be considered. Dr. Daniel refers to the existing degraded state of the trout habitat within the Ohinemuri River, and the lack of resilience of trout populations to stressors, including temperature changes. The trout population has very low stability. To properly consider cumulative effects, the effects of the proposal should be added to the effects of existing activities in the Ohinemuri River, as set out in *Kuku Mara Partnership v Marlborough DC*[2]:

> *if the existing activity has adverse effects, and the proposed activity also has an adverse effect, even if only minor which would add to the existing effects, then the definition requires a consideration of both. That is because the new effect will have an impact in combination with other effects even if its scale, intensity, duration or frequency is not, of itself more than minor. That would comply with the ordinary meaning of cumulative.* [emphasis added].

[1] Resource Management Act, Interpretation – "effects": s 3 d).
[2] (2005) 11 ELRNZ 466 at [53] and [53].

6. Consideration of the net effect of the take on water quality, i.e. whether further degradation is **avoided** is explicitly required in assessing this resource consent under WRP 3.3.3 Policy 11l.

***104 (1)(b) - Any relevant provisions***

7. The application has been made under discretionary rule pertaining to surface water takes in catchments where existing takes exceed the WRP Table 3-5 primary and secondary allocable flows allocable flows in accordance with Policy 7(e) (Rule 3.3.4.23). The application should more naturally fall under the water harvesting rules, specifically Rule 3.3.4.26 (non complying). I highlight in my evidence that the applicant has made the circular argument that the Policy 20(b) limit (10% of flow at the time of abstraction) for the discretionary activity defines the activity of 'water harvesting' in itself. I highlight that 'water harvesting' is a concept with a broader scope than a single restricted discretionary rule, and can encompass larger takes, however these would fall under the no-complying rule (3.3.4.26).

8. Under a natural reading of the WRP, I consider that Rule 3.3.4.23(4) takes falling under Policy 7(e) more appropriately relates to takes which may impact primary and secondary allocation, whereas the water harvesting provisions should apply for takes at higher flows from rivers, and accordingly, the current consent application.

9. If this application is considered under the non-complying rule, the decision maker must be satisfied that any adverse effects are minor, and the application is not contrary to the objectives and policies of the WRP (s 104D RMA).

10. I outline many of the relevant policies in my evidence, many of which I consider to be sufficiently prescriptive that they should be given direct effect to in the resource consent irrespective of whether it falls to be a discretionary or non-complying activity.

11. Certain effects should be avoided. These include:
    a. **Minimum flows and takes should be assessed having particular regard to the avoidance of any further degradation of water quality/whether the further degradation of water quality is avoided: WRP 3.3.3, Policy 1 (d) and Policy 11 (l).** As highlighted by Dr. Daniel, the take is likely to have adverse effects on in stream temperatures, but this has not been assessed.
    b. **Minimum flows and takes should be assessed having particular regard to the avoidance of significant adverse effects on the in stream ecological values and biodiversity and the remediation or mitigation of adverse effects otherwise/whether appropriate mitigation measures are to be implemented: WRP 3.3.3, Policy 1 f) and Policy 11) (x).** The evidence of Dr. Daniel shows significant effects for torrentfish habitat and a high likelihood of effects for trout habitat.

12. Certain environmental outcomes should be maintained. These include:
    a. **The purpose of the fishery class is to maintain or enhance existing water quality and aquatic habitat so that trout or indigenous fish can complete their life cycles and/or maintain self-sustaining populations and managed trout and indigenous**

**fisheries can be sustained (WRP 3.2, Policy 7).** Dr. Daniel has identified effects on both water quality (temperature) and aquatic habitat (flow) which do not maintain or enhance these characteristics to meet the purpose.

b. **Maintain water temperatures and dissolved oxygen levels that are suitable for aquatic habitat and spawning (WRP 3.2, Policy 7(a)).** Dr. Daniel has stated that reducing the volume of water will increase the rate the remaining flow will heat up in warmer months. As such these characteristics are not maintained, but no assessment of this has been presented.

13. Certain standards should be met. I have not covered the Fisheries Class Standards in detail in my evidence, as I consider the water management class policies and the purposes to be the overarching matter for consideration, and the Standards are "guidance" and "one method of achieving the purpose"[3] of a class. However, relevant standards for the Fishery classes include:
    a. **Where water is taken, sufficient flow and/or water depth shall be maintained to allow for the maintenance of fish habitat and spawning.**[4] Dr. Daniel indicates that the rate of flow applied for and the minimum flow would not meet this standard for torrent fish and may not meet this standard for trout.
    b. **As a result of added heat, the temperature of the water shall not exceed 20 degrees Celsius at any time.**[5] The impacts of the abstraction on exceedances of the 20 degree threshold and the timing of these have not been assessed.

14. Certain matters must be demonstrated. WRP 3.3.3 Policy 11(d) and (t) both require the applicant to demonstrate the need for the volume and rate of flow. The need for the rate, based on 20% of the flow at the time of abstraction has not been demonstrated, as opposed to a slower rate in the consent being replaced of 10%.

15. The overall direction of the Policies is that there is a clear intention to maintain water quality in this stream and avoid any further degradation (including in terms of temperature) these are considerations that are explicitly required at resource consenting stage.

16. Finally, I note that if the application is considered to be a discretionary activity under 3.3.4.23(4), it requires a Riparian Vegetation Management Plan as a standard and term.

17. The Auckland/Waikato Sports Fish and Game Bird Management Plan should also be had regard to; it identifies the Ohinemuri as a significant trout fishing river; the most popular in the Hauraki/Coromandel,[6] and it is an Objective to protect and increase that habitat.

---

[3] Method 3.2.4.1 WRP.
[4] Method 3.2.4.5 b) v), Waikato Regional Plan.
[5] Method 3.2.4.5.b) iv), Waikato Regional Plan.
[6] Auckland/Waikato Sports Fish and Game Bird Management Plan, p 34.

***104(1)(ab) - Any measure proposed or agreed for the purpose of ensuring positive effects to offset or compensate for any adverse effects***

18. The applicant has stated that for the current application no mitigation should be required, but has mentioned the existence of planting activities it has previously undertaken. The extent of planting relevant to instream values has not been quantified, the planting does not relate to the current proposal, and there has been no verification as to whether this planting is mitigation for other activities (and as such may not be a positive effect for the purpose of s104(1)(ab)).

19. Certain standards should be met, using performance standards in the consent, for effects to be given weight under this consideration. These include measurable or quantified outcomes, permanence (and maintenance), no-net-loss of values (in this case these should be in-stream values); location (this should be as close to the impacted site as possible).

20. I consider that riparian planting could be used to offset increases in instream temperatures of the reduced flow as a result of the take. At the very least any positive effects claimed in this regard should be quantified with conditions to support them.

***Subject to Part 2***

21. Part 2 may be judged to be applicable for consideration, and this is contemplated in the WRP. There is a link between section 6(a), to recognise and provide for natural character as a matter of national importance and WRP 3.2 Policy 3. WRP 3.2 Policy 3 gives specific direction that for recognising and providing for the preservation of natural character of rivers and their margins from inappropriate use and development, there are certain specified characteristics for consideration. Natural flow characteristics and aquatic and riparian habitats (including wetted margins) should be considered as part of this.

**Relief sought**

22. Fish and Game seeks that the Panel consider for relief:
    **a.** Increases to minimum flow triggers for the abstraction; or
    **b.** No increase to the rate of take from 10%.

23. Regardless of the above changes to the flow triggers and/or rate of abstraction, the consent should appropriately avoid, remedy and/or mitigate the cumulative degradation of the water quality by including conditions which mitigate for temperature increases (specifically I would support a riparian planting and maintenance plan with specified performance standards).