

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER OF Applications for resource consent
for the operation of the Pahiatua
Wastewater Treatment Plant

BY **TARARUA DISTRICT COUNCIL**
Applicant

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

23 May 2017

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MAY IT PLEASE THE HEARING PANEL:

INTRODUCTION

1. These legal submissions support the applications for resource consent by Tararua District Council ("**TDC**") to allow the ongoing operation of the Pahiatua Wastewater Treatment Plant ("**WWTP**") in order to service the residents of Pahiatua.
2. The applications cover three discharge consents for the operation of the WWTP itself, as well as a further discharge consent and land use consent to establish and operate a new wetland to attenuate the treated wastewater from the WWTP before it reaches the Mangatainoka River (together, the "**Project**").
3. These submissions:
 - (a) summarise TDC's case in a principal submission;
 - (b) set out the background and context to the applications, including addressing issues related to scope;
 - (c) describe the legal framework for the Panel's decision;
 - (d) note the evidence before the Panel regarding the environmental effects of the operation of the WWTP, highlighting key issues for determination;
 - (e) identify relevant planning documents and provisions;
 - (f) note that extensive conditions are proposed to attach to the resource consents, and discuss the term of the consents;
 - (g) address how the legal framework, including Part 2 of the Resource Management Act 1991 ("**RMA**"), is to be applied to these applications; and
 - (h) identify the witnesses giving evidence for TDC.

PRINCIPAL SUBMISSION

4. TDC and its predecessor entities have been responsible for Pahiatua's wastewater treatment system since it was first developed in about 1930, in order to meet their core obligation of dealing with wastewater produced by the town of Pahiatua. These applications are to allow that operation to continue, in a responsible and environmentally sustainable way.

5. The ongoing operation of the WWTP is vital to the health and safety of the residents of Pahiatua, and in turn is vital to the social and economic wellbeing of the community. These are matters at the very heart of the RMA's sustainable management purpose. Put another way, compromising the operation of the WWTP would run contrary to the purpose of the RMA.
6. These applications aim to ensure, for a term of 15 years, the continued lawful operation of the WWTP. Granting consent for that term would appropriately reflect the essential nature of the WWTP.
7. Central to this Panel's consideration of the applications must be the environmental effects of allowing them. The expert evidence before the Panel is that the adverse environmental effects of the Project are modest, in contrast to its essential benefits, and have been or will be appropriately avoided, remedied, or mitigated. Importantly, the implementation of the consents sought for the Project will result in a reduction of adverse effects as compared to the WWTP as it currently operates.
8. Overall, granting the applications, subject to the conditions proposed and for the 15-year term proposed by TDC, will accord with Horizons Regional Council's ("**Horizons**") One Plan and promote the sustainable management purpose of the RMA.
9. These matters are addressed in greater detail below.

BACKGROUND AND CONTEXT TO THE PROJECT

Obligation to provide wastewater treatment services

10. TDC's statutory obligations in relation to the Pahiatua WWTP are derived from:
 - (a) subpart 1 of the Local Government Act 2002, which imposes obligations on territorial authorities to assess the adequacy of water services, including wastewater services; and
 - (b) section 25 of the Health Act 1956,¹ which imposes a duty on local authorities to provide sanitary works, including sewerage works and works for the disposal of sewage.

Background to the current Pahiatua wastewater treatment system

11. The WWTP serves the town of Pahiatua, which is home to approximately 2,500 residents.² There are 1,316 total connections to the town's

¹ As amended by the Health (Drinking Water) Amendment Act 2007.

wastewater system, which consists of a reticulation system throughout the town, and WWTP.

12. The WWTP is located at Boundary Road, about 100m north-west of Pahiatua township. The WWTP was originally constructed on this site in 1974, as a two-pond system, discharging to the Mangatainoka River.
13. As Mr Crawford describes in his evidence for TDC, there have been a series of upgrades to the WWTP, in particular in 2014 and 2015, and further tuning and upgrades are to be undertaken as part of this consent renewal process. In its current configuration, the WWTP is a three-pond oxidation-based plant. A fine screen at the inlet provides preliminary treatment, while recently installed chemical dosing, clarification, filtration and UV disinfection provide tertiary treatment.³
14. Discharge from the WWTP is currently via an outfall pipe to 'Town Creek', which subsequently discharges into the Mangatainoka River downstream of the WWTP.
15. Mr Crawford's expert opinion is that:
 - (a) the WWTP is operating well within its nominal loading capability; and
 - (b) in terms of effluent quality, the performance of the WWTP is as good or better than most comparable systems in New Zealand.

These applications and the basis for them

The current applications

16. The WWTP currently operates in reliance on Discharge Permit 4369, which expired in June 2005. An application to replace DP4369 was lodged in December 2004. The 2004 application has been on hold since 2006.⁴
17. Several of the current applications were lodged in 2014.⁵ The consents sought at that time were to:
 - (a) discharge contaminants to water, being the discharge of treated wastewater to the Mangatainoka River; and
 - (b) discharge contaminants (mainly odour) to air from the operation of the WWTP.

² In his evidence for TDC, Mr King explains that the Council is expecting a small amount of population growth over the medium- to long-term.

³ The operation of these tertiary processes is yet to be optimised.

⁴ The 2004 application had the effect of preserving DP4369 – because the 2004 application was lodged more than six months prior to DP4369, TDC is entitled under section 124 of the RMA to rely on DP4369 for the lawful operation of the WWTP until either new consents (and all appeals are determined), or consent is refused (and all appeals determined).

⁵ As a revised version of the 2004 application.

18. In December 2015, as part of a response to a request made by Horizons under section 92 of the RMA, TDC sought an additional consent for the discharge of contaminants (treated wastewater) to land. That consent would authorise any possible unintended seepage from treatment ponds (through their existing clay liners), rather than the deliberate application of treated wastewater to land.
19. TDC seeks a 15-year term of consent for all the above discharge permits.
20. On 12 April 2017, again in response to a section 92 request by Horizons, TDC sought consent to construct a wetland to be located adjacent to the existing ponds at the WWTP. The intention is that treated wastewater from the WWTP will enter the wetland. The applications relating to the wetland comprise applications:
 - (a) for land use consent, to enable earthworks in order to create the wetland; and
 - (b) for consent to discharge treated wastewater to land, to allow for seepage from both the lined and unlined portions of the wetland.
21. TDC seeks a five-year consent term for the earthworks consent, and a 15-year term for the discharge consent.

Option selection / alternatives work

22. In 2013 TDC commissioned Wai Waste to conduct an investigation into the disposal of treated wastewater to land from the WWTP. The investigation report concluded there were potentially suitable sites available for land irrigation, however these carried risks that would require mitigation, including long-term land ownership, potential legal easements, confirmation of soil conditions, and a potentially onerous resource consent process.
23. In 2014, TDC engaged Opus to comment on Wai Waste's investigation report. Opus found that discharge to land was not a cost-effective option in the circumstances as it relied on a relatively high application rate and would still require significant temporary storage in the event of any non-irrigation conditions (i.e. heavy rainfall). Opus recommended TDC maintain the existing method of discharge to water.
24. Accordingly, TDC did not pursue the option of land irrigation further.

Consultation and discussions with tangata whenua, Horizons, and other stakeholders

25. TDC recognises the myriad benefits of consulting about its infrastructure with the various communities in the district. As the proposal has developed TDC has sought and drawn on the views of tangata whenua and others about matters of concern, and worked closely with Horizons' technical experts to agree appropriate methods for assessing its effects.
26. In respect of tangata whenua, TDC's original applications were informed by a cultural values assessment commissioned from Peter McBurney by Rangitāne O Tāmaki nui a Rua (dated November 2014), included with the applications. While expressing Rangitāne's appreciation for TDC's efforts to improve the quality of treated wastewater discharged from the WWTP, the assessment ultimately notes Rangitāne's support for the kaupapa of avoiding the direct discharge of any treated wastewater to the Manawatū River system. Mr Paewai's evidence expresses the same conclusion, and similar views have been expressed by other iwi/hapū with whom TDC have consulted.
27. These views drove the process of TDC taking advice on potential alternatives to the current discharge, including by way of large-scale irrigation to land – as noted above, the options assessed are discussed in the report by Wai Waste and Opus that accompanied the applications. As Mr King will explain, such a system is prohibitively expensive for the district (even leaving aside some consentability risks highlighted in the Wai Waste report).
28. Nonetheless, the views of tangata whenua have also framed TDC's ongoing efforts to upgrade and tune the WWTP, and the Panel will hear about how those works have improved – and will continue to improve significantly – its performance, in terms of removing nutrients and contaminants during the treatment process. Further, the Project now incorporates passage of the treated wastewater through a wetland as a final 'polishing' step, which will enhance contact of the wastewater with (and its passage through) land in order to achieve even greater improvements in the quality of the discharge, as well as aiming to provide additional metaphysical benefits. TDC would be grateful for further input from tangata whenua into the detailed design of the wetland, to those ends.
29. TDC has similarly consulted with and taken on board the views of other interested parties who are also concerned with potential effects on the

Mangatainoka River and related watercourses, such as Water and Environmental Care Association and Fish and Game, and has worked closely with a neighbouring landowner, Mr Morrison, about the proposal.

30. TDC has also engaged closely with Horizons about technical aspects of its proposal, including the appropriate approach to assessing the in-stream effects of the discharge.⁶
31. Engagement is proposed to continue through the Tararua District Wastewater Forum, which TDC hopes will provide a valuable setting for ongoing constructive dialogue between its officers, tangata whenua, and interested community members about the WWTP and related issues.

Scope

32. It is important for resource consent applicants to be open-minded to adapting a proposal to address stakeholder concerns and other issues that may arise and, ultimately, to achieve better environmental outcomes than originally proposed. An issue that inevitably arises in the context of such iterative development is whether proposed changes are within the scope of the consents originally sought.
33. The law on that point is relatively clear, but an evaluative assessment must be carried out on the facts of each particular case.
34. A change to a notified application is within the jurisdiction of the consent authority if its ambit is fairly and reasonably within the scope of the original notified application.⁷ Particular factors to be considered are whether the activity for which consent is sought, as ultimately proposed, is significantly different from that originally applied for and notified (if notification was required) in terms of:
 - (a) the scale or intensity of the proposed activity; or
 - (b) the altered character of the effects or impacts of the proposal.⁸
35. Whether there might have been other submitters, had the activity as ultimately proposed been that applied for and notified, may assist in applying or answering the test.
36. As noted above, the 2014 applications were to discharge treated wastewater to the Mangatainoka River, and to discharge contaminants (mainly odour) to air. Separate consents have been sought since then

⁶ See the joint memorandum dated 30 May 2016 at Appendix B to Dr Ausseil's evidence.

⁷ *Shell New Zealand Ltd v Porirua City Council* CA 57/05, 19 May 2005.

⁸ *Atkins v Napier City Council* (2008) 15 ELRNZ 84.

relating to seepage from the existing ponds, construction of a wetland, and seepage from that wetland.

37. The modifications made to aspects of the proposal since those applications were lodged relate to:
- (a) a proposed change in the configuration of the wetland on land currently owned by the Morrisons;⁹ and
 - (b) an associated change to the location of the discharge to the Mangatainoka River.
38. The character of the effects of the proposal are unchanged; wastewater is still to be discharged to land (from the base of ponds and the wetland) and to the river (albeit in a different location to that originally envisaged). The scale and intensity of the proposal's adverse effects are likewise unchanged from the original applications,¹⁰ and indeed are aimed at reducing adverse effects on the Managh land neighbouring the WWTP.
39. The Morrisons have given written approval to the modifications, and it is difficult to conceive of any other person who may have submitted on the applications, had they been for the Project as amended. Accordingly, those changes are within scope.

STATUTORY FRAMEWORK FOR THE PANEL'S DECISION

Section 104

40. Section 104(1) provides that when considering the applications for resource consent and any submissions, the Panel must, subject to Part 2 of the RMA, have regard to:
- (a) any actual and potential effects on the environment of allowing the activity;
 - (b) any relevant regulations and provisions of statutory planning documents; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
41. Under section 104(2A), the Panel must have regard to the value of the investment of the existing consent holder. This means the Panel must have regard to the value of the original WWTP, as well as the upgrades

⁹ Anna and Philip Morrison have provided their formal written approval to the proposal, as modified.

¹⁰ The original discharge to the river was proposed to be by way of an old infiltration system, which would have facilitated mixing of the discharge with the river flows; while this is no longer proposed, wastewater discharged in the currently proposed location will have had the benefit of additional 'polishing' through the wetland system.

carried out since 2002, and the significant cost of constructing an alternative wastewater treatment plant.

42. As recorded by Ms Morton in her section 42A report:
- (a) the four discharge permits (three for the WWTP itself, and one for the wetland) are to be assessed as discretionary activities;¹¹ and
 - (b) the land use consent to undertake the earthworks necessary to construct the wetland is to be assessed as a controlled activity.¹²
- Ms Morton has not recommended that this consent be 'bundled' with the discharge consents.

Section 104A (wetland earthworks) and 104B (discharges)

43. Section 104A applies to the Panel's consideration of the land use consent application in respect of the wetland, being a controlled activity. That section provides that the Panel must grant consent for the activity, but may impose conditions under section 108. Conditions must relate only to those matters over which control is reserved in the One Plan, in national environmental standards, or in other regulations.
44. Section 104B applies to the Panel's consideration of the discharge permits, being discretionary activities. That section gives the decision-maker the discretion to grant or refuse an application and, if the application is granted, to impose conditions under section 108. Possible conditions of consent are addressed later in these submissions.

Provisions specifically relevant to the discharge consents: sections 105 and 107

45. In relation to the discharge consents sought for the Project, 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.
46. Taking each of those matters in turn:
- (a) the nature of the discharges and sensitivity of the receiving environment (primarily the Mangatainoka River) are addressed in

¹¹ Under One Plan Rule 14-30 (for the discharges of treated wastewater) and 15-17 (for the discharge to air

¹² Under One Plan Rule 13-2.

detail in the evidence of Dr Ausseil (among others) – in simple terms, TDC's case is that the adverse effects of the discharges will be moderate and acceptable, and will be an improvement over the level of effects from the WWTP as currently configured;

- (b) the reason for the discharges is to allow the operation of the WWTP, which in turn is classified as regionally significant infrastructure, and essential to the health and safety of the residents of Pahiatua; and
 - (c) as outlined above, TDC has considered alternative methods of discharge, including discharging the treated wastewater to land. TDC's position is that the Project as presented to the Panel is appropriate and in keeping with the sustainable management purpose of the RMA.
47. 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). Section 107 is triggered only where, after reasonable mixing, any of the effects in the receiving waters that are listed in section 107(c) to (g) arise.
48. Ms Morton addresses section 107 in her section 42A report, and implies it is possible that section 107 is triggered. However, there is no technical evidence before the Panel that the discharges will give rise to any of the effects list in section 107(c) to (g). While Mr Patterson's view is that the impact of the discharges on dissolved oxygen levels are difficult to determine, he makes no direct link between that possible issue and any of the effects listed in section 107(c) to (g).
49. Dr Ausseil will explain his view that there is no issue with dissolved oxygen levels, and that section 107 is not triggered by the discharges.

Application of the legal framework

50. We discuss below how the legal framework applies to TDC's proposal, in terms of:
- (a) the effects on the environment of allowing the application;
 - (b) relevant regulations and planning instruments;
 - (c) the Manawatu River Leaders Accord (as an "other relevant matter" under section 104);
 - (d) the application of section 105 and 107;

- (e) TDC's proposed consent conditions and consent term; and
- (f) Part 2 of the RMA.

EFFECTS ON THE ENVIRONMENT

Introduction

- 51. As noted above, the effects of the Project – both positive and adverse – are central to the Panel's consideration under section 104.
- 52. The effects of the Project are in turn central to assessing the relevant provisions of the One Plan, as well as to the RMA's sustainable management purpose; the definition of that term also refers to "*avoiding, remedying, or mitigating any adverse effects of activities on the environment*".
- 53. The key categories of effects for consideration are noted in turn below.

Positive effects

- 54. The benefits of the Project are fundamental. The positive effects of providing for an appropriate wastewater treatment system for the residents of Pahiatua are not specifically addressed in the section 42A report of Ms Morton as part of her discussion of the effects of the Proposal.¹³ However, it is important that the positive effects of the Project are not overlooked by the Panel.
- 55. Again, the operation of the WWTP is vital to promoting health and wellbeing (in all senses of the word, including cultural, economic, and social) of the local communities here. Allowing the necessary discharges of contaminants for these purposes, while avoiding, remedying, or mitigating any adverse effects on the environment (as discussed below), is the very definition of sustainable management.

Adverse effects

- 56. Based on a reading of the evidence and section 42A reports, it is apparent that the key categories of actual and potential adverse effects to be considered by the Panel are:
 - (a) effects on surface water quality arising from the ultimate discharge of the treated wastewater to the Mangatainoka River); and
 - (b) effects on cultural values associated with the mauri of the Mangatainoka River.

¹³ Though as discussed below they are noted at a high level as part of her discussion of the relevant One Plan provisions.

57. Those effects, and others addressed in the evidence and section 42A report, are highlighted below.

Surface water quality

58. The Council and its specialist advisors have engaged with Horizons in respect of the potential effects of the Project on surface water quality.
59. The evidence illustrates that the experts (Mr Patterson for Horizons and Dr Ausseil for TDC) are fairly well aligned in their views as to the nature of the Project's effects on surface water quality, and an overall conclusion that those effects will be modest. Perhaps the primary exception to that alignment is in respect of dissolved oxygen (as noted above in the context of section 107), where Mr Patterson considers there is uncertainty as to the level of effect, while Dr Ausseil does not.
60. Since the applications were first lodged in 2014, a programme of substantial upgrades to the operation of the existing WWTP has been implemented. That programme is to be completed by TDC, along with the construction of the wetland, which will bring further benefits in terms of the quality of the treated wastewater that enters the Mangatainoka River. It is clear, therefore, that the adverse effects of the WWTP on surface water quality will be reduced by comparison to the effects of the WWTP as it existed prior to the applications being lodged.
61. In addition, Mr Crawford has now specified appropriate discharge quality standards, which are proposed to be enshrined through consent conditions. In meeting those standards, TDC will ensure that any measurable effects of the WWTP on surface water quality will be acceptable.

Cultural values

62. The submissions lodged by Kahungunu ki Tamaki nui-a-rua, Te Roopu Taiao o Ngāti Whakare, and Rangitāne O Tāmaki nui a Rua Inc address the cultural effects of the discharge to Town Creek and the Mangatainoka River. These submissions oppose the term of consent sought by TDC, but do not oppose outright the granting of consent for the Project.
63. TDC greatly values its relationship with tangata whenua. As discussed above, TDC has engaged with tangata whenua regarding this project, in order to improve its understanding of the cultural values at issue (including by commissioning a cultural values assessment from Rangitāne

O Tāmaki nui a Rua Inc at an early stage), and investigate options to address potential effects on those values.

64. TDC understands the strong desire of tangata whenua to avoid discharge of wastewater to the river. As noted above, the feasibility of a discharge to land system was considered by TDC as part of its assessment of alternative options for the discharge of treated wastewater from the WWTP. Ultimately, though, TDC has determined that the cost of a full land application/irrigation system is prohibitive at this time and cannot be sustained by the rate-paying communities of the District.
65. TDC's resources have been dedicated to upgrading the WWTP to improve the quality of the effluent by reducing the nutrients and contaminants that enter the awa. The project also now incorporates a wetland 'polishing' system, which will increase contact of the wastewater with land, in order to ameliorate the cultural effects associated with the discharge.
66. TDC is hopeful of engaging further with tangata whenua, particularly in respect of the detailed design of the Project.

Groundwater quality

67. Any potential effects on groundwater arise due to leakage (if any) from the WWTP ponds, and from seepage of (fully treated) wastewater from the wetland, before that wastewater enters the river. Mr Baker appears to be of the view that any potential adverse effects are appropriately addressed through the conditions he has proposed (and which have subsequently been recommended by Ms Morton).
68. In his section 42A report, Mr Baker records that there are no other groundwater users down-gradient of the WWTP within a 1km radius, meaning there is no risk of well contamination. Otherwise, the groundwater that might potentially be affected by the Project will ultimately enter the river – meaning that any effects on that groundwater are captured as effects on surface water.

Odour

69. There is no real suggestion that odour effects are at issue for the applications.

70. In her section 42A report, Ms Ryan records steps that can be taken to ensure any potential odour effects are appropriately addressed. Conditions have subsequently been proposed by Ms Morton.

Recreation and amenity

71. Ms Morton raised the (unknown) potential for the Project to have recreation and amenity effects in her section 42A report. There is no real evidence before the Panel that any such effects will arise. However, TDC is happy to undertake a recreation survey of this area of the river, and if necessary provide warning signage (as recommended by Ms Morton).

Soil disturbance

72. Mr Bevin's technical memorandum for Horizons addresses the potential effects associated with the earthworks required for the creation of the wetland. His view is that any effects can be addressed by an Erosion and Sediment Control Plan ("**ESCP**"). Mr Bevin also identifies matters that he considers should be added to TDC's final ESCP.
73. A further draft ESCP is being prepared by TDC. The indicative condition provided by Ms Morton, and endorsed by Ms Manderson, calls for the ESCP to be finalised and certified prior to the earthworks being undertaken. That is an appropriate approach, particularly in light of the likely further refinement of the detail of the earthworks to be undertaken.

REGULATIONS AND PLANNING DOCUMENTS

Introduction

74. Section 104 also requires the Panel to have regard to relevant provisions of certain regulations and statutory planning documents, listed in the evidence of Ms Manderson.¹⁴

National Environmental Standards

75. Ms Morton discuss the relevance of the National Environmental Standard for Sources of Human Drinking Water ("**Drinking Water NES**") and National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health ("**Soil NES**"). Her conclusion is that there are no issues for the Project in respect with either the Drinking Water NES or the Soil NES.¹⁵

¹⁴ See also the section 42A report of Ms Morton.

¹⁵ Ms Manderson agrees with that view.

National Policy Statement for Freshwater Management

76. The National Policy Statement for Freshwater Management ("**NPSFM**") sets out a framework for regional councils to follow when implementing plan provisions to manage fresh water.
77. As recorded by Ms Morton, the NPSFM is a higher order document, to be implemented by Horizons through the One Plan. The NPSFM is relevant to this application primarily insofar as it has been implemented, in respect of decisions on applications for resource consent, through Policy 14-9 of the One Plan.¹⁶

One Plan

78. The One Plan includes both the Regional Policy Statement ("**RPS**") and Regional Plan for the Horizons region.
79. The RPS provides that the Panel must "recognise and provide for" the operation, maintenance and upgrading of the WWTP. Alongside that strong and directive policy, the Panel must also take into account a range of other One Plan provisions that are relevant to the Project. In line with the above discussion, the key One Plan provisions in respect of the potential adverse effects of the Project are those that relate to surface water quality and cultural values.
80. The RPS provisions addressed by Ms Manderson and Ms Morton are highlighted below. The provisions that address consent duration are addressed later in these submissions.

Regionally significant infrastructure

81. The WWTP amounts to "regionally significant infrastructure", that is subject to the enabling provisions in Chapter 3 of the RPS (Objective 3-1; Policy 3-1 and 3-3).
82. Objective 3-1 provides that Horizons (and the Panel) must:
- "Have regard to the benefits of infrastructure and other physical resources of regional or national importance by **recognising and providing for** their establishment, operation, maintenance and upgrading."*
- [emphasis added]
83. In line with that objective, Policy 3-3 provides:

¹⁶ Ms Manderson agrees with Ms Morton's evidence in respect of the NPSFM.

"In managing any adverse environmental effects[^] arising from the establishment, operation, maintenance* and upgrading* of infrastructure[^] or other physical resources of regional or national importance, the Regional Council and Territorial Authorities[^] must:*

*(a) **recognise and provide** for the operation*, maintenance* and upgrading* of all such activities once they have been established, ..."*

[emphasis added]

84. That very directive policy framework weighs heavily in favour of granting the applications.

Water quality, including cultural values

85. Ms Manderson and Ms Morton identify the One Plan provisions that address water quality and are relevant to the applications, as follows:
- (a) RPS: Water Objective 5-1, 5-2; Policy 5-1, 5-2, 5-3, 5-4, 5-6, 5-9, and 5-11; and
 - (b) Regional Plan: Discharges to Land and Water Objective 14-1; Policy 14-1, 14-4, 14-8, and 14-9.
86. The Te Ao Māori provisions of the RPS are also important, in light of concerns raised by iwi submitters about the potential effects of the discharges arising from the Project on the mauri of the water. The relevant RPS provisions are Te Ao Māori Objective 2-1; Policy 2-1, 2-3, and 2-4. In the Regional Plan, cultural issues in respect of water quality are addressed through the Discharges to Land and Water provisions listed above.
87. The potential effects of the Project that are relevant to these provisions are addressed above. Clearly, the Panel will have to consider carefully the application of these objectives and policies, including by reference to the planning and other evidence.

Erosion and sediment control

88. Ms Manderson and Ms Morton identify that the following One Plan provisions dealing with erosion management are relevant:
- (a) RPS: Land Objective 4-2; Policy 4-2; and
 - (b) Regional Plan: Land Objective 13-1; Policy 13-1 and 13-3.

89. Ms Manderson and Ms Morton are both of the view that the Project accords with these provisions (subject to the requirement for a certified ESCP).

Odour

90. The Discharges to Air provisions of the One Plan are relevant to the extent they address the potential for odour effects associated with the Project. The relevant provisions are:

- (a) RPS: Air Objective 7-1; Policy 7-2 and 7-3; and
- (b) Regional Plan: Discharges to Air Objective 15-1; Policy 15-2

91. Ms Manderson and Ms Morton are both of the view that the Project accords with these provisions (subject to the recommended conditions).

Other matters

Manawatu River Leaders Accord

92. The Manawatu River Leaders Accord ("**the Accord**"), to which TDC is a signatory, is a multi-party, catchment-wide strategy aimed at improving the water quality of the Manawatu River.

93. Specific goals of the Accord include the following:

- (a) *"The Manawatu River becomes a source of regional pride and mana."*
- (b) *"Waterways in the Manawatu Catchment are safe, accessible, swimmable, and provide good recreation and food resources."*
- (c) *"The Manawatu Catchment and waterways are returned to a healthy condition."*
- (d) *"Sustainable use of the land and water resources of the Manawatu Catchment continues to underpin the economic prosperity of the Region."*

94. The renewal of the discharge permit for Pahiatua is identified as one of TDC's tasks under the Accord Action Plan.

95. The Project is consistent with the Accord, in that it will allow for the consenting of the WWTP, while improving the environmental outcomes associated with it.

Section 104(2A) – value of the investment

96. Where a new consent is sought for an existing activity, the consent authority must have regard to the value of the investment of the existing consent holder – in this case, the value of TDC's investment in the wastewater treatment facilities serving Pahiatua. The original application puts the estimated asset value of the Pahiatua WWTP at \$2 million, and the planned upgrades at \$1.2 million (the cost of providing the wetland is additional, as discussed by Mr King). That is a significant investment, particularly for a council that serves a relatively small population base.

"Subject to Part 2" of the RMA

97. 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).

98. Until recently, that required decision-makers to exercise an "overall broad judgment" approach to determining applications for resource consent. After considering the specific matters listed in section 104 of the RMA, the decision-maker would then traverse the matters set out in sections 6 to 8,¹⁷ and finally come to an overall conclusion as to whether granting consent (and if so, on what conditions and for what term) would meet the sustainable management purpose of the RMA.

99. However, earlier this year the High Court decision of *RJ Davidson Family Trust v Marlborough District Council*¹⁸ ("*Davidson*") upheld the Environment Court's decision stating that the Court:

"... is not required to consider Part 2 of the RMA beyond its expression in the planning documents, as the Court correctly applied the Supreme Court's decision in [Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38] to this s 104 RMA application."¹⁹

100. The High Court added that decision-makers should only resort to Part 2 where "*there has been invalidity, incomplete coverage or uncertainty of meaning within planning documents*".²⁰

¹⁷ The matters of national importance, "other matters", and the principles of the Treaty of Waitangi.

¹⁸ [2017] NZHC 52. Counsel understands this decision is under appeal.

¹⁹ At Part IV Conclusion, Ground 1, paragraph (1)(b).

²⁰ At paragraph [76].

101. Both Ms Manderson and Ms Morton are of the view that there is no need for the Panel to specifically consider Part 2, on the basis that the One Plan covers the relevant issues, and is not uncertain or invalid.
102. In light of that view expressed by the planners, counsel reiterate again the strongly worded direction in Chapter 3 of the RPS, that the Panel must "recognise and provide for" the ongoing operation and upgrade of the WTPP.
103. If the Panel has any doubt as to the strength of that direction (as compared to the One Plan provisions addressing water quality and cultural values), then the Panel should bear in mind the conclusion reached by the Environment Court in *Envirofume Ltd v Bay of Plenty Regional Council*²¹ (post- the *Davidson* High Court decision) that Part 2 remains relevant:
- "(a) as an overall check that the purpose of the Act and that Part 2 issues are properly covered and clear;*
 - (b) to focus the Court or decision makers on the overall purpose of the consent in question; and*
 - (c) as a check that the various documents have recognised, provide for or given effect to the Act and other documents in the hierarchy."*
104. Granting consent for the Project will promote sustainable management, in the local context, in a fundamental way. The appropriate collection and disposal of Pahiatua's wastewater is essential to enable people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety. That is recognised through Objective 3-1 and Policy 3-3 of the RPS, which must be given appropriate weight by the Panel.

SECTIONS 105 AND 107

105. The relevance of sections 105 and 107 to the Project (specifically, the applications for discharge permits) is addressed earlier in these submissions.

²¹ [2017] NZEnvC 12.

PROPOSED CONDITIONS AND CONSENT TERM

Conditions

106. Section 108 of the RMA empowers the Panel to impose conditions on the consent. A range of conditions have been proposed to address the potential adverse effects of the Project. TDC's position in respect of conditions is set out in Appendix 1 to Ms Manderson's evidence, which includes a response to each of the conditions proposed by Ms Morton in her section 42A report.

Term

107. TDC has sought consent for a relatively modest 15-year term for the Project's discharge permits. There is disagreement between Ms Manderson and Ms Morton as to the appropriateness of that term. The Panel will need to consider the evidence of Ms Manderson and Ms Morton in light of the relevant One Plan provisions.
108. One Plan Policy 12-5 provides a framework for the Panel when assessing the term of consent. In respect of the discharge permits, TDC's position is that a 15-year term is well aligned with that policy. TDC is:
- (a) seeking an additional two years beyond what can be seen as the "default" term of consent (for the discharge to water permits), which would be 1 July 2030;²² and
 - (b) proposing a condition allowing for periodic reviews of the conditions of consent.
109. TDC is seeking a five-year consent term for the earthworks land use consent. While Ms Morton supports only a two-year consent term for that consent, TDC considers there is no good reason to depart from the default position under Policy 12-5(a) for that consent, whereby the term sought by the applicant is granted.

EVIDENCE TO BE PRESENTED

110. The witnesses for TDC are as follows:
- (a) Blair King – TDC overview, project description, and related matters;
 - (b) Roger MacGibbon – wetland management, maintenance and performance;
 - (c) Dr Olivier Ausseil – water quality;

²² That date is the second common catchment expiry for Water Management Zone 1, on the basis the first common catchment expiry is 1 July 2020. See the section 42A report of Ms Morton at paragraph 161.

(d) Tabitha Manderson – planning and conditions; and

(e) John Crawford – wastewater engineer.

DATED this 23rd day of May 2017

David Randal / Esther Bennett

Counsel for Tararua District Council