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To: Info
Subject: Ohura Water Supply Service
Importance: High

4 November 2013

To **The Mayor and Councillors**
 Ruapehu District Council

From **Mr and Mrs Howard of Ohura**

MEMORANDUM BY EMAIL

Please place the following memorandum to the Mayor and Councillors from Mr and Mrs Howard at Ohura on the agenda of the first meeting of the newly elected and sworn Ruapehu District Council, and, before Council takes any further action relating to the future of Ohura Water Supply Service.

RE: OHURA WATER SUPPLY SERVICE

Council staff reports published by the former Ruapehu District Council (the RDC) dated 19 August 2013 places Mr and Mrs Howard and Ohura township residents/ratepayers on notice regarding the future of the water supply service.

It is apparent from the notice that the contention of the former RDC is that with a diminishing population at Ohura township and increasing costs of RDC continuing to provide a reticulated potable water service to the township, this water supply service is no longer sustainable.

However, in Council's disclosed public documents only a legal explanation of Sections 131, 132 and 133 of the Local Government 2002 has been provided.

In the context of the less than 200-people to whom the water service is delivered and who are ordinarily resident proscribed in section 131 (2) of the Local Government Act, which allows Council a discretion to close or transfer a water supply service after applying certain rules, it is relevant to note that the latest 2013 census statistics has Ohura town residents now numbered down to 129 and National Park town residents numbered down to 171 (also less than the 200 proscribed "ordinarily resident").

It is also noteworthy that for the 2013 local body elections National Park Ward has 702 electors and Ohura Ward 699 and yet National Park Ward retains its community board representation whereas a former Ruapehu District Council was successful in moving the Local Government Commission in 2004 to abandon Ohura Ward community board representation. A review of representation is now needed.

Moreover, there appears to be no formal Council resolution advising that Council is considering closing down or transferring the Ohura Water Service as being no longer appropriate to maintain. That is also required.

Indeed, the current Ohura water services scheme effectively provides potable water on a 24/7 basis and, although the scheme is not perfect, safe drinking water continues to efficiently flow at household taps without any major continuity of supply or health issues.

On that basis, the scheme itself is sustainable as a drinking water supply service.

From the former Council's documents it is apparent that it is the rising costs allied to a diminishing population at Ohura which has allowed Council to consider that the service has become financially unsustainable and/or no longer appropriate to maintain under the current funding sources used - which is an entirely different thing.

From the 2013 census statistics that same situation, however, can now be said to potentially apply to National Park.

Dated 19 August 2013, the former Council published a bundle of consultative documents to Ohura residents/ratepayers about the future of the Ohura Water Supply. These are also globally available by way of the Council's internet website.

The former Council's documents advise that it has investigated options and provided a summary of four options which are materially relevant to the financial position, the future of the water services, and funding source options.

However, for the purposes of providing clear information and meaningful consultation for Ohura residents, Council has not provided information that it has firstly complied with relevant legislation, specifically regarding financial management under section 101 of the Local Government Act.

The former Council's Preferred Option Survey proposed the following options that were open for consultation with Ohura ratepayers/residents.

Option 1 – Roof tanks

Option 2 – Community Operation

Option 3 – Alternative Ration Method

Option 3a- Explicit Subsidy

Option 3b – Flat Water Rate Across the District

However, for Alternative Rating Method (Option 3) above Council states – “These options will require the agreement of the ratepayers in the remainder of the District. If residents wish to advocate for them they will need to lobby Councillors and make submissions to the next Exceptions Annual Plan when the rates are set.”

It is not apparently rational nor does it meet the legislative requirements and application of section 101 of the Local Government Act for Ohura residents to be expected to lobby all RDC Councillors for options that Council itself decided to open for

consultation, most particularly when the statutory power of decision ultimately resides with Council and not with resident/ratepayer's.

It is also noted in media reports in the Ruapehu Press newspaper and elsewhere, which remain uncorrected by Council that:-

“The council’s most ideal choice would be to abandon its responsibility for providing water but this needs a 75 per cent mandate in favour of the proposal – which Ohura residents are likely to oppose.”

It is to be borne in mind that this is not just about abandoning the current Council operated and controlled Ohura water service and/or about just one property installing a water tank but, rather, water tanks for a whole township with the health and other implications arising from that.

The RDC consultation document as published fails to meet the consultative requirements of the Local Government Act. The documents are not considered to be adequate, meaningful or contain clear information and/or financial information to meet the legislative objectives and tests.

Further, relevant and valid legal and statutory options have been omitted from the RDC consultation document.

These are:-

- (i) District-wide flat rate uniform water charge across all district rateable properties;
- (ii) District-wide Uniform Annual General Charge;
- (iii) Water Meters;
- (iv) Water filters at the boundary of residential dwellings; (an option in Council’s 2008 discussion document)
- (v) Process for consultation with Maori omitted - but legislatively required.
- (vi) An investigation by Council of the DWAP to test whether water tanks are fundable;
- (vii) Inquiries to be undertaken by Council with Horizons (Regional Council) to review and ascertain water quality, consent compliance and water standards upstream of the Ohura treatment plant and water intake i.e. what is in the water and does it meet quality and consent standards in the first instance?

These appear to have been played down and, further, the financial information provided is not reasonably broken-down and explained in a manner to enable critique.

Background

From Council's published documents the RDC took control of the Ohura Water Supply in 1989. Council states that capital expenditure was stopped, maintenance minimised and depreciation of assets was suspended in June 1990.

Council further states that (a) the Prison at Ohura was the biggest user on the water supply but closed down in November 2005 and (b) Infrastructure investment in Ohura had been held in abeyance as it was believed that, when the prison tenure was completed, the water supply scheme would become unsustainable.

Council's documents refer to a water treatment plant existing from circa 1957. In light of previous reasoning by former Council's from circa 1990 something was required.

Over \$800,000 was subsequently spent by Council on the Ohura Water Supply Service in the last 7 years - \$200,000 by Council/Ohura ratepayers and, in April 2010, \$619,353 was received by Council from central Government's Drinking Water Assistance Programme (DWAP).

In a discussion document dated 14 August 2008 Council informed Ohura residents that the DWAP will reduce the cost to the community, for initial of capital cost of an upgrade, ongoing maintenance and operating costs

However, Council's charges for water have kept on rising year on year to currently a 59% rise to Ohura residents for water service over the past 5 years.

Accordingly, the quality of the water at source by comparison to quality of water taken at the actual treatment plant intake, the rising costs, the allocation of costs and expenses, the reasoning behind that and the charging regime adopted by Council for the Ohura Water Supply Service, needs thorough scrutiny by relevant and appropriate independent authorities.

It is noted from Council's Long Term Plan 2012-2022 and Council's Asset Management Plan 2012-2022 that the Waimarino Ward is predicted to grow by an additional 420 houses (connections) over a ten year period i e a 15% increase in current households.

Council states it has undertaken preliminary investigations through the Waimarino Water Supply Options Study and investment in a Water Treatment Plant is required but that this can be delayed. Council documents state that Ohakune needs more storage or clarifier but Waimarino Plant/s needs looking at before making this investment. Council states that Raetihi needs a new plant and this needs to be considered before building more treatment.

There is no indication in Council's Long Term Plan document(s) specifying issues surrounding the Ohura Water Supply and/or, importantly, what is to happen to the \$1.5 million Ohura water treatment plant and infrastructure, or where it will go, should the Ohura water supply service be closed down.

In that light, it is a reasonable inference to draw that Ohura's Water Treatment Plant will be placed elsewhere in the District.

The Local Government (Rating) Act empowers Council to set and collect general and targeted rates.

From Council's documents there is water supply services operated and controlled by Council across the District. If a targeted flat water rate across the District were to be implemented Council indicates that 4 water services would have a decrease in water rates and 3 would have an increase and, even then, the largest increase across the District is \$128.05 per annum (or \$2.46 per week) for Ohakune.

Further, from media reports Ruapehu District ratepayer's across the District are already complaining about the current level of Council's debt incurred in the ratepayer's name.

Accordingly, there are issues that if Council, on behalf off all Ruapehu District ratepayers, advanced loans to Ohura residents to buy water tanks and associated equipment, - one proposal mentioned in Council's consultation documents - presumably the amount involved would need to be borrowed by Council.

If all Ohura township residents were required to take-up the water tank option this would amount, from Council's own data, to just under \$1 million that Council would need to further borrow to fund that activity.

All Ruapehu ratepayer's would be required to take liability for that borrowing

What would be the security required for such a loan?

In this case, a targeted flat water rate set across the Ruapehu District would presumably not involve any such borrowing by Council.

On the other hand, if Ohura resident's have to borrow commercially to buy water tanks over a 20-year period as stated, there is considerable doubt that some would have a credit rating sufficient to be able to borrow the amount needed, or have the security to secure the loan and/or re-pay the debt.

It is further noted from Council's documents that the yearly cost to Ohura residents of buying water tanks is effectively the same as the cost of the current Council-operated Ohura water supply service.

The Council staff report states that Ohura has an Index of Deprivation score of 10 out of a possible 10 (where 1 is least deprived and 10 is most deprived).

The Index of Deprivation is an index developed by Victoria University based on census data, including personal income, household income, employment status, qualifications, access to a car and access to a telephone.

If Council decides to abandon the Ohura township water supply service and people cannot obtain a loan and/or afford to buy roof tanks, and/or there are times of drought, is it Council's intention that some of its Ohura township resident's/ratepayers will go without water, most particularly, safe and clean drinking water?

Further, even though Ohura township has septic tanks, water is still required to flush a toilet. In times of drought or other circumstances would this newly-elected Council expect every Ohura household to dig a long-drop in their backyard when there was insufficient water? That could well be the reality.

Further, if Council decides to abandon Ohura township water and resident's must install water tanks and there are power cuts, how will resident's pump water and what steps will council take to ensure that they can?

Nonetheless, as was held by Honourable Justice Wylie in *Tacon v Hastings District Council* [2013] NZHC 1078 (14 May 2013) – an on point case which directly relates to Council's powers to set targeted rates:-

His Honour held that the starting point is section 101 of the Local Government Act – Financial management - This provides:-

Section 101 (1) - A local authority must manage its revenues, expenses, assets, liabilities investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community.

Section 101 (3) then provides – “*The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of.....*”

Note – Starting with the premise that Ruapehu is a District Council, Section 101 (1) is directly aligned to Schedule 7 (14) of the Local Government Act which provides for elected members to make a declaration to execute and perform powers, authorities and duties vested or imposed in the best interests of the District.

These are unequivocal provisions with no room for doubt.

Further, the Local Government Act 2001 defines “Wards” for “electoral purposes”. That provision does not envisage parochialism by Ward councillors in decision-making.

However, there are public comments from present Ward Councillor's that having one vote out of twelve around the table has its challenges and further, “I'm only one councillor.” Such commentary demonstrates levels of “Ward” parochialism operating within the former Council when the legislation and the elected member's declaration unequivocally does not envisage that.

In fact, at a public meeting at Ohura held on 12 September 2013 some Councillor's from other Council Wards publicly spoke-out in favour of Ohura township being on water tanks as opposed to, and despite, a consultation option 3b of a targeted flat water rate across the District.

The staff report to Council dated 17 July 2013 also states under the heading Flat Water Rate across the District as being a “Threat” and “Politically unpopular.”

That is an irrelevant consideration to Council's decision-making.

Further, it is noteworthy that the Local Government Commission has publicly advised:- *“The Commission emphasises that wards are for electoral purposes only, and that Council is the entity to which members are elected.”*

This finding is also supported by the definition meaning of “ward” in the Local Electoral Act 2001 which makes reference “for electoral purposes”. Again, this definition does not envisage parochialism by Ward councillors in decision-making.

From Tacon (supra) His Honour held that Section 101 (3) of the Local Government Act is a critical filter by which funding sources in respect of each activity must be considered and determined.

In this case, the activity is Council’s control and provision of reticulated potable water to Ohura township and funding sources are, inter alia, a Flat Water Rate across the District.

In the first instance the Council is therefore requested to obtain a legal opinion about the whole matter of the Ohura Water Supply Service and the total of the legislative requirements.

Secondly, the Council is requested to have staff prepare a report for Council’s relevant Committee pursuant to section 101 (3) of the Local Government Act 2002 and addressing the section 101 (3) considerations.

This report will need to analyse and evaluate public/private benefits and how the costs of the Council continuing to control and operate the Ohura Water Supply could be allocated through, for example, setting and collecting a wider targeted water rate for the benefit of the Ohura township community, the Ohura Valley rural community, the wider District Community, the wider Regional Community and wider visitors.

The Council is then requested to resolve to receive the legal opinion and staff report and address the section 101 (3) considerations and make a decision.

As was said in *Tacon* (supra) Section 101 in the Local Government Act is the starting point and ss 16, 17 and 18 and Schedules 2 and 3 in the Local Government (Rating) Act provide the relevant statutory framework within which Council may determine to levy a targeted rate.

Section 101 (3) is concerned with how the funding needs of local authorities are to be met. The section puts in place a process by which local authorities identify and then use funding sources.

It affords local authorities the opportunity to exercise considerable flexibility in apportioning liability between various sources.

Local authorities must determine the appropriate sources to meet their funding needs.

When it is considering each activity to be funded the local authority is required to consider each of the five factors identified in s 101 (3) (a). The factors are cumulative and the consideration of each of them mandatory.

One of the identified factors is the distribution of benefits between the community as a whole, any identifiable part of the community and individuals. The legislation has recognised that each may share in the benefits from the activity provided by a local authority.

The local authority is required, inter alia, to consider the distribution of benefits in determining how its funding needs are to be met.

It is only after the section 101 (3) considerations and determinations are made, that section 16 of the Local Government (Rating) Act comes into play and becomes a relevant matter.

It logically follows that Council's ability to close or transfer the Ohura water service as being no longer appropriate to maintain is therefore not a relevant consideration at this point.

Some resident/ratepayers have, however, prepared a benefit(s) summary.

Funding and maintaining the current Ohura Water Supply under Council control is considered to have benefits to the township of Ohura, to the Ohura Valley community, to the wider Ruapehu District community, to the wider Regional Community including, most particularly, to transient and overnight visitors to Ohura and wider visitors to the Ruapehu District and to the Region.

For example, over the 2013 Labour Day holiday weekend 82 mobile homes from Hamilton and New Plymouth stayed in Ohura for the entire weekend and people used public and private facilities as did 39 members and their horses and floats from horse trekking clubs from as far away as Hastings.

There are also overnight visits to Ohura by members of vintage, classic and modern motorcycle and car clubs. People also come to overnight in Ohura to visit the cemetery and for tangi and Maori events. There are also transient visitors and workers travelling through Ohura township to other areas in the District and elsewhere on a daily basis.

John & Maree Howard