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Dear Ms Platts,

### **Two Requests under the Official Information Act**

On the 17<sup>th</sup> of October 2008 You swore an affidavit in defence of your employer, Environment Waikato, in a court case where I was attempting to protect one of only three significant mainland populations of *Oligosoma moco* skink, namely that of in, and around, the wetland in Whangamata. (ref: Environment Court Decision 134 /2008)

This wetland that was fed by natural springs, has now been turned into a car park and high density housing area as part of the Whangamata marina project.

The Skink colony was discovered after the illegal burning of mangroves in 2005 by marina society members and supporters. The area cleared and burnt off was the **mitigated** area (adjoining salt marsh on the opposite side of the causeway) for the destruction of the wetland for the purposes of the marina .The now destroyed wetland was an **Area of Significant Conservation Value**.

The discovery of the skink was not notified to Hauraki Maori until 14<sup>th</sup> May 2008, two days later the Marina Developers with the (faulty) consent of the Department Of Conservation (not Hauraki Maori) moved in and started confiscating a very small fraction of the skink, while exterminating the majority. I took photos of the area on Queens Birthday Weekend(1<sup>st</sup> of June 2008) after being told of the discovery. Again I took photo evidence on the 3<sup>rd</sup> and 4<sup>th</sup> of July, where a targeted spraying of the Skink habitat was apparent, and later confirmed to me by Dr. Keith Corbett M.B.E., whom had been observing the habitat, and made repeated requests to TCDC to stop spraying.

Dr Corbett had pointed out that while Pampas grass was an introduced flora, it had the upside of providing valuable, advantageous habitat for our rare *Oligosoma moco* Skink.

One could perhaps perceive a loophole, a motive, here for anyone passionate about a multimillion dollar development, and taking matters into their own hands.

I also have evidence that the Marina Society had known about this rare skink habitat as early as February 2007. Not Feb 2008 as proffered by the Marina Society developer's president Mick Kelly.

Unlike the Wetland, the saltmarsh (mitigated Area) is not fed by a natural spring, though it does receive storm water runoff from a drain, courtesy of Whangamata's industrial area.

**At the conclusion of the investigation into salt marsh clearance, Your Council decided not to prosecute those responsible for the destruction, nor for the death of the skink that would have occurred from that burning.**

A local opponent of the Marina, and Green Ribbon Award winner for his efforts in trying to improve Whangamata's estuary water quality Paul Shanks, recently conveyed to me that whilst attending A Navigational and safety bylaws meeting late last year several community board members and Councillors (including your own Councillor Simon Friar) recounted to Paul that while illegally burning the mangroves, "hundreds of skink were running around underfoot." Apparently they were laughing as they recounted it to Paul.

Kessels and associates produced a report for Environment Waikato to determine the destruction that stemmed from that illegal mangrove burning activity. - EWDOCS-#1042233-v1-Whangamata\_Mangrove\_clearance\_and\_saltmarsh. An excerpt from that report :

*Tables 1 and 2 assess the area with regard to the EW Regional Policy Statement Criteria for assessing ecological significance. In summary, Whangamata Harbour as an entire ecosystem can be ranked as of **National Significance** because of its relative intactness, and the diversity of intact estuarine communities it contains, which in turn provide habitat for a number of nationally threatened indigenous species, such as NZ dotterel. To this end the Waikato Regional Coastal Plan recognises the Upper Whangamata Harbour as an Area of Significant Conservation Value (EW, 2001).*

I also have DOC documents (some of which I have attached to this email) that refer to the wetland that has now been turned into a car park, as one of only two Areas of Significant Conservation Value (ASCV) in that estuary, and the problems of maintaining Dotterel habitat in the estuary once the wetland will be destroyed.

**Similarly, as stated in your affidavit, even though you identified the person responsible for the illegal spraying on the CAUSEWAY which killed Oligosoma moco skink (the photos I provided you illustrate quite adequately that the spraying was deliberate)Your employer, Environment Waikato, AGAIN, decided not to prosecute!**

To this letter, I have attached a compilation of photos displaying the targeted spraying of pampas grass in the wetland / car park area, where skinks were living. I have also attached emails from Dr Keith Corbett M.B.E. protesting to Thames Coromandel District Council over the previous year regarding the targeted spraying of skink habitat.

Also included, an excerpt from the herpetological society newsletter of October 2008 regarding the inappropriate manner in which the "rescue" of a fraction of this Skink colony was conducted.

An excerpt from your affidavit:

8. Late on the 25 July 2008 Mr John Knappett sent an email to me stating that Bruce Connell had undertaken the spraying on the site. Mr Knappett stated that he would send through the rules to the contractor and that "the Whangamata Marina Society had indicated to Bruce that it would negotiate the mitigation programme with his company but certainly did not authorise any work in advance of all pre start consent conditions being satisfied".

As I received your affidavit and many others at 4:30 pm on the Eve of my case against the Marina Society, Environment Waikato, and Thames Coromandel District Council, I had to accept legal advice at that time to drop TCDC as a respondent in my case.

Up unto this time, the only correspondence I had received was that from Environment Minister Trevor Mallard, stating that there appears to be some confusion within TCDC as to whom was responsible for the spraying.

Upon further investigation that evening however, I learnt that Bruce Connell is not only a preferred contractor to TCDC, but the majority of equipment on the marina site is his, and his family own the registered office of the Whangamata Marina Society.

Ms Platts, **a question**, during your investigation, did you ever consider **motive** for the illegal spraying?

Perhaps an investigation should have best been referred back to the Police, even though the police had referred it back to DOC, and washed their hands of it?

**Another question**; Do you not consider that Connell or the marina society / TCDC, had **motive** for exterminating the skink habitat along the causeway? Dr Keith Corbett persistently pointed out To TCDC that targeting the Pampas grass along the causeway was killing the skink, but to no avail.

I also understand that Mr Connell has received approximately \$7,000 for his dirty work on the causeway, I, on the other hand have been sued approx \$50,000 for trying to defend this colony from extermination, in the face of a complete disregard from all crown agencies obligated with the skinks welfare.

The DOC website lists the Moko Skink as:

**Moko Skink**

**Taxon –Oligosoma moco**

**Threat classification – 6 Sparse**

**Qualifier – Human induced**

**Also** Does your council, like TCDC - the marina society, consider the skink as a rare endangered indigenous coastal reptile, or simply a nuisance? A pest?

You may argue that it is only sparse, that classification is only because it exists artificially on several offshore Islands.

Dr Keith Corbett M.B.E (who supported my case) informs me that this particular colony happened to be thriving, more so than the handful of other remaining mainland habitats and this colony's individuals appeared to be larger in size than those on offshore islands.

I also note from your affidavit that you personally, only learnt of the skink habitat at Whangamata on the 30<sup>th</sup> of July last year, after learning of the illegal spraying complaint, how is this? And, does your council not note rare /sparse native species habitats, even when your own employee's /contractor discover them initially?

During my court case E.W. contested repeatedly that no skink had been found below Mean High Water Springs. A great deal of time and cost was wasted on that issue despite Dr Keith Corbett M.B.E. arguing on my behalf that the skink fed below MHWS. I did point out one location with evidence provided by Bioreserches Ltd (working on behalf of the marina developers) of a skink found below MHWS.

During the case The Hauraki Maori Trust Board repeatedly requested from DOC evidence of Skink recovery locations. The evidence was held back until well after my case was concluded by Principle Environment Court Judge Bollard, who also happened to oversee the original Whangamata marina case that was vetoed by the Rt Hon Chris Carter .

**To my official information Requests:**

**With regard to Illegal clearance of mangroves in 2005 I request:**

***All documentation of that investigation relating to forming a conclusion that no charges should be laid, and in particular which council officers or councillors were involved in the input of that decision making process.***

**With regard to illegal spraying of the Skink habitat along the causeway:**

***All documentation of that investigation that concluded that no charges should be laid, and in particular which council officers or councillors were involved in the input of that decision making process.***

I wish to point out that I already have a copy of the Kessels and associates report of 2005 into the illegal mangrove burning, and do not require another copy. I wish to point out that vegetation in the mitigated area, has not yet grown back, and the token planting of oi oi requested as mitigation for the wide range of biodiversity that existed in the original wetland that has now been destroyed by the marina developers, has failed.

**Question:** When a consent applicant (the marina developers) fail to meet its obligations, namely that of not fulfilling its mitigation requirements, like the members of that society destroying the mitigated area, then that consent applicant being unable to recreate the wetland in the mitigated area, is it up to local Iwi and the wider community to seek

enforcement as conditions laid down by the Environment Court? Or does the council, as the consenting authority undertake observance and policing of said conditions?

To date the only evidence I have seen is that your council has the luxury of discretion, and it seems, always in favour of this applicant.

Are the marina society members above the law? The depth of the marina developer's corrosive influence within TCDC is widely known. What degree of influence do the marina developers have over your council?

**The last five years have shown a sudden deterioration in the Whangamata kaimoana beds** (Walsh K, per com 28 March 2007). Under tikanga, any risks to the kaimoana beds are unacceptable, yet continue. The Assessment of Environmental Effects (Iip service) commissioned by the marina developers perversely suggests dredging the shellfish beds, and placing them somewhere else in the Estuary. One can only assume that with construction of the marina, further degradation of Kai moana will continue.

With regard to TCDC now wishing to give a 30 year extension for the sewage pond to continue leaking up to 30,000 liters per day into the estuary, despite an agreement being struck with Clean Water Whangamata to re – line the leaking pond through mediation via the Environment Court. Does your council not see any need to pressure this local council to conserve this Estuary of **National Significance**?

Many of the decisions that have the greatest effect on people's everyday lives are made by local, not central government. To this end, one should expect greater transparency and impartiality towards the **wider** community; my experience has sadly found the opposite, in particular with regard to this marina "society Inc".

With regard to the failing waste water system, a number of community groups opposed the TCDC's proposed abysmal waste water system upgrade (re: Paul Shanks Green Ribbon Award) and appealed to the Environment Court. Through mediation it was agreed that TCDC would re-line the leaking sewage settling pond, which leaks up to a milk tankers worth of sewage a day, about a kilometre directly up stream of the marina site and major shellfish beds. The Pond was constructed in 1986, three years later Bruce Scott (previous Whangamata community Board Member, TCDC Councillor and Deputy Mayor, currently Surfing New Zealand President) and ardent supporter of the marina, was made aware of the problem via numerous reports, but did nothing.

Within months of the agreement, the TCDC gave a non notified consent for the pond to leak for a further 30 years.

At the first Environment Court Hearing in 1999, TCDC Strategic Assets Manager Murray Lyngaard was called back to give evidence to the court that the Whangamata Waste Water System can function inside consent requirements and can cope with the new Marina development (abridged) upon which he stated in the affirmative. This was a lie.

Within two hours of giving this false testimony Mr Lyngaard is sacked, and replaced by John Whittle, who in the future becomes the focus of at least one internal fraud investigation (concerning the marina) at TCDC.

Does your Council still accept this AEE as sound environmental science and reasonable environmental practice?

I believe that the lenience awarded to this "incorporated society" demands further investigation.

Dear Ms Platts,

it is not my intention to hold you or your council solely responsible for all the transgressions that have occurred regarding this marina development and the extermination of the skink habitat. **Some** of the people I have added to the CC list may shed some light, or even accept some responsibility for this fiasco.

My final question:

**Where does Conflict of interest end and corruption begin?**

I understand that you may not be able answer all the questions I have posed, or **both** Official Information Requests, so if you could pass this correspondence onto someone in your organisation that could, I would much appreciate it.

Perhaps Simon Friar, Environment Waikato Councillor, Active Marina Society Member, and instigator of the illegal mangrove clearance would be best suited to respond?

Kind Regards,

Michael Gunson

C.C. Resource Management Act (Simplifying and Streamling) Amendment Bill Select Committee.