

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2010-404-005092

UNDER

the Judicature Amendment Act 1972 and Part 30 of
the High Court Rules

BETWEEN

**NEW ZEALAND CLIMATE SCIENCE EDUCATION
TRUST**

Plaintiff

AND

**NATIONAL INSTITUTE OF WATER AND
ATMOSPHERIC RESEARCH LIMITED**

Defendant

**SECOND AFFIDAVIT OF TIM DAVID MAHOOD IN OPPOSITION TO
APPLICATION BY PLAINTIFF FOR DISCOVERY OF DOCUMENTS
Dated 5 July 2011**

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I, TIM DAVID MAHOOD of Auckland, Solicitor swear

1. I am the plaintiff's general counsel.
2. I am authorised on its behalf to swear this affidavit.
3. I make this affidavit further to my affidavit of 1 July 2011.
4. It has been drawn to my attention that exhibit 5 to my affidavit of 1 July 2011 being a letter from the Australian Bureau of Meteorology to the plaintiff refers in paragraph 2, item 1, to "six individual station reports as the Bureau did not produce a report for Hokatiki (sic) as this was published by NIWA prior to the review by the Bureau" and, in item 6, to "...underpinning the Bureau reports such as excel spreadsheets...".
5. I understand that the plaintiff may interpret this as indicating that the Bureau did provide a report or reports being its own "station reports". This is not the case.
6. The correct position is that the station reports were provided initially in draft by the defendant to the Bureau.
7. In a process of iterative review consisting of phone calls, emails, marked up copies of the reports and comments the Bureau carried out its review by commenting on the reports provided by NIWA to the Bureau. With the exception of its letter of 14 December 2010 (already disclosed) the Bureau did not itself produce any peer review report or station report independently or otherwise despite what may appear on the face of the letter from the Executive Legal Officer at the Bureau to Ms Gardner who is legal counsel at NIWA. I have personally checked that this is the position and can confirm it to be so.
8. In the synopsis of submissions provided by counsel for the plaintiff at paragraph 28 there is a reference to a "Review" being, from the context of the submissions, NIWA's own review of the 7SS. At paragraph 28, counsel for the plaintiff says

The Review drastically changes the 7SS in almost all important respects. Only one of NIWA's published Schedule of Adjustments...

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9. I am not aware of any evidence for this assertion and, in any event, it is wrong. Looking at the review document which appears annexed to Mr

Morgan's affidavit as exhibit "B" the second page contains a graph for the New Zealand Annual Temperature and Trend. The changes brought about as a result of the review to which counsel for the plaintiff refers can be assessed by comparing the red line with the blue line, the blue line being the NZ annual temperature and trend prior to the review. As can be seen the changes, far from being drastic, are minimal and, most importantly, the overall trend is confirmed.

Sworn at Wellington this 5th)

day of May 2011)

before me:)

A Solicitor of the High Court of New Zealand

