

Appendix B to Memorandum of Counsel for ANZCO dated 14 June 2013

Record of Transcript in relation to MATTER THREE: Definition of “proposed effluent area”

Please note this has had some minor editing for relevance and readability

28 March. Week three – Day 3 – Audio file 1:

1. 59.55 Commissioner Sheppard: At paragraph 38 legal subs – you’re suggesting that for the purpose of controlling where discharges might be found, you’re going to look not only at the boundaries of the property where the discharge occurs, but you’re going to allow for some kind of contractual deal with adjoining properties so that the discharge plume might be permitted to extend rather further - is that right?
2. 1.00.44 Jane Walsh – I can see why you’re asking that question Sir and it might help if we turn to Appendix A – as that will explain this point more clearly. So we have proposed an addition at Rule 5.36, which shows a double underlining of condition 1(b). So instead of “site” we have suggested “property or proposed effluent discharge area”, so all we are saying is, whatever that discharge area might be, and that can be defined on a map there is no reason why it shouldn’t be, that the rule should be capable of assessing both where discharge originates from and where it is to be discharged to. So it’s in relation to a point source discharge there, and whatever the legal arrangement is, or wherever the property boundaries are, shouldn’t matter provided you can define the discharge area. Where that discharge area goes over 2, 3 or 4 or however many properties, it is still the one discharge and so it should be capable of being assessed as one discharge regardless of where the boundaries might lie.
3. 1.02.25 Commissioner Sheppard – I’m not quite sure I understand - is it to enable an activity to keep on discharging waste into the ground, for as far as they choose to call the “proposed effluent discharge area”?
4. 1.02.51 Jane Walsh – No it is to recognise that a discharge always relates to an area of land, and that area of land will be determined by a number of situations to which Mr Douglass will be able to talk. But in ANZCO’s case for example, it has land which it leases as part of its discharge area. Now it’s the

one discharge, and its only going to one area, but because that area does not fall within the definition of “site” it falls to be a non-complying activity. So if you cannot meet that condition because you don’t own that site to which you are discharging, you fall to be non-complying, and that is not effects based.

5. 1.03.40 Commissioner Sheppard – I’m not sure that the effects based argument gets far with me, but I’m grateful for the further explanation as to what you had in mind, and I see you’ve suggested might not only include a leasehold but a contractual basis, so that a discharger who has no lease or ownership of the land to which the plume extends, might nevertheless be entitled to continue that discharge if some contract is come to with the owner of that land – is that right?
6. 1.04.25 Mr Douglass – can I ask a point of clarification Sir?
7. Commissioner Sheppard – Mr Douglass I’d like to hear what you have to say a bit later – but I am just trying to grasp what counsel has intended to convey to me just now.
8. 1.04.40 Jane Walsh – If that discharge area is accurately set out in the application for discharge, then of course it would be open to the council to assess the effects of that, and if that person was unable to provide some kind of written approval or proof of an agreement that they were able to discharge onto that person’s land, then of course it would be open to the council to say well we don’t accept the effects of that because your plume is extending onto someone’s land. The intention of this rule, of this addition, however, is not all to allow for that. It is to allow for the situation where the discharge originates from a different place to where it is going to be discharged to. And that can be encompassed in the discharge area, in the consented area.
9. 1.05.35 Commissioner Sheppard – well thank you for that. I think I probably had misunderstood, or thought is this some way of doing a private deal at the cost of the environment, but you’ve explained to me that is not what you intend.
10. Jane Walsh – no, not at all. I’d be happy to consider your concern more and see if there could be a way that we could address that clearer. Perhaps we could proffer a definition of “effluent discharge area” might better meet the concern which you’ve raised.

11. 1.06.10 Commissioner Sheppard - Certainly our practise is if anybody offers to come back with a bit of extra drafting, we always welcome that.