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CC

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Complaints re PPP Contract and Potential Breach of the Overseas Investment Act

Tēnā koe Minister

I wish to complain about the outcomes and process used by Rotorua Lakes Council (RLC) to amend its 2018-2028 Long Term Plan by agreeing by a margin of 7-4 on 29 July 2020 to enter into a 10-year public-private-partnership (PPP) contract with Trility NZ Ltd for the management of Rotorua's wastewater services.

I also suspect that the RLC may have breached the terms of the Overseas Investment Act (July 2020), which introduced national security considerations into overseas investment in New Zealand.

Accordingly, I appeal to you and the Overseas Investment Office (OIO) to suspend the signing of the RLC's PPP contract until you have had time to consult with relevant Cabinet and Opposition colleagues and the OIO has been able to investigate the following concerns. Thank you.

Disclaimer

While I write to you as a concerned citizen, I am not disinterested. I was a co-founder of the Rotorua Pro-Democracy Society in 2013. I helped lead the transformation of the RP-DS into the Rotorua District Residents and Ratepayers (RDRR) in 2015. I came second in Rotorua's mayoralty elections in 2016 and 2019. I was elected into eighth place on Rotorua's 10-seat Council in 2019, joining two other RDRR councillors placed second and fifth. RDRR is the largest ratepayer interest group in a district in which 18,757 voted in the last district election. It has grown to having over 700 members and associates and 2,363 Facebook followers. RDRR's aim is to restore democracy, the rule of law, financial responsibility and policy making power to elected representatives.

PPP Contract to Outsource Wastewater System Management

The RLC's plan to outsource the management of Rotorua's wastewater system to a consortium of Trility, Fulton Hogan and Stantec (Trility NZ Ltd) was met with 92 per cent opposition¹ by presenters at the public Hearings on 25 June. It was confirmed² on 23 July that 81 per cent of written submissions opposed the plan. There were many reasons given for the opposition.

One was doubts about the provenance and intentions of a 'flag of convenience' or possibly 'false flag' registration. Despite recent assurances from the Mayor and Council officials that due diligence regarding potential partners had been underway for many years, Trility NZ Ltd was not actually registered as a New Zealand limited company³ until 24 February 2020.

Another reason was the discovery that Trility was Chinese owned, which intensified when this ownership was initially denied by Mayor Steve Chadwick and Deputy Mayor Dave Donaldson. Trility was acquired in 2018 by the Hong Kong-based investment holding company, Beijing Enterprises Water Group. Concerns deepened when Cr Donaldson responded to concerns about Chinese ownership at the Strategy, Policy and Finance (SP&F) Committee on 23 July 2020 by alleging and attacking xenophobia.

Residents and ratepayers are aware that Mayor Steve Chadwick has had a long association with Chinese authorities. For example, in 2016 she accepted an invitation by the Chinese Tourism Association to give a keynote address to the International Mayors' Forum on Tourism held in Zhengzhou, 24-27 May.⁴ A Memorandum of Understanding was subsequently signed by the RLC's Chief Executive (CE) Geoff Williams and Rotorua's Mayor with the Deputy General Manager of China Travel Service Head Office Henan Co. Ltd. which is controlled by the China Travel Service (HK) Group Cooperation. The MOU was intended to provide a partnership for further cooperation to promote a "Henan-New Zealand Tourism and Cultural Exchange Programme."

¹ https://www.nzherald.co.nz/local-democracy/news/article.cfm?c_id=1504814&objectid=12343076

² https://www.nzherald.co.nz/water/news/article.cfm?c_id=362&objectid=12350527

³ The New Zealand Companies Register lists Trility NZLtd (7887577) (NZBN: 9429047943117) with an address of Pricewaterhousecoopers, Level 26 Pwc Tower, 15 Customs Street West, Auckland, 1010.

⁴ Steve Chadwick (7 July 2016) International Mayors Forum on Tourism, Zhengzhou, China, 24-27 May 2016, report to the Monitoring and Operations Committee, Rotorua Lakes Council.

While this and many other trips to China by Rotorua's Mayor, CE and Cultural Ambassador Cr Trevor Maxwell may have been innocent tourism marketing ventures, Rotorua's residents and ratepayers have become increasingly concerned that a Beijing-owned company could be given control of their wastewater system, a company that could have a majority of its directors appointed by the Chinese Communist Party (CCP) and is likely to be part of China's penetration of New Zealand's local government.

Rotorua's Mayor Steve Chadwick was very briefly named in a 2017 paper⁵ by Professor Anne-Marie Brady in a context of the CCP interfering in our democracy. In 2020, in a more comprehensive submission to Parliament's Justice Select Committee, Brady⁶ pointed out (p. 3) that local governments have become an important focus for CCP foreign political interference activities because

- a. they are able to make independent planning decisions on infrastructure and investments which could undermine the policy of the central government,
- b. there is often overlap between local and central government politicians and political parties, as well as economic and political elites,
- c. local governments can be used by CCP interference activities to suppress individuals or organisations regarded as a threat by the CCP government, and
- d. pressure central government to pursue policies that suit PRC interests and control water rights and land use, and
- e. local governments do not have foreign policy expertise or advisors, or access to regular national security briefings, implying that they are vulnerable to penetration.

Brady noted (p. 8) that in

New Zealand's 2016, and 2019, local government elections had a number of instances of candidates with clear CCP united front connections, and mayoral candidates who received funding from figures involved in united front work organisations. Currently the Serious Fraud Office is investigating both Auckland Mayor Phil Goff, and Christchurch Mayor Dalziel's election expenses and income

More broadly, she explained, (p. 10):

⁵ https://www.wilsoncenter.org/sites/default/files/media/documents/article/magic_weapons.pdf

⁶ https://www.parliament.nz/resource/en-NZ/52SCJU_EVI_93630_JU69172/ec59cb5bfac8217b4d55c2200ba6e5875ce9943

The CCP has a comprehensive strategy to target foreign economic and political elites, in order to get them to promote China's foreign policy agenda within their own political system, to encourage them to relay information on foreign government intentions, strategies and the attitude of key actors towards China, as well as to provide access to cutting-edge technology ...

The Chinese People's Association for Friendship with Foreign Countries (CPAFFC, Youxie, 友协) —a united front organization—is in charge of China's sister city relations. Since 2015, CPAFFC has run an annual China-New Zealand mayoral forum. The theme for the 2020 China-New Zealand Forum will include the topics of climate change and Belt and Road Initiative (BRI), Xi Jinping's signature project. BRI is a China-centred political and economic bloc, one that will reshape the global order.

An interim conclusion is that RLC's decision to offer a PPP to Trility NZ Ltd could be in part a consequence of CCP foreign political interference in New Zealand's local government and potentially in breach of the Overseas Investment Act (July 2020) which warrants investigation.

Manipulation of Democratic Decision Making

The second theme to public concerns about outsourcing to Trility is the Mayor's undemocratic manipulation of decision-making processes.

It was claimed by the Mayor at the 23 July meeting of SP&F Committee and at full Council on 26 July that iwi were fully supportive of the proposal to outsource wastewater management to Trility NZ Ltd. A highly respected kaumatua, who participated as a member of the Te Arawa Partnership, has recently confirmed to me that two issues caused Te Arawa to pull out of helping select potential private sector partners well over a year ago.

The first was the difficulty of estimating the costs, and likely PPP budget blowouts, due to ageing infrastructure. The second was the culturally unacceptable proposal to pump treated wastewater back into Lake Rotorua.⁷ The Te Arawa Lakes Trust has since taken an identical stance, confirming that the Mayor's claims that iwi are supportive were probably deceptive.

Respectful consideration of antagonistic public feedback was significantly hampered at the Hearings on 25 June by the Mayor and Cr Merepeka Raukawa-Tait accusing me of

⁷ This proposal is also opposed by a vast majority of those given formal standing in case ENV-2020-AKL-000052 before the Environment Court.

predetermination⁸ and disrupting my presentation when I followed the precedent set by Cr Cliff Lee and presented at the Hearings as a citizen and then re-joined council as a councillor.

The CE claimed⁹ that the “worst-case scenario” of predetermination would be an affected party challenging a council decision through judicial review. However, the question of predetermination would only have been relevant if my vote was required to achieve a majority and a member of the minority challenged the decision. The CE should have known this, as should have the Council’s legal advisors.

Deceptive justifications were also used to gain the support of some elected members. A previous mayor (2004 - 2013) submitted against the proposal at the Hearing on 25 June due its bias in favour of one predetermined option.¹⁰ He also said there were "far too many risks and far too many unanswered questions" with the proposal ... "This [system management] can be done in-house. This is your core business."

Consideration of the Government’s proposed Three Waters Reform Programme by the RLC was also impeded by mayoral action and inaction. An invitation dated 6 July, from the joint central and local government Three Waters Steering Committee to elected members, appropriate senior officers and iwi partners to attend briefing workshops, was not extended to Rotorua’s district councillors.

Instead, on 14 July, Bay of Plenty regional councillors shared the invitation and indicated that the nearest workshop would be available in Tauranga on 23 July. This opportunity then appeared to be pre-empted by a RLC Governance workshop being called on the same morning, with the SP&F Committee being called that afternoon. The Deputy Mayor indicated that elected members could attend another Three Waters workshop except that it was after the RLC Governance workshop and SP&F meeting.

An attempt to inform elected members’ decision making about the Government’s Three Waters Reform Programme was deliberately thwarted by the chairs of SP&F and Council, Cr Merepeka Raukawa-Tait and the Mayor. Cr Raj Kumar and I attended the LGNZ/ SOLGM/ DIA workshop in Auckland on Monday 20 July. However, the SP&F Chair, with the explicit support of the Mayor, ruled out consideration of the Three Waters Reform Programme at the 23 July meeting as

⁸ https://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c_id=1503438&objectid=12343069

⁹ https://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c_id=1503438&objectid=12347632

¹⁰ https://www.nzherald.co.nz/local-democracy/news/article.cfm?c_id=1504814&objectid=12343076

“irrelevant”. In my view, this deliberate suppression of information prevented us from making crucial information available to fellow councillors and significantly impaired their decision making.

There is at least one key and unresolved point of contention between the Trility and the Three Waters Reform models. The outsourcing proposal assumes that the heavily indebted RLC will retain full ownership of its water assets and related debt for the 10-year contract, thereby keeping all borrowings on its balance sheet and using rates rises to fund Trility’s profits. In sharp contrast, the Three Waters proposal is that councils share asset ownership and related debt by moving them on to the balance sheet of new supra-regional water entities, in return for massive infrastructure upgrades, not-for-profit management and expert contracting, all prospects congenial to ratepayers.

A deceptive claim made by a senior official was that outsourcing would avoid Wellington-style sewage disasters¹¹ and another was that it was "unaffordable" and "impossible" to find \$200m to "capture the lost ground" on sewerage infrastructure.¹² The Trility outsourcing contract will not mobilize capital investment.

After the Council meeting on 29 July, another previous mayor (1992 to 2004)¹³ said that residents and business people would have "even more reason to be concerned" because it was hard to get accurate figures because "information has been withheld" and the project had been handled in a "non-transparent way." He was referring to Council’s refusal on July 28 to answer ten questions submitted by the Rotorua Daily Post. In his view, the 7-4 majority was “definitely not a good way for [the] council to make such an important decision and speaks volumes of the poor process that has been adopted by [the] council leadership.”

An interim conclusion at this point is that RLC’s decision to offer a PPP to Trility NZ Ltd could be in part a consequence of it’s decision making process being manipulated by the chairs of the SP&F and Council meetings to suppress consideration of alternative models and the Government’s Three Waters Reform Programme and warrants being conducted de novo.

11” https://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c_id=1503438&objectid=12333467

12” https://www.nzherald.co.nz/water/news/article.cfm?c_id=362&objectid=12352072

13” https://www.nzherald.co.nz/local-government/news/article.cfm?c_id=250&objectid=12352424&fbclid=IwAR13ImiO_QW1kNhh9mvavfFhY8YUU-tdrQaCnG-GPFuA1ByofU6ZtxWs7T8

The PPP Contract is Not in the Public Interest

Since the 2019 local body elections, RLC's elected members have been repeatedly presented with a predetermined solution to a problem. The predetermined solution to the failure of the mix of internal management and local contracts to manage the wastewater treatment system was to outsource the management of Rotorua's wastewater system to the Trility consortium.

Unmentioned in these presentations was that Trility NZ Ltd had already be given a \$1 million annual contract to embed three managers in Rotorua's wastewater treatment plant, presumably to improve its performance. Elected members of Council have not been given a systematic evaluation of that contract, and its outcomes, before being asked to consider a PPP. In effect, the PPP will increase Trility's \$1 million annual contract to \$15.6 million a year for the next 10 years.

More, the contract is CPI-indexed and flexible enough to meet the costs of achieving agreed performance standards and any revisions. Some of the implications can be projected. For example, between March 2019 and March 2020, New Zealand CPI inflation rate went up by 2.5 percent.¹⁴ If that inflation rate is applied to the Trility baseline annual price of \$15.6 million, it will compound to about \$20 million per annum in the next 10 years, before demands for additional payments are considered.

Ratepayers are also concerned about the contract being a PPP because they will have to fund Trility's profits from their targeted rates. The scale of likely profits was indicated by one of the expert submitters to the 25 June Hearings. He calculated that Trility's standard profit margin over the last five years has varied between 16.5 and 19.9 per cent of revenue.¹⁵ If so, then given the baseline annual price of \$15.6 million, between \$2.5 to \$3.1 million will have to be taken from targeted rates and leave Rotorua's economy.

Ratepayers have two questions.

1. Instead of outsourcing the management for \$15.6 to \$20 million over 10 years, plus paying for escalating profits, why can't Council's corporate management reform the current mix of internal management and local contracts?

¹⁴ <https://www.stats.govt.nz/information-releases/consumers-price-index-march-2020-quarter#:~:text=Annual%20change,for%20housing%20up%203.7%20percent>.

¹⁵ This estimate has been challenged by a senior official who claimed that 7-8 per cent profit on revenue was more likely, but which appears implausible.

2. Why would Council give away profits by having a public-private partnership with Trility?
It would add it to the profits already leaving our economy to CLM, for managing the Aquatic Centre, and to iPark, for managing our CBD parking, and so on, all in a Covid context where wage subsidies will run out at the end of September.

There is, however, another \$12.5 million to \$15.5 million of ratepayers' money at risk. If Council cancels the contract, Trility is entitled to five year's profit. There is no reciprocal payment required if Trility walks away. This lop-sided power in the contract also enables Trility to progressively renegotiate the contract to make even greater profits at risk to ratepayers.

Finally, the RLC's Statement of Proposal identified seven major problems to do with our three waters' systems; ageing infrastructure, growth in demand, increasing compliance, effects of climate change, funding and financing, internal capability, and regulating the quality of services.

It is widely accepted that under investment in wastewater infrastructure has been a major causal factor of these seven problems over decades. However, awarding a wastewater management outsourcing contract will not solve any of these problems. The Three Waters Reform Programme will, potentially, address all of them and help shift the burden of debt and investment and management to the new entities.

An interim conclusion at this point is that RLC's decision to offer a PPP to Trility NZ Ltd was not in the public interest because it was premature and warrants being conducted de novo to take careful account of the Government's Three Waters Reform Programme.

Recommendation

The interim conclusions above point to the possibility that the RLC's decision to offer a PPP to Trility NZ Ltd could be in part a consequence of

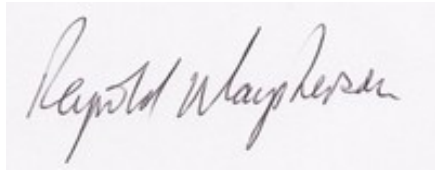
1. CCP foreign political interference in New Zealand's local government and potentially in breach of the Overseas Investment Act, and/ or
2. it's decision making process being engineered by the chairs of the SP&F and Council meetings to suppress consideration of alternative models and the Government's Three Waters Reform Programme.

If so, the former possibility warrants investigation, while the latter warrants the RLC's policy process being conducted *de novo* without bias and predetermination.

Hence my I appeal to you and the Overseas Investment Office (OIO) in the public interest is for you to suspend the signing of the PPP contract until you have had time to consult with relevant Cabinet and Opposition colleagues and the OIO has been able to conduct appropriate inquiries.

Thank you.

Yours sincerely,

A handwritten signature in black ink on a light grey background. The signature is written in a cursive style and reads "Reynold Macpherson".

Dr Reynold Macpherson

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3 August 2020.