

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**

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

18 December 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, 23 October 2020 and 19 November 2020. It addresses my response to the below questions asked of myself at the adjournment of the hearing on 19 November 2020 and later outlined in a written minute being Minute 7 dated 26 November 2020.

For Ms Adsett, we identified a number of matters for her to address in a supplementary s42A report. This primarily included:

- a. *An assessment of the proposal based on the agreed position of the joint witnessing participants and as recorded in the last paragraph on page 2 of the JWS;*
 - b. *An assessment of the proposal against the policies and objectives and Part 2 of the Act, assuming that the proposal embodies both the proposed proprietary filter and the nutrient removal mitigation; and*
 - c. *A s104 assessment taking account of positive effects (including the effect of avoiding a Prison closure).*
4. Minute 7 requested this information be provided no later than 18 December 2020.

B. JOINT WITNESS STATEMENT DATED 13 NOVEMBER 2020 - PROPOSAL ASSESSMENT

5. The following section addresses the first point:
 - a. *An assessment of the proposal based on the agreed position of the joint witnessing participants and as recorded in the last paragraph on page 2 of the JWS;*
6. This paragraph was initially addressed in my supplementary report presented at the hearing on the 19 November 2020, in section E. Since the writing of this report further information has been received from the Applicant on 11 December 2020. This further information addresses what would be required to undertake the proposed mitigations including weed harvesting, sediment removal and the installation of the proprietary filters. I note the measures of detainment bunds and flocculation, which were both discussed at the hearing, have not been examined.
7. The panel has requested that I consider the final paragraph on page 2 of the Joint Witness Statement dated 13 November 2020.

8. 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.

9. I noted in my previous report that the agreement relies on a two-prong approach of the Applicant undertaking both treatment of the stormwater **AND** harvesting of weed.

10. In their evidence of 11 December 2020, the Applicant has outlined the consenting requirements for each of the approaches.

11. For the proprietary treatment device, I note they have stated any placement of the device within prison property will not require consent for its installation and operation – however the Applicant also acknowledges elsewhere in their evidence the device remains within the design stage and there is no firm plans for the placement of the device i.e. The device may still have to be located beyond the prison boundary and landowner approval may still be required.

12. With regards to the weed harvesting, I am of the opinion there are two key aspects being access to the lakes and removal of the weed as a permitted activity. With regards to access the Applicant has gained the approval of Mr Neil Campbell as the owner of part of the bed of Lake Wiritoa and all of the bed of Lake Pauri. However the Applicant states they will still require permission of Whanganui District Council for access across reserve land adjacent to Lake Pauri. With regards to Lake Wiritoa, the Land Information New Zealand (LINZ) website records part of Lake Wiritoa as being in their ownership and an email to LINZ on 14 December 2020 confirms that in order to undertake works on the portion of the bed under their control would require their permission. A copy of this email is attached in **Appendix 1**.

13. The Applicant remains 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.*”.

14. Mr Brown has responded further to the applicants new proposal, in a memo which is attached to my evidence as **Appendix 2**.

15. Mr Brown is of the opinion that in order for the weed harvesting to be successful (and meet the test of protecting or enhancing the habitat, therefore being a

permitted activity) it will require use of an experienced operator and the targeting of hornwort beds through the use of mapping to ensure native plants are not compromised. In addition, the harvesting would have to be undertaken on a regular basis. The set of conditions dated 16 December 2020 require regular reviews of the Total Phosphorus (TP) and Total Nitrogen (TN) being discharged but no minimum reoccurrence for the harvesting to be undertaken.

16. Mr Brown also reflects on the possibility of the weed harvesting being too effective and resulting in a lack of weed to harvest which may undermine the ability for the Applicant to effectively complete their mitigations in future years.
17. For other opinions such as sediment removal the Applicant has stated that they consider sediment removal a permitted activity as it is being carried out for the purposes of protecting or enhancing the habitat. I disagree with this statement and do not believe it is what the plan intends. Instead, any disturbance of the lake channel for this purpose is, in my opinion, a Non-Complying activity under Rule 13-9 of the One Plan. Mr Brown discusses this further in his memo attached in **Appendix 2**.
18. Although not addresses by the Applicant in their evidence of 11 December 2020 I remain of the opinion that flocculant discharge, should it be proposed as a mitigation, would also require a consent under Rule 13-9 of the One Plan as it is a discharge to a threatened habitat.
19. While the Applicant has demonstrated they can reduce the reliance on third party agreements and a number of activities can be undertaken without consent I do not believe all of the risk has been entirely removed. As such I remain of the opinion that there is a risk these mitigations cannot be fully implemented in the manner the Applicant proposes.

C. UPDATED ASSESSMENT OF OBJECTIVES AND POLICIES AND PART 2

20. The following sections address the second point:

b. An assessment of the proposal against the policies and objectives and Part 2 of the Act, assuming that the proposal embodies both the proposed proprietary filter and the nutrient removal mitigation; and

Assessment against the Objectives and Policies of the Regional Plan.

21. An assessment of the application against the Objectives and Policies of the One Plan was undertaken in my s42A report dated 18 August 2020 and a full assessment of Part 2 of the Act was undertaken in my supplementary evidence dated 19 November 2020.

22. I have updated the assessment of the Objectives and Policies below taking into account the proposal presented by the Applicant in their evidence dated 11 December 2020. Rather than repeating all the evidence previously presented I have summarised each of the relevant Objectives and Policies in Table 1 below and provide my opinion how the proposal is considered against each below and if it is contrary or otherwise to the applicable Objective or Policy. Where applicable, this builds on evidence presented in my prior reports.

Table 1. Analysis of relevant Objectives and Policies within the One Plan.

Objective/ Policy	Assessment of Objective/ Policy
One Plan Objective 2-1: Resource management	The applicant has shown a willingness to engage and incorporate the CIA's into their BPO. I consider the application is now consistent with this Objective.
One Plan Policy 2-1 Hapu and iwi involvement in resource management	The applicant has shown a willingness to engage and incorporate the CIA's into their BPO. I consider the application is now consistent with this Policy.
One Plan Policy 2-4 Other resource management issues and Table 2.1	I am of the opinion the application remains contrary to issues (a) and (c) of Policy 2-4. Please refer to my evidence of 23 October 2020 paragraphs 82-84. I have not seen any additional evidence to change this opinion
One Plan Objective 5-1: Water [^] management Values	Framework objective – must be used to guide decision making including determining which values apply to these waterbodies. This has been undertaken in my evidence in chief dated 18 August 2020.
One Plan Policy 5-1: Water Management Zones* and Values	<p>The wording of Policy 5-1 is strong in that it states (emphasis added) “...lakes.... <i>must be managed in a manner which safeguards their life supporting capacity and recognises and provides for the Schedule B Values when decisions are made on avoiding, remedying or mitigating the adverse effects</i>”</p> <p>While the works proposed by the Applicant will effectively ‘neutralise’ the effect of the discharge the mitigations proposed by the Applicant will not result in the lakes allowing to provide for their Schedule B values. Overall, while I do not consider the application to be directly inconsistent to this Policy, I do note that the lakes will still be unable to support a number of Schedule B values as detailed in the memo attached in Appendix 2 from Mr Brown.</p>
One Plan Policy 5-2: Water quality targets*	Similar to Policy 5-1 this policy is directive using the strong words of ‘must’, that when making a decision on a consent these “ <i>targets must be used to inform the decision</i> ”.

Objective/ Policy	Assessment of Objective/ Policy
	While I do not consider the application to be directly inconsistent to this Policy and note that the effect of the water quality discharge will be effectively natural - Mr Brown has made it clear the lakes will still be unable to meet a number of water quality targets as detailed in the memo attached in Appendix 2 from Mr Brown.
One Plan Policy 5-4: Enhancement where water quality targets* are not met	I am of the opinion the application is contrary to this Policy. While the works proposed by the Applicant will effectively 'neutralise' the effect of the discharge – the overall water quality targets will remain unmet and there is no overall enhancement. Mr Brown discusses this further in his memo attached in Appendix 2 .
One Plan Policy 5-9: Point source discharges^ to water^	<p>Policy 5-9 covers a range of matters. I have re-evaluated these in turn below</p> <p><i>5-9(a) the degree to which the activity will adversely affect the Schedule B Values for the relevant Water Management Sub-zone. And 5-9(b) whether the discharge, in combination with other discharges^, including non-point source discharges^ will cause the Schedule E water quality targets* to be breached.</i> As discussed above the effects of the Applicants discharge will be neutralised so the effect on Schedule B values as a result of the discharge will also be nil. However Mr Brown is of the opinion the water quality in the wider lake system means schedule E targets will continue to remain breached. I am of the opinion the application is inconsistent with portion (b) of this policy.</p> <p><i>5-9 (c) the extent to which the activity is consistent with contaminant^ treatment and discharge best management practices. And 5-9 (g) whether it is appropriate to adopt the best practicable option.</i> The Applicant has completed a best practicable option assessment and updated it on 11 December 2020 to include the cultural impact assessments. The Applicant has demonstrated the option of discharging to the lakes is their best practicable option.</p>

Objective/ Policy	Assessment of Objective/ Policy
	<p><i>5-9 (d) the need to allow reasonable time to achieve any required improvements to the quality of the discharge. The Applicant has detailed the intended improvements being the already completed sleeving of the stormwater pipes to prevent groundwater infiltration, the fitting of a priority filter being an 'UpFlow' or 'Jellyfish' filter and weed harvesting. The Applicant has proposed a timeframe of 3 years to install the filter which I am comfortable with.</i></p> <p><i>5-9 (e) whether the discharge is of a temporary nature or is associated with necessary maintenance or upgrade work and the discharge cannot practicably be avoided. I am satisfied this portion of this policy does not apply as the discharge is not temporary in nature.</i></p> <p><i>5-9 (f) whether adverse effects resulting from the discharge can be offset by way of a financial contribution set in accordance with Chapter 19. I have reviewed the Applicants AEE and they have not provided any analysis of this section of policy.</i></p> <p>In my opinion, the application remains inconsistent with section (b) of Policy 5-9.</p>
<p>One Plan Objective 6-1: Indigenous biological diversity</p>	<p>This objective seeks to:</p> <p><i>Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biological diversity[^], including enhancement where appropriate.</i></p> <p>I have discussed above that the Applicants proposal will neutralise their effect. However I have also established in the effects assessment that the water quality of the Applicants discharge, even with the completed and proposed improvements (being the sleeving of the pipe network and filters) will still remain below the One Plan targets and will not result in an overall improvement in water quality overall within either lake.</p> <p>I am of the opinion this application contrary to Objective 6-1 which seeks to protect these habitats.</p>

Objective/ Policy	Assessment of Objective/ Policy
One Plan Policy 6-2: Regulation of activities affecting indigenous biological diversity	Framework objective – must be used to guide decision making including determining which habitat type the lakes fall within. This has been undertaken in my evidence in chief dated 18 August 2020.
One Plan Objective 13-2: Regulation of activities affecting indigenous biological diversity^	Framework objective – must be used to guide decision making including determining which habitat type the lakes fall within and subsequently which rules apply. This has been undertaken in my evidence in chief dated 18 August 2020.
One Plan Policy 13-4: Consent decision-making for activities in rare habitats*, threatened habitats* and at-risk habitats*	<p>I remain of the opinion Policy 13-4 is key in making a decision on this application. This Policy sets out the matters for consideration for activities in rare habitats, threatened habitats and at-risk habitats.</p> <p>Policy 13-4(b)(i) – (iii) is the section of most significance and panel should give careful consideration to it. This policy states:</p> <p><i>Consent must generally not be granted for resource use activities in a rare habitat*, threatened habitat* or at-risk habitat* assessed to be an area of significant indigenous vegetation or a significant habitat of indigenous fauna under Policy 13-5, unless</i></p> <p><i>(i) any more than minor adverse effects^ on that habitat's representativeness, rarity and distinctiveness, or ecological context assessed under Policy 13-5 are avoided.</i></p> <p><i>(ii) where any more than minor adverse effects^ cannot reasonably be avoided, they are remedied or mitigated at the point where the adverse effect^ occurs.</i></p> <p><i>(iii) where any more than minor adverse effects^ cannot reasonably be avoided, remedied or mitigated in accordance with (b)(i) and (ii), they are offset to result in a net indigenous biological diversity^ gain.</i></p> <p>I have discussed above that the Applicants proposal will neutralise their effect I have established in the effects assessment that the water quality of the Applicants discharge, even with the completed and proposed improvements (being the sleeving of the pipe network and filters) will still remain below the One Plan targets and will not result in an overall improvement in water quality overall within either lake.</p>

Objective/ Policy	Assessment of Objective/ Policy
	<p>I am of the opinion here that the decision of the proposal of weed harvesting and the installation of the filter is a mitigation or offset is key in deciding if this policy is met or not.</p> <p>To help with my decision making around the proposal of a filter and weed harvesting being a mitigation or offset I have referred to the guidance document from Local Government New Zealand titled " Biodiversity Offsetting under the Resource Management Act" September 2018. ¹</p> <p style="text-align: center;"><i>Section 1.2.3 advises "Mitigation and a biodiversity offset are not the same thing. To 'mitigate' means to alleviate, or moderate the severity of something. Offsets do not do that. This is because offsets do not simply reduce adverse effects, but rather they seek to achieve biodiversity gains that are equivalent to the residual biodiversity losses (or greater, to achieve a net-gain offset)."</i></p> <p>Given the filter and proposed weed harvesting (subject to approvals as discussed above) will neutralise the effect I consider they are alleviating or lessening the effect of the discharge. Additionally, the effect is being mitigated at the point of the impact rather than away from it.</p> <p>As such I consider the Application to be potentially consistent with this section of the policy.</p> <p>Policy 13-4(E) and (F) requires consideration of relevant Objectives and Policies in Chapters 5 and 14. As this is a discharge to water, I am of the opinion Objective 14-1 and polices 14-1, 14-4, 14-8 and 14-9 are of relevance and further consideration is given to these below.</p>

¹ <https://www.lgnz.co.nz/assets/Uploads/7215efb76d/Biodiversity-offsetting-under-the-resource-management-act-full-document-....pdf>

Objective/ Policy	Assessment of Objective/ Policy
	<p>In addition, as discussed above, I consider the application contrary to Policy 5-4 and 5-9(b) which this Policy in (E) requires decision makers to have regard to.</p> <p>Overall, I consider the application to be inconsistent with this policy when considering the requirements under (E)</p>
<p>One Plan Policy 13-5: Criteria for assessing the significance of, and the effects^ of activities on, an area of habitat</p>	<p>Framework objective – must be used to guide decision making including determining which habitat type the lakes fall within. This has been undertaken in my evidence in chief dated 18 August 2020.</p>
<p>Objective 14-1: Management of discharges^ to land^ and water^ and land^ uses affecting groundwater and surface water quality</p>	<p>While the applicant intends to neutralise the effect of their discharge, I am of the opinion that, as the water quality targets will remain unmet, there is no overall enhancement. Mr Brown discusses this further in his memo attached in Appendix 2.</p> <p>Objective 14-1 specifically requires surface water be managed in a manner that provides for the objectives and policies of Chapter 5. This includes Policy 5-4 which requires enhancement where targets are not met and 5-9(b) which requires scheduled E targets to not be breached.</p> <p>I am of the opinion the application remains contrary to this Objective.</p>
<p>One Plan Policy 14-1: Consent decision-making for discharges^ to water^</p>	<p>In regards to (a) this policy requires decision makers to specifically consider Objectives of chapter 5 and policies 5-1 to 5-5 and 5-9. I have discussed these above and consider the proposal to be potentially inconsistent with Policies 5-1, 5-2 and 5-9 and contrary to policy 5-4.</p> <p>In regards to (b) and avoiding discharges likely to accumulate, the effects of the Applicants discharge will be neutralised so their contribution to TP and TN will be nil however I am of the opinion there remains a residual risk that the works will be unable to be undertaken to neutralise the effect (ie. landowner approval's/ need to gain consent)</p>

Objective/ Policy	Assessment of Objective/ Policy
	<p>In regards to (c). The Applicant has completed a best practicable option assessment and updated it on 11 December 2020 to include the cultural impact assessments. The Applicant has demonstrated the option of discharging to the lakes is their best practicable option.</p> <p>this Policy in (d) requires decision makers to have regard to the relevant Objectives and Policies of Chapter 2. Above I have discussed that I consider the application contrary to Policy 2-4 .</p> <p>On this basis I consider the application to be contrary to with this policy to the extent that regard is given to policies in chapters 2 and 5.</p>
One Plan Policy 14-4: Options for discharges^ to surface water^ and land^	The Applicant has completed a best practicable option assessment and updated it on 11 December 2020 to include the cultural impact assessments. The Applicant has demonstrated the option of discharging to the lakes is their best practicable option. consider the application is now consistent with this Policy.
One Plan Policy 14-8: Monitoring requirements for consent holders	This policy provides guidance on monitoring requirements. Any disagreement between the Applicant and myself on the proposed conditions for monitoring are detailed in the joint witness statement dated 16 December 2020.
One Plan Policy 14-9: Consent decision making requirements from the National Policy Statement for Freshwater Management	<p>As discussed in my evidence in chief Section (b) of this policy is applicable to this discharge and has two matters which the regional council must consider:</p> <ul style="list-style-type: none"> (i) the extent to which the <i>discharge</i>^ would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh <i>water</i>^ including on any ecosystem associated with fresh <i>water</i>^; and (ii) the extent to which it is feasible and dependable that any more than minor adverse effect on fresh <i>water</i>^, and on any ecosystem associated with fresh <i>water</i>^, resulting from the <i>discharge</i>^ would be avoided.

Objective/ Policy	Assessment of Objective/ Policy
	As the Applicant has demonstrated they are able to mitigate the effect to the point that it is neutralised I consider the application is no consistent with this policy.

Conclusion

23. While the updated proposal from the Applicant as of 11 December 2020 enabled them to be consistent with a number of Objectives and Policies within the One Plan I am of the opinion there are still a number they remain contrary to as detailed above in particular Policy 6-1 and Policies 2-4, 5-4 which must be given regard to when considering Objective 14-1 and Policy 14-1.

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

24. I have undertaken two part 2 assessments. Firstly, in my evidence in chief where at paragraph 199 I consider that there is no reason to recourse to Part 2. In my supplementary report I consider the recent release of the National Policy Statement Freshwater Management (NES-FM) and remain of the opinion that no recourse is needed. I remain of this opinion.
25. However, to assist the Panel, should they reach a different conclusion, I have undertaken an assessment of Part 2 below. As per my supplementary evidence, for brevity, I have focused on areas where I disagree with Mr Halls assessment at Paragraph 373 of his evidence in chief.
26. In regards to Section 5 of the Resource Management Act, based on the evidence of Mr Brown attached in **Appendix 2**, I am of the opinion the effects on water quality as a result of the discharge, with the new proposal in place, is less than minor. While the discharge is effectively neutralised, it does not assist the lakes in any capacity to meet their values or provide for the safeguarding of life supporting capacity or ecosystems.
27. 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. The lakes will remain in a degraded state and will still be unable to meet a number of values.
28. 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, although the effects of TP and TN are neutralised, I do not consider the discharge is providing for the preservation of these wetlands.

29. With regards to 6(e) and 7(aa) I previously considered the BPO is flawed in not allowing for the incorporation of the CIA's prepared by Ngati Apa and Tupoho. The Applicant has since recertified this by incorporating them into the assessment. I am not qualified to comment if the process to incorporate the CIA into the BPO is technically correct. However I have not seen any evidence which enabled me to form the opinion that these matters are now provided for.
30. 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. Based on Mr Brown's memo attached in **Appendix 2** I remain of this opinion.
31. With regards to sections 7(d) and (g) Mr Brown is clear that the proposal, while neutralising the effects, it does enhance the environment nor does it provide for the intrinsic values of the ecosystem.
32. 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.
33. 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. Previously I noted Te Runanga o Tupoho held 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. The Applicant has engaged with iwi on the wording of the conditions and offered an additional new condition (Condition DA / 12) which requires engagement on both the stormwater management plan and landscaping plan before they are finalised and on the Annual report.
34. On this basis I no longer consider the Application inconsistent with section 8 of the RMA.
35. In conclusion, when considering the Applicants altered proposal in their evidence dated 11 December 2020, I have altered my opinion on a number of matters however I still consider that lakes and wetlands are of an elevated status on the RMA, recognised specifically in section 6(a) as needing to be preserved and protected. While the effects of the discharge will be neutralised, I do not consider the discharge will help to preserve or protect these environments. In addition Tangata Whenua have highlighted concerns about the discharge including effects on cultural values such as the mauri of the water.

E. S104 ASSESSMENT

c. A s104 assessment taking account of positive effects (including the effect of avoiding a Prison closure).

36. I have provided in a table below an update of my s104 assessment noting the point at which I originally addressed the matter and if my opinion has changed as a result of the evidence submitted by the applicant on 11 December 2020.

S104 assessment

(a) any actual and potential effects on the environment of allowing the activity	
Effects on Water Quality;	<p>Mr Brown has canvassed the effects of the discharge on water quality of the lakes in his memo attached in Appendix 2. The effect of the discharge will make the discharge of stormwater from the Prison (in terms of TP and TN) neutral the lakes will, however, still continue to exceed the One Plan targets and fall within Band D of the National Policy Statement for Freshwater 2020 (NPSFW) for these parameters.</p> <p>I consider the effect on water quality as a result of the discharge will be less than minor.</p>
Effects on the Values and freshwater ecology associated with Lakes Wiritoa and Pauri;	<p>Mr Brown has canvassed the effects of the discharge on water quality of the lakes in his memo attached in Appendix 2. As discussed above the effect of the discharge of stormwater from the Prison (in terms of TP and TN) neutral. The lakes will, without further intervention, continue to be unable to meet the values associated with them,</p> <p>Aside from the effect on the value of Mauri, I do not consider the inability of the lakes to provide for their values to necessarily to be a direct effect from the prison's stormwater. However, I don't consider the proposal is assisting in facilitating the lakes to meet these values either. As such I consider the effect on values and freshwater ecology associated with Lakes Wiritoa and Pauri to be minor.</p>
Flooding and erosion effects; and	As per section B of my supplementary evidence dated 19 November 2020 I am of the opinion this effect is less than minor .
Effects on Cultural values.	As per section B of my supplementary evidence dated 23 November 2020, based on the assessments provided in the respective CIA's I consider the application to continue with the discharge of stormwater Lakes Wiritoa and Pauri potentially has a more than minor effect on the Mauri and wellbeing of the lakes.
Positive effects	As per section C of my supplementary report dated 19 November 2020 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. Should the prison be required to close I consider this would have a more than minor effect on the community given the number of people it employs and the impact it would have on prisoners and their whanau.
(b) any relevant provisions of—	
(i) a national environmental standard:	In paragraph 88 of my evidence in chief I have identified the National Environmental Standard for Sources of Drinking Water (NES-DW) to be the only relevant NES to this application.
(ii) other regulations:	I have not identified any other national regulation as being relevant to this application.
(iii) a national policy statement:	<p>In my supplementary report dated 23 October 2020, section G, I identified and analysed the relevant provisions of the NPSFW.</p> <p>While the proposal by the Applicant will neutralise the effects of their discharge in respect of TN and TP it will not result in an overall enhancement of the lakes which are considered to be in a poor state. This remains inconsistent with the Objective of the NPS-FW and with Policies 1, 5 and 13.</p> <p>While I accept the poor water quality is a combination of past actions and non-point source discharges and the Applicants effect on water quality will effectively be neutralised I remain of the opinion that this policy direction is strong in its desire to see an overall improvement in these types of waterbodies (ie. wetlands and lakes) which this activity will not result in.</p>
(iv) a New Zealand coastal policy statement:	The New Zealand Coastal Policy Statements is not relevant to this application due to the discharge not being in the Coastal Marine Area.
(v) a regional policy statement or proposed regional policy statement:	The provisions of the One Plan are canvassed above in section C

(vi) a plan or proposed plan;	The provisions of the One Plan are canvased above in section C
(3)(c)grant a resource consent contrary to (i) section 107.	<p>An assessment against s107 is undertaken in paragraph 210 of my evidence in chief. As discussed in the memo of Mr Brown attached to this report, while the effects of this discharge are proposed to be neutralised, the water quality within the lakes will potentially remain in a state which will not allow it to be consumed by farm animals.</p> <p>S107(1) states <i>if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters... (f) the rendering of fresh water unsuitable for consumption by farm animals:</i></p> <p>While the discharge will not contribute to, or make the water quality worse, I am of the opinion the water quality with the lakes due to legacy discharges, is potentially unable to meet s107(1)(f).</p>

F. OTHER MATTERS

37. The panel also requested a number of parties to caucus on conditions. The parties met on 4 December 2020 and discussed a number, but not all the conditions. Caucusing then continued via E-mail where comments on the remainder of the conditions were exchanged.
38. The outcome of the caucusing and the signed Joint Witness Statement, dated 16 December 2020, was submitted to the panel on 18 December 2020.

G. CONCLUSION

39. In order to grant the application, the panel must be satisfied that the gateway test set out in 104D is met. I have reassessed the objectives and policies of the relevant plan, being the One Plan, above. I am of the opinion there are a number which this application, even with the consideration of the applicants proposed mitigation measures, remains contrary to.
40. I have reassessed the effects of the discharge based on the proposal submitted by the Applicant on 11 December 2020 and while I have amended my opinion of the level of effect in relation to the effects on water quality and effects on values and freshwater ecology associated with the lakes, I remain of the opinion the cultural effects are **more than minor**.

DATED this 18 December 2020



NATASHA CACILIA ADSETT

Appendix 1 – Email to Land Information New Zealand regarding ownership of Lake Wiritoa

From: Crown Property <CrownProperty@linz.govt.nz>
Sent: Monday, 14 December 2020 1:04 PM
To: Natasha Adsett <natasha@evergreenconsulting.co.nz>
Cc: Pye, Sean <Sean.Pye@colliers.com>
Subject: RE: Owner/ manager of Lake Kaitoke - ID 3592049

That's correct, but best to contact our property Managers at Colliers in the first instance, Sean.Pye@colliers.com.

The adjoining owner has AMF rights on everything else contained within that white line that's not yellow.

Regards

Megan McKinstry
Portfolio Manager
Land and Property Wellington

E mmckinstry@linz.govt.nz | DDI 04 8311 691

Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand | T 04 460 0110
W www.linz.govt.nz | data.linz.govt.nz



From: Natasha Adsett <natasha@evergreenconsulting.co.nz>
Sent: Monday, 14 December 2020 12:59 p.m.
To: Crown Property <CrownProperty@linz.govt.nz>
Cc: Natasha Adsett <natasha@evergreenconsulting.co.nz>
Subject: RE: Owner/ manager of Lake Kaitoke - ID 3592049

Thanks Megan

So if anyone wanted to undertake works in the yellow portion of the lake I am correct in assuming permission would be needed from LINZ? Do you have any idea what happens to the portion not covered in yellow/ owned by the adjoining property owner (Mr Campbell).

Cheers,

Natasha

From: Crown Property <CrownProperty@linz.govt.nz>
Sent: Monday, 14 December 2020 12:44 PM
To: Natasha Adsett <natasha@evergreenconsulting.co.nz>
Subject: RE: Owner/ manager of Lake Kaitoke - ID 3592049

The area highlighted in yellow is under the ownership of LINZ



Megan McKinstry
Portfolio Manager
Land and Property Wellington

E mmckinstry@linz.govt.nz | DDI 04 8311 691

Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand | T 04 460 0110
W www.linz.govt.nz | data.linz.govt.nz



Appendix 2 – Memo of Mr Logan Brown



MEMORANDUM

FILE:

DATE: 16th December 2020.

TO: Natasha Adsett

FROM: Logan Brown

SUBJECT: ASSESSMENT OF THE APPLICANTS FURTHER INFORMATION.

1. Effects – water quality:

The application as now proposed by the applicant involves offsetting the nutrient load that is discharged from the stormwater to the lakes. This is to be achieved via weed harvesting (or some other type of intervention in the catchment). My understanding of the basis of the current proposal from the applicant is that overall, the nutrient effects will be neutral as a result of the same load of nutrients being removed from the lakes as is discharged into it from the prison stormwater discharge.

Weed harvesting (or similar) is proposed to start removing the current (prior to the filter installation) load discharged to the lakes (calculated at 7.7 kg/annual). This load is to be re-calculated on an at least three-year cycle.

An important thing to note is that even with the proposal to remove the load that is discharged to the lakes from the stormwater the lakes will continue to be Band D for TN and TP, the proposal itself will not result in the water quality moving towards Band C (or out of Band D) for these parameters and reflects the legacy load that has been created (including the discharge from the Prison) and the ongoing contributions from land use in the surface and groundwater capture zones to the lakes.

2. Effects on values:

As well as looking at the water quality parameters one can and should consider the values that the lake systems hold and their current state. As agreed in the JWS dated the 18th September 2019 the lakes in their current condition do not support the following values (values identified as applying to these systems in the One Plan):

- contact recreation;
- mauri;
- stock water;
- capacity to assimilate pollution;
- amenity;
- inanga migration (lower river); and
- trout fishery.

The current proposals (weed harvesting and filter) will continue to see the lakes not supporting these values – as noted at the hearing it is possible that some in-lake interventions such as the addition of flocculant would result in improvements in water quality (particularly phosphorus) and potentially the following values being met (or at least move towards being met):

- contact recreation;
- stock water; and
- capacity to assimilate pollution.

3. Effects of weed harvesting:

The applicant through information provided by Mr Hamill has considered the potential effects of weed harvesting on native macrophyte species present within Lakes Pauri and Wiritoa. I agree with the information provided by Mr Hamill and note that in my supplementary evidence I noted the potential beneficial effects of weed harvesting on native macrophytes by the removal of exotic macrophytes.

One of the key conclusions that I draw from Mr Hamill's reply is that the success of such operations is dependent on the use of an experienced operator and the targeting of hornwort beds. I agree with those conclusions and would consider that such information would form part of a management plan for the harvesting of macrophytes (or included in the nutrient plan as proposed by the applicant). The weed mapping as show in the response to the panel shows the area were the dense weed beds where at the time of the mapping occurring, these would naturally be the area that such a weed harvesting operation would focus on and the gathering of such information would be important prior to undertaking such works to direct the areas to be targeted. The other point to note here is that for weed harvesting to provide the enhancement prospect to native species it would need to be undertaken on a regular basis. Without having the harvesting undertaken on a regular basis the native macrophytes would simply be outcompeted by the hornwort beds. However, alternatively if harvested too frequently there is a risk that the volume of weed that can be harvested is not large enough to meet the nutrient load requirements.

4. Stock drinking water

The current lake water quality does not support the value of stock drinking water (agreed in the JWS dated 18th September 2019). The reason for this value not

being met is due to the cyanobacteria blooms that occur in both Lakes Pauri and Wiritoa. Monitoring of these cyanobacteria blooms show that at times toxins are released into the water column which makes it unsuitable for consumption. These toxins can cause liver damage when consumed. The presence of cyanobacteria blooms is generally driven by phosphorus within the water column. This is one of the reasons that flocculation is used for phosphorus removal and the management of cyanobacteria blooms.

5. Protection or enhancing the environment through the removal of sediment within the wetlands due to contamination of sediment as a result of the discharge:

The One Plan and NPS/NES provisions quoted by Mr Hall specifically relate to the restoration, protection, or enhancement of habitat. I am slightly perplexed as to the analysis that has been undertaken in relation to restoration, enhancement, or protection of a habitat. In the non-regulatory work that we undertake the use of such provisions would include things such as weed control to enable the establishment of native species, restoration of weirs on lake outlets to enable fish passage etc. Such a proposal to continually need to dig out sediment that has been contaminated by the discharge will not in my opinion meet the definition of restoration, enhancement, or protection of a habitat especially as the discharge would be re-occurring in nature and the potential for removal of sediment would be needed again in the future. The restoration, enhancement, or protection of a habitat is work done towards the improvement of habitat – potential contamination of sediment and then the need to remove on a regular basis in my opinion does not meet the threshold for restoration, enhancement, or protection of a habitat.

6. Enhancement of water quality through weed harvesting (or other mitigations).

The applicant has proposed a range of possible interventions (of which weed harvesting has had the most detail provided for). The interventions are proposed to in effect make the discharge of stormwater from the Prison (in terms of TP and TN) neutral. The lakes will, however, still continue to exceed the One Plan targets and fall within Band D of the NPSFM for these parameters (this may be different if flocculation was used as an intervention but appears to have been the least investigated as part of this proposal). This neutrality can be seen in the proposed conditions having a TP amount of 7.7 kg requiring to be removed from the lakes from the start of the proposed consent term and then the ability for this to be reduced as the upgrades are implemented, monitored and the loads recalculated.

The proposal effectively sees the same amount of nutrients removed from the system as that enters from the proposed Prison stormwater discharge. This results in the load of the nutrients entering the lake from the stormwater effectively being neutralised. This, however, will not result in an enhancement of

water quality within the lakes. For this to occur the applicant would need to remove more than they discharge into the lakes.

One thing to note is that overall, although the effect of the nutrient inputs (on the lake loads) will be neutral it will be important that weed harvesting (or other chosen interventions) are completed on a regular basis. This is because once weed harvesting is completed, the stormwater discharge continues to discharge to the lake and therefore will lead to degradation in water quality until the weed harvesting occurs again. The longer the length of time between the harvesting cycles the greater the level of degradation will occur. This could be managed via a trigger load that has been discharged to the lake e.g., once 15 kg of TP is discharged to the lake harvesting must be undertaken or alternatively have such an activity time bound. The current proposed conditions have the load discharged to the lakes being recalculated every three years and it may be that a three-year cycle is appropriate for weed harvesting to ensure that water quality degradation between weed harvesting cycles is limited.



Logan Brown

Freshwater & Partnerships Manager