

## CHAIRMAN REPORT – ENVIRONMENTAL PERFORMANCE COMMITTEE – 01/02/2016

This report is prepared by WAIKATO REGIONAL COUNCILLOR Clyde Graf – Chair - Environmental Performance Committee

### **Introduction**

**The Agencies (users and supporters of 1080 poison)** = Department of Conservation (DoC), Waikato District Health Board (WDHB (Public Health Unit), Ministry of Health (MoH), OSPRI, Waikato Regional Council (WRC)

In November 2014 councillors Clyde Graf and Kathy White presented their WAIKATO REGION AERIAL 1080 POISON REPORT to the ENVIRONMENTAL PERFORMANCE COMMITTEE. The report highlighted and investigated compliance issues and questioned the appropriateness of some 1080 poison consent conditions and permissions.

### **The 1080 Working Group**

As a result of the feedback received from the Graf and White Report (1) <http://www.waikatoregion.govt.nz/PageFiles/19533/Env%20Perf%2025%20November%202014%20Agenda%20Public.pdf>, Council resolutions, and feedback from local committees, a 1080 Working Group was set up by Council. Members of the working group were Tipa Mahuta (Chair), Timoti Bramley, Stu Husband, Kathy White, and Clyde Graf.

### **Office of the Auditor General – Mitchell Partnerships**

The working group was charged with preparing a brief for the Office of the Auditor General (OAG) which would then review WRC's processes for monitoring resource consents for aerially applied 1080 poison. The Working Group was then to consider the response from the OAG and report back to Council.

The Working Group was also charged with collating responses from agencies to the Graf and White Report, considering alternatives to 1080 poison, the appropriateness of some consent conditions and WRC compliance with regard to 1080 poison operations.

Soon after being formed the Working Group was told that the OAG would not be undertaking the review, and that one of five staff-selected people would be chosen to undertake the review. Phil Mitchell from Mitchell Partnerships was selected through a working party selection process. WRC then commissioned "AERIAL APPLICATION OF 1080 – REVIEW OF COMPLIANCE WITH THE REGULATORY REGIME" - AN INDEPENDENT REPORT – PREPARED BY PHIL MITCHELL - MITCHELL PARTNERSHIPS – 2015

This Chair Report explores some of the issues encountered with the processes and presents ideas and suggestions which may improve transparency and independence in future commissioned reports.

## The ISSUES

1/ A DRAFT of the WRC-commissioned Mitchell Report was released to the Agencies (the Agencies the report was meant to be critiquing) many weeks prior to the Working Group being made aware that a Draft even existed. The Working Group was to receive the Report in August, but was informed there were gaps in information and that those gaps were being addressed. The Working Group was not however made aware that there was a Draft Report and that the Draft had been distributed to all of the Agencies for their feedback.

2/ The Working Group was provided with a Final Report and was required to vote on recommendations that had been written by staff (7) within five days of receiving the Report (over 250 pages).

3/ When members of the Working Group became aware that the Draft report existed, they requested a copy from staff. Staff refused, stating complexities to do so. Councillors then requested Vaughan Payne (CE) to provide copies, which he did immediately.

4/ It then became clear that the original eight recommendations (6) in the Draft Report, after being critiqued by the Agencies, were amended by staff into three insignificant suggestions- "recommendations". There was a big difference between Mitchell's original recommendations, and the diluted recommendations presented by staff.

5/ Information agreed to by the Working Group to be provided to Mitchell Partnerships and to be considered in the Mitchell review included, but was not limited to;

- The (Graf & White) Waikato Region Aerial 1080 Report (As presented to the Environmental Performance Committee in November, 2014)
- 1080 in Water – EPA – VIDEO CLIP (5) (As presented to the Environmental Performance Committee in November, 2014)
- Response from Dr. Jo Pollard in response to Dr. Suren (5) (1080 in water video clip)
- Email from Councillor Clare St Pierre with regard to her Council having to insist on extending exclusion zones around the Te Awamutu Water Catchment (Attachment)

The information listed above was meant to be passed on by staff to Mitchell Partners to help set the baseline that would ensure that not just Agency information and views were considered in the review.

Information received by Mitchell Partners was referenced in the Appendices of the Final Mitchell Report, and excludes *all* of the information listed above. Some, if not all of the information above may not have been received by Mitchell Partnerships, and some was certainly not provided to Mitchell Partnerships in time for researching and consideration.

This meant that important and factual information was missed for consideration during the process. This could have been avoided if the Working Group members (Councillors) were informed about the sharing of the Draft Report with the Agencies, and the responses the agencies provided to the independent reviewer. However, despite this issue, the Draft Recommendations presented in the Draft Mitchell Report (6) are an outcome not unexpected from an independent review. It was only after intervention by the Agencies and staff that the independence of the Report was diluted and lost.

## OUTCOME OF THE REPORT – AGENCY COMPLIANCE

The Mitchell Report states that compliance by agencies involved with the aerial discharge of 1080 poison across the Waikato Region was overall, good. (Although there were several compliance breaches referenced in the Waikato Region Aerial 1080 Report that weren't identified in the Mitchell Report).

Phil Mitchell also pointed out that there are inconsistencies and gaps across the agencies, which he initially described as “shortcomings in the regulatory regime.”

This is partly due to Agency conditions and permissions in some cases being set on unsafe scientific information (2), (5) and depending on circular referencing, from one Agency to another. The Agencies reference each other without providing sound scientific evidence that the aerial discharge of 1080 poison (classed by WHO as A1 – their highest rating, and without antidote) across land and directly into water, is in fact safe or beneficial.

Better access to independent research and feedback would have allowed for a better understanding of the issues that communities are concerned about. After all, it is the communities that are funding reports like this.

When the Agencies responsible for the discharge of 1080 poison and issuing permissions and conditions across the Waikato Region were introduced to the Draft Report for commentary and feedback (and without the councillors being made aware of the fact), the independence of the report was compromised.

The responses from the Agencies that were provided to Mitchell Partnerships were in effect, like hearing from the Defense, but not the Prosecution. It would be like asking tobacco or alcohol companies if their products are safe and socially appropriate.

The Mitchell Report was also undertaken to assess conditions and permissions focused on the social impacts of discharging of aerial 1080 poison onto land and into water across the Waikato Region. It is with this focus in mind that the Draft Report recommendations (6) were appropriate and an outcome that demonstrates the benefits of an independent investigation – that is, prior to Agency intervention.

### **WRC Response to the Draft Mitchell Report – (WRC & Agency responses in *italics*)**

*“As the reviewer will be aware, consent conditions must be reasonable and for a resource management purpose. In 5.2 (Draft Report) in relation to adverse effects on water supplies, we disagree that providing “peace of mind” to the public is consistent with these requirements.”*

The commentary above by WRC bio security staff indicates that consideration for the social welfare of communities and ratepayers could improve. Avoiding waterways is “impracticable” when aurally discharging 1080 poison, but is that a sound justification for not applying buffers to waterways? 1080 is dropped directly into most streams within operational areas (see flight charts). The research used to justify aurally dropping 1080 poison directly into waterways is unsafe and of poor scientific quality (5).

### **DoC Response to the Draft Mitchell Report –**

DoC points out it complies with conditions and permissions. However, and as stated above, the conditions and permissions are not difficult for the Agencies to comply with.

In its consultation material provided to iwi (included in the Mitchell Report) DoC states that the DVDs “Maori and 1080” and “1080; Good News for Conservation” were provided to numerous iwi. Some information provided in the DVDs is not accurate, and misleading. I ask why isn’t the opposing view DVD (4 x international award winner) documentary Poisoning Paradise <https://youtu.be/AQ9ZOquYmfl> also provided to iwi, for balance? The environmental, and medical impacts of consuming puha, watercress, tuna, koura and other kai is covered in the Poisoning Paradise documentary. Maori, credible and qualified scientists and doctors, Farmers, business people and other experts share their experiences and concerns in the documentary.

The bias shown by the Department of Conservation also demonstrates a lack of consideration for cultural awareness, and iwi. Iwi, and all members of the public, should be supplied with a balance of information – not just a one-sided, and often inaccurate information that is currently being distributed to them.

### **OSPRI & TBFREE Response to the Draft Mitchell Report –**

OSPRI states it conforms to its conditions. That statement is probably correct. As mentioned above, the conditions and permissions are not hard to comply with. However, does TBFREE and OSPRI test water for 1080 residues at 8, and at 24 hours, by following Landcare Research protocol? Correspondence referenced in the original report presented to the EPC indicates it does not.

OSPRI also references the PCE. The PCE’s report into 1080 poison was not a credible scientific document (2).

### **Waikato District Health Board Response to the Draft Mitchell Report –**

*“We cannot support the recommendation (page 57, section 6, and bullet point 4) that all flowing bodies be excluded during aerial operations, as this is impracticable for the purpose of the operation ... We disagree with the finding in the report (page 36, paragraph 4) that there is currently no explicit condition under the HSNO controls, MoH permission, DoC permission or resource consents requiring operators in the Waikato Region to enact these buffers.” These are part of our permission conditions.” ... “Exclusions are required for the following: Public areas, walking and vehicle tracks, roads, dwellings ...”*

These “conditions” referenced by the DHB are not in place in many drops. Most walking tracks are not excluded and neither are vehicle tracks. The areas where the poison is dropped is mostly public conservation land and is mostly open to public when the drops are undertaken. Numerous examples are documented in the video clips available to view online .... [www.youtube.com/thegrafbays](http://www.youtube.com/thegrafbays)

The WDHB goes on to say ...

*“We cannot support the recommendation (page 46, section 4.8.2, para 2) “that operators must conform to Landcare Research’s best practice protocol when water supply testing is undertaken. The testing is required to confirm the absence of 1080 in waterways. There is good experimental data as to when the toxin is likely to appear in the water from the drop. We use these results to show the water is again safe for human consumption.”*

Is the DHB suggesting there is a period when the water is NOT safe for consumption after an aerial drop? Many water tests are delayed, and taken after 24 hours to prove the poison is no longer present, and has already passed through the water column or been up-taken by aquatic life.

Landcare Research protocol (2) states that samples taken within 8 hours of a drop provide the greatest likelihood of detecting residual 1080. Samples taken after 24 hours are often pooled to inform the public that 1080 isn’t dropped into waterways and is not detectable, when the exact opposite is the case.

The DBH goes on to say that *“Where there is an increased risk of the VTA or poisoned carcasses entering into waterways (e.g., sloping ground toward the waterway; heavy vegetation overhanging the waterway), the exclusion distances may be increased. This will depend on local conditions, including rainfall, the gradient of the terrain, vegetation and soil type.”* Is the DHB not aware that 1080 poison is dropped directly into all streams and waterways on all aerial drops? There is no consideration given to where baits or carcasses (including deer and pigs) end up after aerial drops.

This video clip of the recent aerial drop on the Coromandel (4) clearly demonstrates the conditions and permissions are inadequate ... <https://youtu.be/QbAeUa5ueRg>

#### **MoH response to the Draft Mitchell Report –**

*“It appears the auditor lacks a good understanding of the purpose of health permissions e.g. see comment regarding page 50”*

*“Page 50, 4.10 – The example provided was the different buffer zones imposed by health permissions – the main purpose of the permission conditions is to address local circumstances so as to protect public health, and therefore may vary from one operation to another.”*

Perhaps it is the MoH respondent that is the one that lacks understanding of aerial 1080 poison drops.

The permissions that the MoH sets are not made publically available. An Official Information Act request is required to obtain a copy of the permissions. Mitigation is available to domestic households, if the household requests it (Clause 25). However, more often than not domestic households are not aware of this right, so are left to continue to draw water without being informed that the poison drop has even taken place or that 1080 poison has been dropped directly into their water, let alone how to mitigate any possible negative impacts.

When requested by WRC CEO Vaughan Payne, the MoH refused to meet with Cr White and Cr Graf to discuss the issues raised in their report and in the following video clip of the recent Coromandel 1080 poison drop (4) ... <https://youtu.be/QbAeUa5ueRg>

## **CONCERNS HELD BY INDEPENDENT SCIENTISTS AND DOCTORS**

Perhaps the most concerning and frustrating aspect of the 1080 poison debate is the persistent resistance and objection by the organisations involved with using the poison, to the presentation of independent research and feedback – despite the fact that the independent research and information is coming from highly qualified and experienced practitioners. For example, scientists and doctors - Quinn and Pat Whiting Okeefe, Sean Weaver, Jo Pollard, Alexis Pietak, Peter Scanlon – all qualified and experienced to provide research and feedback on the use of 1080 poison, are deliberately and persistently ignored.

## **CONCLUSION**

When ratepayer funded reports are commissioned, councillors *must* be included in all correspondence between all parties to ensure transparency and independence is retained.

If information gaps are identified, the independent contractor should be encouraged to request answers to questions, and not provide a draft report to the agencies it is paid to critique.

Information provided by communities and independent practitioners should be able to be included for consideration, not just information passed by Council staff or the agencies, and especially when Council is conflicted – in this case aerially applying 1080 poison itself.

Councillors involved in the 1080 Working Group should have been fully informed about the review process. Information should have been forthcoming upon request, and reliable.

The WRC commissioned AERIAL APPLICATION OF 1080 – REVIEW OF COMPLIANCE WITH THE REGULATORY REGIME” - AN INDEPENDENT REPORT – PREPARED BY MITCHELL PARTNERSHIPS – 2015 is a good example of how the bureaucratic world can control the outcome of a publically funded, “independent” report.

The original recommendations (6) put forward by Mitchell Partners are in the best interest of the ratepayer and public’s social wellbeing, health and safety. No justifications or excuses put forward by the Agencies supersede the responsibility WRC has to consider the social wellbeing and health of the residents of the Waikato Region.

Based on the information within the final Mitchell Report, the information that has come to light since the Report was released, and experience I have gained from over 9 years of researching, filming and documenting 1080 poison drops across all of New Zealand, it has become apparent that the WRC commissioned review of compliance and monitoring by Mitchell Partnership was ineffective at critiquing the various Agencies, with full independence.

The eight Draft Mitchell Report recommendations (6) are presented below, and the three amended, sanitised (3) recommendations that staff prepared in place of Mr Mitchell’s original eight, are also referenced below.

## REFERENCES

**Reference (1) -**

<http://www.waikatoregion.govt.nz/PageFiles/19533/Env%20Perf%2025%20November%202014%20Agenda%20Public.pdf>

**Reference (2) –** [www.1080science.co.nz](http://www.1080science.co.nz) [A Scientific Evaluation of the Parliamentary Commissioner for the Environment’s view on 1080](#)

**Reference (3) –** <http://www.landcareresearch.co.nz/resources/laboratories/toxicology-laboratory/services/advice-and-protocols/protocol-for-sampling-and-testing-water-for-1080>

**Reference (4)**

DoC Drops 1080 Poison into Coromandel Water Supplies - <https://youtu.be/QbAeUa5ueRg> (Ministry Of Health report – 2008)

Mt Pirongia Poison Drop Breaches Manufacturer’s Label - <https://youtu.be/rkgyXF56Uvo>

Poisoning Paradise documentary - <https://youtu.be/AQ9ZOquYmfl>

**Reference (5)**

1080 Poison Safe in Water – EPA <https://youtu.be/J4pe-Ma4L-o>

## Reference (6)

### Mitchell Report – Eight Draft Recommendations ...

“Throughout this report we have made recommendations to improve the regulatory regime of 1080 discharge operations across the Waikato Region. The following is a summary of these recommendations. “

1. There is considerable scope for improved inter-agency cooperation and for the standardization of information and regulatory requirements. We anticipate that the Regional Council is well placed to play a leading role in this regard. We recommend that where there are common conditions between the regulatory agencies, that the Regional Council craft a set of conditions that can be agreed upon by the respective regulatory agencies. This will have the effect of streamlining the various consenting processes, provide greater clarity for the operators and prevent conditions being over-ruled or undermined by conditions from other regulatory agencies.
2. In addition, we recommend the implementation of a common inter-agency database for the storage of information regarding aerial 1080 operations in the region, particularly in regard to the common conditions between the regulatory agencies. We believe the Regional Council is well placed to take a leadership role in this regard.
3. Evidence presented and analysed here does not clearly outline the methodology required for post-operation water sampling. We therefore recommend that the Regional Council include resource consent condition(s) requiring operators to adhere to the Landcare Research best practice protocol with regard to water sampling and require a post-operation report to be prepared that details the water sampling undertaken and enable compliance to be assessed.
4. Regarding the buffering of flowing and standing water bodies, and drinking water sources, there is currently no explicit condition under the HSNO controls, MOH permission, DOC permission or resource consents requiring operators in the Waikato Region to enact these buffers. We therefore recommend that a resource consent condition be added to all future resource consents requiring operators to avoid the discharge of baits into standing and flowing water bodies within the operational area, including the enactment of buffers around waterways and drinking water sources identified during the pre-operation phase.
5. Regarding the lack of evidence of consultation with tangata whenua and other stakeholders across the three operations reviewed here, we recommend that a region wide consultation practice, led by the Regional Council be developed and incorporated into all future resource consents. The consultation practice should outline the information required and identify the parties to be consulted with to gain this information. This could be completed alongside recommendations 1 and 2, but with input from the other regulatory agencies who have consultation requirements in their standard operating procedures, particularly DOC.



6. The pre and post operation monitoring of the effects of a 1080 operation on target species is not currently required in the Waikato Region. Based on EPA report statistics this places the Waikato Region operations, with the exception of the DoC operation (post-operation only), in the minority regarding this aspect. We therefore recommend that a resource consent condition should be added to all future resource consents requiring the pre and post operation survey of target species populations within the operational area.

7. Similarly post-operation monitoring of the benefits of a 1080 operation on native flora and fauna only occurs in 30% of operations and is required over a number of years after an operation. We recommend the Regional Council includes a resource consent condition in all future operations requiring the post-operation effects on native flora and fauna be assessed and reported on.

8. Overall through our review of information completed here, we have developed the opinion that the information required for confirmation of compliance with many of the conditions from all regulatory agencies would be best communicated on pre and post operation maps, instead of as lists of information. We therefore recommend that the Regional Council include an advice note on all future resource consents outlining the information required to be presented on pre and post operation maps.

## **Reference (7)**

### WRC Staff recommendations following Agencies intervention ...

1. There is considerable scope for improved inter-agency cooperation and for the standardization of information and regulatory requirements. We anticipate that the Regional Council is well placed to play a leading role in this regard. We recommend that where there are common conditions between the regulatory agencies, that the Regional Council craft a set of conditions that can be agreed upon by the respective regulatory agencies. This will have the effect of streamlining the various consenting processes, provide greater clarity for the operators and prevent conditions being over-ruled or undermined by conditions from other regulatory agencies.

2. We recommend the implementation of a common inter-agency database for the storage of information regarding aerial 1080 operations in the region, particularly in regard to the common conditions between the regulatory agencies. We believe the Regional Council is well placed to take a leadership role in this regard.

3. Through our review of information completed here, we have developed the opinion that the information required for confirmation of compliance with many of the conditions from all regulatory agencies would be best communicated on pre and post operation maps, instead of as lists of information. We therefore recommend that the Regional Council include an advice note on all future resource consents outlining the information required to be presented on pre and post operation maps.

Report produced by Councillor Clyde Graf – Chair Environmental Performance Committee (Disclaimer – Commentary is my personal findings and opinion)

