

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER OF

applications for resource consent
(**APP-2005011178.01** and **APP-
2018201909.00**) to Horizons
Regional Council associated with
the construction of a wetland as
part of the proposed upgrades to
and ongoing operation of the
Eketāhuna Wastewater
Treatment Plant

BY

TARARUA DISTRICT COUNCIL

Applicant

**OPENING LEGAL SUBMISSIONS ON BEHALF OF
TARARUA DISTRICT COUNCIL**

27 November 2018

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MAY IT PLEASE THE HEARING PANEL:

INTRODUCTION

1. These opening submissions support the applications for resource consent by Tararua District Council ("**TDC**") associated with the construction of a wetland (APP-2018201909.00) ("the **Wetland Application**") at the Eketāhuna Wastewater Treatment Plant ("**EWWT**P"). The Wetland Application forms part of a broader proposal for the upgrade and ongoing operation of the EWWT P ("the **Project**").
2. These submissions explain, against the relevant factual, legal and policy background, why granting the Wetland Application will accord with Horizons Regional Council's ("**Horizons**") One Plan and will promote the sustainable management purpose of the Resource Management Act 1991 ("**RMA**"). In brief, the Project enables the EWWT P (an essential and regionally significant piece of infrastructure) to continue to operate in an environmentally responsible way and the Wetland Application enables the Project to comply with Policy 5-11 of the One Plan, and responds to cultural effects.
3. The Wetland Application includes consents for earthworks to construct the wetland and bund, for a diversion of water, for the construction and placement of a discharge structure and a consent for discharge to land where it may enter water (from seepage out of the bottom of the lined wetland). To be clear, this seepage is the only discharge consent relevant to the Wetland Application. The Wetland Application does not otherwise relate to the discharge of treated wastewater from the EWWT P. That discharge was addressed at the first hearing in relation to the Project.
4. TDC's earlier application (APP-2005011178.01) ("the **First Application**") in respect of the Project was heard by the Panel at a hearing over three days from 5 to 7 April 2017, before the Panel adjourned pending receipt of further information.¹ The Panel's memorandum dated 19 October 2018 ("the **Eighth Memorandum**") directed that the 27 November 2018 hearing would be limited to considering the Wetland Application and that matters already addressed in the First Application would not be dealt with.
5. That said, TDC acknowledges the distinction between matters relating to the Wetland Application and matters relating to the First Application is not

¹ The First Application included consents for discharge of treated wastewater to water, discharge of treated wastewater to land where it may enter water, and discharge to air. The further information sought related to the details (including site) of the proposed wetland.

clear-cut and it will be necessary to address both, as part of TDC's overall case on both applications relating to the Project. In order to ensure all matters are addressed, while preserving the scope of this hearing, these submissions deal with matters relating to the Wetland Application under 'Part A', and all other matters relating to the Project under 'Part B'. Conditions relating to both the First Application and the Wetland Application are dealt with under 'Part C'.

6. These submissions:

(a) under Part A (Wetland Application):

- (i) summarise TDC's case in a principal submission;
- (ii) set out the background and context to the Wetland Application;
- (iii) detail the engagement TDC has undertaken with affected iwi, namely Rangitāne o Tamaki Nui-a-rua ("**Rangitāne**") and Kahungunu ki Tamaki Nui-a-rua ("**Kahungunu**");
- (iv) address how the legal framework, including Part 2 of the RMA, is to be applied to these applications, in light of:
 - (1) the evidence before the Panel regarding the environmental effects of the Wetland Application, highlighting key issues for determination; and
 - (2) the relevant planning documents and provisions;
- (v) explain why, in TDC's submission, the Wetland Application meets the requirements of Policy 5-11 of the One Plan and in doing so appropriately responds to cultural effects; and
- (vi) identify the witnesses giving evidence for TDC;

(b) under Part B (Other matters):

- (i) address matters that have arisen since the re-adjourning of the hearing in May 2017, including those relating to water quality, treatment plant processes and term;
- (ii) propose a possible pathway for addressing these matters, with the ultimate goal of achieving an integrated outcome for both sets of applications within the broader EWWTP resource consent proceedings; and

(c) under Part C (Conditions), discuss the conditions proposed by TDC in respect of both the Wetland Application and the First Application.

PART A: WETLAND APPLICATION

Principal submission

7. The proposed wetland is an important component of the wider EWWTP Project, which itself is crucial to the continued operation of the EWWTP in a sustainable, environmentally responsible way. TDC's position is that the wetland, if constructed, will enable the EWWTP Project to comply with Policy 5-11 of the One Plan.
8. As a local authority, TDC has statutory obligations and functions, including responsibility for Eketāhuna's wastewater treatment systems and processes. The Wetland Application forms part of the Project, which will allow TDC to continue treating and processing Eketāhuna's municipal wastewater in a responsible and environmentally sustainable way.
9. The proposed wetland was conceived with a primary purpose of responding to cultural concerns and ensuring the overall EWWTP Project meets Policy 5-11 of Horizons' One Plan. That purpose remains at the core of the Wetland Application, and TDC has worked hard to develop an effective, affordable and carefully-designed wetland concept, in consultation with Rangitāne and Kahungunu.
10. With broader relationships developing between TDC, Rangitāne and Kahungunu in the background, throughout the EWWTP re-consenting process TDC has engaged in meaningful, on-going consultation and this has fed into the wetland design. This engagement has included hui, site visits and other communications, and has led to the preparation of a cultural values assessment ("**CVA**") of Kahungunu. A CVA from Rangitāne has not been provided to date, however communications between TDC and Rangitāne are ongoing.
11. A careful assessment of the environmental effects of the proposed wetland is central to the Panel's consideration of the Wetland Application, and essential in ensuring the RMA's sustainable management purpose is met.
12. The expert evidence before the Panel is that the adverse environmental effects flowing from the construction and operation of the proposed wetland have been or will be appropriately avoided, remedied, or mitigated such that they are minor (or less). The benefit of the Project is in achieving compliance with Policy 5-11 and therefore appropriately responding to cultural issues (it does also have some minor 'polishing' benefits).

13. The proposed wetland will meet the requirements of Policy 5-11 in that it ensures that treated wastewater is applied onto or into land (being the wetland itself and seepage from the wetland) and/or flows overland (again, the wetland) before entering the Makakahi River.
14. If granted, the Wetland Application will ultimately lead to a set of upgrades that will enhance the existing environment of the Makakahi River through reducing the adverse effects of the existing EWWTP.²
15. TDC seeks a short-term consent of seven years for the Wetland Application, to align with the term sought for the Project in the First Application.
16. Overall, granting the Wetland Application (along with the Project), subject to the conditions proposed and for the seven-year term proposed by TDC, will further reduce environmental effects, accord with the One Plan and promote the sustainable management purpose of the RMA.
17. These matters are addressed in greater detail below.

Background and context to the Wetland Application

Obligation to provide wastewater treatment services

18. TDC's statutory obligations in relation to the EWWTP are derived from:
 - (a) subpart 1 of the Local Government Act 2002, which requires local authorities to provide good-quality infrastructure and local public services and to perform its regulatory functions in a cost-effective manner; and
 - (b) section 25 of the Health Act 1956,³ which imposes a duty on local authorities to provide sanitary works, including sewerage works and works for the disposal of sewage.

Background to the EWWTP

19. Eketāhuna is home to approximately 441 residents.⁴ There are 220 connections to the town's wastewater system, which consists of a reticulation system throughout the town, and a wastewater treatment plant located on land adjacent to the Eketāhuna Golf Club ("**Golf Club**"). The EWWTP is located approximately 250 metres north-west of the Eketāhuna township.

² Under section 104B, the Panel may grant or decline consent. If they grant consent, it may be subject to conditions in accordance with section 108 or section 108AA.

³ As amended by the Health (Drinking Water) Amendment Act 2007.

⁴ As stated in TDC's 2014 Wastewater Asset Management Plan. The 2013 census data records the number as 444.

20. The EWWTP and its discharges are very small. To put it into some context alongside other wastewater treatment plants in the region, according to the results of the 2013 census Pahiatua services 2,412 residents, Woodville 1,401, Feilding 15,500,⁵ Palmerston North 80,079, Shannon 1,239 and Foxton 2,643.
21. Currently, the EWWTP discharges treated effluent directly to the surface water of the Makakahi River. The discharge point is located immediately upstream of the confluence of the Makakahi River with the Ngatahaka Creek.⁶ Should the Panel grant the resource consents sought through the Wetland Application and the First Application, following the commissioning of the proposed wetland the discharge point will be relocated to some distance downstream of the confluence with the Ngatahaka Creek. This will significantly improve the ability to monitor the effects of the EWWTP discharges on the Makakahi River.
22. As set out in the evidence of Mr Crawford, presented as part of the First Application, the EWWTP has undergone various improvements works in recent years. This includes, the installation of a new 3kw aerator in the oxidation pond and a desludging programme undertaken in 2015, which removed over 30 years' accumulation of matter from the base of the ponds. TDC has also committed to installing an influent fine screening system as part of the new tertiary plant. Further upgrades to the EWWTP are proposed as part of the current EWWTP Project, and these were addressed during the hearing of the First Application.

Background to the Wetland Application

23. As part of the EWWTP upgrades, TDC proposes to construct a wetland through which wastewater will flow after it has been treated via the EWWTP treatment processes and before it is discharged to the Makakahi River.
24. The wetland concept was first discussed among the parties during pre-hearing meetings in advance of the First Application in April 2017, in recognition of the cultural concerns associated with the discharge of human effluent to water. It was also presented at pre-hearing meetings as a means of addressing Policy 5-11 of the One Plan.
25. The Panel adjourned the hearing of the First Application on 7 April 2017. At that time TDC was considering two possible options for the proposed

⁵ This figure is from paragraph [4] of *Manawatu District Council v Manawatu District Council* [2016] NZEnvC 53, which states that the Feilding WWTP serves a population of "around 15,500...in the Feilding and Bunnythorpe communities."

⁶ As the Panel is aware this creates significant issues in determining the effects of the EWWTP discharges.

wetland and the Panel, in its minute dated 13 April 2017, asked TDC to confirm which option it intended to pursue. TDC confirmed via a memorandum dated 17 May 2017 that it intended to pursue option 2 (which has formed the basis of the Wetland Application) and the Panel subsequently directed that TDC prepare and lodge the consent applications required for that option⁷. The matter was briefly discussed at the reconvened hearing on 23 May 2017 before the Panel re-adjourned the hearing to enable TDC to (in consultation with Rangitāne and Kahungunu) prepare and lodge the consents as part of the wider suite of EWWTP applications.⁸

26. TDC consulted with Rangitāne and Kahungunu (discussed in more detail below and in the evidence of Mr King) and submitted the Wetland Application on 29 June 2018. Horizons notified the Wetland Application on a limited basis, and one submission, dated 13 August 2018, was received from Rangitāne.⁹
27. The background to the Wetland Application is discussed in more detail in the evidence of Mr King.

The current applications

28. The EWWTP currently operates under Discharge Permits 103346 and 103732. TDC's First Application, which (together with the Wetland Application) replaces 103346 and 103732, was lodged on 31 March 2015.
29. The Wetland Application, lodged on 29 June 2018, seeks the following consents:
 - (a) Earthworks to construct the wetland bund, pursuant to Rule 13-2 (Controlled Activity);
 - (b) Diversion of water, pursuant to Rule 16-13 (Discretionary activity);
 - (c) Construction and placement of discharge structure, pursuant to Rule 17-15 (Discretionary Activity); and
 - (d) Discharge to land where may enter water, pursuant to Rule 14-30 (Discretionary Activity).
30. TDC seeks a seven-year term of consent for all the above consents.¹⁰

⁷ In the Panel's minute dated 19 May 2017.

⁸ The Panel adjourned the proceedings to allow TDC to confirm which wetland option it intended to pursue and subsequently to prepare the required consent applications for its preferred option.

⁹ The Wetland Application was notified to Rangitāne, Kahungunu and the Eketāhuna Golf Club.

¹⁰ The intention is to align the seven-year term of the consents sought as part of the Wetland Application with the seven-year term sought for the consents sought through the First Application.

Iwi engagement on the Wetland Application

31. Cultural concerns associated with the broader EWWTP Project, and the ability to meet the requirements of Policy 5-11 of the One Plan, lies at the heart of the Wetland Application.
32. TDC acknowledges the complexities of wastewater treatment consenting projects, and is particularly mindful of the cultural sensitivities around discharging human effluent to water. The One Plan's recognition of the cultural concerns associated with discharges of human effluent to water is expressed through Policy 5-11.
33. The difficulty here, and in TDC's other wastewater treatment plant re-consenting projects, is that a tension exists between recognising and providing for tangata whenua's deep connections with the awa in the Tararua District and TDC's obligations to the Eketāhuna community to provide safe, good-quality infrastructure and dispose of its wastewater in a sustainable, practical and affordable way.
34. This tension was acknowledged in the Environment Court's decision of *Horowhenua District Council v Manawatu-Wanganui Regional Council* ("the **Foxton Decision**"). In that case, while the Court acknowledged disposal to land is required in order to meet Policy 5-11, it went on to find that affordability and practicality are relevant factors when dealing with discharge consent applications and, in particular, land-based disposal options under the One Plan.¹¹
35. TDC has worked hard to engage with tangata whenua, in particular Rangitāne and Kahungunu, both on the EWWTP Project and more widely.¹²
36. As explained in Mr King's evidence (as well as in TDC's collated memoranda attached as **Appendix 1** to Mr King's evidence), TDC's engagement with Rangitāne and Kahungunu since the re-adjourning of the hearing has included hui, site visits and telephone and email correspondence.
37. As part of these communications Kahungunu provided a CVA on 21 May 2018. It highlighted the productive engagement between Kahungunu and TDC, acknowledging the potential of the wetland to improve discharge

¹¹ *Horowhenua District Council v Manawatu-Wanganui Regional Council and Horowhenua District Council* [2018] NZEnvC 163, at [5(a)-(b)].

¹² Mr King describes TDC's work with Rangitāne on the Kaitoke wastewater improvements project at paragraph 23 of his evidence.

quality prior to entry into the Makakahi River, and suggesting methods for further improvements.¹³ TDC is grateful for the careful thought that has gone into preparing this CVA, and shares Kahungunu's view that the engagement has, and continues to be, valuable and productive. TDC looks forward to building on this relationship further, through the EWWTP Project and more broadly through District-wide matters.

38. A CVA has not been received from Rangitāne.¹⁴ However, broader discussions between TDC and Rangitāne in relation to the management of wastewater in the Tararua District are ongoing.
39. TDC acknowledges the concerns held by Rangitāne and Kahungunu in relation to the discharge of treated wastewater to the Makakahi River. These views helped shape the Wetland Application and the conditions TDC proposes in respect of the Project. Aside from the Wetland Application itself, which is aimed at reducing cultural effects associated with discharges to water by incorporating passage of treated wastewater through and over land, TDC has also proposed conditions providing for further discussion and participation (through the Tararua District Wastewater Forum), the preparation of CVAs and cultural monitoring.
40. That said, Rangitāne is clear in its submission that it is opposed to the Wetland Application and it seeks that the Wetland Application be placed on hold pending further information (based on consultation with Rangitāne) on alternative options and outcomes.¹⁵ It also seeks that if resource consent is granted that it be for a term of no more than five years.
41. This hearing is solely focussed on whether to consent a wetland option as proposed by TDC, or not. TDC recognises, at least for Rangitāne, that the Wetland Application does not address all cultural concerns.

Application of legal framework to the Wetland Application

42. The legal framework as it applies to the Wetland Application is discussed below. This section covers:
 - (a) the effects on the environment of allowing the application;¹⁶
 - (b) relevant regulations and planning instruments;¹⁷

¹⁴ There is no legal requirement to require a CVA, see *The Taranaki-Whanganui Conservation Board and Others v The Environmental Protection Authority* [2018] NZHC 2217, at [216]. While this decision applied to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the same approach applies to the RMA. Further, although TDC has consulted, there is no duty under the RMA to consult on resource consent applications – section 36A.

¹⁵ While not explicit in its submission on the Wetland Application, TDC understands from previous discussions, as well as Rangitāne's evidence in the First Application, that Rangitāne seeks discharge to land.

¹⁶ S104(1)(a)

- (c) the application of section 105 and 107;
- (d) consent term; and
- (e) Part 2 of the RMA.

Effects on the environment

Introduction

- 43. The effects of the Wetland Application – both positive and adverse – are central to the Panel's consideration under section 104.
- 44. The effects are in turn central to assessing the Wetland Application against the relevant provisions of the One Plan (and those provisions also influence the effects assessment), as well as the RMA's sustainable management purpose.
- 45. The key categories of effects for consideration are noted in turn below.

Positive effects

- 46. As already stated, the Wetland Application forms a part of the Project that will enable upgrades to, and the ongoing sustainable operation of, the EWWTP.
- 47. The driving force behind the wetland's conception was to address (in response to evidence during the First Application) the highly directive One Plan Policy 5-11, and to recognise cultural issues associated with a direct discharge of treated human wastewater to water. Addressing these issues was, and remains, the primary purpose of the Wetland Application. Compliance with the objectives and policies of the One Plan, and responding to cultural effects, is an essential step in enabling TDC to unlock the numerous positive effects associated with the broader upgrades to the EWWTP. As discussed in the evidence of Mr King, one of TDC's primary functions as a local authority is “...to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”.¹⁸ The provision of an operational wastewater treatment plant is essential to that purpose and enables the Eketāhuna community to provide for their health and wellbeing.
- 48. Another positive effect of the wetland is the possibility of additional 'polishing' to the wastewater before it is discharged into the Makakahi

¹⁷ S104(1)(b)

¹⁸ Paragraph 29.

River. This polishing function is an ancillary benefit and is not the driver for, nor a necessary consequence of, the Wetland Application.

Adverse effects

49. The evidence and Section 42A Reports indicate the key categories of actual and potential adverse effects associated with the Wetland Application¹⁹ are:

- (a) groundwater (and potential surface water) quality effects;
- (b) soil disturbance effects / Erosion and Sediment Control effects;
- (c) flooding effects; and
- (d) cultural effects.

Groundwater (and surface water) quality

50. As outlined in the evidence of Ms Boam, the development of the proposed wetland will have a less than minor effect on the groundwater system.

51. The groundwater in the vicinity of the wetland is not used for any consumptive purposes. Therefore, the wetland will not affect any existing water users.

52. In regard to the potential leakage from the base of the wetland, in order to ensure no more than 10% leakage Mr Baker recommended, and Ms Boam agreed, that the desired permeability of the liner material be incorporated into a consent condition. This has been provided for in the conditions recommended by Ms Manderson.

Surface water quality

53. The only surface water quality effect relevant to the Wetland Application is from the seepage from the lined wetland base (10% as stated above) that may enter surface water. However, the effects of the discharge of treated wastewater from the EWWTP were fully addressed during the hearing of the First Application. The wetland will not make a material difference to the effects of the EWWTP discharge on surface water quality.²⁰

54. In Mr Brown's Section 42A report he queries the efficiency of the wetland as a tool for nitrogen removal and notes the form of nitrogen that is discharged to the wetland must be considered. He also considers additional ongoing maintenance of the wetland is required.

¹⁹ As above, the effects of the primary discharge of treated wastewater to water are not associated with the Wetland Application.

²⁰ Evidence of Dr Aussiel, paragraph 33

55. Mr Brown's issue about nitrogen reduction is a Part B matter as it relates to effects of the project and not the Wetland Application and is addressed below. The Wetland Application does include the 10% seepage but Mr Brown does not address that separately in his report (and it is important its effects are not double counted). For the reasons set out in Part B, Dr Olivier Ausseil's opinion is that there is little, if any, effects-based justification for placing a strong compliance emphasis on the nitrate-nitrogen reduction from the wetland, as it does not make a material difference to the risk of effects caused by the EWWTP discharge.²¹
56. Conditions recommended by Mr Brown, and issues as to maintenance, have been addressed in the evidence of Ms Manderson, Dr Ausseil and Mr MacGibbon.

Soil disturbance effects / Erosion and Sediment Control effects

57. In her Section 42A Report, Ms Morton indicated some minor matters of clarification required²² and, as addressed in the evidence of Ms Manderson, a memorandum addressing these queries as well as an updated draft erosion and sediment control plan ("**ESCP**") have been prepared by Colin Stace, Rural Consultant WSP Opus.²³ The ESCP will ensure effects are appropriately managed and less than minor with the final ESCP being certified by Horizons.

Flooding effects

58. Potential effects in relation to the construction of the bund are described in the Wetland Application and Ms Morton's Section 42A report.²⁴ These have been assessed by Mr Bell, Manager of River Engineering in his Technical Assessment.²⁵ Mr Bell concluded the impact of the bund would be less than minor.

Regulations and planning documents

Introduction

59. Section 104(1)(b) requires the Panel to have regard to relevant provisions of certain regulations and statutory planning documents. Ms Morton and Ms

²¹ Ibid.

²² From a review by Mr Greg Bevin, Regulatory Manager for the Regional Council.

²³ Section 42A Report of Ms Morton at paragraph 51 and evidence of Ms Manderson at paragraph 29.

²⁴ Section 42A Report of Ms Morton at paragraphs 53 – 59.

²⁵ Appendix 3 to the evidence of Ms Manderson.

Manderson consider the following planning documents are relevant to the Wetland Application:²⁶

- (a) National Policy Statement for Freshwater Management 2014 ("NPSFM") (updated in August 2017);
- (b) Horizons' Regional Policy Statement (part of the One Plan); and
- (c) Horizons' Regional Plan (part of the One Plan).

National Policy Statement for Freshwater Management

- 60. Ms Morton states in her Section 42A Report, agreed by Ms Manderson, that the NPSFM was addressed at the hearing for the First Application and does not require revisiting.
- 61. In short, TDC's position in respect of the NPSFM's application to the EWWTP Project is not altered by the Wetland Application. That said, it is worth noting that since the previous hearing in April 2017 there have been some amendments to the NPSFM that came into force in August 2017. The NPSFM now includes a new statement of national significance of freshwater and Te Mana o te Wai which commences with:²⁷

"The matter of national significance to which this national policy statement applies is the management of freshwater through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management."

- 62. New objectives and policies, relevant to the Wetland Application, include:
 - (a) Objective AA1:²⁸
 - (i) *"To consider and recognise Te Mana o te Wai in the management of freshwater";*
 - (b) Objective A4:
 - (i) *"To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits";* and
 - (c) Policy A7:
 - (i) *"By every regional council considering, when giving effect to this national policy statement, how to enable communities to*

²⁶ Set out at paragraph 27 of Ms Morton's Section 42A Report and agreed by Manderson at paragraph 21 of her evidence.

²⁷ Page 7.

²⁸ Policy AA1 which implements this objective relates solely to regional councils changing their policy statements and plans.

provide for their economic well-being, including productive economic opportunities, while managing within limits."

63. In complying with Policy 5-11 of the One Plan, and providing an overland and/or into land flow, the Wetland Application is consistent with Objective AA1.
64. In terms of Objective A4 and Policy A7, TDC emphasises (as was recognised in the Foxton Decision and as set out in the One Plan²⁹) the importance of affordability.

Horizons' One Plan

65. The One Plan includes both the Regional Policy Statement ("**RPS**") and Regional Plan for the Horizons region.
66. The key RPS chapters for the purpose of the Wetland Application are:
 - (a) Chapter 2 (Te Ao Māori);
 - (b) Chapter 3 (Infrastructure and Energy);
 - (c) Chapter 4 (Land);
 - (d) Chapter 5 (water).
67. The key Regional Plan chapters for the purpose of the Wetland Application are:
 - (a) Chapter 13 (Land use activities and indigenous biological diversity);
 - (b) Chapter 14 (Discharges to land and water)

Chapter 2 (Te Ao Māori);

68. The chapter 2 provisions of the RPS are relevant to the Wetland Application given its primary purpose of compliance with Policy 5-11 and responding to cultural issues.
69. The only relevant provisions in chapter 2 are Objective 2-1((a) have regard to the mauri of natural and physical resources and (b) recognise and provide for s6(e) and have particular regard to 7(a) matters) and Policy 2-4. Policy 2-4 requires that the issues listed in Table 2.1 must be addressed in the manner specified.
70. Table 2.1(a) is relevant generally to water quality across the region, although primarily relevant to the First Application (again double counting must be avoided). These general provisions are addressed through the

²⁹ Section 1.5.

objectives and policies in Chapter 5 and the rules in Chapter 14 of the One Plan. In terms of the seepage associated with the Wetland Application the issues raised in (a) are addressed through the evidence of Dr Ausseil and through the through/over land passage of any such discharge.

71. Table 2.1(h) is directly relevant to the Wetland Application as it relates to addressing the cultural effects of the discharge of treated human wastewater to water. Objective 5-2 and Policy 5-11 (addressed below), and the rules in Chapter 14, are the methods in the One Plan to address this issue.
72. TDC's engagement with Kahungunu and Rangitāne, and the work it has done to ensure the Wetland Application (and by extension, the wider EWWTP Project) complies with Policy 5-11 is well canvassed throughout these submissions. It is further recognised in these submissions that Rangitāne opposes the Wetland Application. TDC acknowledges the Panel will have to carefully consider the application of these objectives and policies to the Wetland Application.
73. Ms Morton's view, at paragraph 68 of her Section 42A Report, is that the Wetland Application does not fully accord with the chapter 2 objectives and policies (in light of Rangitāne's submission). With respect to Rangitāne's submission that is correct but the objectives and policies do not require full accordance with the submission. Further, Policy 2-4 and Table 2.1(h) are clear in their approach and application and, as set out below, the Wetland Application accords with them. Ms Manderson's view is that the Wetland Application is consistent with chapter 2, and she steps through her reasoning at paragraphs 41-42 of her evidence.

Chapter 3 (Infrastructure and Energy)

74. The relevant provisions of chapter 3 are Objective 3-1 (recognise and provide for ongoing operation and upgrading), Policy 3-1(c) (have regard to the benefits) and Policy 3-3 ((a) recognise and provide for the operation and upgrading once established) and (b) allow minor effects arising from the establishment of new infrastructure). Ms Manderson and Ms Morton are in agreement that the Wetland Application is consistent with these provisions.
75. As recognised by Ms Manderson, Policy 3-3(b) is of particular importance, as it requires the Panel to allow minor effects associated with the Wetland Application (and the First Application).

76. As set out above and in the expert evidence presented on behalf of TDC, potential adverse effects arising from the Wetland Application will be managed to ensure they are no more than minor. As above:
- (a) Ms Boam's evidence is that effects of the Wetland Application on groundwater will be less than minor; and
 - (b) Dr Ausseil's evidence is that the wetland does not make a material difference to the effects caused by the EWWTP discharge (and any differences are unlikely to be measurable in stream³⁰).
77. In light of the expert evidence, TDC's position is that any adverse effects of the Wetland Application on groundwater or freshwater quality will be no more than minor. Cultural values are addressed below.

Chapter 4 (Land)

78. The relevant provisions of this chapter are Objective 4-2 and Policy 4-2. Ms Morton and Ms Manderson are in agreement as to these provisions.
79. Ms Morton's Section 42A Report states, at paragraph 75, that so long as the earthworks activity is undertaken in accordance with appropriate conditions (which should include a certified ESCP) the earthworks activity should not give rise to any increase of accelerated erosion at that site.
80. Ms Manderson's evidence states at paragraph 44 that TDC's proposed conditions include the requirement for a certified ESCP.

Chapter 5 (Water)

81. The relevant provisions of this chapter are Objectives 5-2 (maintain or enhance depending on existing water quality) 5-4 (beds of rivers), Policy 5-11 (wastewater) and Policy 5-22 (beds of rivers). Policy 5-11 is addressed below.
82. Ms Manderson and Ms Morton agree that the Wetland Application is consistent with these provisions.

Chapter 13 (Land use activities and indigenous biological diversity)

83. Ms Manderson and Ms Morton are in agreement regarding the relevant provisions in this chapter, namely Objective 13-1, Policy 13-1 and Policy 13-2. In brief, both agree the Wetland Application is consistent with this chapter.

Chapter 14 (Discharges to land and water)

³⁰ Evidence of Dr Ausseil, paragraph 32.

84. The relevant provisions of this chapter are Objective 14-1 and Policy 14-1. Ms Morton and Ms Manderson are largely in agreement, however Ms Morton raises one query regarding the lining of the wastewater storage ponds. It is noted that this is a Part B matter (ie is outside the scope of this hearing) however for completeness this is addressed in the evidence of Ms Manderson, Ms Boam, Mr Crawford and Mr King. TDC does not intend to line the wastewater storage ponds on the basis it is unnecessary, for the reasons given by Ms Boam.

Other Regional Plan chapters

85. In her Section 42A Report Ms Morton sets out Chapters 12 (General objectives and policies), 16 (Takes, uses and diversions of water, and bores) and 17 (Activities in artificial watercourses, beds of rivers and lakes, and damming).
86. Ms Morton and Ms Manderson are in agreement with the application of these chapters to the Wetland Application. In terms of the term sought for this Wetland Application, TDC has confirmed in the evidence of Ms Manderson that it seeks a seven-year term to run from the commencement of the consents.

Other section 104(1)(b) matters

87. Ms Morton and Ms Manderson agree that there are no other section 104(1)(b) matters that are relevant to the Wetland Application.³¹

Sections 105 and 107

88. In relation to the discharge consent sought for the Wetland, section 105 of the RMA requires the Panel to have regard to:
- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
 - (b) the applicant's reasons for the discharge; and
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.
89. Taking each of these matters in turn:
- (a) The discharge at issue is seepage through the base of the wetland. As set out in the evidence of Mr MacGibbon, the base of the wetland

³¹ Specifically, Ms Morton and Manderson do not consider there are any national environmental standards, other regulations, New Zealand coastal policy statement or "any other matter" that are relevant to the Wetland Application.

is designed to allow no more than 10% of the average daily inflow to percolate through the wetland base. The treated wastewater will then, as discussed in Ms Boam's evidence, mimic the natural topography and flow down-gradient towards the Makakahi River. The sensitivity of the Makakahi River as the receiving environment was addressed in Dr Ausseil's evidence in the First Application.

- (b) The reason for the discharge is to allow the wetland to function in accordance with its design (discussed by Mr MacGibbon). This will then allow the operation of the EWWTP, which in turn is significant infrastructure, and essential to the health and safety of the residents of Eketāhuna; and
- (c) As outlined in the First Application, TDC has considered alternative methods of discharge, including discharging the treated wastewater to land. The wetland option has been developed over a long period of time. The Wetland Application (together with the Project) appropriately mitigates adverse effects, is achievable and affordable, is in keeping with Policy 5-11 of the One Plan and achieves the sustainable management purpose of the RMA.

90. Section 107 of the RMA restricts the grant of certain discharge consents that would contravene sections 15 or 15A of the RMA (which relate to the discharge of contaminants into the environment).

91. As explained by Dr Ausseil in his evidence, the wetland does not make a material difference to the risk of effects of the discharge.

Consent Term

92. As discussed above, TDC seeks consent for a short term of seven years, to begin from the commencement of the consents.

93. There is no disagreement between Ms Morton and Ms Manderson as to the term sought, and TDC's proposed conditions include provision for a section 128 review in July 2020, in accordance with Ms Morton's recommendation (although the utility of that review is questioned as the system will still be being established).

"Subject to Part 2" of the RMA

94. The Panel's decision on this application is subject to Part 2, and in particular the RMA's overriding purpose of promoting *"the sustainable*

management of natural and physical resources", a term defined in section 5(2).

95. Until recently, the Courts have taken an 'overall broad judgement' approach in considering applications for resource consent as well as notices of requirement, assessing the application against the relevant planning instruments and then stepping back to consider the application against the matters in Part 2.
96. However in recent cases, the Courts have re-considered how Part 2 should be applied in decision-making processes under the RMA. These cases have arisen following the Supreme Court's reasoning in *King Salmon*, as to how decision-makers should apply Part 2 in a plan change context.³²
97. In the context of resource consents, the findings in *King Salmon* were considered by the Environment Court and the High Court in *RJ Davidson Family Trust v Marlborough District Council* ("**Davidson**").³³
98. In its decision the Environment Court considered that the phrase "*subject to Part 2*" did not give a specific direction to apply Part 2 in all cases, but only in certain circumstances (invalidity, incomplete coverage and uncertainty).³⁴
99. On appeal, the High Court agreed with the findings of the Environment Court. Referring to *King Salmon*, the Court agreed that reference should only be made to Part 2 where there has been invalidity, incomplete coverage or uncertainty of meaning within the planning documents.³⁵
100. On appeal to the Court of Appeal,³⁶ the Court determined that:
 - (a) applying the *King Salmon* invalidity, incomplete coverage or uncertainty of meaning within the planning documents was not "*preferred*" for resource consents, as it involves too little flexibility, but rather (c) applies;³⁷
 - (b) notwithstanding *King Salmon*, RMA decision makers should usually consider Part 2 when making decisions on resource consents (that is the implication of the words "*subject to Part 2*" in section 104);³⁸
 - (c) however, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it "*would not add*

³² *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38

³³ [2016] NZEnvC 81 and [2017] NZHC 52. The application was initially heard by the Environment Court, which declined the application. That decision was appealed to the High Court.

³⁴ [2016] NZEnvC 81 at [259].

³⁵ [2017] NZHC 52 at [76].

³⁶ [2018] NZCA 316.

³⁷ At paragraph [76]. To this extent paragraph 105 of Ms Morton's evidence is incorrect.

³⁸ *Ibid*, see paragraphs 66-70.

anything to the evaluative exercise".³⁹ It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2. In other words, "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome".⁴⁰

101. Following the Court of Appeal decision in Davidson, the current position is that the Panel should refer to Part 2 unless it considers that the plan has been "competently"⁴¹ prepared and that the relevant provisions have clearly given effect to Part 2. Although there are issues with the provisions in the One Plan and its 'competence' may be questionable in parts,⁴² it is submitted that, for the Wetland Application at least, the One Plan provides a clear and directive framework, through Policy 5-11 that leaves little room for a Part 2 assessment.

The wetland and Policy 5-11 – "Onto or into land" / "overland"

102. TDC's position is that the proposed wetland would enable the EWWTP Project to meet the requirements of Policy 5-11 of the One Plan.

103. Policy 5-11 is as follows:

Policy 5-11: Human sewage discharges

Notwithstanding other policies in this chapter:

- a. before entering a surface water body all new discharges of treated human sewage must:
 - i. be applied onto or into land, or*
 - ii. flow overland, or*
 - iii. pass through an alternative system that mitigates the adverse effects on the mauri of the receiving water body, and**
- b. all existing direct discharges of treated human sewage into a surface water body must change to a treatment system described under (a) by the year 2020 or on renewal of an existing consent, whichever is the earlier date.*

104. The Section 42A Report of Ms Morton, and the evidence of Ms Manderson both:

³⁹ Ibid, at paragraph 75.

⁴⁰ Ibid, at paragraph 82.

⁴¹ Ibid, at paragraph [75].

⁴² See for example *Wellington Fish & Game v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 and *Horowheuna District Council* [2018] NZEnvC 163.

- (a) agreed that the Wetland Application meets Policy 5-11 in that it is consistent with Policy 5-11(a)(ii) (noting Ms Manderson's view that it also meets limb (i));
- (b) agreed that the policy does not require an applicant to meet all three limbs of Policy 5-11(a) in order to meet the policy on the whole; and
- (c) agreed that as the Wetland Application meets the requirements of Policy 5-11, it also provides a pathway for the First Application to be consistent with the requirements of Policy 5-11.

105. TDC stated its position on these points in the context of the Pahiatua Wastewater Treatment Plant proceedings.⁴³ As set out in those proceedings, TDC's view is that:

- (a) Policy 5-11 responds to tangata whenua concerns that the direct discharge of treated wastewater to lakes, river and surface waters is generally not appropriate, due to effects on the mauri of the water;
- (b) the proposed wetland (both in those proceedings and in the current Wetland Application) amounts to "*land*" for the purposes of Policy 5-11(a)(i) and (ii), in light of the broad meaning ascribed to "*land*" by the RMA which specifically includes "*land covered by water*"; and
- (c) in practice, the operation of the wetland system will ensure that the Project meets Policy 5-11 through a combination of the treated wastewater being "*applied onto or into land*" (5-11(a)(i)) and "*flow[ing] overland*" (5-11(a)(ii)).

106. In addition to those submissions, and in relation to Policy 5-11:

- (a) The Environment Court in the *Shannon*⁴⁴ decision held the project in that case, which included a small wetland connected to a high rate land passage system that enables, as necessary, discharge into the Manawatu River when flows exceeded the 20th FEP, and while the Court did not comment on Policy 5-11 directly it did state "*the proposal is consistent with all relevant planning documents and provisions*";⁴⁵
- (b) The Environment Court in the *Feilding* decision held the project in that case, which still involved a direct discharge into the Manawatu River, to not be consistent with the "*very directive policy that that is*

⁴³ In particular, TDC's memorandum of counsel dated 29 May 2017.

⁴⁴ *Horowhenua District Council* [2015] NZEnvC 45.

⁴⁵ *Ibid*, at [110].

*specifically relevant to the matter before the Court*⁴⁶ (and consequently granted a 10 year term for the river discharge);⁴⁷

- (c) The Environment Court in the *Foxton* decision held the project in that case, which was 100% to land, was consistent with the "*strong direction*"⁴⁸ given in Policy 5-11 (recognising that case involved considerable opposition despite being 100% to land).

107. The proposed wetland provides for wastewater to go onto and into land and to pass through and over land.⁴⁹ TDC acknowledges that Rangitāne opposes the application. The Wetland Application does not achieve a 'no effects' outcome but such an outcome is not required under the RMA, nor Policy 5-11.

108. The planning evidence of Mr Phillip Percy, presented on behalf of Rangitāne, queries:

- (a) whether the "*mitigation*" element of Policy 5-11(a)(iii) also applies to (i) and (ii), opining that all three branches of Policy 5-11(a) are intended to achieve three particular outcomes; and
- (b) whether the proposed wetland may be more akin to a "*lake*" than "*land*" and therefore may not meet the requirements of Policy 5-11.

Factors to be considered

109. Mr Percy's first point conflates different objectives and policies and attempts to apply them all through one policy. He is also conflating the consents sought through the First Application and the Wetland Application relevant to this hearing.

110. TDC has no issue that there are range of objectives and policies in the One Plan that are relevant to the EWWTP consents. Those objectives and policies (including objectives 5-1, 5-2, 5-4 and 14-1) were dealt with comprehensively during the first hearing.⁵⁰ This hearing, which focusses solely on the Wetland Application, is not the opportunity to try and bring them back into issue by incorrectly expanding the interpretation of Policy 5-11.

⁴⁶ [2016] NZEnvC 53, at [134].

⁴⁷ *Ibid*, at [189] and [205] – [208].

⁴⁸ *Horowhenua District Council* [2018] NZEnvC, at [29].

⁴⁹ And is also a system that "*mitigates the adverse effects on the mauri of the receiving water body*".

⁵⁰ Although Mr Percy did not refer to them in his evidence for the first hearing beyond agreeing with Mr Carlyon's evidence and a general reference to Chapter 5 at paragraph 62. These objectives and policies are also referred to above.

111. That Policy 5-11 is within Chapter 5 of the One Plan is not disputed. That Policy 5-11 is also highly directive is not disputed.⁵¹ That makes sense, as it is the surface water chapter. That the EWWTP consents (as a whole) should be consistent with the relevant objectives and policies of the One Plan (as a whole) is also not disputed.
112. However, as Mr Percy notes, Policy 5-11 is different to the other policies in that it is method, and not outcome, focussed.⁵² That is correct but does not mean that outcomes are read into the clear wording of Policy 5-11. Policy 5-11 is also separated from the other Chapter 5 policies by the use of the word "*notwithstanding*". That makes it clear that compliance with the other Chapter 5 provisions (outcome focussed and relevant to the first hearing) is required *and* that a Policy 5-11 discharge method also needs to be achieved.⁵³
113. Policy 5-11 is deliberately different to, and separate from, the other policies in Chapter 5. It is also directly relevant to treated wastewater discharges and the method of discharge. In particular, it is the sole policy in the One Plan that implements Policy 2-4⁵⁴ (and cultural effects) in relation to the discharge of treated human wastewater. Table 2.1 of the One Plan is clear that other objectives and policies implement the more general cultural water quality issues.
114. In response to Mr Percy's evidence on the interpretation of Policy 5-11, TDC's position is that another assessment of the general water quality matters covered in the other objectives and policies in Chapter 5 is not required, nor appropriate. However, even if the Panel disagrees with that approach the Wetland Application (and the EWWTP consents):
- (a) are consistent with them;
 - (b) will maintain or enhance the mauri of the Makakahi River compared to the present discharge;⁵⁵
 - (c) will safeguard⁵⁶ the life supporting capacity of the River; and
 - (d) will comply with Policy 5-11 (in particular (a)(i) and (ii), noting in particular that (ii) relates to a "*flow overland*").

⁵¹ A position also adopted by Mr Percy at paragraph 43 of his evidence for the first hearing.

⁵² At paragraph 20.

⁵³ It also, arguably, gives Policy 5-11 primacy within the policies of Chapter 5 (ie that the method is to be achieved even at the cost of the other Chapter 5 policies).

⁵⁴ Via Table 2.1(h).

⁵⁵ Unlike the existing environment in s104(a) the assessment against the provisions of the One Plan under s104(b) have to be taken as at the date it was made operative when the existing consents were lawfully occurring.

⁵⁶ Which is not to be read as "*to avoid all adverse effects on*" – *P&E Limited v Canterbury Regional Council* [2016] NZEnvC 252, at [263].

115. Finally, in relation to Mr Percy's suggestion that the "*mitigation*" element of limb (iii) may equally apply to limbs (i) and (ii), that is neither a natural, nor legal, interpretation of the policy.
116. Had that been the policy intent behind 5-11, the "*mitigation*" element would either be included in the stem of Policy 5-11(a) or be repeated in limbs (i), (ii) and (iii). As the policy stands, the requirement for a system or process that "*mitigates the adverse effects on the mauri of the receiving water body*" is only present in limb (iii). To read that requirement into limbs (i) and (ii) goes well beyond the natural and plain wording of the policy.
117. That said, although TDC does not rely on Policy 5-11(a)(iii) in order to meet Policy 5-11, it understands Policy 5-11 to contemplate adverse effects on the mauri of the receiving water body being mitigated where the treated wastewater is applied into or long land, or where it flows overland, before entering water.

Is the wetland "land"

118. As was the case with the Pahiatua wetland, Mr MacGibbon has specifically designed the EWWTP wetland to ensure that much (if not all) of the treated wastewater will, as it flows through the wetland system, interact with the soil. As Mr MacGibbon sets out in his evidence, this interaction is important for ensuring optimal denitrification of the treated wastewater as it moves through the wetland and percolates down through the wetland base. In this way, the treated wastewater will:
- (a) be applied "*onto...land*" at the point it is transferred from the treatment ponds to the wetland;
 - (b) be applied "*...into land*" as it percolates down through the wetland base; and
 - (c) "*flow overland*" in the sense that it flows above the ground as it makes its way through the wetland system.
119. In short, the proposed wetland does meet Policy 5-11(a) either through limb (i) and/or (ii)⁵⁷. Ms Morton's view, set out at paragraph 82 of her Section 42A Report, is that the proposed wetland addresses Policy 5-11, specifically through Policy 5-11(a)(ii).

Evidence to be presented

120. The witnesses for TDC are as follows:

⁵⁷ Or (iii).

- (a) Blair King – TDC overview, project description, and related matters;
- (b) John Crawford – wastewater;
- (c) Roger MacGibbon – wetland design;
- (d) Ella Boam - groundwater
- (e) Dr Olivier Ausseil – freshwater quality; and
- (f) Tabitha Manderson – planning and conditions.

PART B: OTHER MATTERS

Introduction

121. As confirmed in the Panel's eight memorandum dated 19 October 2018 ("the **Eighth Memorandum**") the scope of today's hearing is confined to "*only...this additional application for the proposed wetland (APP-2018201909.00)*".⁵⁸
122. However, since the Eighth Memorandum was issued TDC has received queries from the Panel, as well as matters contained in Council Officers' Section 42A Reports, that fall outside of the scope of the Wetland Application but that nevertheless require a response.
123. TDC recognises the complex interrelationship between the Wetland Application and the First Application, and acknowledges there are matters that, while not within scope of this particular hearing, are important in the broader context of the EWWTP proceedings. Such matters are addressed in TDC's expert under the heading "Part B".
124. That said, TDC is conscious that these are matters that affect not only the two parties that were notified of the Wetland Application, but also all submitters on the First Application. Depending on what, if anything, the Panel wishes to do in relation to these questions, TDC proposes a possible pathway for dealing with these matters to ensure all parties are afforded the opportunity to participate in all matters in which they have an interest.
125. The ultimate outcome is one integrated reply by TDC drawing together both the First Application and the Wetland Application.

Water Quality

126. Dr Ausseil's evidence comments on points raised in the Section 42A Report of Mr Brown relating to:

⁵⁸ Paragraph 9.

- (a) the contribution of the EWWTP to in-river nitrogen loads; and
- (b) ammoniacal nitrogen and Periphyton.

127. In brief, Dr Ausseil concludes that:

- (a) The EWWTP is a very minor contributor to in-stream nitrogen-nitrate concentrations and loads;⁵⁹
- (b) Ammoniacal-nitrogen in the discharge is less likely to be a driving force in the moderate increase in periphyton growth downstream of the Ngatahaka confluence/EWWTP discharge than other factors (for instance nitrate-nitrogen from the Ngatahaka Creek and DRP from the discharge);
- (c) One Plan periphyton targets are generally met downstream of the Ngatahaka confluence/EWWTP discharge (such that management of adverse effects as contemplated by the One Plan are achieved⁶⁰), however a degree of uncertainty remains regarding compliance with the Periphyton target;
- (d) These uncertainties should be able to be addressed once the EWWTP discharge is relocated away from the Ngatahaka confluence and robust monitoring is put in place; and
- (e) There is presently no strong evidence that the nitrogen component of the discharge causes significant adverse effects on periphyton growth, either at the site scale or cumulatively. The monitoring proposed will assist in confirming this.

128. In his Section 42A Report, Mr Brown refers to a 10.5% reduction in loss from dairy farms in the catchment.⁶¹ Dr Ausseil's evidence is that dairy farms generate approximately 50% of the N load such that Mr Brown's reduction should be a 5% reduction. Mr Brown does not provide any copies of these consents to enable consideration of them.⁶² Assuming the decrease to 37.65kg/N/ha/yr is required by the consents that is from a very high starting point, and the N leaching remains at a level significantly above that required in Table 14.2 of the One Plan (to which the One Plan requires

⁵⁹ Tables 2 and 3 of his evidence.

⁶⁰ See paragraph 41(a) of Dr Ausseil's evidence.

⁶¹ At paragraph 38.

⁶² And the relevance of them to the types of consents applicable to the *Wellington Fish & Game* declaratory proceedings. His reference to a N reduction may be to respond to comments by the Environment Court in the *Fielding* decision (at paragraph 148) that Horizons was putting pressure on the applicant to reduce nitrogen inputs without putting the same pressure onto other discharges. If so then the same position as in the *Foxton* decision (at paragraph 235) applies, at the EWWTP is doing its equitable share. It is also noted, as set out in the *Foxton* decision, that cost is an important factor. Mr Brown has not provided any such assessment but it is significantly cheaper to reduce N leaching from farming systems than WWTP systems.

such discharges "*must be managed*"⁶³). Beyond illustrating that dairy farming N losses are very high, Mr Brown's comparison only goes to highlight the very minor levels of in-stream N associated with EWWTP.

129. More broadly, the EWWTP has wide public benefit and is regionally significant infrastructure. The Project means that EWWTP is doing its part in enhancing water quality in the Makakahi River.

Groundwater

130. Ms Boam's evidence responds to Ms Morton's and Mr Baker's recommendation that one up-gradient and two down-gradient monitoring wells be installed should the treatment ponds not be lined.
131. Ms Boam's view is this is not necessary given the presence of Mudstone bedrock, an impermeable substance. This means that any seepage from the ponds would not be able to interact with a groundwater system and would therefore not affect water quality. Ms Boam suggests permeability investigations could be undertaken to confirm whether any leakage is occurring from the ponds. Such conditions are proposed by Ms Manderson.

Wastewater treatment processes

132. Mr King explains in his evidence the work that has been done on the EWWTP since the re-adjudgment of the May 2017 in response to the Panel's questions. As set out in Mr King's evidence, works that form part of the proposed upgrades will be commissioned following the finalisation of conditions and once treatment standards are confirmed.
133. Mr King also describes the additional work TDC has undertaken in terms of influent characterisation and stormwater ingress reduction, with reference to Mr Crawford's evidence.
134. Mr King, Ms Boam and Mr Crawford confirm, in response to a query from Ms Morton, the wastewater storage ponds will not be lined. Again that is due to them being located in bed rock. Lining the ponds also comes at a considerable expense (with little or no environmental benefit) and raises technical issues (for example the ponds cannot be used while they are lined and the formation of whales).
135. Mr Crawford provides an update to his previous evidence in the First Application in relation to effluent quality and notes that although the effluent

⁶³ Policy 14-5.

ammonia concentration has deteriorated, it is still relatively low for a wastewater oxidation pond system.

136. As Mr Crawford explains, while there may be options available for denitrification upgrades, these options would require a fundamental change to the treatment plant which would carry with it significant costs (\$1m-\$1.2m).⁶⁴ As Mr King explains in his evidence, TDC has already committed to upgrading four primary wastewater systems which will mean more complex and engineered processes and increases in staff. These upgrades already mean a significant investment for the township of Eketāhuna and its 260 ratepayers.
137. Mr Crawford's opinion, informed by Dr Ausseil's evidence in relation to the in-stream effects of ammoniacal-nitrogen in the discharge, is that such costly and significant upgrades are not warranted based on the current level of understanding.
138. As found by the Environment Court in the Foxton Decision it is not appropriate to require *"additional works at considerable extra cost to the local community when the likelihood is that any environmental benefits that may result may not be perceptible or measurable."*⁶⁵
139. In this case, there is insufficient evidence that the installation of reliable denitrification upgrades would result in any meaningful environmental benefit, therefore in light of the *Foxton* Decision, and taking into account the high cost to the small community of Eketāhuna that would attach to such upgrades, this is not considered an appropriate use of ratepayers' money nor an outcome that would achieve sustainable management.

Term of consents

140. The Panel has queried whether TDC still seeks a term expiring 1 July 2025 and if not, what the legal basis for the different term is. TDC understands this query to relate to the First Application.
141. As set out in counsel's memorandum dated 17 May 2017, a seven-year term was sought for the First Application on the basis that this was the shortest time practically available to collect further information (one year), design, build and optimise the proposed treatment plant (three years) and undertake monitoring (three years).

⁶⁴ At paragraph 19 of his evidence for the Wetland Application.

⁶⁵ *Horowhenua District Council v Manawatu-Wanganui Regional Council and Horowhenua District Council* [2018] NZEnvC 163, at [303].

142. As discussed by Ms Manderson in her evidence, TDC still seeks a seven-year term, however the 1 July 2025 deadline is now outdated and TDC seeks that the seven-year term run from the commencement of the consents. It is also envisaged that the seven-year term would align with the seven-year term sought in respect of the Wetland Application.

Possible Pathway

143. As indicated above, and in the memorandum of counsel dated 7 November 2018, TDC is conscious of the need to ensure all relevant parties to both the First Application and the Wetland Application remain informed of, and able to respond to, issues relevant to their submissions.

144. One suggested approach going forward may be as follows:

- (a) Following today's hearing (and prior to TDC's written reply being filed) a document be prepared updating all parties (to both sets of applications) on matters arising from the Wetland Application that may have implications for the broader EWWTP proceedings. That document may include, for instance:
 - (i) The Panel's questions as set out in the memorandum dated 29 October ("the **Ninth Memorandum**");
 - (ii) TDC's responses to those questions;
 - (iii) An updated set of conditions; and
 - (iv) Any other matters;
- (b) The document would be provided to all parties for written comment;
- (c) TDC would then, following receipt of any comments, provide its written reply. This would be one integrated document relating to both the First Application and Wetland Application;
- (d) Provided the Panel is satisfied it has all the information it requires to make its decision on the applications, it would then close the hearings and issue a decision on both applications.

145. This is just one suggested approach and TDC looks forward to discussing it, and/or alternative pathways going forward, with the Panel and the parties.

PART C: CONDITIONS

146. Sections 108 and 108AA of the RMA empower the Panel to impose conditions on the consent, but also impose a number of restrictions on

that power. A range of conditions has been proposed to address the potential adverse effects of the proposed wetland, as well as the broader EWWTP Project. TDC's position in respect of conditions is set out in Appendix 1 to Ms Manderson's evidence, which includes responses to the conditions proposed by Ms Morton in her Section 42A Report.

DATED this 27th of November 2018

David Allen / Esther Bennett

Counsel for Tararua District Council