BEFORE THE MANAWATŪ-WHANGANUI REGIONAL COUNCIL INDEPENDENT HEARING PANEL

IN THE MATTER	of the Resource Management Act 1991 ("RMA" or "the Act")
AND	
IN THE MATTER	of resource consent applications to **MANAWATŪ-WHANGANUI REGIONAL COUNCIL** by **WINSTONE PULP INTERNATIONAL LIMITED** to discharge up to 750m^3/day of condensate wastewater, and land disturbance together with any ancillary diversion of water and discharge of sediment for the associated construction of a wetland (ATH-2010011593.03 and ATH-202609463.00).

LEGAL SUBMISSIONS OF COUNSEL FOR THE APPLICANT

9 OCTOBER 2026

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INTRODUCTION

1.1 This is a hearing of an application by Winstone Pulp International Limited ("**WPI**" or "**the Applicant**") to consent the discharge of up to 750 m^3/day of condensate wastewater associated with the proposed wood processing operations, in addition to consent for land disturbance together with any ancillary diversion of water and discharge of sediment associated with construction of the wetland ("**the Proposal**") at 1002 State Highway 49, Tangiwai ("**the Site**") under the Horizons Regional Council One Plan ("**One Plan**").

1.2 Resource consent is sought for:

(a) A maximum wastewater discharge of 750m^3/day from an industrial activity to the Whangaehu River (Discretionary Activity); and

(b) Land disturbance for the construction of the proposed wetland, together with any ancillary diversion of water and discharge of sediment into water (Controlled Activity).

1.3 Overall, the Proposal is considered as a discretionary activity.

1.4 The Proposal was initially put forward for consent in March 2025 but has evolved considerably since then with a substantial reduction in scale.

1.5 By way of background:

(a) The Karioi Pulp Mill ceased operations in September 2024 as the business was no longer economically viable, with no discharges having occurred since then (with the exception of small volumes of stormwater).

(b) Since closure, WPI has been actively seeking a purchaser for the Site to repurpose it for future wood processing.

(c) WPI's original discharge to water consent (ATH-2010011593.01) was set to expire in July 2025. That consent authorised:

(i) A maximum 5,200 m^3/day of discharge of treated pulp effluent to the Whangaehu River;

(ii) The discharge of antifoam inhibitor not exceeding a rate of 125 L/day (at a maximum rate of 3 mL/second); and

(iii) Includes effluent and receiving water monitoring requirements.

(d) Pursuant to s 124 of the RMA, WPI subsequently lodged an application in March 2025 for a new discharge to water consent to authorise the ongoing wastewater discharges from the Site for a 5-year duration.[1] Following discussions with potential buyers and various interested parties, WPI amended the consent to reduce the discharge rate to 4,000m^3/day and removed the antifoam inhibitor discharge.

(e) The application was publicly notified with the submission period closing on 4 December 2025.

(f) On 17 December 2025, section 123C was inserted into the RMA, which reinstated the existing consent and extended its expiry date to the close of 31 December 2027.

(g) In March 2026, WPI confirmed that it is working with Te Ara Hiko Ltd, a potential purchaser of the Karioi Pulp Mill site. Te Ara Hiko Ltd is proposing to construct and operate a Biocoal manufacturing facility on the Site, producing 180,000tpa of Biocoal pellets to supply both domestic and export customers.[2]

(h) While the future industrial process will be largely similar to the historical wood processing on the subject site, the new operations will incorporate a "torrefaction" process (as opposed to the "pulp" process used by WPI previously).

(i) Biocoal is produced through the "torrefaction" process, whereby wood chips are heated in the absence of oxygen and the resulting gases and biomass by-products are combusted to generate heat for the manufacturing process.[3] Heat is recovered from the resulting flue gas through condensation, creating the wastewater stream that forms the discharge component of this application.[4]

(j) Following public notification, WPI undertook further engagement with parties who initially opposed the application and had ongoing

1 A shorter duration was applied for to provide an interim consent to preserve the site's productive potential and to support future investment and employment.
2 EIC, Duder, at 1.1.
3 EIC, Duder, at 1.4-1.7.
4 EIC, Duder, at 1.6-1.7.

discussions with Council. The application was amended further in April 2026, which included:

(i) A maximum daily discharge flow rate of 750m^3/day;

(ii) Reference to a "torrefaction" process;

(iii) Clarifying the type of wastewater as condensate from that process; and

(iv) A proposed wetland into the wastewater discharge path, following feedback from Ngāti Rangi.

(k) WPI proposed, and the Panel directed,[5] that an amended application and updated assessment of effects be filed. The revised application was submitted on 30 April 2026.

(l) To resolve any scope issues for the application,[6] the Applicant requested the revised application be publicly notified. This was accepted by Council, and the application was notified on 22 July 2026.

(m) Following notification of the application, and expert input, further refinements have been made to the design of the proposed wetland to enable cooling of the wastewater. The key design parameters are set out in the evidence of Ms Singh.[7]

(n) WPI met with Ngāti Rangi representatives on 17 September 2026 to share and explain the refined and updated wetland design.

1.6 The Proposal before the Panel is one that has been substantially refined over time. This has been driven both by the significant engagement and feedback received from various interested parties, and the Applicant's desire to work with the local community and, in particular, iwi. This has included:[8]

5 Per Minute 2 dated 20 March 2026.
6 We refer to our Memorandum of Counsel dated 2 July 2026 which commented on scope issues in the context of the *Cloud Ocean* case. Our findings were that the *Cloud Ocean* was not relevant to any scope issue, where the Applicant's amendments fell within scope of the original application. Notwithstanding this, we requested on behalf of the Applicant for the application to be re-notified to resolve any scope issues, given that there was some time before the Panel were available for a hearing.
7 See EIC, Singh, at 4.
8 EIC, Ryan, at 4.

(a) Engagement via attempted door knocking, face to face meetings, and invites to "town hall" meetings either direct via mail or public notices in local media.

(b) Entering into a formal environmental agreement since 2009 with Ngāti Rangi and undertaking regular engagement on such matters. Since closure, WPI and the potential proposed purchaser have continued to brief the environmental working group, along with the wider Ngā Waihua o Paerangi Trust board, regarding the Site's sale, proposed future use and about this resource consent process.

(c) Maintaining an ongoing relationship with Te Korowai o Wainuiarua, where WPI meets with them on at least a biannual basis, alongside WSP as their environmental consultants.

(d) Engagement with Te Rūnanga o Ngā Wairiki Ngāti Apa and Whangaehu Marae following their opposition to the earlier 4,000 m^3 per day proposal. That engagement confirmed those submitters were not opposed to economic development but were concerned to ensure that best practicable technology was used to minimise wastewater volumes and effects on the Whangaehu River.

(e) Engagement with Federated Mountain Clubs of New Zealand, Ruahine White Water Club and an associated individual submitter, who opposed the earlier application. WPI met with these groups following notification of the current Proposal to discuss their concerns, whereby those parties subsequently lodged updated neutral submissions on the current Proposal due to the change in discharge water chemical composition and flow volumes.

1.7 WPI is actively engaged with the community and has been receptive to the feedback received. This has materially informed and shaped the Proposal before the Panel.

Purpose and scope of legal submissions

1.8 The purpose of these submissions is to assist the Panel by providing a contextual analysis of the Proposal against the relevant statutory and plan provisions, in light of the evidence filed and to address matters relevant to Ms Morton's section 42A reports ("**s 42A Report**") and the accompanying expert assessments.

2. THE SUBMISSIONS

2.1 The Proposal was publicly notified on 22 July 2026 and closed on 20 August 2026. A total of 20 submissions were received, where:

(a) 15 submissions were in support of the Proposal;

(b) 4 submissions were neutral; and

(c) 1 submission opposed the Proposal.

2.2 Four submitters stated that they wished to be heard. Further details are provided in Ms Singh's evidence and Ms Morton's s 42A Report, which we refer to and agree with Ms Morton's summary of the concerns raised in the submissions.

2.3 In response to these submissions, the Applicant prepared a memorandum to the Panel, Council, and the submitters dated 8 September 2026, which provided a high-level response to various concerns raised in Nga Waihua o Paerangi Trust[9] and Health New Zealand Te Whatu Ora's[10] submissions. This memorandum clarified aspects of the Proposal and agreed to various conditions that were recommended by the submitters.

2.4 Here, we specifically refer to Pukeatua Farming's submission,[11] which amongst other matters raises the following two concerns:[12]

(a) Noise complaints regarding the previous WPI operations from the reverse beepers on the loaders used in the log yard and from the de-barking and chipping operations; and

(b) That the consent for the MyNoke worm farm was poorly granted by Council, where the operation produced leachate runoff that entered Mr Sherratt's wetland.

2.5 We submit that these two concerns are outside of the scope of the Proposal as:

9 Submission 15.
10 Submission 17.
11 Submission 19.
12 As outlined in Mr Duder's evidence at 7.1 following a phone call with Mr Sherratt.

(a) The noise concerns relate to log yard operations, whereas this application is for resource consents for land disturbance and the discharge of treated condensate to land;[13] and

(b) The Applicant has no involvement in, or connection with, the MyNoke worm farm. Further, the submission appears to raise concerns regarding a separate consent process undertaken by Council; the Applicant's hearing is not the appropriate forum to revisit those matters. In any event, those matters fall outside the scope of the present application.

3. S 42A REPORT

3.1 Ms Morton's s 42A Report assesses the proposal in detail. She concludes that:[14]

> *I have not reached a recommendation at this stage as to whether the discharge permit should be granted or declined. That recommendation will be made following consideration of the section 41B evidence, the evidence presented at the hearing, including the evidence of Ngāti Rangi, the final condition framework and any other matters arising through the hearing process.*

3.2 While we consider this is surprising, given the material available, she makes the following conclusions on physical effects:

(a) The effects of the proposed discharge on surface water quality are expected to be no more than minor;[15]

(b) The effects of the proposed discharge on aquatic ecology are expected to be no more than minor;[16]

(c) The effects of the proposed discharge on recreation, amenity and public health are expected to be no more than minor;[17]

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13 Although we note for completeness, that Mr Duder responded to this point in his evidence at 7.2(c) stating that "we will ensure that loaders used in the log yard have broadband directional alarms as opposed to the basic tonal beepers, which were likely previously used."
14 S 42A Report, page 5.
15 S 42A Report, at [73].
16 S 42A Report, at [77].
17 S 42A Report, at [81].

(d) The potential erosion and sediment effects associated with construction of the wetland can be appropriately managed through conditions;[18]

(e) The effects associated with the disturbance and reuse of contaminated soils can be appropriately managed through implementation of the Remedial Action Plan, engineered containment, appropriate liner installation and quality assurance, an unexpected contamination protocol, monitoring, maintenance and aftercare;[19] and

(f) The residual groundwater risk can be addressed through the final wetland design, leak detection and monitoring requirements.[20]

3.3 Ms Morton does not provide an overall conclusion on cultural effects and states she will not do so until she has considered the evidence filed and / or presented by Ngāti Rangi.[21]

Recommended conditions

3.4 Ms Morton's report includes a draft set of conditions, which were prepared in collaboration with the Council's technical experts.

3.5 These recommended conditions are generally endorsed by Ms Singh and the Applicant's technical experts, subject to some further minor amendments.

4. THE APPLICANT'S EVIDENCE

4.1 The Applicant has provided a comprehensive suite of evidence that addresses all relevant matters, including those raised in the s 42A Report and submissions.

4.2 The evidence describes and provides an assessment of the effects of the Proposal and the key issues arising. These include:

(a) Corporate;

(b) Water quality;

(c) Ecology;

18 S 42A Report, at [133].
19 S 42A Report, at [134].
20 S 42A Report, at [135].
21 S 42A Report, at [65], [132] at [214].

(d) Contaminated land and remediation;

(e) Earthworks; and

(f) Planning.

4.3 The relevant witnesses are as follows:

Michael Ryan (Corporate)

4.4 Mr Ryan is the CEO of WPI. His evidence provides an overview of WPI, its closure and the Site, and engagement and consultation undertaken with various parties to date.

Paul Duder (Corporate / Technical)

4.5 Mr Duder is the Director of Duder Project Management Limited and has been working with Te Ara Hiko Ltd and its shareholders since September 2024. His evidence provides an overview of the Te Ara Hiko Project and the 'torrefaction' process in the context of the Proposal to establish a torrefaction processing plant at the Site.

Lobo Coutinho (Water Quality)

4.6 Mr Coutinho is an Environmental Science and Engineering Lead at Babbage Consultants Limited. His evidence provides a water quality assessment of the Proposal. His overall conclusion is that the Proposal will result in negligible adverse effects on water quality and represents good environmental practice.[22]

Treffery Barnett (Ecology)

4.7 Ms Barnett is a Technical Director (Freshwater and Coastal Ecology) at Babbage Consultants Limited. Her evidence provides an ecological assessment of the Proposal. She reaches the overall conclusion that the ecological values of the native fauna in the Whangaehu River are assessed as Very Low, and the magnitude of the effect of the discharge will be negligible (a very slight change from the existing baseline condition), resulting in a Very Low level of ecological effect.[23]

Hiram Garcia (Contaminated Land and Remediation)

22 EIC, Coutinho, at 1.7.
23 EIC, Barnett, at 6.5.

4.8 Mr Garcia is a Principal Environmental Consultant at Babbage Consultants Limited. He provides findings of the Detailed Site Investigation ("**DSI**") and Remedial Action Plan ("**RAP**") for the proposed wetland on the Site. He concludes that two samples identified localised arsenic and zinc contamination; however, both of these are confined to near-surface soils or localised within the Site and unlikely to reach the Whangaehu River located more than 540 m away.[24] The remediation approach has been revised to address the identified risks.[25]

Sunil Prasad (Earthworks)

4.9 Mr Prasad is an Engineering Manager at Cheal Consultants Limited. His evidence provides an assessment of the proposed earthworks and the Erosion and Sediment Control ("**ESC**") report associated with the construction of the wetland. He agrees with Mr Pearce and considers that the residual concerns can be addressed through appropriate conditions of consent and covered off during detailed design and preparation of a final Erosion and Sediment Control Plan.[26]

Sukhi Singh (Planning)

4.10 Ms Singh is a Technical Director – Planning at Babbage Consultants Limited. Her evidence addresses the Site and its planning context, the Proposal, consents required and activity status, potential effects on the environment and the relevant planning provisions. Ms Singh then sets out further details about the Proposal and provides her substantive planning assessment.

4.11 Ms Singh has also prepared a supplementary statement of evidence to assist the Panel[27] that:

(a) Provides an update following discussions between the Applicant and Council teams since the Applicant's evidence in chief was filed.

(b) Appends the following documents:

(i) An updated draft condition set, to which further amendments have been made as a result of the Applicant/Council discussions.

24 EIC, Garcia, at 1.3-1.4.
25 EIC, Garcia, at 1.5.
26 EIC, Prasad, at 1.7.
27 Supplementary, Singh, dated 9 October 2026.

(ii) A Submission Table that sets out all submission points and how those have been addressed by reference to the s 42A report, evidence in chief for WPI, and the draft condition set.

(iii) A Planning Table that sets out the key provisions of the One Plan framework as it relates to surface water quality.

5. RELEVANT PLANNING AND STATUTORY PROVISIONS

5.1 The relevant planning matters are identified and addressed in Ms Singh's evidence. They comprise:

(a) The One Plan;

(b) Horizons One Plan – Regional Policy Statement;

(c) Ngāti Rangi Taiao Management Plan 2014.

(d) The National Policy Statement for Freshwater Management 2020; and

(e) The National Environmental Standards for Sources of Human Drinking Water.

5.2 The Panel will be familiar with the relevant statutory provisions that apply under the RMA, notably:

(a) Section 104(1) that requires the Panel to consider:

(i) The actual and potential effects of the activities;

(ii) Any measures proposed or agreed to for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects;

(iii) The provisions of any regional or district planning instruments, operative or proposed, that may be relevant to the Panel's decision;

(iv) Whether there is any other factor or consideration that is relevant and should be taken into account in making the Panel's decision; and

(v) Part 2 – if considered necessary.

(b) Section 104B, which empowers the Panel to grant or refuse the application, and if granted, impose conditions under section 108 of the RMA.

(c) Section 107, which restricts the grant of certain discharge permits.

(d) Section 108 of the RMA that provides for conditions to be imposed on resource consents as the consent authority "considers appropriate".

5.3 Additional statutory provisions apply here under the Ngāti Rangi Claims Settlement Act 2019 ("**Settlement Act**") which we address further in the context of Ngāti Rangi's submission below.

6. LEGAL ISSUES

6.1 Various relevant legal issues arise regarding the Proposal with respect to:

(a) Ngāti Rangi's submission;

(b) The scope of application;

(c) The assessment of future effects;

(d) Consent duration; and

(e) Part 2 of the RMA and King Salmon – basis for assessment.

Ngāti Rangi's submission

6.2 Ngāti Rangi's submission states:[28]

> ***<u>Ngāti Rangi decision</u>***
>
> ***Ngāti Rangi declines the application in its present form****. The discharge of wastewater condensate into the Whangaehu River does not align to the principles of Te Mana Tupua meaning that kawa ora, mauri ora, manawa ora and finally wai ora (the river's life-giving properties) are diminished. The volume of daily wastewater discharge exceeds the Ngāti Rangi standards.*

6.3 As a preliminary comment, we note Ngāti Rangi's use of the word "decision" throughout its submission, including in the heading "Reasons for decision". Given that the Panel is the decision maker here, we assume those references

28 Submission 15, page 2.

are intended to refer to the position Ngāti Rangi has taken in its submission, rather than being reflective of any decision-making function.[29]

6.4 The submission appears to reference both the:

(a) Settlement Act;[30] and

(b) Ngāti Rangi Taiao Management Plan 2014.[31]

6.5 We address these below, including how they are to be considered by the Panel.

Ngāti Rangi Claims Settlement Act 2019

6.6 The Settlement Act applies to the Panel's consideration of the Proposal, including Part 3, which relates to Te Waiū-o-Te-Ika – Whangaehu River.

6.7 More specifically:

(a) Sections 107 and 108 set out the elements of the Te Waiū-o-Te-Ika framework.

(b) Section 107 (Te Mana Tupua o Te Waiū-o-Te-Ika ("**Te Mana Tupua**")) states that:

> *Te Waiū-o-Te-Ika is a living and indivisible whole from Te Wai ā-moe to the sea, comprising physical (including mineral) and metaphysical elements, giving life and healing to its surroundings and communities.*

(c) Section 108 (Ngā Toka Tupua o Te Waiū-o-Te-Ika ("**Ngā Toka Tupua**")) records the intrinsic values that represent the essence of Te Waiū-o-Te-Ika.[32]

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29 In the alternative that Ngāti Rangi considers that its opposition is determinative of the outcome, we refer to *Gock v Auckland Council* [2019] NZHC 276, which reaffirms a settled line of authority at [177] including "*Minhinnick v The Minister of Corrections, Watercare Services Ltd v Minhinnick, Gavin H Wallace Ltd & Ors v Auckland Council, which establishes that the RMA does not confer on Tangata Whenua or Kaitiaki a power of veto over use or development of natural and physical resources in their area. That is for the stated reason that the Court acts as arbiter for the community as a whole so that although Māori views are important they will not in every case prevail*."

30 Through reference to Te Mana Tupua.

31 By reference to the Ngāti Rangi standards.

32 Being Ko te Kāhui Maunga te mātāpuna o te ora; He wai-ariki-rangi, he wai-ariki-nuku, tuku iho, tuku iho; Ko ngā wai tiehu ki ngā wai riki, tuku iho ki tai hei waiū, hei wai tōtā e; Kia hua mai ngā kōrero o ngā wai, kia hua mai te wai ora e.

(d) Section 109 sets out the legal effect of Te Mana Tupua and Ngā Toka Tupua. This applies to the Panel,[33] as its exercise or performance of that function, power, or duty relates to the Whangaehu River, and if Te Mana Tupua and Ngā Toka Tupua also relates to that function, power, or duty.[34]

(e) Specifically, s 109(3) states that:

> *Decision makers under the Acts listed in clause 2 of Schedule 5 must have particular regard to Te Mana Tupua and Ngā Toka Tupua.*
>
> *(Emphasis ours.)*

6.8 The terminology "*must have particular regard*" was considered by the High Court in *New Zealand Transport Agency v Architectural Centre Inc*.[35] There, the Court:

(a) First considered the phrase "*have regard to*", stating that:

> *[59] Taking the phrase "have regard to" as the starting point, in New Zealand Co-operative Dairy Co Ltd v Commerce Commission Wylie J (sitting with Mr R G Blunt) said:*
>
> > *"We do not think there is any magic in the words 'have regard to'. They mean no more than they say. The tribunal may not ignore the statement. It must be given genuine attention and thought, and such weight as the tribunal considers appropriate. But having done that the tribunal is entitled to conclude it is not of sufficient significance either alone or together with other matters to outweigh other contrary considerations which it must take into account in*

33 Being a decision maker of a resource consent application. See Ngāti Rangi Claims Settlement Act 2019, sch 5, cl 2.

34 Ngāti Rangi Claims Settlement Act 2019, ss 109(1)(a)(i) and 109(1)(b).

35 *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, (2015) 19 ELRNZ 163; most recently referred to in *New Zealand Transport Agency v Waikato Regional Council* [2023] NZEnvC 55 at [61]. The High Court case was in the context of s 171 of the RMA, where one of the issues that arose at [53] was "Does the difference in wording between s 104 and s 171 require a substantively different approach to considering effects on the environment arising from notices of requirement as that for determining consent applications?". The direction in s 104 is "must…have regard to" whereas s 171 refers to a direction that a territorial authority must have "particular regard to".

> *accordance with its statutory function[.]"*

(b) Significantly, the Court confirmed that the phrase "*have regard to*" does not mean "*to give effect to*".[36]

(c) The Court then went on to consider the phrase "*having particular regard to*", where it found the phrase "conveys a stronger direction than merely "to have regard to"."[37]

(d) In making that determination, it considered the Planning Tribunal's decision in *Marlborough District Council v Southern Ocean Seafoods Ltd*[38] was an appropriate interpretation of the phrase:

> *"The duty to have particular regard to these matters has been described in one case as 'a duty to be on inquiry' Gill v Rotorua District Council (1993) 2 NZRMA 604, 2 NZPTDPart 5. With respect in our view it goes further than the need to merely be on inquiry. To have particular regard to something in our view is an injunction to take the matter into account, recognising it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion."*

(e) The High Court qualified that the reference to "take the matter into account" is understood in the sense that "…the decision-maker is free to attribute such weight as it thinks fits to the specified matter but can ultimately choose to reject the matter."[39]

6.9 The Court went on to state that:

> *[66] While NZTA submitted that the (a) to (d) matters in s 171(1) were to be carefully weighed in coming to a conclusion, no submission was advanced in the course of argument on the interpretation issue to the effect that the matters to which particular regard was to be had were required to be the subject of extra weight. On*

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36 At [60]. We equally submit that "have particular regard to" also does not mean "to give effect to", where "to give effect to" has been recognised by the Supreme Court as having a strong directive, and simply means "implement" – see *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77].

37 At [64].

38 *Marlborough District Council v Southern Ocean Seafoods Ltd* [1995] NZRMA 220 (PT) at 228.

39 *New Zealand Transport Agency v Architectural Centre Inc*, above n 16, at [63].

> *that issue I share the view of Sir Andrew Morritt V-C in Ashdown v Telegraph Group Ltd:*
>
> > *"It was submitted that the phrase 'must have particular regard to' indicates that the court should place extra weight on the matters to which the subsection refers. I do not so read it. Rather it points to the need for the court to consider the matters to which the subsection refers specifically and separately from other relevant considerations."*

6.10 In light of the relevant authorities, we submit that the direction that the Panel "must have particular regard to Te Mana Tupua and Ngā Toka Tupua" under s 109(3) of the Settlement Act, is focussed on the level of attention that is provided to those matters, rather than the weight to be afforded to those matters as part of any decision. The discretion ultimately remains with the Panel as to the weight it affords to these provisions, based on the evidence before it. Notably it does not have to "recognise and provide for" Te Mana Tupua and Ngā Toka Tupua or "give effect to" these matters as part of the decision-making process here.

6.11 We further refer to s 109(6) of the Settlement Act, which states:

> *Subsections (2) to (4)—*
>
> *(a) permit a decision maker to consider Te Mana Tupua and Ngā Toka Tupua as determining factors when exercising or performing a function, power, or duty under an Act listed in Schedule 5; but*
>
> *(b) do not remove, or prevent the exercise of, any discretion that a decision maker has in exercising or performing a function, power, or duty under an Act referred to in those subsections.*

6.12 While s 109(6)(a) permits the Panel to consider Te Mana Tupua and Ngā Toka Tupua as determining factors, s 109(6)(b) clarifies that this does not remove or prevent the Panel's discretion when exercising and performing its functions and powers under the RMA. These provisions enable, but do not require, the Panel to treat those matters as determinative in any particular case, noting the differing statutory language in ss 109(2), (3) and (4). If

Parliament intended otherwise, it could have used mandatory language to that effect.

6.13 Moreover, s 109(5) provides that the Panel's obligations to consider Te Mana Tupua and Ngā Toka Tupua must be fulfilled in a manner that is consistent with the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.[40] Accordingly, while Te Mana Tupua and Ngā Toka Tupua are mandatory considerations to which the Panel must have particular regard, they are to be considered as part of the Panel's overall assessment under the RMA, rather than operating as an overriding consideration or standalone test.

6.14 For completeness, we note that ss 123 - 125 of Settlement Act are procedural provisions that set out the purpose, scope, legal effect, preparation and approval of the catchment document, Te Tāhoratanga.[41] The legal effect of Te Tāhoratanga is that, in preparing, varying, amending or approving a regional policy statement, regional plan, or district plan (a planning document) that relates to the Te Waiū-o-Te-Ika catchment, the local authority:[42]

(a) Must recognise and provide for Te Tāhoratanga; and

(b) May, at its discretion, incorporate Te Tāhoratanga in whole or in part in 1 or more of the planning documents, in accordance with the appropriate process under Schedule 1 of the Resource Management Act 1991.

6.15 Section 124(3) states that:

> *In determining an application for a resource consent that relates to the Whangaehu River or to an activity in the Te Waiū-o-Te-Ika catchment that affects the Whangaehu River, the consent authority must have particular regard to Te Tāhoratanga.*

40 RMA 1991, s 5(1).

41 Its purpose is to provide strategic leadership to promote Te Mana Tupua and Ngā Toka Tupua; and to advance the health and well-being of the Te Waiū-o-Te-Ika catchment; and to advance the integrated management of the Te Waiū-o-Te-Ika catchment, including through the co-ordination of the agencies with responsibilities under this Act or any other enactment; and to provide guidance on how to give expression to the relationship of the iwi or groups of iwi of Ngā Iwi o Te Waiū-o-Te-Ika and their kawa, tikanga, and ritenga with the Te Waiū-o-Te-Ika catchment.

42 Ngāti Rangi Claims Settlement Act 2019, s 124(1).

6.16 Here, however, despite the mandatory deadlines in the Settlement Act,[43] we are not aware of Te Tāhoratanga being approved.[44] In these circumstances, there is no operative Te Tāhoratanga document for the Panel to "have particular regard to" here.

6.17 To summarise, in determining the application the Panel:

(a) Must have particular regard to Te Mana Tupua and Ngā Toka Tupua. That requirement concerns the manner in which those matters are considered and does not, of itself, prescribe any particular weight to the consideration of those matters.

(b) Retains its discretion as to the weight to be afforded to Te Mana Tupua and Ngā Toka Tupua in the context of the application as a whole.

(c) That discretion must be exercised on the evidence and within the wider statutory framework, consistently with the purpose of the RMA.

(d) Is not required to have particular regard to Te Tāhoratanga as it does not yet exist.

Ngāti Rangi Taiao Management Plan 2014

6.18 Ngāti Rangi's submission states they oppose the application as the volume of daily wastewater discharge exceeds Ngāti Rangi's standards. We understand these standards are detailed in Ngāti Rangi's Taiao Management Plan 2014 ("**Management Plan**").[45]

6.19 We also note that the Management Plan records that Ngāti Rangi generally does not support discharges to water.[46]

6.20 We consider the Management Plan can be identified as an "other matter" under s 104(1)(c)[47] that is relevant to the Panel's determination of the proposal. However, the Management Plan has been taken into account when preparing the One Plan and Regional Policy Statement.[48] On that basis, we

43 Which have passed - see s 125, Schedule 7.
44 Noting that there is no document available on Ngā Wai Tōtā's own website (https://www.tewaiuoteika.nz/tet%C4%81horatanga) and a report from Horizons Regional Council's Strategy and Policy Committee dated 9 September 2025 (Report 25-126) states that "the first Te Tāhoratanga is still to be approved by Ngā Wai Tōtā".
45 This predates the Settlement Act.
46 Policy 4.2.1.
47 S 42A Report, section O and EIC, Singh, at 15.9.
48 See ss 61(2A) and 66(2A) of the RMA and https://www.horizons.govt.nz/your-council/working-with-tangata-whenua/iwi-and-hapu-environmental-management-plans.

submit the Panel can be assured that it has been appropriately taken into account in the higher order planning instruments.[49] There is no requirement to "look behind" the One Plan to reconsider the Management Plan in this scenario.

6.21 We submit that there is no express statutory direction for the Panel to reconsider the Management Plan. However, if the Panel is minded to have regard to the Management Plan under section 104(1)(c) of the RMA, this must occur within the broader statutory and planning framework, and should not prevail or assume greater prominence than the planning documents which have taken it into account already.

Scope of application

Infrastructure required to undertake Proposal

6.22 For completeness, we confirm this application is solely concerned with the discharge of condensate to water, alongside the land disturbance associated with the construction of the proposed wetland. The discharge will occur utilising existing infrastructure (specifically the pipe from the Site to the Whangaehu River). Any necessary changes to on Site infrastructure (with the exception of the wetland) required to undertake the Proposal are outside the scope of this application.

Air discharge matters

6.23 Equally, consideration of air discharge matters falls outside of the scope of this application. We refer to our Legal Memorandum that accompanied WPI's evidence,[50] which confirmed that both the Council and Applicant's experts agreed that an assessment of effects of the air discharge was not necessary to fully understand the effects of this Proposal. Accordingly, this application has not been deferred under s 91, nor we submit, are the air discharge matters relevant to the Panel's consideration of this application.

Assessment of potential future effects

6.24 There is a degree of uncertainty throughout Ms Morton's s 42A Report regarding the application, as the proposed torrefaction plant is not yet operating, and the actual characteristics of the discharge are therefore not known.

49 Noting the requirements in section 66 of the RMA.
50 Dated 29 September 2026.

6.25 While acknowledging that there is no actual discharge available to sample or test, the Applicant has relied on the best available information and has proposed a comprehensive suite of consent conditions to address any adverse effects and uncertainty.

6.26 To assist the Panel, we refer to Ms Singh's evidence, which responds to any 'uncertainty' regarding the anticipated wastewater composition by reference to the comprehensive technical evidence provided.[51]

6.27 Should the actual discharge characteristics differ from those assessed and authorised, there is the ability for Council to review the consent under s 128 of the RMA.[52] There is also the range of enforcement mechanisms available to Council, should any discharge subsequently contravene the consent conditions.

6.28 Moreover, the Panel is legally required to assume that conditions will be complied with.[53] For completeness, we are unaware of ss 104(2EA) or (6A) applying here.

6.29 Accordingly, the fact that the proposed torrefaction plant is not yet operational and that the actual discharge characteristics have not yet been observed is not, of itself, a proper basis to assume that the consent conditions will not be complied with.

Consent duration

6.30 We refer to:

(a) Ngāti Rangi's submission, which we understand to state that if consent is granted, the requested 20-year period is supported where the applicant is granted 10 years with a right to a further 10 years; and

(b) Ms Morton's s 42A Report, which does not consider the 20-year consent term is necessary for the land disturbance or discharge activity, nor for the 10-year lapse period.

6.31 We respond to each point below.

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51 EIC, Singh, at 6.5.
52 As also acknowledged by Ms Morton at [333] of the s 42A Report.
53 *Nelson City Council v King* [2008] ELHNZ 190 (DC) at [16] where the Court states "Consent authorities grant resource consents on the basis of an assumption that consent holders will comply with the conditions of their consents. Indeed consent authorities are legally required to assume that conditions will be complied with. Failure to comply with conditions therefore attacks the very basis on which consents are granted."

Ngāti Rangi 10-year right of renewal

6.32 We do not consider that such an arrangement is lawful and note that the RMA does not provide for a right of renewal, within the statutory framework.

6.33 We refer to *Alexandra Flood Action Society Inc v Otago Regional Council*[54] where the Environment Court stated:[55]

> *"Renewing" a resource consent is like obtaining a lease where there is no right of renewal. The tenant, like the applicant for renewal of water permits, in effect has to ask for a new lease.*

6.34 This is reflected in s 124 of the RMA; an applicant can apply for a new consent for the same activity to continue operating under its existing consent until the new application is determined. However, this enables continuity of operation but does not guarantee renewal or any "right" in that regard.

6.35 Rather, any subsequent application would need to be considered as a new consent application, for which there can be no assurance of approval. To conclude otherwise would effectively fetter the decision-maker's ability to independently assess the proposal in light of the evidence before it at the time, the nature and extent of any actual or potential effects, any measures proposed to avoid, remedy, or mitigate adverse effects, and the applicable statutory framework.

S 42A Report position

6.36 Ms Morton does not consider that the consent duration and lapse period for both consent applications are necessary for the following reasons:

(a) For the land use consent:

(i) She considers that the land disturbance consent authorises a finite construction activity associated with establishing the proposed wetland, in which a 10-year lapse period is not necessary;[56] and

(ii) A 20-year consent term is not necessary because once commenced, the earthworks are intended to be completed, stabilised and the wetland established.[57] She considers that

54 *Alexandra Flood Action Society Inc v Otago Regional Council* [2005] ELHNZ 328 (EnvC).
55 At [67].
56 S 42A Report, at 325.
57 S 42A Report, at 327.

the timeframe within which the works are completed is more relevant, and recommends that the earthworks, stabilisation and associated establishment works be completed within five years of commencement.[58]

(b) For the discharge permit:

(i) She does not consider the 10-year lapse period is appropriate because the torrefaction plant is not yet operating and the actual condensate characteristics have not been confirmed.[59] A ten-year lapse period could result in the discharge commencing a considerable time after the technical assessments and effects assessment presently before the Panel were undertaken.[60]

(ii) She recommends that the expiry date aligns with IP-P5 of the One Plan, being 1 July 2039 (i.e., a consent duration of just less than 13 years).[61] She does not consider there is "sufficient basis" to extend this permit to the next expiry date of 1 July 2049 and notes that the discharge has not yet commenced, its actual characteristics remain to be verified, and there are unresolved cumulative and intergenerational matters raised by Ngāti Rangi.[62]

6.37 We note that Ms Morton's position on these matters was determined prior to the Applicant's evidence being filed, including that of Mr Duder.

6.38 The Applicant has considered Ms Morton's comments and has agreed to a lapse period of 5 years for the land disturbance consent. It otherwise maintains the duration and lapse period as applied for in its Proposal, as:

(a) The RMA provides for a maximum 35-year term duration; the Applicant is entitled to seek a 20-year term duration;[63]

(b) The One Plan stipulates that dates may be extended in 10-year increments where a term longer than 10 years can be granted after

58 S 42A Report, at 327.
59 S 42A Report, at 330.
60 S 42A Report, at 330.
61 S 42A Report, at 332.
62 S 42A Report, at 336.
63 Also noting IP-P5: Consent durations at (1) which states that "*Other than as provided for under (2), the Regional Council will generally grant resource consents^ for the term sought by the applicant unless reasons are identified during the consent process that make this inappropriate*."

considering various criteria,[64] all of which support the Applicant's request for a 20-year duration;[65]

(c) The fact that a discharge may commence some years after consent is granted is not a reason in itself to impose a shorter lapse period. The discharge will still be required to comply with the conditions, regardless of whether it commences 10 years after consent was granted, or earlier; and

(d) Similarly, while Ms Morton notes that the torrefaction plant is not yet operating and that actual condensate characteristics remain to be confirmed, uncertainty of itself does not justify a reduced consent duration where the activity has been assessed on the basis of the best available information and we refer to 6.27 above where there are available mechanisms in place to deal with any future uncertainty.

6.39 Further, we refer to Mr Duder's evidence, which states that:[66]

> *(a) The high level of consistency of the Radiata Pine fuel source, which is the source of the discharge contaminants, is expected to result in very stable condensate concentrations without significantly peaking values;*
>
> *…*
>
> *(c) The condensate contaminant levels used in the assessment are average values taken from actual laboratory test analysis. No 'contingency' allowances have been added to the laboratory test results, and it is expected that the actual condensate contaminant levels will fluctuate*

64 The criteria refers to "*(a) the extent to which an activity is carried out in accordance with a recognised code of practice, environmental standard or good practice guideline; (b) the most appropriate balance between environmental protection and investment by the applicant; (c) the provision of s128 review opportunities to enable matters of contention to be periodically reviewed in light of monitoring and compliance information; and (d) whether the activity is infrastructure^; water*, sewage* or stormwater treatment plants and facilities; or publicly accessible solid waste* facilities including landfills*, transfer stations and resource recovery facilities.*"

65 Equally, the matters to be considered in determining a shorter consent duration than requested by the Applicant does not support the reduction in duration term. These matters include "*(a) whether it is necessary for an activity to cease at a specified time; (b) whether the activity has effects* that are unpredictable and potentially serious for the locality where it is undertaken and a precautionary approach is needed; (c) the risks of long-term allocation of a resource whose availability changes over time in an unpredictable manner, requiring a precautionary approach; and (d) in the case of existing activities, whether the consent holder has a good or poor compliance history in relation to environmental effects* for the same activity*."

66 EIC. Duder, at 8.3.

> *relatively tightly around the average contaminant levels used;*

6.40 Equally, we note the following from Mr Coutinho's evidence:[67]

> *Our understanding, as per Mr Duder's evidence describing the process, is that the level of contaminants in the discharge will be defined mostly by the content of such contaminants in the fuel source (the wood), and that is expected to be relatively mixed in the yards and within the process, so that discharge concentrations are expected to be relatively constant. I am in agreement with Mr Ausseil in that "the very simple "static" scenario approach is sufficient given the overall conclusions that the discharge's effects are not likely to be more than minor", particularly considering the conservatism in the assessment.*

6.41 In these circumstances, we submit that any residual uncertainty must be viewed in the context of the anticipated potential effects. All experts, including the Council's, are in agreement that effects will be less than minor, or no more than minor.

6.42 Accordingly, reducing the consent duration as a precautionary response would be entirely disproportionate to the nature and scale of the effects anticipated. Uncertainty can instead be appropriately managed through monitoring requirements, compliance with the proposed conditions, and the review mechanisms available under the RMA.

6.43 Mr Duder provides context for the duration and lapse period requests:[68]

> *8.5 A consent term of 20 years is requested because:*
>
> *(a) The Te Ara Hiko Biocoal facility requires significant levels of investment funding to bring it to life. Without investment funding, the proposed Biocoal facility will not be established and therefore none of the positive benefits with respect to employment, support to the local economy or support for New*

67 EIC, Coutinho, at 7.2(b).
68 EIC, Duder, at 8.5.

Zealand's move away from fossil coal use will be realised.

(b) A key factor in attracting funding is to reduce investment risk.

(c) From a financial model perspective, the Te Ara Hiko Biocoal business is modelled on a 20 year lifespan. Investors become concerned when a business model is not supported by the necessary operational consents required to enable operation for the lifespan of the model. A consent duration of less than 20 years will be deemed by many potential investors as an unacceptable risk resulting in non-investment.

(d) A consent duration of 20 years best supports attracting the investment necessary to enable the Te Ara Hiko Biocoal plant to become operational.

8.6 A lapse period of 10 years is requested to ensure sufficient time to obtain the necessary financial investment ahead of constructing and commissioning the plant. Constructing the plant is expected to take 3 to 4 years and under a 5 year lapse period, this would leave insufficient time to secure the necessary financial investment.

6.44 Overall, it is submitted the requested 20-year consent duration and 10-year lapse period[69] strike an appropriate and proportionate balance between providing investment certainty for the proposal, allowing sufficient time to obtain the necessary consents and to construct the plant, and ensuring that any actual effects are appropriately managed through the proposed consent conditions.

Part 2 of the RMA and *King Salmon* – basis for assessment

6.45 The previous approach to section 5(2) of the RMA in the context of resource consent applications involved an "overall broad judgement" approach.

69 With the exception of the 5-year lapse period as agreed to regarding the land disturbance consent.

However, the Supreme Court's decision in *King Salmon*[70] (and the subsequent decision of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*[71]), which found that when there is no ambiguity in lower order planning documents, there is generally no need to refer back to Part 2 of the Act.[72]

6.46 There are several 'caveats' to this general rule. In particular:

(a) Where there is a challenge to the lawfulness of a planning document, this needs to be resolved before it can be determined if a decision maker is acting in accordance with Part 2 of the Act;[73]

(b) There may be instances where the document concerned does not "cover the field" and the decision maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered;[74] and

(c) If there is any uncertainty as to the meaning of particular policies, reference to Part 2 may be justified to assist in a purposive interpretation.[75]

6.47 There is no reason why recourse to Part 2 is necessary, which is consistent with the conclusion reached by Ms Morton in her s 42A Report.

7. ASSESSMENT OF EFFECTS

7.1 The effects of the Proposal are assessed through the water quality evidence of Mr Coutinho, the ecology evidence of Ms Barnett, the contaminated land and remediation evidence of Mr Garcia, and the earthworks evidence of Mr Prasad.

8. WATER QUALITY

8.1 Mr Coutinho addresses the potential water quality effects of the proposed condensate discharge to the Whangaehu river. His assessment focussed on the potential effects of the discharge on the water quality of the Whangaehu River, including potential changes to relevant physical and chemical water

70 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38, (2014) 17 ELRNZ 4 42.
71 *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283.
72 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, above n 57, at [85].
73 At [85].
74 At [88].
75 At [88].

quality parameters and any resulting implications for the receiving environment.[76]

8.2 His key findings are that:

(a) The proposed discharge of 750m^3/day represents a substantial reduction compared with the previously consented discharge for the Site (5,200m^3/day).[77]

(b) The discharge will receive substantial dilution within the receiving environment, resulting in only minor changes to river water quality that are within the natural variability of the river.[78]

(c) Based on the available information, the predicted changes in river water quality resulting from the Proposed discharge are small relative to existing river conditions and natural variability, and are not expected to result in measurable adverse effects on the receiving environment after reasonable mixing.[79]

(d) Following engagement with iwi, the Applicant developed a wetland system, which includes rock channel cooling structures.[80] Mr Coutinho's assessment of effects does not rely on the anticipated performance of the wetland, and therefore represents a conservative assessment of potential effects after reasonable mixing.[81]

(e) Overall, he concludes that the Proposal will result in negligible adverse effects on water quality and represents good environmental practice.[82]

Issues raised by submitters

8.3 The key concerns that were raised relate to:

(a) The quality of the proposed condensate discharge;

(b) Potential effects on the Whangaehu River;

(c) Cultural values associated with the receiving environment;

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76 EIC, Coutinho, at 3.2.
77 EIC, Coutinho, at 1.2.
78 EIC, Coutinho, at 1.3.
79 EIC, Coutinho, at 1.4 and 3.1(c).
80 EIC, Coutinho, at 1.5.
81 EIC, Coutinho, at 1.6.
82 EIC, Coutinho, at 1.7.

(d) Discharge temperature; and

(e) The effectiveness of the proposed wetland treatment system.

8.4 While he notes that these matters have also been considered in the technical assessments and further information provided by the Applicant, he responds that:

(a) The proposed discharge does not include any stormwater component and the available information indicates that the condensate is expected to contain low concentrations of contaminants and very low organic loading.[83]

(b) The water quality assessment demonstrates that the proposed discharge will receive substantial dilution within the Whangaehu River.[84] The predicted changes in water quality parameters are small relative to existing conditions and natural variability observed in historical data.[85] He also comments that the Proposal is not expected to materially alter compliance with the applicable One Plan water quality targets or NPS-FM attribute states.[86]

(c) He notes that iwi highlighted a desire for additional treatment and cooling prior to discharge.[87] In response, the Applicant has developed a wetland system that incorporates rock channel cooling structures. While his assessment of effects does not rely on the performance of these additional treatment measures, they provide further environmental safeguards and seek to respond positively to the cultural values associated with enhancing water quality before water is returned to the receiving environment.[88]

(d) A conservative temperature assessment indicates that the proposed discharge would increase river temperature by less than approximately 0.2°C following mixing under low flow conditions. Actual temperature changes are expected to be lower due to cooling occurring during conveyance from the Site to the discharge point and through the proposed cooling and wetland treatment system. This is substantially below the 2°C temperature limit applicable to the Upper

83 EIC, Coutinho, at 6.2.
84 EIC, Coutinho, at 6.3.
85 EIC, Coutinho, at 6.3.
86 EIC, Coutinho, at 6.4.
87 EIC, Coutinho, at 6.5.
88 EIC, Coutinho, at 6.5.

Whangaehu Water Management Sub-Area and is not expected to result in adverse ecological effects.[89]

8.5 Following the review of the submissions, Mr Coutinho remains of the opinion that the proposed discharge will result in no more than minor adverse effects on water quality within the receiving environment.[90]

S 42A Report

8.6 Mr Coutinho agrees with Mr Ausseil's assessment and conclusion that the effects from the proposed discharge will generally not be detectable and will be no more than minor.[91]

8.7 Mr Ausseil raises the following matters:

(a) The mixing characteristics of the discharge have not been discussed in the application documents and that effects of the discharge must be assessed at the end of the zone of reasonable mixing;[92]

(b) The assessment does not account for potential "peak" concentrations;[93]

(c) The potential effects of the discharge on water temperature do not appear, however, to be discussed in the application. He concludes that the maximum potential temperature increase caused by the discharge after full mixing would be less than 0.2°C. However, He considers that any increase in river water temperature would be less than 0.1°C in practice following cooling within the wetland, which can be considered no more than minor.[94]

8.8 Mr Coutinho's response is that:

(a) He agrees with Mr Ausseil in that the mixing zone was not defined, and that the mass balance approach assesses effects after full mixing. However, he also agrees with Mr Ausseil that due to natural characteristics of the river (stoney river with turbulent flows) and the level of discharge, "the potential effects of the discharge on the

89 EIC, Coutinho, at 6.6.
90 EIC, Coutinho, at 6.7.
91 EIC, Coutinho, at 7.1.
92 Ausseil Report dated 22 September 2026, at [38].
93 Ausseil Report dated 22 September 2026, at [39].
94 Ausseil Report dated 22 September 2026, at [41].

Whangaehu River's water quality are likely to be no more than minor".[95]

(b) Mr Coutinho relied on Mr Duder's evidence describing the torrefaction process and understood that the level of contaminants in the discharge will be defined mostly by the content of such contaminants in the fuel source (the wood), and that is expected to be relatively mixed in the yards and within the process. As such, the discharge concentrations are expected to be relatively constant. He refers to and agrees with Mr Ausseil that "the very simple "static" scenario approach is sufficient given the overall conclusions that the discharge's effects are not likely to be more than minor", particularly considering the conservatism in the assessment.[96]

(c) He agrees with Mr Ausseil that the discharge is unlikely to change the river temperature by more than 0.2°C, which is well within the 2°C variation limit defined in Schedule 5 of the One Plan for this specific catchment (Whau_1a). He noted that the proposed wetland design has changed to allow for cooling through turbulent flow in a rock channel and to avoid plant die off in the wetland due to high temperatures. The retention times are now about 4 hours and the expected discharge temperature after the wetland is 26°C +/- 5°C.

8.9 In his evidence in chief, Mr Coutinho noted that the Applicant seeks that discharge limits be measured in loads (kg/day or equivalent) instead of concentrations (g/m^3 or equivalent) as proposed by Council.[97]

8.10 Since meeting with Mr Ausseil earlier this week, we understand the experts are now in alignment that the discharge limits will be measured in kg/day. The proposed condition set[98] has been updated to reflect this agreement, along with the Applicant's updated limits and trigger load values.

9. ECOLOGY

9.1 Ms Barnett provides the results of instream ecological surveys of aquatic life in the Whangaehu River, along with an ecological assessment of the construction of the proposed new polishing wetland.

95 EIC, Coutinho, at 7.2(a).
96 EIC, Coutinho, at 7.2(b).
97 EIC, Coutinho, at 7.3.
98 Supplementary Statement, Singh, Attachment 1.

9.2 Her key findings are that:[99]

(a) The Whangaehu River exhibits unique water quality conditions influenced by volcanic inputs from Mt Ruapehu, resulting in naturally very low pH (acidic water).

(b) The consistently naturally very low pH is an ecologically limiting factor in the river, resulting in a naturally very low macroinvertebrate abundance and diversity, and no native fish.

(c) Consequently, the ecological value of the Whangaehu River for native fauna, in the assessment reach, is assessed as Very Low.

(d) The ecological value of vegetation and habitat for native fauna at the proposed polishing wetland site is assessed as Negligible. The loss of the vegetation for the construction of the new wetland is assessed as a High magnitude of effect, resulting in an overall Very Low level of effect. With the proposed native planting on the bunds within and adjacent to the wetland, the magnitude of effect is assessed as Positive, resulting in a Net Gain level of effect.

(e) The Whangaehu River is a large receiving environment relative to the volume of the proposed discharge and provides significant dilution. Based on the available information, the discharge is not expected to result in adverse water quality effects on the ecology of the Whangaehu River after reasonable mixing.

S 42A Report

9.3 Ms Barnett reviewed the s 42A Reports and supporting technical assessments. She agreed with Dr Ausseil's conclusion that any effects on the river's living communities and ecology will be no more than minor, noting that she had characterised those effects as negligible, resulting in a Very Low level of effect.

9.4 Ms Barnett further agrees with Council's proposed conditions.

10. CONTAMINATED LAND AND REMEDIATION

10.1 Mr Garcia was engaged by WPI to conduct a DSI and prepare a RAP for the proposed wetland area, which also contained the former mechanical pulp mill discharge pond.

99 EIC, Barnett, at 1.2-1.6.

10.2 Mr Garcia's key findings are that:[100]

(a) Arsenic was detected at 135 mg/kg in surface soil at WA09, which exceeds the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations, 2011 and the commercial/industrial land use Soil Contamination Standard human health criteria. However, he notes that arsenic decreased to 1.32 mg/kg at approximately 1 metre below ground level ("mbgl"), indicating the contamination is confined to near-surface soils.

(b) Zinc was detected at 1,340 mg/kg at approximately 1.5 mbgl at WA18 within the former mechanical pulp mill discharge pond, exceeding the Landcare Research soil guidelines for the protection of ecological receptors for commercial/industrial land use. However, a sample from WA20, approximately 50 m away at a similar depth, contained only 61 mg/kg, indicating the elevated zinc is localised and confined within the Site and unlikely to reach the Whangaehu River, which is located more than 540 m away.

(c) The remaining contaminants were reported below the applicable assessment criteria.

(d) The revised remediation approach incorporates excavation of the arsenic-affected area at WA09 to approximately 1 m depth, with the excavated material placed within the former discharge pond and capped with at least 0.5 m of additional onsite material. The revised wetland design avoids the former discharge pond and associated zinc-affected area, removing the need for a wetland leak-detection system and addressing the identified risks associated with constructing the wetland over contaminated land.

Section 42A Report

10.3 Mr Garcia has reviewed the s 42A Report and agrees with the conclusions reached by Mr Blackwell in his technical memorandum.[101]

10.4 However, Mr Blackwell recommends a leak monitoring system despite concluding that:[102]

100 EIC, Garcia, at 1.3-1.5.
101 EIC, Garcia, at 7.1.
102 EIC, Garcia, at 7.2.

(a) Shallow soils beneath the wetland becoming saturated is unlikely to be a significant concern provided that the wetland HDPE liner is installed correctly with appropriate Quality Assurance; and

(b) The likelihood of the underlying soils containing organic pulp to generate methane gas should they become saturated is low.

10.5 Mr Garcia agrees that it is unlikely soils beneath the wetland will become saturated, and that the risk of methane gas generation is low. [103]

10.6 In light of those conclusions and given that the wetland will be installed in accordance with a Construction Quality Assurance Plan, he does not agree that a leak detection system is warranted based on the commensurate level of risk identified.[104] He therefore recommends the deletion of Conditions 21(c), 43(c), and 44(d) that relate to leak detection; he otherwise considers that the proposed conditions with respect to contaminated land are suitable.[105]

10.7 Since the filing of the Applicant's evidence, both experts have met and Mr Blackwell has subsequently agreed that the leak detection system is not required. The proposed conditions attached to Ms Singh's supplementary statement[106] of evidence reflect this agreement.

11. EARTHWORKS

11.1 Mr Prasad was engaged by WPI to prepare the preliminary design and drawings for the proposed wetland earthworks, along with the required erosion and sediment controls necessary for the Site.

11.2 His key findings are that:

(a) The Site earthworks and erosion and sediment controls for the proposed wetland have been designed to minimise earthworks and ensure no discharge of contaminated or sediment laden runoff from the Site.

(b) The proposed earthworks consist of excavating a series of wetland ponds. A perimeter earth bund is proposed to prevent clean water

103 EIC, Garcia, at 7.3.
104 EIC, Garcia, at 7.3.
105 EIC, Garcia, at 7.4.
106 As Attachment 1.

from entering the Site and to keep dirty water from leaving the Site during the earthwork activities.

(c) Pond 1 is proposed to be excavated first and to be used as an initial sediment retention pond. Subsequent wetland ponds will then be constructed, providing additional sediment retention as each pond is excavated. Excavated material is proposed to be used to fill the existing Pond 6. Given the existing large pond and the excavation of subsequent ponds, there is extensive capacity within the Site to store more than the full 100-year event rainfall within the Site. Consequently, there will not be any discharge of runoff from the Site, keeping any contamination or sediment contained.

(d) Following the preparation of the preliminary drawings and Erosion and Sediment Control Plan, the proposed concept wetland design and configuration has been revised. The proposed revision reduces the earthworks in both quantity (volume) as well as extent on Site. The existing pond (Pond 6) is now proposed to be filled. Following completion of the proposed works, this area will be capped and grassed and will not be part of the wetland system. The remaining area will be used for a series of connected shallow, narrower channels to assist in cooling the condensate water entering the wetland while providing extensive planting between channels for treatment.

(e) The proposed revision to the wetland concept will not affect the general methodology proposed for the earthworks and the erosion and sediment controls. The volume of earthworks will likely be reduced with the cut from the proposed wetland channels being used to fill the existing pond. The exact volumes are not available as the concept design has not been finalised and therefore the revised earthwork design has not yet been completed. The methodology for Erosion and Sediment control is unchanged with substantial initial retention volume in the existing pond and additional volume becoming available as the wetland channels are excavated. A topsoil perimeter bund will be utilised to ensure containment during construction works.

Issues raised in submissions

11.3 Ngāti Rangi raised a concern regarding using potentially contaminated soil for the perimeter earth bund.

11.4 The Applicant confirms that the bund will be constructed from onsite source material that does not exceed the human health or environmental acceptance criteria per the HAIL guidelines.

S 42A Report

11.5 Mr Pearce raised the following minor concerns in his s 42A Report:

(a) Clarification of areas to be vegetated versus lined with HDPE;

(b) Dewatering details, should it be necessary; and

(c) Greater detail regarding monitoring of site controls.

11.6 Despite these concerns, Mr Pearce considers that these concerns can be addressed through appropriate conditions of consent and covered off during detailed design and preparation of a final Erosion and Sediment Control Plan.

11.7 Mr Prasad agrees that these concerns can and will be addressed through a further detailed design and subsequent updated final Erosion and Sediment Control Plan, which will also incorporate the recent proposed revisions to the wetland design as well. He confirms that these changes do not materially affect his conclusion that the proposed methodology and sediment and erosion controls remain appropriate for the Site.[107]

11.8 His response to the above concerns is that:[108]

(a) The clarification of vegetated areas versus HDPE lined areas will be shown on a plan once final layout and planting plans have been completed.

(b) Dewatering is not likely to be required due to the very large storage capacity available on Site before and during construction works. This capacity is seven times greater than the calculated runoff generated from the site in a 100-year rainfall event.

(c) Monitoring of site controls will be detailed in the final Erosion and Sediment Control plan and will ordinarily include specification of which controls need ongoing monitoring, how frequently or when the controls need to be inspected, and what specific maintenance or remediation may be required. This includes regular inspection of the perimeter bund to ensure it has not been damaged or compromised,

107 EIC, Prasad, at 7.4(a).
108 EIC, Prasad, at 7.4(b)-(d).

or it may include monitoring of water depths within pond areas to ensure there is no discharge of runoff from the site.

12. PLANNING

12.1 Finally, Ms Singh sets out that the Applicant has worked through all relevant statutory and planning requirements for the determination of the Proposal and provides a comprehensive assessment of the actual and potential adverse effects of the Proposal.

Conditions of consent

12.2 Ms Singh is in general agreement with the s 42A Report's proposed conditions, but has proposed minor changes to the draft condition set. The initial condition set appended to her evidence in chief has since been updated in light of recent further agreement reached between the Applicant's and Council's experts. The latest version is attached as Attachment 1 to her supplementary brief of evidence.

12.3 While Ms Singh has provided reasons within the draft condition set for each of the changes, we note the key changes to the discharge permit conditions include:

(a) Condition 5(a) has been deleted and 5(d) updated to clarify that the flow meter will be installed on the wastewater line prior to the discharge into the wetland.

(b) The Advice Note of Condition 5 has been updated, as it appears to be tailored for farm flow meters. The updated condition clarifies that the flow meter for this project will most likely be installed by a certified electrician or specialised instrument engineer (both of whom may not have a "blue tick").

(c) Condition 18 has been amended to provide for less frequent sampling collection regime where sampling results demonstrate over the previous year that compliance with Condition 21 parameters are met. This reduces the time cost and financial cost of undertaking unnecessary sampling where compliance is being illustrated on a consistent basis.

(d) Following Condition 19, the Applicant proposes a new condition which will require sampling of the discharge at the Whangaehu River to ensure availability of robust data to illustrate compliance with the consent conditions.

(e) Condition 20 is deleted as the function of the refined stone wetland design is to reduce wastewater temperature. The purpose/benefit of this proposed condition is therefore not clear.

(f) Condition 21 has been amended to reflect the discharge limit units as kg/day (rather than mg/L), along with updated limits and trigger load values. Further, the Applicant is proposing a monitoring regime by having two categories: wastewater discharge load limits for key parameters; and wastewater discharge load triggers for investigation for remaining parameters.

(g) Condition 22 has been amended to state that where there are any exceedances of the wastewater load trigger levels in Table 1A of Condition 21, the Consent Holder must undertake investigations by a suitably qualified and experienced person to assess whether the discharge resulted in greater effects than those assessed in the application. Should the assessment conclude that the discharge resulted in greater effects than those assessed in the application, it constitutes non-compliance with Condition 21 and must be managed in accordance with Conditions 23 and 24.

(h) Deletion of the Commissioning Monitoring Report (Conditions 25 and 26). Under Condition 26, this report would be required at the same time as the first annual compliance report. Ms Singh notes that it is not clear as to the purpose of this report as these matters would largely be addressed in the annual compliance report under Condition 27.

12.4 Regarding the land disturbance consent, the following amendments to the conditions have been made:

(a) Condition 13 (certification of the ESCP and RAP) has been amended to avoid delays in the certification of the final ESCP and RAP, where the condition now specifies that council must within 20 days of receiving the ESCP and RAP either certify the documents or advice the consent holder which aspects of the documents do not comply with the required conditions.

(b) Part of Condition 16 has been deleted relating to dirty and clean water diversions, as the ESCP does not include these. Further, to provide some flexibility in the final design of the ESCP, the condition has been refined to require certification of the constructed erosion and sediment control measures (as opposed to specifying a particular

solution for certification). Notably, only the solutions certified by the Council will be constructed.

(c) Conditions 21(c), 39, 43(c), and 44(d) have been deleted as a leak detection system is not warranted based on the refined location of the wetland, and the commensurate level of risk identified by Mr Garcia.

(d) Condition 48 – the Applicant has accepted Council's proposed 5-year lapse period for the earthworks, which is reflected in this condition.

Overall conclusions - planning

12.5 Ms Singh concludes that effects on water quality,[109] ecological,[110] contaminated land,[111] recreation and amenity,[112] land stability and erosion,[113] and construction effects[114] will be less than minor, or no more than minor. As to cultural effects, while she acknowledges that it is for Ngāti Rangi to identify the relevant cultural values of the Whangaehu River, she considers that various measures have been incorporated into the Proposal to avoid, remedy or mitigate the effects of the Proposal on cultural values.[115] Ms Singh further concludes that the application is generally consistent with the relevant objectives and policies framework, as confirmed by the technical assessments.[116]

13. PRINCIPAL SUBMISSION

13.1 In conclusion, and having regard to the above, it is submitted that it is appropriate that consent for the Proposal be granted as:

(a) There is general consensus amongst all experts that all physical effects will be less than minor, or no more than minor;

(b) The Applicant has undertaken ongoing meaningful consultation with Ngāti Rangi and has included various measures that avoid, remedy or mitigate the effects of the Proposal on cultural values; and

109 EIC, Singh, at 9.3.
110 EIC, Singh, at 10.3.
111 EIC, Singh, at 11.7.
112 EIC, Singh, at 12.3-12.4.
113 EIC, Singh, at 13.1.
114 EIC, Singh, at 14.4.
115 EIC, Singh, at 15.12.
116 EIC, Singh, at 17.2.

(c) The Proposal has been assessed and found generally consistent with the relevant objectives and policies framework.

13.2 Overall, the Proposal represents a substantial reduction in the scale of the discharge as previously authorised for the Site, and strikes an appropriate balance between enabling the Site's proposed future use and safeguarding the Whangaehu River through the robust effects assessments, the proposed wetland, and the comprehensive suite of consent conditions.

13.3 The Applicant and its team (counsel and witnesses) are grateful for your consideration of this application.

DATED at Auckland this day of 9 October 2026

C F Timbs / B S Morris
Counsel for Winstone Pulp International Limited