

BEFORE THE HEARING COMMISSIONERS

IN THE MATTER OF the Resource Management Act 1991

AND An application by Tararua District Council to Horizons Regional Council (application ref APP-2005011178.01) for resource consents associated with the operation of the Eketahuna Wastewater Treatment Plant, including a discharge into the Makakahi River, a discharge to air (principally odour), and a discharge to land via pond seepage, located at Bridge Street, Eketahuna.

AND a submission by Rangitāne o Tamaki nui a Rua Incorporated

PLANNING EVIDENCE OF PHILLIP HARRY PERCY

on behalf of Rangitāne o Tamaki nui a Rua Incorporated

Dated: 23 March 2017

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QUALIFICATIONS AND EXPERIENCE

1. My name is Phillip Harry Percy. I hold the degree of Bachelor of Resource and Environmental Planning with Honours from Massey University with a specialisation in physical geography. I hold a current Making Good Decisions certificate.
2. I have been practicing as a planner since 1998 (approximately 19 years). This has included working as a Resource Advisor (Policy) for Greater Wellington Regional Council, a Senior Planner for Eliot Sinclair and Partners in Christchurch and as a Senior Planner for Beca in Wellington. I am currently a Director of Perception Planning Limited, a resource management planning consultancy established in 2007 and which employs 10 professional staff.
3. I have been involved in a professional capacity in a wide range of planning matters including applications for large-scale subdivision consents, land use consents for dwellings, commercial buildings, earthworks and infrastructure projects including in the Palmerston North, Kapiti Coast, Wellington and Christchurch areas. I have experience in assessing proposals against both regional and district planning provisions and in both urban and rural environments. I have also been involved in resource consent applications for discharges to land, water and air and water take applications, including municipal wastewater discharges, winery waste discharges, and discharges of stormwater.
4. I have also acted for submitters on plan changes and resource consent applications including the Proposed Canterbury Land and Water Plan and resource consent applications for the Ruataniwha Water Storage Scheme in the Hawke's Bay.
5. I have significant experience in the development of RMA planning documents, both at regional and district level. In the local geographical area, this includes involvement in the development of, hearings and appeals on the Horizon Regional Council's One Plan and several plan changes to the Palmerston North City District Plan.

6. In 2016, I was the hearing commissioner for Plan Change 2016 to the Rangitikei District Plan, a plan change relating to advertising, historic heritage, natural hazards, building setbacks and re-zonings.
7. I have previously worked as a Planner in the United Kingdom including in consent processing, enforcement and monitoring roles.
8. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have specified where my opinion is based on limited or partial information and identified any assumptions I have made in forming my opinions.

SCOPE OF EVIDENCE

9. I have been asked by Rangitāne o Tamaki nui a Rua Incorporated (Rangitāne) to prepare planning evidence specifically in relation to the matters raised in their submission on this application. The key matters raised in the Rangitāne submission are summarised as:
 - (a) Rangitāne strongly objects to any activity that has the potential to cause blemish, pollution and devastation to Papatūānuku.
 - (b) That the recommended consent term is for only 10 years, with a 5 year review.
 - (c) That continued work be put towards advanced operations for the wastewater discharge in line with a nil discharge to waterways.
 - (d) That site visit/s are had with Rangitāne.
 - (e) In future operations, Rangitāne would, through the monitoring and reporting procedures, like to be kept informed of the quality and quantity being discharged into our waterways.

10. The submission stated that '*Rangitāne o Tamaki nui a Rua Inc. do not support the proposed resource consent application for the Eketahuna Waste Water Treatment Plant*'.
11. My evidence therefore focuses on the planning matters that are within the scope of the Rangitāne submission. This means that I do not undertake a full evaluation of all relevant matters applicable to making a decision on this application. The planning analysis I provide below is intended to assist the Commissioners on the matters that I specifically deal with.

INTRODUCTION

12. In preparing this evidence, I have read and considered the following documents:
- (a) The resource consent application and accompanying reports.
 - (b) The further information provided by the applicant in December 2015 and via letter on 27 February 2017.
 - (c) The s42A planning and technical reports prepared by Horizons Regional Council (Horizons) staff – Fiona Morton (planning), Logan Brown (water quality), Tim Baker (groundwater) and D Ryan (air).
 - (d) The planning and technical evidence prepared for the hearing by experts on behalf of the Applicant – John Crawford (wastewater engineering), Olivier Ausseil (water quality), Tabitha Manderson (planning).
 - (e) The planning and technical evidence prepared by experts on behalf of Ngati Kahungunu-ki-Tamaki-nui-a-rua Trust – Greg Carlyon (planning) and Kathryn McArthur (water quality).
 - (f) The technical evidence of Adam Canning (water quality) for Wellington Fish and Game Council.
 - (g) The evidence of Manahi Paewai on behalf of Rangitāne-o-Tamaki-nui-a-Rua Incorporated.

PROPOSAL

13. The proposal is to discharge treated wastewater from the Eketahuna Wastewater Treatment Plant (WTP) to water and to land where it may enter water. The proposal also involves discharging odour to air.
14. The proposal involves a series of modifications to the existing WTP, which are listed in Section 1.7.2 of the application as:
- (a) Re-use the step screen by lowering it 'to grade';
 - (b) Install a lamella plate clarifier, including a contract tank for coagulation and a chemical dosing facility;
 - (c) Install an additional aerator
 - (d) Install a UV disinfection system if still necessary following other upgrades
 - (e) Install a Tephra filter
 - (f) Relocate the current WWTP discharge some 100m downstream, including construction of a rock filter.
15. The Applicant has also referred to the possibility of installing wetlands¹, however these are a possibility only.

STATUTORY AND POLICY SETTING

16. I generally agree with the statutory and policy setting described by Ms Morton in her evidence. I will not repeat that summary here.

KEY ISSUES RELEVANT TO RANGITĀNE SUBMISSION

17. Set out in this section of my evidence are summary statements of the key issues in contention that relate specifically to the submission from Rangitāne.
- (a) The technical evidence of Dr Ausseil, Mr Brown and Ms McArthur is that the current activity is negatively impacting water quality in the Makakahi

¹ Letter from Tabitha Manderson to Fiona Morton responding to the Council's request for further information, dated 27 February 2017.

River. Ms McArthur summarises the environmental effects at paragraphs 25 to 27 of her evidence. The decline in QMCI between upstream and downstream sites constitutes a significant adverse effect on aquatic life. For some parameters (i.e. E. coli, MCI, QMCI and periphyton biomass) the discharge exceeds One Plan targets. For other parameters, the discharge materially contributes to increases in concentration (i.e. SIN, DRP), contributing to an overall degradation of the water quality and ecological health of the Makakahi River, particularly at low flows.

- (b) The actual and potential adverse effects of both the existing discharge and the proposed discharge on the relationship Rangitāne, and their culture and traditions, have with the Makakahi river and wider environment have not been assessed by the Applicant. On the basis that there are adverse effects on aquatic life, water quality (surface and sub-surface), and the life-supporting capacity of the receiving environment, there are likely to also be adverse effects on Papatūānuku and therefore on Rangitāne values and relationships with the environment.
- (c) The proposal for modifications to the WTP are uncertain, imprecise, and in most cases, are not time-bound. As a result, the performance of the WTP in the future is uncertain and it is unclear whether the modifications to the system will resolve the adverse effects currently being caused by the WTP. There is insufficient information available to be able to determine the actual and potential effects of a modified WTP.
- (d) The proposal, as described in the application as originally lodged, involves the majority of wastewater from the WTP still being discharged directly to water, albeit through additional pieces of infrastructure including filters and screens. This is inconsistent with the requirements of Policy 5-11 of the One Plan and is culturally offensive².
- (e) Conditions are proposed that provide for modifications and upgrades to the WTP in the future, however the character, scale and impact (positive or negative) of those changes are not known at this time. To grant resource consent now requires assumptions to be made as to whether:

² See the evidence of Mr Paewai

- i. the effects on the environment of the upgrades themselves are appropriate
 - ii. the modifications and upgrades will be effective in addressing the adverse effects of the discharges
 - iii. additional resource consents will be required (e.g. earthworks, damming and diversion of water, other discharges during construction)
 - iv. people who may be adversely affected by the modifications and upgrades, and by the subsequent discharges, have a reasonable opportunity to be involved in the assessment process
 - v. the adverse effects of the proposal are appropriate if the future modifications and upgrades are not able to proceed (i.e. if rights to use land for wetlands cannot be negotiated with existing landowners).
- (f) The proposed discharges are not consistent with several of the objectives and policies of the One Plan.

EVALUATION OF KEY ISSUES

18. Ms Morton has taken the approach of not providing a separate assessment of the proposal against Sections 5, 6, 7 and 8 (Part 2) of the Act. She has relied on *R J Davidson Family Trust v Marlborough District Council*³ in adopting this approach. Ms Manderson has also adopted this approach.

19. I agree that recourse to Part 2 is not necessary where the provisions of the relevant planning documents cover the matters relevant to the assessment of the proposal, and those provisions have not been challenged as to their appropriateness for assisting in achieving the purpose of the Act. I agree with Ms Morton that the One Plan and the NPSFM 2014, being the key planning documents applicable to the discharge of contaminants to land and water associated with the proposal, have not been challenged as to their validity or appropriateness in terms of contributing to achieving the Purpose of the Act.

³ R J Davidson Family Trust v Marlborough District Council, CIV-2016-406-14 [2017] NZHC 52

20. The R J Davidson Family Trust decision highlights the importance of carefully considering a proposal against the relevant objectives and policies of the applicable planning documents. The presumption is that the objectives and policies of the relevant planning documents have been designed, assuming s32 was properly applied at the time, to achieve the purpose of the Act. Therefore, where a proposal is consistent with those objectives and policies, a conclusion can reasonably be drawn that the proposal will also be consistent with promoting sustainable management. The converse also applies.
21. To apply this approach to the current application therefore requires a comprehensive examination of the proposal against all of the relevant objectives and policies of the One Plan, as well as the relevant objectives and policies of the higher order planning documents such as the NPSFM where the One Plan does not already fully give effect to them.
22. Mr Paewai explains in his evidence that the reference to Papatūānuku in the submission from Rangitāne relates to the earth in its broadest sense, rather than being limited only to land or soil. Mr Paewai explains that water flows through Papatūānuku like blood flows through a person's body⁴. The interconnected nature of water and land are represented by Papatūānuku and Rangitāne's submission point is intended as an expression of the relationship of Rangitāne, and their culture and traditions, with their ancestral lands, water, sites, waahi tapu and other taonga. These are matters of national importance set out in s6(g) of the Act that must be recognised and provided for when exercising functions and powers under the Act in relation to managing natural and physical resources.

Assessment against One Plan objectives and policies

23. The adverse impacts of previous resource management regimes on the relationship Rangitāne (and other iwi) have with the environment are clearly documented in Section 2.2 of the One Plan, which describes the Te Ao Maori resource management issues for the Region. The consequences of historical resource use decisions on Rangitāne traditions and values are further explained in Mr Paewai's evidence. The community's (including iwi) expectations of the response to those resource management issues is set out in the objectives and policies of the One Plan. The One Plan documents the framework for achieving

⁴ Para 29

integrated management for the Region and, as such, the response to the Te Ao Maori issues is implemented through objectives, policies and other provisions spread throughout the other topic-specific chapters of the Plan.

24. The interconnections between the Te Ao Maori issues and the provisions of the One Plan that address them are usefully summarised in Table 2.1 in Section 2.4 of the One Plan, and highlight that implementing a range of provisions relating to surface water, ground water, discharges, land use management, biodiversity, landscapes and historic heritage is necessary for those issues to be resolved.
25. Dealing first with the objectives and policies in Chapter 2 of the One Plan, in the context of the Eketahuna WTP proposal, there has been no analysis undertaken by the Applicant as to how the relationships and traditions of Rangitāne manifest themselves in the local area. This is confirmed by Ms Manderson⁵. The Applicant has not subsequently provided any evidence to address the shortfall in information.
26. At paragraph 16.5 of her evidence Ms Manderson states *“in my opinion the proposal is not inconsistent with the relevant objectives and policies of the One Plan, acknowledging it is challenging to form an opinion with regard to the policies that relate to Te Au Māori (sic) and further evidence from iwi submitters at the hearing should assist in assessing the objectives and policies contained in Chapter 2 of the One Plan in particular”*.
27. In my view, Ms Manderson’s conclusion highlights that the resource consent application and assessment of environment effects is deficient and does not meet the requirements of s88 and Schedule 4 of the Act. Specifically in relation to cultural and spiritual effects, Clause 7 of Schedule 4 requires that an assessment of effects *must* address:
 - (a) (a) any effect on those in the neighbourhood and, where relevant, the wider community, including any social, economic, or cultural effects:
 - (b) (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:

⁵ Para 8.3

28. While the point at which the consent authority can reject the application as incomplete has passed, I raise the point to emphasise that the scheme of the Act is for the Applicant to undertake an appropriate assessment of effects at the beginning of the process rather than relying on submitters to fill in the gaps through evidence at the hearing. Mr Paewai's evidence provides good context and succinctly summarises the significant values as he understands them, however his evidence should not, in my view, be treated as a substitute for a proper assessment being undertaken by the Applicant.
29. Mr Paewai's evidence sets out some of the cultural and traditional relationships Rangitāne has with the Makakahi River and its catchment. The relationships rely both on physical human interaction with the waterways, as well as non-physical relationships and traditional connections with rivers and other features of the environment as spiritual entities and tupuna⁶. Mr Paewai explains the way in which physical impacts on the river affect its wairua and mauri, how they impact on traditional relationships such as mahinga kai, and how the health and well-being of the river has a bearing on the health and well-being of the land and people.
30. Importantly, Mr Paewai summarises the primary actual and potential adverse effects of the Eketahuna WTP discharge in paragraphs 62 to 67 of his evidence. He draws the conclusion that the existing discharge has significant adverse effects on the mauri and wairua of the Makakahi River and the rivers it flows into, on Rangitāne's cultural and traditional relationships with the Makakahi River, and on Rangitāne iwi itself. He further considers that the proposed upgrades are unlikely to resolve these adverse effects because:
- (a) there will continue to be a direct discharge of sewage into the river,
 - (b) there are likely to be continued discharges of contaminants to the river and related groundwater through seepage from the ponds, and
 - (c) the contributions of nutrients and other contaminants in combination with other discharges into the catchment will continue to have significant adverse impacts throughout the catchment on mahinga kai and the mauri of the waterways.

⁶ From para 29

31. In my view, the effects of the proposal as described by Mr Paewai make it inconsistent with Objective 2-1 (b) of the One Plan, which is that:

32. *'Kaitiakitanga[^] must be given particular regard and the relationship of hapū* and iwi* with their ancestral lands[^], water[^], sites*, wāhi tapu* and other taonga* (including wāhi tūpuna*) must be recognised and provided for through resource management processes.'*

Policy 2-2

33. Importantly, Mr Paewai refers to a number of sites on or connected to the Makakahi River downstream of the WTP discharges that are regarded as wāhi tapu, wāhi tūpuna or as other sites of significance. Policy 2-2(a) of the One Plan is expressly directive that identified wāhi tapu, wāhi tūpuna or other sites of significance⁷ *must be protected from inappropriate subdivision, use or development that would cause adverse effects on the qualities and features which contribute to the value of these sites'*.

34. Policy 2-2(a) applies a strong requirement to protect sites with significance to Rangitāne and other iwi. The effects that the sites are to be protected from are those that will impact on the qualities and features which contribute to the value of the sites. That, in my view, requires protection of both the sites themselves as well as other aspects, both physical and perceptive, that contribute to making those sites significant. By way of example, Mr Paewai has explained in his evidence how discharging human waste into the Makakahi River will impact on the mana of the atua at Paneatua. *'The mauri and mana of the atua at Paneatua on the shores of the Makakahi River will be impacted. This is on the basis that this area is about atua, and human waste in this area would cause significant cultural offence'*⁸.

Policies 2-1 and 2-3

35. Policy 2-1 of the One Plan directs that the *'Regional Council must enable and foster kaitiakitanga[^] and the relationship between hapū* and iwi* and their*

⁷ Policy 2-2(a) applies specifically to sites recorded on the publicly available registers specified in the policy. The sites referred to by Mr Paewai are not currently listed on those registers but are in the process of being compiled and catalogued in order to do so. This site recording project is summarised on pages 26 to 28 of the Te Kāuru Taiao Strategy published by Rangitāne in November 2016.

⁸ Para 68

ancestral lands^, *water*^, *sites**, *wāhi tapu** and *other taonga** (including *wāhi tūpuna**) through increased involvement of *hapū** and *iwi** in resource management processes'. (my emphasis). The policy includes a non-exhaustive list of measures to support achieving this outcome. Connected to Policy 2-1 is Policy 2-3, which requires that the Regional Council must have regard to the mauri of water by implementing Policy 2(a) to (i).

36. The evidence of Mr Paewai is that the relationship hapū and iwi have with the Makakahi River and the important sites and traditions associated with it and the catchment, are adversely impacted by both past and current use and development. He also explains in his evidence how discharges of human waste and deterioration of the river adversely affect mauri. The policy direction is that hapū and iwi must be involved in resource management processes, which includes, in my view, both being engaged with by applicants when considering proposals, but also by being provided with sufficient information to be able to effectively contribute as participants in the resource consent assessment process. That requires sufficient information to be provided by applicants in applications and assessments of effects to enable hapū and iwi to understand the character, scale and effects of a proposal in order to determine how a proposal may impact on their relationships with significant sites and the environment more widely.
37. Given the lack of detail about the performance of the Eketahuna WTP, both in its current format and after potential future changes, iwi are unable to properly understand and evaluate the effects of the proposal on their responsibilities as kaitiaki and on their relationships with the environment. In my opinion, that lack of information and impact on their ability to engage meaningfully in management of the Makakahi River is not consistent with enablement. Furthermore, the potential adverse effects of the discharge from the Eketahuna WTP have significant potential to adversely impact on Rangitāne's relationship with their land, sites and other taonga and therefore do not enable that relationship. In my opinion, this results in the proposed approach to the potential upgrade of the Eketahuna WTP being inconsistent with Policy 2-1.
38. At para 8.4 of her evidence, Ms Manderson notes that a *forum proposed during the pre-hearing meetings (and forming part of the recommended conditions) allows for engagement with the community and iwi*" and that this *would go some way towards meeting the relevant Objectives and Policies identified in Chapter*

2". I agree with Ms Manderson's statement but emphasise her position that the forum would only go some way towards meeting the requirements of the objectives and policies of Chapter 2. In actuality, the approach results in the following outcomes:

- (a) It seeks to understand hapū and iwi issues *after* resource consent has been granted, and
- (b) Three separate iwi submissions have identified that there are, and are likely to be, adverse effects on the mauri of water resulting from this proposal and these issues cannot be addressed with certainty through the imposition of consent conditions.

39. Overall, it is my view that the proposal, and the processes associated with the management of it, are not consistent with Policy 2-1.

One Plan Chapter 5 objectives and policies

40. I have read the evidence of Greg Carlyon in relation to his assessment of whether the proposal is consistent with the objectives and policies of Chapter 5 of the One Plan. I agree with his conclusions on those matters and will not provide further assessment in my evidence. However, I set out below some further analysis on Policy 5-11.

Policy 5-11

41. Also of particular relevance to the consideration of cultural and traditional values associated with the awa is Policy 5-11 of the One Plan. Mr Paewai explains in his evidence why direct discharge of human waste to water has significant adverse effects on the culture, traditions and relationships Rangitāne have with Papatūānuku.

42. Ms Morton addresses Policy 5-11 from paragraph 102 of her evidence. For the most part I agree with Ms Morton's assessment of the policy, however I disagree that clause (a) of the policy applies to the Eketahuna WTP discharge. My interpretation of the policy is that clause (a) applies to entirely new discharges and clause (b) applies to existing discharges that will either continue under their current resource consent beyond 2020 or that will require new consents before

2020. The Eketahuna WTP is an existing discharge for the purposes of this policy, and therefore clause (b) applies.

43. Clause (b) of Policy 5-11 is very directive and unequivocal in its drafting. The policy directs that the discharge must change to a treatment system described under (a) on renewal. To meet this policy, it is my view that the proposal for which resource consent is sought must be explicit in how the WTP will be modified to meet this requirement. At present the application is not clear if or how the policy will be achieved, and by when. The proposal is currently inconsistent with this directive policy.

SECTION 107

44. Section 107 of the Act provides a set of basic safeguards that apply to the decision as to whether or not to grant a consent that involves a discharge to water. While not expressly stated in the section itself, several of the effects listed in s107(1) are relevant to values Rangitāne associate with water bodies in the area. In particular, the concept of mahinga kai requires healthy water and a healthy and abundant ecosystem. Rangitāne also consider the land, rivers, and other features of the landscape in the Manawatu catchment as a tūpuna (Papatūānuku) and therefore degradation of the appearance, quality and health of the water in the rivers and the ecosystems they support reflects an adverse effect on that ancestor⁹. The matters described in s107(1) are observable physical manifestations of river degradation and therefore indicate an adverse effect on the river itself and, in turn, an adverse effect on the cultural and traditional relationship Rangitāne have with the river.

45. Ms Morton summarises her evaluation of the proposal against the requirements of s107 in her s42A report¹⁰. She states at para 138 *'While I have included possible conditions to address s107 matters in Appendix 1, in the absence of the knowledge of the final effluent quality, I cannot be certain that these effects will be avoided'*.

46. Both the Applicant's and the Council's evidence indicate that there are currently significant adverse effects on aquatic life, evidenced by a significant reduction

⁹ See evidence of Manahi Paewai

¹⁰ Paras 136 to 138.

(exceeding 20%) in QMCI below the discharge as compared to the upstream monitoring sites. On that basis, the current discharge does not meet, at least, the requirement of s107(1)(g).

47. I agree with Ms Morton's conclusion that there is insufficient information to determine whether modifications to the wastewater treatment system will be effective in addressing that significant adverse effect. The Applicant's evidence sets out a range of possible modifications to the treatment and discharge components of the WTP, however there is no apparent commitment to undertaking these modifications, nor analysis of the degree to which those changes will be effective in addressing the existing adverse effects.
48. Including a condition of consent to require the Applicant to satisfy the requirements of s107 without sufficient information to be able to determine that that condition can actually be met risks setting up an enforcement trap for the Applicant. Such a condition would be unreasonable in my view. Furthermore, such a condition would not satisfy the requirements of s107(3) on the basis that the discharge would remain likely to give rise to the relevant effects listed in s107(1)(c) – (g) at the expiry of the consent. Simply imposing a condition does not resolve the probability that the effect will occur.

CONSENT TERM

49. The Applicant has sought a consent term of 20 years. Ms Manderson has suggested a term of 7 years in her evidence. Ms Morton has indicated that a term of 5 years would be a possibility.
50. Rangitāne's submission supported a 10 year consent term but with a 5 year review in place.
51. In my opinion, if resource consent is to be granted, a significantly shorter term than requested in the application is necessary. While I understand the benefits that a longer term consent provides to the Applicant in terms of investment certainty and reduced consenting costs, the high level of uncertainty and fluidity associated with the current proposal means that it is necessary to comprehensively re-evaluate the proposal as details are refined. As noted below, some of the possible modifications and additions to the WTP that are being suggested in evidence presented on behalf of the Applicant are likely to require

detailed examination both as to their effectiveness but also the actual and potential effects of their development and commissioning.

52. An important part of the New Zealand resource management system is the ability for people and groups representing their own interests or interests more widely to be involved in determining how development that affects those interests will be managed. The resource consent process, with associated decisions as to who is potentially affected, notification, and a transparent decision-making process, is the primary mechanism for this to occur. In my view, a proposal that involves significant unknown modification over time should be subject to a short term consent regime to allow appropriate engagement by stakeholders in the decision-making process. That sentiment is reflected in Policy 2-1 of the One Plan, which focuses on enabling iwi and hapu engagement in resource management processes.

53. Given the uncertainty associated with the current proposal, if resource consent is able to be granted, it will be necessary to use conditions of consent to explicitly direct the consent holder to undertake investigations and other work to provide more certainty for future decision-making on subsequent applications. While it will be difficult to reconcile such an approach with s107, in my view a term of no more than **five years** would be appropriate. This would allow sufficient time for the Applicant to undertake further assessment of adverse effects (including effects on hapū and iwi), to complete investigations into alternative discharge methods, to establish and obtain data on existing WTP performance, and to prepare a comprehensive resource consent application and assessment of effects.

COMMENTS ON DRAFT CONDITIONS

54. With regard to the draft conditions offered by Ms Morton and which are, subject to some minor amendments, supported by Ms Manderson, I do not consider that these assist in resolving the fundamental lack of information required to properly assess the application at this point in time. While gathering further information through consent conditions can assist in better understanding the nature and effects of an activity, relying on conditions to 'fill in the gaps' in an initial assessment of the proposal is not appropriate in my view. This is especially the case where the response to the further information is unknown.

55. The draft conditions provided by Ms Morton include a forum, which, as I understand it, is intended to provide an engagement opportunity for parties involved in this resource consent process to be provided with information as more data and details of the modifications to the WTP are developed. While I have no difficulty with an information-receiving forum as a concept, it does not resolve the fundamental issue that affected parties will be constrained in their ability to exercise their normal rights of assessment, evaluation, representation to decision-makers, and ultimately the right to appeal decisions.

56. To grant resource consent now would require assumptions to be made as to whether:

(a) the effects on the environment of the upgrades themselves are appropriate (for example, there has been no assessment of effects associated with the construction and operation of the possible wetland features).

(b) the modifications and upgrades will be effective in addressing the adverse effects of the discharges. The Applicant's further information letter of February 2017 stated that the upgrade components installed on the Pahiatua WTP (which I understand to be comparable to what is proposed for the Eketahuna WTP) are not performing as predicted. While I accept that it is necessary and appropriate in some situations to apply estimations to plant performance, the theoretical performance on which the Applicant has based their assessment of effects appears to have a high degree of uncertainty associated with it.

(c) additional resource consents will probably be required. For example, resource consents are potentially required for earthworks, damming and diversion of water, other discharges during construction of wetlands and the establishment of alternative discharge structures. None of these have been applied for and it is appropriate that these activities are assessed as the details become apparent rather than being authorised through conditions of a consent granted at this stage.

(d) people who may be adversely affected by the modifications and upgrades, and by the subsequent discharges, have a reasonable opportunity to be involved in the assessment process. The potential

changes and expansion of the WTP onto other land may result in new people becoming affected parties. There may also be others that did not submit on the current application due to its described scope, but who may be interested in a more complex proposal. These people will be excluded from the process if the additional activities are authorised through conditions of consent now.

(e) the adverse effects of the proposal are appropriate if the future modifications and upgrades are not able to proceed (i.e. if rights to use land for wetlands cannot be negotiated with existing landowners). In other words, what is the feasibility and probability of the proposed upgrades occurring, and what is the fall-back position if they do not.

57. In my opinion, the Applicant has not provided sufficient information to enable a decision to be made as to the nature and scale of the activity, nor its actual and potential effects. Conditions of consent cannot compensate for this short-fall (any information derived from conditions will not be available until after the decision on the consent has been made). The assumptions are untenable in my opinion, as they establish a low probability that the Purpose of the Act will be achieved by granting resource consent.

58. I have not provided an exhaustive assessment of all of the draft conditions, however I would be happy to assist the Commissioners in refining a set of conditions should the decision be made to grant resource consents.

CONCLUSIONS

59. There is insufficient information provided by the applicant to be able to reasonably determine the scale of the actual and potential effects beyond the current WTP format. Proposed modifications to the system are unclear and their scale, timing and effectiveness are uncertain or, at best, theoretical.

60. The Applicant has not provided an assessment of the actual and potential effects of either the current discharge or future discharges on the relationship of iwi, and their culture and traditions, with their ancestral lands, water, sites, waahi tapu, and other taonga. The only evidence on these effects has been provided by submitters, and the conclusions drawn by Manahi Paewai are that there are potentially significant adverse effects on those values and relationships.

61. The actual and potential adverse effects of the activity on the water quality, life-supporting capacity, and other values of the Makakahi River are currently more than minor. This includes the adverse effects on the mauri of the river, and on the traditions, relationships and values iwi and hapu associate with the river and the wider catchment.
62. The proposal is inconsistent with a significant number of objectives and policies in the One Plan. This includes the objectives and policies of Chapter 2 – Te Ao Maori and Chapter 5 – Water. Applying the approach in the *R J Davidson Family Trust* decision, that is a strong indicator that granting resource consents to the activity as currently proposed would be inconsistent with achieving sustainable management.
63. Based on the limited information available, it is unlikely that the proposal will meet the obligations set out in s107 of the Act. There is no certainty as to whether those requirements are likely to be achieved within the reasonably foreseeable future. On that basis, the resource consents involving discharges to water are not able to be granted.
64. Granting consent on the basis that it will be an interim step towards the Applicant designing a comprehensive WTP would require a set of specifically crafted conditions designed to direct the Applicant to develop a detailed proposal and associated assessment of effects. Conditions would also be required to ensure that the adverse effects on the environment are no greater than at present. If such a consent is granted, my opinion is that it should be for a term of no more than five years.
65. Based on the evaluation I have set out in my evidence above, the following factors indicate that resource consent should not be granted:
- (a) The activity is likely to have significant adverse effects on the environment that cannot be avoided, remedied or mitigated by conditions of consent.
 - (b) The activity currently has and is likely to have significant adverse effects on the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
 - (c) The activity is unlikely to meet the requirements of s107 of the Act.

(d) The activity is inconsistent with a number of the objectives and policies of the One Plan.

A handwritten signature in black ink, appearing to read 'P. Percy', written in a cursive style.

Phillip Percy

DATED this 23rd day of March 2017