

Notice - Open Letter To all Regional Councils and Territorial Local Authorities .

Dear Mayor, Councillor and CEOs,

Subject: Trans-Pacific Partnership (TPP) Negotiations.

I write on behalf of the Renewables, a Motueka based Climate Action group, who take an active interest in New Zealand's ability to mitigate Climate Change. We have recently focussed on the TPP, Free Trade Agreement negotiations, as we see some of the proposed outcomes affecting New Zealand's ability to manage and legislate appropriately in the public interest. This led to our lobbying Tasman District Council to address the issue;

<http://www.stuff.co.nz/nelson-mail/news/9802308/TDC-seeks-positive-benefits-from-TPPA>

Summary of Our Presentation.

Please consider this a proposal toward your Annual Planning process; as a letter bringing the attached resolution to your Council's attention; and as tool for the public to gain a level of knowledge about the mysterious TPP and its attendant process.

Auckland, Nelson and Tasman District Councils have carried a resolution that proposes the 'public interest' in the TPP negotiations. This is attached. Other Councils, Wellington, Horizons and Palmerston North, have expressed interest in this resolution.

We have taken the liberty to modify it to include a further concern, biosecurity.

What is TPP?

The TPP is a set of negotiations involving presently 12 nations; Australia, Singapore, Vietnam, Brunei, Malaysia, Japan, Canada, USA, Mexico, Peru and Chile along with NZ. Taiwan and South Korea are possible entrants. The following Wikipedia article gives a history of the TPP;

http://en.wikipedia.org/wiki/Trans-Pacific_Partnership

TPP negotiations have been undertaken in a series of meetings stretching over the preceding 3 years. They are supposed to conclude in the near future. At the most recent Singapore round of Ministers meeting the following statement was issued at its conclusion, Tuesday 10th December 2013;

<http://keionline.org/node/1851>

We, the Ministers and Heads of Delegation for Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam, have just completed a four-day Ministerial meeting in Singapore where we have made substantial progress toward completing the Trans-Pacific Partnership agreement.

Over the course of this meeting, we identified potential “landing zones” for the majority of key outstanding issues in the text. We will continue to work with flexibility to finalize these text issues as well as market access issues.

For all TPP countries, an ambitious, comprehensive and high-standard agreement that achieves the goals established in Honolulu in 2011 is critical for creating jobs and promoting growth, providing opportunity for our citizens and contributing to regional integration and the strengthening of the multilateral trading system.

Therefore, we have decided to continue our intensive work in the coming weeks toward such an agreement. We will also further our consultations with stakeholders and engage in our respective political processes.

Following additional work by negotiators, we intend to meet again next month.

TPP Agenda

Here is the Ministry of Foreign Affairs and Trade (MFAT) overview of the TPP negotiations;

<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/index.php#overview>

The TPP negotiators are dealing with many issues broken into 29 chapters. The following link from November 2011 is effectively a press release from Ministers English and Groser identifying the framework agreed between the then 9 participating countries.

<http://beehive.govt.nz/release/next-step-trans-pacific-partnership-agreement>

And from this, an 8 page background paper gives detail on the 'framework' of TPP and content of the main chapters or subject areas which include; Competition, Cross Border Services and Customs, E-Commerce, Environment, Financial Services, Government Procurement, Intellectual Property, Investment, Labour, Market Access for Goods, Rules of Origin, Sanitary and Phytosanitary Standards, Technical Barriers to Trade, Telecommunications, Textiles and Apparel, Trade Remedies and Tariffs.

The specific content being negotiated is not to be found in any of the releases from Government. This is shrouded in secrecy to the consternation of the interested public and legislators here and in the other negotiating countries.

http://beehive.govt.nz/sites/all/files/TPP_broad_outlines%20.pdf

Many organisations both here and overseas are calling for the release of the detail of the TPP text. The extreme secrecy is one of the controversial issues connected with the TPP.

Treaty negotiations

Treaty negotiations are firmly maintained in the realm of government's executive which in New Zealand is the Cabinet. Clause 7.112 of the Cabinet Manual deals with the ratification of treaties. Parliament is merely informed and gets to enact enabling legislation, however it does this whether or not it endorsed the treaty in question. The closest Parliament gets to the treaty ratification process is through the Foreign Affairs, Defence and Trade Select Committee.

The following is a link to the relevant clauses of the Cabinet Manual;

<http://cabinetmanual.cabinetoffice.govt.nz/7.112>

There was an attempt to democratise treaty-making in NZ in the early 2000s but the legislation failed to gain its second reading. Government prefers to keep the Treaty making powers entrenched in the executive at this point in history.

TPP Secrecy

The parties to the TPP must initially agree to a memorandum of understanding and any late arrivals must gain agreement from the other parties allowing their entry. The TPP memorandum itself is a secret. The following link is to 'freedom info' who provide insight into the secret memorandum of understanding signed by each participating nation.

<http://www.freedominfo.org/2013/11/spotlight-on-trade-talks-after-wikileaks-disclosure/>

The parties have apparently agreed that all documents except the final text will be kept secret for four years after the agreement comes into force or the negotiations collapse. This reverses the trend in many recent negotiations to release draft texts and related documents. The existence of this agreement was only discovered through a cover note to the leaked text of the Intellectual Property chapter.

New Zealand is the repository for all these documents and the conduit for all requests for the release

of information, including this Memorandum of Understanding.

An open letter to Prime Minister John Key and Trade Minister Tim Groser from unions, civil liberties, church, public health, development, environmental and trade justice groups has demanded the release of the secrecy document. The Green Party and Mana Movement have both endorsed the call.

The release of the secrecy memorandum was requested by many parties during the Chicago round of negotiations in early October 2011. New Zealand lead negotiator Mark Sinclair has asked for responses from the other countries. As of March 2014 there is no agreement to do so.

<http://tppwatch.wordpress.com/2011/10/16/trans-pacific-partnership-papers-remain-secret-for-four-years-after-deal/>

Here is the open letter from various USA based organizations to the then USA Trade negotiator Ron Kirk. This is similar to calls from others in TPP nations;

<http://www.citizen.org/documents/us-transparency-letter-2011.pdf>

TPP Chapters

Now in March 2014 we have the benefit of a few leaked documents; Environment, Intellectual Property and Investor State Disputes - all of which can be accessed at the It's Our Future website <http://www.itsourfuture.org.nz/> or direct from Wikileaks

<https://wikileaks.org/tpp-sacrificing-the-environment.html>.

Intellectual property issues are the desire to extend patent holder rights, restrict internet usage and open access. We are aghast at the suggestion of criminalization of activity associated with usage of material with artistic or intellectual content. Implications for NZ are wide ranging and would affect Council run libraries, Pharmac, and anyone who uses material with artistic or intellectual content.

Investor-state dispute mechanisms provide favourable jurisdictions for Investors where they perceive their profitability is limited by government legislation or action.

Other chapters such as the one dealing with Government Procurement may directly affect Council decision making and resource allocation.

TPP, because of its wide scope, might limit our ability to legislate for a range of community-good outcomes. This was identified by the Renewable's Joanna Santa Barbara a retired doctor in her presentation to TDC (Tasman District Council) on the 6th March, in respect to Plain Packaging of

Tobacco Products legislation passed by New Zealand's Parliament and now on hold, out of fear of an 'investor-state dispute' suit as allowed in the TPP.

<http://tvnz.co.nz/politics-news/key-admits-plain-cigarette-packaging-may-not-go-ahead-5345464>

TPP and Climate Change.

There is very real concern that the TPP may prevent future Governments from legislating to strengthen greenhouse gas emissions reduction targets and climate change mitigation strategies. The investor-state dispute mechanisms allow challenges to legislation where it is claimed to interfere with a corporation's profits. Philip Morris' case against Australia over plain packaging of Tobacco Products is one such case. There are in excess of 100 globally.

Local Government is given Climate Change guidelines by Central Government within which to set policy and future planning;

<http://www.mfe.govt.nz/publications/climate/climate-change-effect-impacts-assessments-may08/page4.html>

The following link is the Ministry advice to Local Government.'Responding to the Effects of Climate Change'.

<http://www.mfe.govt.nz/publications/climate/preparing-for-climate-change-guide-for-local-govt/html/page3.html>

Prof. Jane Kelsey from Auckland University <http://www.law.auckland.ac.nz/uoas/os-jane-kelsey> has assessed the leaked Environment Chapter as follows:

<https://wikileaks.org/tpa-environment-chapter.html> Please note that there are links to all the leaked papers at the bottom of her analysis. From her assessment under the subtitle 'Overview';

The Environment Chapter addresses matters of conservation, environment, biodiversity, indigenous knowledge and resources, over-fishing and illegal logging, and climate change, among others. It might be expected to provide balance to the commercial interests being advanced in the other chapters, and genuine protections that are consistent with international environmental law.

Instead of a 21st century standard of protection, the leaked text shows that the obligations are weak and compliance with them is unenforceable. Contrast that to other chapters that subordinate the environment, natural resources and indigenous

rights to commercial objectives and business interests. The corporate agenda wins both ways.

At this point perhaps you might allow a few minutes to review this video by Greg Craven where he lays out a very rational approach to reach appropriate decisions in respect to Climate Change mitigation;

<https://www.youtube.com/watch?v=zORv8wwiadQ> and the following link provides material and discussion on the subsequent book by Craven "What's the Worst That Could Happen? A Rational Response to the Climate Change Debate" from 2009;

<http://www.manpollo.org/forums/index.php>

To this effect we need agreements and treaties that enable precautionary and proactive action to mitigate Climate Change on a global scale.

TPP and your Council

Tasman Council adopted in March 2014 (with the amendment of point 12 removing the requirement for public consultation during the negotiations) the 12 point public interest resolution originally passed by Auckland Council in December 2012 and Nelson in July of 2013. Other Councils also have dealt with TPP and passed varying positions; Wellington, Palmerston North and Horizons Councils have variously called for transparency in negotiations and that New Zealand's public interest and Sovereignty be maintained.

We believe that NZ's Councils have a major role in representing the public/community interest and TPP potentially could compromise this interest.

The resolution we are requesting New Zealand's Regional Councils and Territorial Local Authorities to adopt is as set out in **Attachment A**.

This position is comprehensive and represents common sense and a position that most New Zealanders would agree with. As such we regard it as the 'public interest' position.

We thank you for your attention.

Attachment A

TPPA resolution for Local Government consideration

That (name of Council) Council encourages the government to conclude negotiations on the Trans-Pacific Partnership and Free Trade Agreements in a way that provides net positive benefits for the (name of local region or city) Region and New Zealand, that is, provided the Partnership and Agreements achieve the following objectives:

- i. Continues to allow the (name) Council and other Councils, if they so choose, to adopt procurement policies that provide for a degree of local preference; to choose whether particular services or facilities are provided in house, by council-controlled organisations (CCOs) or by contracting out; or to require higher health and safety, environmental protection, employment rights and conditions, community participation, animal protection or human rights standards than national or international minimum standards;
- ii. Maintains good diplomatic and trade relations and partnerships for (local region) and New Zealand with other major trading partners not included in the agreement including with China
- iii. Provides substantially increased access for our agriculture exports, particularly those from the (name of) region into the US Market;
- iv. Does not undermine PHARMAC, raise the cost of medical treatments and medicines or threaten public health measures, such as tobacco control;
- v. Does not give overseas investors or suppliers any greater rights than domestic investors and suppliers such as through introducing Investor-State Dispute Settlement, or reduce our ability to control overseas investment or finance;
- vi. Does not expand intellectual property rights and enforcement in excess of current law;
- vii. Does not weaken our public services, require privatisation, hinder reversal of privatisations, or increase the commercialization of Government or of (insert name) Council or other local government organisations
- viii. Does not reduce our flexibility to support local economic and industry development and encourage good employment and environmental practices and initiatives like the (insert examples), and the Mayor's Taskforce for Jobs which enable marginalised young people to develop their skills and transition into meaningful employment;

- ix. Contains enforceable labour clauses requiring adherence to core International Labour Organisation conventions and preventing reduction of labour rights for trade or investment advantage;
- x. Contains enforceable environmental clauses preventing reduction of environmental and biosecurity standards for trade or investment advantage;
- xi. Has general exemptions to protect human rights, the environment, the Treaty of Waitangi, and New Zealand's economic and financial stability;
- xii. Has been negotiated with real public consultation including regular public releases of drafts of the text of the agreement, and ratification being conditional on a full social, environmental, and economic impact assessment including public submissions.