

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of applications for
Resource Consent Application **APP-
2013016147.00** by The Department of
Corrections – Whanganui for the discharge
of stormwater and associated contaminants
to water from the Whanganui Prison, Pauri
Road, Kaitoke

REPORT TO THE COMMISSIONERS

**MR DAVID MCMAHON (CHAIR), MS SHARON MCGARRY AND MS ELIZABETH
BURGE**

**SUPPLEMENTARY EVIDENCE OF NATASHA CACILIA ADSETT – CONSULTANT
PLANNER FOR MANAWATU-WHANGANUI REGIONAL COUNCIL**

19 November 2020

A. INTRODUCTION

1. My name is Natasha Cacilia Adsett.
2. My qualifications and experience are outlined in my original s42A report dated 18 August 2020 and for brevity are not repeated here.
3. This evidence is supplementary to my evidence of 18 August 2020 and 23 October 2020. It outlines a written statement following the hearing held on the 17-19 November 2020. Firstly, I address the issues still outstanding at the time of writing my aforementioned evidence being:
 - a. Flooding and erosion effects; and
 - b. Positive effects
4. Secondly, I address issues raised at the hearing including:
 - d. Consideration of Part 2 of the RMA
 - e. Joint witness statement dated 13 November 2020
 - f. The National Policy Statement for Freshwater Management 2020
 - g. s104(1)(ab)
 - h. s104(2A)
 - i. s107(1)
 - j. Regionally and nationally significant infrastructure
 - k. Conditions
 - l. Sensitivity of receiving environment and capacity to assimilate pollution
 - m. Activity status
 - n. s104D
 - o. Cultural impact assessments
 - p. Short term consent
 - q. A final recommendation.

5. I also refer to the statement of Logan Brown dated 19 November 2020.

B. FLOODING AND EROSION EFFECTS

6. In my previous evidence I have outlined, based on the advice of Mr Bell, that the effects of flooding and erosion from the stormwater discharge was unknown.

7. Following the evidence of Mr Fisher, Mr Bell has reviewed this evidence and advised that he agrees with the conclusion of Mr Fisher in paragraph 77 that *“flooding will not be worsened by the Prison stormwater discharge”*.

8. On this basis I consider that any flooding and erosion effects will be **less than minor**.

C. POSITIVE EFFECTS

9. In Paragraph 35 of Mr Halls evidence he notes that I do not identify the positive effects of the prison.

10. I have reviewed the assessment undertaken by Mr Hall along with the evidence presented by Mr Pearse and Mr Nind. I agree with the evidence presented that the discharge of stormwater associated with the operation of the prison on the effects on social, economic and health and safety are positive and provides for the continued operation of the prison.

D. CONSIDERATION OF PART 2 OF THE RESOURCE MANAGEMENT ACT (1991) (RMA)

11. Mr Hall, in section 368 of his report outlines Part 2 and the ability or otherwise to undertake recourse to it.

12. As outlined in my original evidence at paragraph 199 I consider that there is no reason to recourse to Part 2 given the recent release of the National Policy Statement Freshwater Management (NES-FM). Despite Mr Halls opinion that recourse is required given the One Plan has yet to be updated to reflect the NPS-FM I remain of the opinion that no recourse is needed.

13. The One Plan, while yet to be updated to what is required within the NPS-FM (ie. The requirements of Part 3 of the NPS) I do not consider the One Plan to be inconsistent with the NES nor am I aware of any legality, uncertainty or incompleteness in the relevant part of the One Plan (2018) when considering the application.
14. As per my original evidence I remain of the opinion that as there are no known illegalities, uncertainties or incompleteness with the One Plan, therefore no further assessment against Part 2 of the Resource Management Act (1991) is necessary to assist with making a decision
15. To assist the Panel, should they reach a different conclusion, I have undertaken an assessment of Part 2 below. For brevity I have focused on areas where I disagree with Mr Halls assessment at Paragraph 373 of his evidence in chief.
16. Firstly, I address Section 5 of the Resource Management Act. I disagree with Mr Hall in paragraph 373 so far as he states "*The discharge manages contaminants such that the life supporting capacity of water and ecosystems will be safeguarded. Adverse effects on the environment are in some instances avoided and in others mitigated.*"
17. Based on the evidence of Mr Brown I remain of the opinion that the effects on water quality and the lakes are potentially more than minor. This is due to the existing internal load within the lakes and the contribution that the continuation of the stormwater discharge will add. While I accept that the Applicant has proposed a number of mitigation measures (i.e. weed harvesting and the use of a filter) I am of the opinion that these are uncertain and the proposed conditions are ultra vires in that it relies on additional consents being obtained and /or third party agreements by land owners. This, in my opinion, means that the application does not provide for the safeguarding of life supporting capacity or ecosystems.
18. With regards to section 6 Matters of National Importance I agree that (a) is of relevance. I note these are matters that must be provided for. (a) requires preservation of wetlands and lakes. For the reasons stated above and those given by Mr Brown I do not consider the application to be providing for this matter.
19. With regards to (c) I disagree with Mr Hall and consider that through the recognition of the lakes as 'Threatened' in the One Plan they are by default recognised as significant. In addition, lakes and wetlands are elevated to a level

of recognition in the Act which I would consider significant (ie. Through recognition in s6(a)). For reasons I have already outlined above I do not consider the discharge is providing for the preservation of these lakes.

20. With regards to (e) I remain of the opinion that the BPO is flawed in not allowing for the incorporation of the CIA's prepared by Ngati Apa and Tupoho. Through this I do not consider this matter has been appropriately provided for.
21. With regards to section 7, Section 7(aa) concerns the ethic of stewardship. To give full effect to this matter I am of the opinion that the BPO should take full account of the CIA's to enable iwi to undertake stewardship.
22. With regards to section 7 (c) I am of the opinion the amenity value is not provided for and this is confirmed in the caucusing notes of Mr Brown and Dr Keesing from September 2018 and discussed in Paragraph 68 of my original evidence.
23. With regards to sections 7(d) and (e) I am of a differing opinion to Mr Hall and remain of the opinion that the effects on the lake water quality will be more than minor. In this regard I do not consider these matters are being given effect to. Mr Brown is clear that the proposal does not maintain or enhance the environment nor does it provide for the values of the ecosystem.
24. Section 7(g) refers to any finite characteristics of natural and physical resources. Mr Brown is of the opinion that the lakes do not have further capacity to assimilate pollutants noting there is a risk of the lakes flipping. In this regard I do not consider this matter to have been given regard to.
25. With regards to section 8 – Treaty of Waitangi – I agree with Mr Hall that the Applicant, being a crown agency has a duty under the Treaty of Waitangi. In addition, Section 8 states the principles of the Treaty of Waitangi must be taken into account.
26. I refer to my comments above relating to the BPO assessment and also the evidence given by Nga Wairiki Ngati Apa and Te Runanga o Tupoho in relation to the process to date. Te Runanga o Tupoho noted concerns about the process to date and the willingness of the Applicant to be forthcoming and highlight and engage with iwi on matters such as the Stormwater Management plan and conditions. I note however there has since been an offer to engage on these matters.

E. JOINT WITNESS STATEMENT DATED 13 NOVEMBER 2020

27. The panel has requested that I consider the final paragraph on page 2 of the Joint Witness Statement dated 13 November 2020.

28. This paragraph states

In terms of cumulative effects of nutrients, we agree that the lake is a sink, that the Whanganui Prison stormwater even with an improved discharge quality, will continue to release nutrients to the lake, that additional nutrient load does not assist in the lake's condition, but that the proposed treatment of stormwater and mitigation to harvest macrophyte biomass could balance the inputs to a point of a neutral or net load reduction from the lake system.

29. I note that the agreement relies on a two-prong approach of the Applicant undertaking both treatment of the stormwater **AND** harvesting of weed.

30. The Applicant has proposed a number of conditions which requires the treatment of the stormwater through a propriety device and weed harvesting both appear to rely on consents and/or approval from landowners. On this basis I am of the opinion that these options have a high degree of uncertainty given the consent for weed harvesting (and any associated structures such as a launch ramp) has not been considered and/or landowner approval may not be able to be obtained.

31. Mr Hall is of the opinion that weed harvesting is allowed for through rule 13-9 so far as it excludes activities "*where they are carried out for the purposes of protecting or enhancing the habitat, including the control of pest animals and pest plants.*". Mr Brown in his evidence identifies "*The weed harvester does not discriminate between exotic and native macrophytes and therefore effects on native macrophytes needs to be considered. These effects on native macrophytes may well be positive but needs to be understood prior to undertaking the works.*". Given this, I am reluctant to draw a conclusion that Rule 13-9 give an all-encompassing exclusion to allow this activity as a Permitted Activity.

32. Mr Brown also notes other requirements such as installation of boat ramps which are robust enough enabling the launching of a harvester into the lake. Again, this is an activity which has not been addressed by the Applicant and will potentially require consent.

33. The Applicant has indicated the propriety device may have consenting requirements. However, the Applicant has not clarified what these are. Again, I am of the opinion this brings in a level of uncertainty and poses a risk that these mitigations may not be able to be implemented and therefore may not be able to address the effects of the continue stormwater discharge.

F. THE NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT 2020

34. I agree with Mr Quinn, at paragraph 68 of his statement, that the NPSFM is not a consideration under S104D. However, it is a clear consideration under s104(1)(b)(iii).
35. Mr Quinn correctly identified that the One Plan has yet to be updated to reflect the provisions of the NPS-FM, particularly those within part 3 of the NPS. I agree that these provisions are direction to the Regional Council on how their plan(s) should be amended.
36. However, I remain of the opinion that Parts 1 and 2 – being the single Objective and 15 Policies, are relevant and need to be considered in a decision making process. I have outlined the relevant provisions in my supplementary evidence dated 18 August 2020 in section G.
37. I acknowledge in my supplementary report that the work required of the Regional Council has yet to occur. However I remain of the opinion that consideration still needs to be given to the fundamental nature of Part 3 including if the relevant attributes in Schedules 2A and 2B are met and the requirement of section 3.20 in regards to responding to degradation.

G. S104(1)(AB)

38. The panel raised the application of s104(1)(ab) to this application. I agree with Mr Quinn that this section is not applicable to this application as it came in to effect in 2017 which was after the lodging of this application (2013). I am of the opinion the application needs to be assessed against the legislation at time of lodgement.

H. S104(2A)

39. The Applicant has raised the matter around the value of existing infrastructure in section 342 of their evidence in chief. In my original evidence I acknowledged there is a value attributed to the existing infrastructure and agree with the comments made with Mr Hall in this regard.

I. S107

40. As outlined in my original evidence s107 is also required to be considered as the application is for a discharge. Based on the joint witness statement between Dr Keesing and Mr Brown dated September 2018, there is a risk this discharge will exacerbate the rendering of freshwater to be unsuitable for consumption by farm animals and also have an effect on aquatic life. Therefore, I am of the opinion this application is contrary with s107 (1).
41. Section 107 (2) however does allow for temporary discharge to occur provided it still meets the purpose of the Act to do so. As Section 107(1) is unable to be met the Panel would need to look under section 107(2) and one of the provisions to enable a short term consent to be granted.

J. REGIONALLY AND NATIONALLY SIGNIFICANT INFRASTRUCTURE

42. The panel posed a question to Mr Quinn if the prison is either nationally or regionally significant infrastructure.
43. In addition to the guidance given by Mr Quinn the panel should also consider Policy 3-1 of the One Plan. Policy 3-1 outlines infrastructure that is considered to be either regionally or nationally important.
44. This policy identifies the following as being regionally significant infrastructure:
- public or community drainage systems, including stormwater systems.*
45. In my opinion I consider this stormwater system to be a private system and therefore not included within this list. On this basis I do not consider that the One Plan provides for the Applicants stormwater system as either regionally or nationally significant infrastructure.

46. However, I do acknowledge based on the evidence of Mr Pearse that the system is an important contributor to the local economy and consider this as one of the positive benefits identified by Mr Hall in his evidence.
47. With regards to section 3.22 I have reviewed the evidence of Mr Hall in Appendix 5 of his Evidence in Chief and agree with his reasoning that the stormwater system falls within the definition of specified infrastructure and other infrastructure as allowed for in the National Policy Statement for Freshwater 2020.

K. CONDITIONS

48. As mentioned earlier I hold concerns that a number of conditions are, in my opinion, Ultra Vires. This is due to there being a requirement that a third party undertake work on land in another persons ownership can be used without prior agreement necessarily being in place.
49. As mentioned by Mr Quinn, I along with Mr Brown have agreed to meet with the Applicant to provide a set of conditions to the panel. I suggest that two sets of conditions be drawn up firstly for a short-term consent and secondly for a longer-term consent as sought in the application. This would reflect the difference in monitoring requirements and potential upgrade requirements.

L. SENSITIVITY OF RECEIVING ENVIRONMENT AND CAPACITY TO ASSIMILATE POLLUTION

50. Having listened to all of the evidence I am of the opinion that the capacity to assimilate pollution appears to be the crux of the outstanding issues.
51. Dr Keesing is of the opinion that the environment has reached a state where it is now adapted to the pollutants in the water and therefore has capacity to assimilate and accept further contaminants. Mr Brown has a differing view that, should further contaminants be added, the internal load of nutrients will continue to increase, the values associated with the lakes will not be provided for, the One Plan targets will remain unmet and there is a risk the lakes are irreversibly damaged through flipping.
52. To my mind this is not providing for the direction set out in the One Plan nor in the recently released NPSFM.

M. ACTIVITY STATUS

53. The Applicant, at paragraph 302 of Mr Halls evidence, has raised the concept that the plan is prohibitive of additional discharges to waterbodies that are degraded.

54. I disagree with this point. The activity is Non-Comply. This activity category sends a strong signal that the activity is subject to a difficult test and not readily accepted by the plan. This is reinforced by Policy 12-1 which states

*.... (e) classify as **non-complying** those activities for which the Regional Council would generally not grant a resource consent owing to the potential for very significant adverse effects[^] on the environment;*

55. This signal is also consistent those given with the document produced in 2013 *Gibbs, M., & Champion, P (2013). Opportunities to address water quality in Lakes Wiritoa and Pauri. Prepared for Horizons Regional Council. NIWA Client Report: HAM2013053.*

56. As noted in paragraph 188 of my original evidence there was the recommendation within this report

The stormwater from the prison complex should not be discharged into the connecting stream where the nutrients will have an effect on these lakes. The stormwater pipes should be re-aligned along the side of the road to the outlet stream to discharge downstream of Lake Wiritoa.

57. I note that the issues associated with the lakes are not new and have been known about them for some time.

N. S104D

58. Mr Quinn, in section 22 of his statement addresses the gateway test set out in section 104D(1)(b).

59. The One Plan has a unique layout in that the Objectives and Policies of the Plan cross references back to the Regional Policy Statement portion of a plan. Many are intertwined in a way which means they cannot be separated and by default need to be considered also. My assessment was against the Regional Plan in accordance with Section 104D.

60. The test is to ensure the activity is not 'contrary' to the relevant Objectives and Policies. Mr Quinn has highlighted I have used the term 'not consistent'. I have considered his points and I am of the opinion the activity remains inconsistent or contrary to the relevant Objectives and Policies of the Plan being the One Plan.

O. CULTURAL IMPACT ASSESSMENT

61. I am not in a position (or qualified) to comment on the contents of either Cultural Impact Assessments (CIA), but I do wish to acknowledge the work that was undertaken to prepare them. In my role as a planner, I found the CIA's clear and concise in identifying the issues and providing tangible conclusions. This has assisted in understanding the potential cultural effects of the activity.

P. SHORT TERM CONSENT

62. In recognition and listening to the evidence presented I agree that the 'rain' cannot be turned off and should consent be declined it would create a predicament of what would happen to the discharge while an alternative solution were found.
63. I remain of the opinion that this consent doesn't meet the gateway tests and therefore enable a decision to grant the consent. However, I recognise the panel may be of a differing view so to assist the panel I have also considered a short-term consent. Should the panel find a way to pass the gateway test in s104D and grant the consent for a short term this option would be consistent with the provisions in s107(2)(b) whereby a consent with the effects can be granted for a temporary period.
64. I am of the opinion that a short-term consent would allow reassessment of the BPO and also give opportunity to explore other barriers such as the additional consents the Applicant may need.
65. As discussed above I would like to propose to the Applicant that we produce two sets of conditions from our caucusing one of which is for a short-term consent.

Q. RECOMMENDATION

66. In conclusion – it has been acknowledged that this is a unique situation in that the discharge cannot be simply stopped and there are many other factors such as security, engineering and design which are a hindrance to alternative solutions.
67. However, I have assessed the consent on its merits being that it is a discharge consent to a Threatened Habitat with a Non-Complying Activity Status and the receiving environment is in a poor, degraded state.
68. Whilst the Applicant has since (the lodging of the application) proposed conditions with mitigations they intend to undertake I am of the opinion these have a high degree of uncertainty for the reasons stated above.
69. I also note that both the One Plan and national policy direction are strong in their desire to see improvements to degraded water bodies. As acknowledged in the Joint witness Statement and in Mr Halls closing at point 7 these water bodies are in a poor condition. However, this unique and difficult situation is not an excuse to exacerbate this poor condition further.
70. In order to grant the application, the panel must be satisfied that the gateway test set out in 104D is met. As asserted in my original assessment, I do not consider that the application meets the gateway tests. Therefore, I am of the opinion this activity is unable to be granted as applied for.

DATED this 19 November 2020



NATASHA CACILIA ADSETT