

BEFORE THE HEARING COMMISSIONERS

IN THE MATTER OF the Resource Management Act 1991

AND IN THE MATTER of APP-2005011178.01 and APP-2018201909.00 for resource consents associated with the operation of the Eketāhuna Wastewater Treatment Plant, including construction of a wetland, diversion of water, construction of a bund, a discharge into the Makakahi River, a discharge to air (principally odour), a discharge to land via pond and wetland seepage, Bridge Street, Eketāhuna.

PLANNING EVIDENCE OF

PHILLIP HARRY PERCY

on behalf of:

Rangitāne o Tamaki-Nui-a-Rua Incorporated

Dated: 19 November 2018

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1 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 previously prepared evidence for this matter in which I set out my qualifications and experience. Rather than repeating that information here, I refer the Commissioners to my previous statement of evidence.

Code of Conduct for Expert Witnesses

3. 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.

2 Scope of evidence

4. Rangitāne o Tamaki-Nui-a-Rua Incorporated (Rangitāne) made a submission on the applications that are the subject of this hearing. I have been asked by Rangitāne to prepare evidence only in relation to the interpretation of Policy 5-11 of the One Plan. Rangitāne have not asked me to prepare planning evidence on other aspects of the applications. I have therefore confined my evidence to setting out my understanding of the policy context in which Policy 5-11 sits to assist the Panel.
5. In preparing this statement, I have read the following documents and evidence:
 - 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), Roger MacGibbon (wetland design), Olivier Ausseil (water quality), Ella Boam (groundwater), Tabitha Manderson (planning) and Blair King.

3 Evidence

6. Policy 5-11 of the One Plan 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.

7. By way of background, the Applicant put forward the proposition at the hearing for the Pahiatua wastewater treatment plant discharge (which was heard by this Panel and has run a somewhat parallel hearing process) that to meet the direction in Policy 5-11(a)(i) and/or (ii), a plain meaning interpretation of 'land' should be adopted¹. The Applicant's opinion was that because land covered by water is 'land' by definition, that passing treated wastewater through a constructed wetland would meet the (a)(ii) of Policy 5-11.

8. I have organised my evidence around two principal questions:

Question 1

Which higher-order provisions of the One Plan is Policy 5-11 related to and therefore designed to achieve (at least in part), and

Question 2

If a literal interpretation of 'land' and 'overland' is applied (relying on the RMA definition of 'land'), does that affect how Policy 5-11 performs in terms of

¹ Pg 24 of the Pahiatua decision

achieving the objectives of the One Plan?

Question 1

9. In her original assessment of the relevant objectives that relate to Policy 5-11, Ms Morton examines only Objective 14-1 and 12-2.² Ms Manderson is also of the opinion that the intent of Policy 5-11 “is ultimately to address the Mauri of the receiving water”.³
10. The interpretation of Policy 5-11 by Ms Morton and Ms Manderson is, in my view, too narrow a lens through which to determine how to apply Policy 5-11.
11. The most immediately relevant objectives in Chapter 5 of the One Plan that relate to Policy 5-11 are Objectives 5-1, 5-2 and 5-4 (noting that there are other relevant objectives as well). They seek to ensure that surface water bodies and their beds are managed in way that safeguards life supporting capacity and recognises and provides for the values identified in Schedule B of the One Plan:

Objective 5-1: Water[^] management Values

Surface water bodies[^] and their beds[^] are managed in a manner which safe guards their life supporting capacity and recognises and provides for the Values in Schedule B1.

Objective 5-2: Water[^] quality

(a) Surface water[^] quality is managed to ensure that:

(i) water[^] quality is maintained in those rivers[^] and lakes[^] where the existing water[^] quality is at a level sufficient to support the Values in Schedule B

(ii) water[^] quality is enhanced in those rivers[^] and lakes[^] where the existing water[^] quality is not at a level sufficient to support the Values in Schedule B

(iii) accelerated eutrophication and sedimentation of lakes[^] in the Region is prevented or minimised

(iv) the special values of rivers[^] protected by water conservation orders[^] are maintained.

(b) Groundwater quality is managed to ensure that existing groundwater quality is maintained or where it is degraded/over allocated as a result of human activity, groundwater quality is enhanced.

Objective 5-4: Beds[^] of rivers[^] and lakes[^]

The beds[^] of rivers[^] and lakes[^] will be managed in a manner which:

² Ms Morton, s42A report, section L, paragraphs 110-128.

³ Ms Manderston, s41B report, paragraph 8.20.

- (a) *sustains their life supporting capacity*
- (b) *provides for the instream morphological components of natural character*
- (c) *recognises and provides for the Schedule B Values*
- (d) *provides for infrastructure[^] and flood mitigation purposes.*

The land[^] adjacent to the bed[^] of reaches with a Schedule B Value of Flood Control and Drainage will be managed in a manner which provides for flood mitigation purposes.

12. Objective 2-1 Resource Management in Chapter 2: Te Ao Mauri expresses tangata whenua aspirations for mauri:

- a. *To have regard to the mauri* of natural and physical resources[^] to enable hapū* and iwi* to provide for their social, economic and cultural wellbeing.*
- b. *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.*

13. Objective 14-1, which prefaces the rules contained in Chapter 14 – Discharges to Land and Water, reiterates the outcomes expected in Objectives 5-1, 5-2 and 5-4 when activities described in Policy 5-11 are carried out:

Objective 14-1: Management of discharges[^] to land[^] and water[^] and land[^] uses affecting groundwater and surface water quality

The management of discharges[^] onto or into land[^] (including those that enter water[^]) or directly into water[^] and land[^] use activities affecting groundwater and surface water[^] quality in a manner that:

- (a) *safeguards the life supporting capacity of water and recognises and provides for the Values and management objectives in Schedule B,*
- (b) *provides for the objectives and policies of Chapter 5 as they relate to surface water[^] and groundwater quality, and*
- (c) *where a discharge[^] is onto or into land[^], avoids, remedies or mitigates adverse effects[^] on surface water[^] or groundwater.*

14. Policies are the course of action to achieve or implement the objectives. The objectives listed above (except for Objective 14-1), and Policy 5-11, are part of the Regional Policy Statement section of the One Plan and therefore fit within the structure described by s62(1) of the RMA. S62(1) requires that *inter alia* the One Plan must state:

- a. the significant resource management issues for the region; and
 - b. the resource management issues of significance to iwi authorities in the region; and
 - c. the objectives sought to be achieved by the statement; and
 - d. the policies for those issues and objectives and an explanation of those policies; and [...]
15. Assuming that the One Plan was developed in a manner consistent with this framework, where there is uncertainty as to the interpretation or application of a policy, the first port of call for resolving that uncertainty should be an examination of the objectives that the policy was designed to achieve, the issues, including issues of significance to iwi authorities that the policy relates to, and the explanation of the policy.
16. The Chapter 5 objectives set out above highlight two key outcomes that are to be achieved by policies in the One Plan. The first is to safeguard life supporting capacity and the second is to recognise and provide for the values listed in Schedule B of the One Plan.
17. The table below shows the Schedule B values that apply to the Makakahi River and the management outcomes anticipated from the implementation of the policies and methods of the One Plan. I have highlighted the values of most relevance to interpretation of Policy 5-11 for the purposes of the current applications:

Zone	Individual Value	Management objective⁴
Zone-wide values	Life supporting capacity – hill mixed	
	Aesthetics	
	Contact recreation	
	Mauri	The mauri* of the water body^ and its bed^ is maintained or enhanced
	Industrial abstraction	
	Irrigation	
	Stockwater	
	Existing infrastructure	
	Capacity to assimilate pollution	

⁴ Schedule B1, part B.3: Surface Water^ Management Values Key: showing the management objectives, where the Values apply and where to find them in Schedule B

Zone	Individual Value	Management objective ⁴
	Sites of Significance - Aquatic⁵	Sites of significance for indigenous aquatic biodiversity are maintained or enhanced
Site/reach-specific values	Trout Fishery (II Regionally significant)	
	Trout spawning	
	Water supply	
	Flood control and drainage	

18. The resource management issues, including issues of significance to hapū and iwi, help inform the basis of the objectives of the One Plan and the issues that the objectives and their associated policies are designed to resolve. Table 2.1 of the One Plan usefully identifies what these issues are and the provisions in the Plan that address those issues. Issues associated with the management of water resources and the disposal human sewage to land and water are reproduced in the table below (emphasis added in bold):

Resource issue of significance to hapū and iwi	Resource issue in the context of tikanga Māori	Relevant part of the One Plan where issue is addressed
(a) Management of water [^] quality and quantity throughout the Region does not provide for the special qualities significant to Māori.	<p>Wai Māori (pure water) is essential to hapū* and iwi* in the Region to ensure activities conducted for cultural purposes, such as spiritual cleansing, baptismal rituals and food gathering, are achievable.</p> <p>Mauri* acts as a balancing agent to ensure the lifesupporting qualities within the water[^] are maintained.</p> <p>Human activities, application of impure agents, loss of water[^] capacity, and contaminants[^] all affect the ability of the mauri* to perform its role effectively, therefore</p>	<p>Surface water[^] quality</p> <p>Te kounga o te wai mata</p> <p>Chapter 2 - Te Ao Māori</p> <p>Objective 2-1</p> <p>Policy 2-3</p> <p>Chapter 2 Methods</p> <p>Chapter 5 - Water</p> <p>Objective 5-1</p> <p>Policy 5-1</p> <p>Chapter 5 Methods</p>

⁵ Shortjaw kokopu at Bruce Stream tributary, Makakahi River tributary and Makakahi River.

Resource issue of significance to hapū and iwi	Resource issue in the context of tikanga Māori	Relevant part of the One Plan where issue is addressed
	resulting in a standard of water [^] not suitable for hapū* and iwi* to perform their relevant tikanga Māori [^] or cultural activities associated with its use.	Rules, Chapter 14 - Discharges to Land and Water
(h) Sewage disposed to water [^] , in treated form or otherwise, is culturally abhorrent. Land-based treatment is preferred.	<p>Mahi tautara (sewage waste) There are serious physical and spiritual connotations to hapū* and iwi* associated with human sewage discharge[^] to water[^]. The act of doing so intentionally is, in itself, regarded as poke - an act of spiritual and physical uncleanness (this term may vary between iwi*). Land-based treatment of sewage is preferred.</p> <p>The physical and spiritual effects on hapū* and iwi* can be wide-ranging. The best method of avoiding these effects is the prevention of direct discharge[^].</p>	<p>Sewage discharge[^]</p> <p>Te rukenga parakaingaki</p> <p>Chapter 5 - Water</p> <p>Objective 5-2</p> <p>Policy 5-11</p> <p>Chapter 5 Methods</p> <p>Rules, Chapter 14 - Discharges to Land and Water</p>

19. Section 5.7 Explanations and Principal Reasons also assists in determining the intended outcome of the objectives and policies of the One Plan in relation to discharges of human waste and the achievement of Māori cultural values. *“In all cases, point source discharges to water of untreated human sewage are culturally unacceptable, and direct discharges of treated human sewage should be changed to involve land application before discharge (Policy 5-11).”*

20. Turning now to Policy 5-11 itself, Policy 5-11(a)(i) and (ii) are limited to a description of the discharge method. They describe the way in which treated wastewater shall be discharged (‘applied onto or into land’ or ‘flow overland’ respectively) but do not extend to describe the outcome those discharge methods are to achieve.

21. Sub-clause (a)(iii) also describes a method (“pass through an alternative system”) but includes a qualifier, which is that the alternative system *“mitigates the adverse effects on the mauri of the receiving water body”*. It is unclear from the drafting of the policy whether this requirement to mitigate the adverse effects on the mauri of the receiving

body is meant to also apply to methods (i) and (ii).

22. The Objectives that must be achieved through the implementation of Policy 5-11 establish the expectation that in all surface water bodies the Schedule B value of mauri will be *recognised and provided for*. Schedule B.3 establishes the 'management objective' of 'providing for' mauri to be 'maintain or enhance'. This direction appears to be at odds with the less stringent requirement in Policy 5-11(a)(iii) to mitigate adverse effects on mauri.
23. Following the direction established by the issues, objectives and explanations of the Plan, in my opinion all three 'branches' of Policy 5-11 are intended to achieve the following:
 - a. The Mauri of the receiving water bodies is maintained or enhanced.
 - b. The life supporting capacity of the receiving water bodies is safe guarded.
 - c. To address cultural issues, treated human wastewater should not be discharged to water and should instead be 'applied to land'.
24. Therefore, the issues, objectives and explanations in the One Plan describe an outcome that is to be achieved when treated wastewater is either applied onto or into land, made to flow overland, or discharged via an alternative system.

Question 2

25. Turning now to Question 2: If a literal interpretation of 'applied onto or into land' or 'flow overland' is applied (relying on the RMA definition of 'land') does that affect how Policy 5-11 performs in terms of achieving the objectives and resolving the resource management issues of significance to hapū and iwi set out in the One Plan?
26. Policy 5-11(ii) identifies 'flow overland' as one of the ways in which discharges of treated human sewage may pass or 'travel' before it enters a surface water body to be consistent with the policy. The Collins Dictionary definition of 'overland' is "over or across land". Section 2(a) of the RMA, land "includes land covered by water and the airspace above land." Based on that definition, the bed of a river, lake or natural wetland is also 'land'.
27. My understanding of the proposed wetland design described in the application and in the evidence of Mr MacGibbon is that the constructed wetland will likely have a permanent flow of treated wastewater present. While the bed of the proposed wetland falls within the definition of 'land' in the RMA and the treated wastewater will flow over and in some cases into that land, it appears that the solution still entails treated wastewater passing through a body of water before discharging into the Makakahi River.

In that sense, the proposed wetland is more akin to a 'lake' as defined in the RMA (a body of fresh water which is entirely or nearly surrounded by land).

28. With limited evidence from cultural experts on whether the proposed wetland will maintain or enhance the mauri of the receiving environment or address cultural impacts, I cannot draw a conclusion on whether the proposed wetland solution meets the requirements of Policy 5-11 when it is interpreted in the context of the informing objectives, issues, and explanations. There is significant risk that a literal interpretation of clauses (i) and (ii) of the policy based only on the RMA definition of 'land' without broader consideration of the policy context, could undermine the intent of the One Plan.

Phillip Percy

19 November 2018