

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER resource consent applications by the Western Bay of Plenty District Council for the continued operation of, and discharge of treated wastewater from, the Te Puke Wastewater Treatment Plant

LEGAL SUBMISSIONS ON BEHALF OF WESTERN BAY OF PLENTY DISTRICT COUNCIL

Introduction

1. Western Bay of Plenty District Council (**WBOPDC**) seeks consent to continue operating the Te Puke Wastewater Treatment Plant (**WWTP**). It seeks resource consent for the discharge of treated wastewater to the Waiari Stream, and it seeks resource consent for a 35 year term.
2. WBOPDC acknowledges that the discharge of treated wastewater to freshwater is culturally offensive to iwi. It cannot fully address this. However, it has taken practicable steps to address cultural issues and minimise cultural offence by:
 - (a) Consulting with iwi early in the application process;
 - (b) Proposing to decommission the existing constructed wetland and replace it with a rock chamber, which will ensure land contact is maintained and allow the decommissioned wetland to be used for other cultural/community uses;

- (c) Proposing upgrades to the WWTP which will result in an improvement in the discharge quality parameters of the treated wastewater, and conditions which will ensure that water quality is maintained over the term of the consent;
 - (d) Proposing to establish a Kaitiaki Group which will provide an opportunity for iwi to be involved in the operation of the consent including by exploring cultural assessment tools;
 - (e) Committing to riparian planting which requires liaison with local iwi and hapu; and
 - (f) Committing to a robust process of investigating and pursuing alternative options for the treatment and disposal of Te Puke's wastewater.
3. WBOPDC also recognises that under the National Policy Statement for Freshwater Management (**NPSFM**) a key objective is to maintain or improve the overall quality of freshwater within a freshwater management unit. WBOPDC has approached this application on the basis that the water quality in the receiving environment should at least be maintained as a result of its discharge, over the term of the resource consent sought.
4. WBOPDC has not sat on its hands. It is committed to investigating and pursuing alternative options. However, WBOPDC is cognisant of the fact that it is a modest local authority with geographically diverse assets in rural locations, and its long term planning must have regard to the need to manage resource consent processes and infrastructure delivery in an integrated manner. The 35 year term sought enables it to do this across different assets, and also has regard to the uncertainty that could be associated with seeking resource consents for the treatment and disposal of Te Puke's wastewater in different ways (i.e. the alternative options). WBOPDC has proposed review conditions associated with the alternative options process and so the consent authority will have the ability to review the resource consent for the discharge of treated wastewater if that is appropriate during the term of the consent.

5. Four resource consents are sought from BOPRC, which are to:
- (a) Discharge treated municipal wastewater to land where it may enter water (Discretionary Activity under Rule DW R8 of the Bay of Plenty Regional Natural Resources Plan (**RNRP**));
 - (b) Discharge odour to air from the WWTP (Discretionary Activity under Rule DW R19w(i) Regional Air Plan (**RAP**) and Rule AQ R21(x)(i) of Plan Change 13 (Air Quality (**PC13**)));
 - (c) Modification of the riparian wetland for installation of the diffuser pipe (Discretionary Activity under Rule WL R9 RNRP); and
 - (d) Temporary discharge of sediment contaminated water to the Waiari Stream during installation of the diffuser pipe and rock chamber and during maintenance activities (Discretionary Activity under Rule DW R8 RNRP).
6. The application is a discretionary activity overall.

The issues and the case for the applicant

7. The case for the applicant is that it is appropriate for resource consent to be granted, subject to the conditions proposed by WBOPDC, for the following reasons:
- (a) Effects on surface water quality are acceptable because the combination of upgrades and more stringent consent conditions (including nutrient mass load limits) will ensure that surface water quality is maintained over the term of consent,¹ and the effects on public health beyond the mixing zone are less than minor;²

¹ Statement of Evidence of Zhuo Chen, paragraphs 10 – 11, 95 – 97 and 152 - 154.

² Statement of Evidence of Zhuo Chen, paragraphs 14 and 155.

- (b) Groundwater quality effects are limited to the immediate vicinity of the wetland and once the constructed wetlands are decommissioned there will be no further effects on local groundwater quality;³
- (c) Effects on aquatic ecology are acceptable because historical fish data indicates “excellent” habitat quality upstream and downstream of the WWTP and the WWTP does not appear to be having an impact on fish,⁴ and effects on macroinvertebrates appear to be minor with respect to the Waiari Stream and negligible with respect to the Kaituna River and Maketu Estuary.⁵
- (d) The constructed wetlands will be decommissioned and replaced with a rock chamber, which ensures that land contact will be maintained and there will be no direct discharge to water, and also allows the decommissioned wetlands to be used for other cultural/community uses;⁶
- (e) WBOPDC will investigate redirecting the Southern Drain into the wetlands, which will improve water quality in the Waiari Stream,⁷ and will also undertake riparian planting along the Waiari Stream bank to improve habitat for macroinvertebrates and fish and to enhance the uptake of nutrients along the bank edge;⁸
- (f) Odour management measures are in place at the WWTP and there is a designated 150m buffer area, and WBOPDC’s proposed consent conditions provide assurance that there will be no noxious, dangerous, offensive or objectionable odour at or beyond the WWTP boundary;⁹

³ Statement of Evidence of Zhuo Chen, paragraphs 101 – 102.

⁴ Statement of Evidence of Fiona Davies, paragraphs 63 – 65 and 98.

⁵ Statement of Evidence of Fiona Davies, paragraphs 72, 74 and 96 – 97.

⁶ Proposed discharge consent condition 6.3, Statement of Evidence of Kelvin Hill, paragraphs 49, and 56 - 64; and Statement of Evidence of Richard Harkness, paragraphs 39(a) – (b), 80, and 197 – 198.

⁷ Proposed wetland consent condition 6.7; Statement of Evidence of Zhuo Chen, paragraphs 29 and 114; Statement of Evidence of Fiona Davies paragraph 99(b); and Statement of Evidence of Kelvin Hill, paragraphs 47 - 51.

⁸ Proposed wetland consent condition 7; and Statement of Evidence of Fiona Davies, paragraphs 62, 99(a) and 103(b).

⁹ Statement of Evidence of Kelvin Hill, paragraphs 36 – 39.

- (g) Consultation was undertaken with iwi early in the application process. WBOPDC has proposed to establish a Kaitiaki Group to ensure that iwi can fulfil their roles as kaitiakitanga through ongoing involvement in the operation of the consent and cultural assessment tools can be explored;¹⁰
 - (h) There are significant positive effects to the Te Puke community in providing essential community wastewater infrastructure, and WBOPDC has made a significant investment in the WWTP and will continue to invest in the WWTP through planned upgrades and renewals;¹¹
 - (i) WBOPDC has committed to investigating and pursuing alternative options and has proposed review conditions which give the consent authority the ability to review the resource consent for discharge of treated wastewater if that is appropriate during the term of the consent;¹² and
 - (j) There are a number of relevant policy statements and plans, which include the NPSFM, Bay of Plenty Regional Policy Statement (**RPS**), RNRP, Air Plan and PC13. A detailed assessment concludes that the WWTP is generally consistent with the relevant provisions of these planning documents and also relevant provisions of the RMA.¹³
8. The most contentious issues before the Commissioners relate to the impact of the discharge activity on freshwater quality and cultural values, and the term of the resource consent sought. These submissions focus primarily on these issues.

¹⁰ Proposed discharge consent condition 14; Statement of Evidence of Chris Nepia, paragraphs 11, 21 – 26 and 39; and Statement of Evidence of Richard Harkness paragraphs 83 – 84, and 199 – 203.

¹¹ Statement of Evidence of Coral-Lee Ertel, paragraphs 13, and 26 – 35.

¹² Proposed discharge consent conditions 16 and 17.3; and Statement of Evidence of Robert Shaw.

¹³ Statement of Evidence of Richard Harkness, paragraphs 86 – 147; and AEE sections 8.2 – 8.10.

Freshwater quality

9. Currently, treated effluent flows through constructed wetlands before discharging into the Waiari Stream via the riparian wetlands. WBOPDC has proposed to decommission the constructed wetlands and replace them with a new rock chamber, which will convey the treated effluent underground to the riparian wetlands.
10. The Waiari Stream in the vicinity of the WWTP is classified as a “Modified Watercourse with Ecological Values” in the RNRP¹⁴ and is surrounded by agricultural land uses. It is fast flowing and spring-fed which provides resilience to the effects of the WWTP and other catchment impacts.¹⁵ The Waiari Stream feeds into the Kaituna River 2km downstream, which is also surrounded by agricultural land uses. Water quality in the Kaituna River is good in the upper reaches but declines in the lower reaches due to the surrounding rural land uses.¹⁶
11. The area lies within the Kaituna, Maketū, Pongakawa and Waitahanui Water Management Area.¹⁷ Almost all of the Kaituna River’s freshwater flows out to sea at the Te Tumu Cut however BOPRC has commenced work to re-divert almost a quarter of the flow back into the Maketu Estuary in order to improve the health of the Estuary.¹⁸ The WWTP contributes only a very small percentage of total nutrient loading to the Kaituna River and Maketu Estuary and localised water quality impacts are not expected to carry over to the Kaituna River.¹⁹
12. With regards to the planning context, the NPSFM requires overall freshwater quality within a freshwater management unit to be maintained or improved.

¹⁴ Statement of Evidence of Richard Harkness, paragraph 127.

¹⁵ Statement of Evidence of Fiona Davies, paragraphs 14, 92 and 95.

¹⁶ Statement of Evidence of Zhuo Chen, paragraphs 30 and 85.

¹⁷ BOPRC has identified nine Water Management Areas, within which it will establish Freshwater Management Units as required under the NPSFM.

¹⁸ Statement of Evidence of Richard Harkness, paragraphs 46 – 47.

¹⁹ Statement of Evidence of Zhuo Chen, paragraphs 86 – 87.

13. As noted above, the Waiari Stream in the vicinity of the WWTP is classified under the RNRP as a “Modified Watercourse with Ecological Values”, the purpose of which is to maintain water quality in order to maintain the aquatic habitats and migratory pathways of indigenous fish species that are present in the watercourse.²⁰ The RNRP includes conditions for discharges into such waterbodies, which reflect the need to minimise any further degradation of water quality in modified watercourses and also the somewhat limited opportunity to improve water quality in those watercourses.²¹
14. The NPSFM sets “national bottom lines” and provides that where freshwater management units are below these bottom lines they must be improved to at least the national bottom lines over time. It recognises that improvements in freshwater quality may take generations depending on the characteristics of each freshwater management unit. In terms of the bottom lines for rivers, the measured water quality attributes within the Waiari Stream and Kaituna River were all within Category A or B, which is above the national bottom lines.²²
15. It appears from historical fish data that the habitat quality for fish is “excellent” both upstream and downstream of the WWTP, and that the WWTP is not impacting fish populations. It also appears that the WWTP is having a minor effect on macroinvertebrate populations in the Waiari Stream however the sampling has been variable and inconclusive.²³ Similarly, the public health effects of the WWTP on the Waiari Stream beyond the mixing zone are less than minor. As set out above, the effects of the WWTP on the Kaituna River and Maketu Estuary are negligible.
16. Through planned upgrades and the proposed consent conditions, WBOPDC is committed to ensuring that water quality is maintained over the term of the consent. The proposed consent conditions set more stringent effluent quality limits both in terms of concentrations, and also mass load limits for total nitrogen and total

²⁰ RNRP, Schedule 9 “Modified Watercourses with Ecological Values Water Quality Classification”, explanation/intent of classification.

²¹ Ibid.

²² Water Quality, Stream and Terrestrial Ecology Assessment dated 16 October 2015 and prepared by Jeremy Hunt, Kristina Healy and Anthony Kirk, Tables 7 and 8; and Statement of Evidence of Zhuo Chen, Tables 3 and 4.

²³ Statement of Evidence of Fiona Davies, paragraphs 71 – 72.

phosphorous.²⁴ Particularly, the proposed conditions set more stringent concentration limits for total suspended solids and set new concentration limits for total nitrogen and total phosphorous (the current conditions do not include these concentration limits), and set new median mass load limits for total nitrogen and total phosphorous.²⁵ WBOPDC will upgrade the WWTP to improve effluent quality and ensure that these new limits can be met, including upgrades to the brush clarifier, grit removal system, inlet screen upgrade, sludge thickener, reactor and fixed generator.²⁶ As such, the total nitrogen limits will apply after six years, to allow enough time for the upgrades to be implemented.

17. As the proposed concentration conditions are more stringent than the current conditions, it can be expected that water quality will improve while effluent flow remains similar. If the full 9000m³ is utilised in the future, the mass load limits will ensure that there will be no additional nutrient loading into the Waiari Stream and water quality will be maintained over the term of the consent.²⁷
18. In addition, WBOPDC is committed to implementing the following measures to mitigate the impacts of the WWTP on the receiving environment:
 - (a) Riparian planting to improve shading and shelter to the Waiari Stream and increase instream habitat for macroinvertebrates and fish;
 - (b) Investigating the possibility of redirecting the “Southern” drain into the constructed wetland once it is decommissioned, to reduce the impact of that discharge on the Waiari Stream and remove any risk of it impacting monitoring results taken upstream and downstream of the WWTP mixing zone; and

²⁴ Proposed discharge consent condition 8; and Statement of Evidence of Zhuo Chen, paragraphs 58 – 62.

²⁵ Ibid.

²⁶ Statement of Evidence of Zhuo Chen, paragraphs 25 – 28.

²⁷ Statement of Evidence of Zhuo Chen, paragraphs 61 – 62, 95 – 97 and 151(b).

- (c) Decommissioning of the constructed wetlands and replacing them with a rock chamber which will ensure the discharge does not come into contact with bird life and other fauna before discharging into the Waiari Stream.
19. WBOPDC will also undertake ecological monitoring of macroinvertebrate and fish communities along with macrophyte cover, and monitoring to confirm the mixing zone.²⁸ Additional monitoring, including potentially through cultural assessment tools, may come out of recommendations made by the proposed Kaitiaki Group.
20. It is therefore my submission that the impacts of the WWTP on freshwater quality are acceptable and resource consent should be granted in accordance with the proposed conditions.

Impact on cultural values

21. WBOPDC recognises that the discharge of treated effluent into water is culturally offensive to tangata whenua. Whilst this issue cannot be fully addressed, it has taken practicable steps to address cultural issues and minimise cultural offence by:
- (a) Consulting with iwi early in the application process. The evidence of Chris Nepia sets out WBOPDC's consultation process. He concludes that engagement with Māori began early, was robust, and was carried out in an open and transparent manner.²⁹ WBOPDC received CIAs from Tapuika and Waitaha, a draft CIA in the form of a summary statement from Ngati Pikiao ki Tai and verbal acknowledgement from Ngati Whakaue ki Maketu that they were prepared to await the Tapuika CIA as that should be sufficient.³⁰
- (b) Proposing more stringent effluent limits that will maintain water quality over the term of the consent. Following feedback from Tapuika, WBOPDC amended

²⁸ Proposed discharge consent conditions 9.8 - 9.9 and 15.9; and Statement of Evidence of Fiona Davies, paragraphs 73 and 103(a); and Statement of Evidence of Zhuo Chen, paragraph 151(d).

²⁹ Statement of Evidence of Chris Nepia, paragraphs 11 and 21 – 26.

³⁰ Statement of Evidence of Chris Nepia, paragraph 25.

some of the proposed effluent limits to be more in line with those proposed in the Tapuika CIA, and has since further amended the limits to be more stringent than those proposed in the application.³¹ The evidence of Zhuo Chen compares the limits proposed by Tapuika with those currently proposed by WBOPDC.³²

- (c) Proposing to decommission the existing constructed wetland and replace it with a rock chamber/seepage system. Treated effluent will travel through the proposed rock chamber to the riparian bank/wetland seepage area, which will ensure that land contact is maintained. This was developed in consultation with iwi and WBOPDC understood that it would mitigate some cultural offence.³³
- (d) Working with Tapuika on ways to enhance cultural benefits from the future use of the decommissioned wetlands, with a view to signing a memorandum of understanding by the end of 2019. Details of the wetlands enhancement project are outlined in the evidence of Kelvin Hill.³⁴
- (e) Upgrading parts of the WWTP, including the brush clarifier, grit removal system, inlet screen, sludge thickener, reactor and fixed generator. These upgrades will improve the quality of treated effluent and ensure that the more stringent consent conditions will be met.³⁵
- (f) Establishing a Kaitiaki Group which will provide an opportunity for iwi to be involved in the operation of the consent including by:³⁶

³¹ Proposed discharge consent condition 8; Statement of Evidence of Zhuo Chen, paragraphs 58 – 59; and AEE, section 6.1.1.

³² Statement of Evidence of Zhuo Chen, paragraphs 63 – 66.

³³ Statement of Evidence of Kelvin Hill, paragraph 49; and Statement of Evidence of Richard Harkness, paragraph 80.

³⁴ Statement of Evidence of Kelvin Hill, paragraphs 56 – 66.

³⁵ Statement of Evidence of Zhuo Chen, paragraphs 25 – 28.

³⁶ Proposed discharge consent condition 14.

- (i) WBOPDC reporting on monitoring requirements and outcomes under the consent, technical review outcomes, and alternative disposal investigation outcomes;
- (ii) Discussing the results of other monitoring undertaken or commissioned by the consent holder, which may include monitoring adverse effects on cultural matters;
- (iii) Allowing the Kaitiaki Group to make recommendations to WBOPDC regarding actions to be taken in response to monitoring reports, technical review, investigation of alternatives, and any s 128 review matter as appropriate;
- (iv) WBOPDC notifying and sending a written report to the Kaitiaki Group following any accidental discharge;³⁷
- (v) Allowing the Kaitiaki Group to make recommendations to WBOPDC and BOPRC with respect to Part 2 of the RMA, particularly to ss 6(e) and 7(a);
- (vi) Allowing the Kaitiaki Group to inform WBOPDC and BOPRC of the effects on mauri and mauriora of the Waiari Stream; and
- (vii) Providing an opportunity to explore cultural assessment tools, which could include the “mauri model” and “Wai Ora Wai Māori” app suggested by submitters.

³⁷ Proposed discharge consent conditions 5.3 and 15.3.

- (g) Submitting an annual report to the Kaitiaki Group and Te Maru O Kaituna after meeting to discuss its contents, and forwarding sampling and monitoring results to these groups on a monthly basis.³⁸
- (h) Committing to riparian planting to improve shading and shelter to the Waiari Stream and increase instream habitat for macroinvertebrates and fish. The planting will be undertaken in liaison with local iwi/hapu.
- (i) Committing to a robust process of investigating and pursuing alternative options for the treatment and disposal of Te Puke's wastewater. The Wastewater Advisory Group established to progress the alternative options includes the Kaitiaki Group and tangata whenua (some of whom are members of the Kaitiaki Group as well), which gives iwi an opportunity to be involved in this process.³⁹ WBOPDC has proposed review conditions associated with the alternative options process which will allow BOPRC to review the consent for the discharge of treated wastewater if appropriate.
- (j) In terms of submitter evidence, a key matter continues to be the implementation of cultural monitoring tools. Cultural monitoring tools have not been proposed as a consent condition partly because such conditions would not be enforceable as they are only binding on the consent holder, so iwi/hapu could not be required to undertake cultural monitoring. Further, and importantly, the proposed conditions already provide for cultural monitoring tools to be explored through the Kaitiaki Group and for the effects on mauri and mauriora to be reported to WBOPDC and BOPRC. The Ecological Monitoring Plan also provides an opportunity for cultural monitoring tools to be explored.

22. In summary, it is my submission that WBOPDC has committed to addressing the cultural issues associated with this proposal.

³⁸ Proposed discharge consent conditions 15.5, 15.6 and 15.8.

³⁹ Proposed discharge consent condition 16; and Statement of Evidence of Robert Shaw, paragraph 21 and Appendix B.

Term of consent

23. WBOPDC seeks a 35 year term for the reasons outlined in the evidence of Richard Harkness and Coral-Lee Ertel.⁴⁰ I will not repeat the evidence however I will discuss the key matters.
24. The evidence of Robert Shaw discusses the alternative disposal options process in detail. He concluded that the final stage will occur over the period 2020 – 2026.⁴¹ However that timeframe was determined when the resource consent application was lodged in 2015 and whilst WBOPDC has continued to progress the alternative options process it has not been able to do so efficiently in recent months pending the outcome of this resource consent application.
25. As outlined in WBOPDC’s answers to the Commissioners’ questions, Robert Shaw has since re-evaluated the timeframe for the final stage and determined that it will take place over 2023 – 2029.⁴² Following the completion of the final stage, he has estimated that it will take a further 15 years to implement an alternative scheme which means a 25year consent term would be required.⁴³
26. WBOPDC requires a 25 year consent term just to allow it enough time to implement an alternative option. It is my submission that an additional 10 years is required for the following reasons:
- (a) WBOPDC has made a significant investment in the WWTP (which is relevant under s 104(2A) and will continue to do so through planned upgrades and renewals.

⁴⁰ Statement of Evidence of Richard Harkness, paragraphs 40 – 45; and Statement of Evidence of Coral-Lee Ertel, paragraphs 39 – 45.

⁴¹ Statement of Evidence of Robert Shaw, paragraph 54.

⁴² Answers to the Commissioners’ questions.

⁴³ Ibid.

- (b) Repetitive resource consent application processes are uncertain and costly to ratepayers, and WBOPDC already has some of the highest wastewater rates in the country.⁴⁴ The Katikati WWTP expires in 2038 and it is expected that an alternative will be implemented towards the end of the consent, which will be a significant expense for ratepayers.⁴⁵ It is important that WBOPDC can manage its infrastructure with certainty and in an integrated manner.
- (c) Residents and local businesses have made long-term decisions on the basis that the WWTP will continue for the long term and can meet future growth demands.⁴⁶
- (d) WBOPDC is committed to ensuring water quality will be maintained over a 35 year term.
- (e) WBOPDC has proposed review conditions which give the consent authority the ability to review the resource consent for discharge of treated wastewater if that is appropriate during the term of the consent. Particularly:
 - (i) Condition 17.1 allows BOPRC to review the consent for a series of purposes, including to deal with an adverse effect on the environment and to address any issues identified in the annual reports and technical review reports;
 - (ii) Condition 17.2 allows BOPRC to review the consent following a report of scientific publication which indicates there is a concern in relation to the emerging contaminants, which will require WBOPDC to monitor the discharge and have the results assessed and reported to BOPRC for certification; and

⁴⁴ Statement of Evidence of Richard Harkness, paragraph 34; and Statement of Evidence of Coral-Lee Ertel, paragraphs 41 – 43.

⁴⁵ Statement of Evidence of Coral-Lee Ertel, paragraph 42.

⁴⁶ Statement of Evidence of Richard Harkness, paragraph 42.

- (iii) Condition 17.3 allows BOPRC to review the consent following the final alternative options report, to assess the outcome of the investigation and determine how best to proceed with any preferred alternative disposal option.
- (f) An alternative may cater for all of the discharge volume, part of the volume, or seasonally adjusted volumes and it cannot be ruled out that in utilising an alternative, even if a full alternative was secured, a discharge into the Waiari Stream may still be required such as for emergency discharges during wet weather.⁴⁷

Other issues relevant under the statutory framework

27. In terms of the relevant statutory directions under s 104 RMA, which directly apply to these applications:
- (a) In terms of further actual and potential effects on the environment of allowing the activity, while the WWTP is currently contributing to nutrient elevation in the Waiari Stream, WBOPDC is committed to ensuring that water quality will be maintained over the term of the consent. Of particular importance, the effects of the WWTP on stream ecology and public health are no more than minor beyond the mixing zone and the WWTP will have a negligible effect on the Kaituna River and Maketu Estuary.
 - (b) The key statutory planning documents relevant to the proposal are the NPSFM, RPS, RNRP, Air Plan and PC13. A detailed assessment shows that the proposal is consistent with the relevant objectives and policies in those planning documents, generally with respect to the environmental impacts and cultural issues associated with the WWTP.⁴⁸ In addition, I note that the proposal is also consistent with the following provisions of the RPS and RNRP:

⁴⁷ Statement of Evidence of Robert Shaw, paragraphs 22 – 23.

⁴⁸ Statement of Evidence of Richard Harkness, paragraphs 107 – 147; and AEE section 8.5.2 – 8.9.

- (i) RPS EIO6: Provide for the social, economic, cultural and environmental benefits of, and the use and development of nationally and regionally significant infrastructure (which includes wastewater treatment plants) and renewable energy;
 - (ii) RPS EI3B: Protecting nationally and regionally significant infrastructure;
 - (iii) RPS EI4B: Recognising the benefits from nationally and regionally significant infrastructure and the use and development of renewable energy;
 - (iv) RNRP IMO7: Recognition of the beneficial effects of the use and development of water, land and geothermal resources on the social, cultural and economic wellbeing of people and communities;
 - (v) RNRP IMP2: To recognise and provide for people and organisations who have adopted proven good environmental management practices; and
 - (vi) RNRP IMP8: To allow resource use and development where there are beneficial effects on the social, cultural and economic wellbeing of people and communities; and adverse effects on the environment are avoided, remedied or mitigated.
- (c) Under s 104(1)(c) of the RMA, a number of matters are relevant and reasonably necessary to determine the application. Key matters include:
- (i) The Tapuika Environmental Management Plan, Waitaha Management Plan and Ngati Whakaue ki Maketu Iwi Resource Management Plan, which are formally recognised Iwi Management Plans. A detailed assessment of these plans shows that whilst the discharge remains

culturally offensive, and this cannot be fully addressed, WBOPDC has made a genuine effort to otherwise address the relevant requirements of these plans.⁴⁹

(ii) The Kaituna River Document, which is a statutory document protecting the Kaituna River and its tributaries including the Waiari Stream. A detailed assessment of this document shows that it generally seeks restoration of water quality and mauri of the Kaituna River to a healthy state.⁵⁰ As set out in evidence, water quality will be maintained over the term of the consent and whilst there will be some public health and ecology effects beyond the mixing zone in the Waiari Stream, the effects of the WWTP will be negligible on the Kaituna River.

(d) As set out in the evidence of Mr Harkness and Coral-Lee Ertel, WBOPDC has made a significant investment in the WWTP, which is a relevant consideration under s 104(2A).

28. The evidence of Mr Harkness sets out the relevant aspects of s 105 of the RMA with respect to the WWTP.⁵¹ To summarise his assessment:

- (a) The discharge comprises treated effluent from the WWTP;
- (b) The Waiari Stream is impacted by surrounding agricultural uses but is spring-fed and fast-flowing, which makes it more resilient to the effects of the WWTP and other discharges;
- (c) WBOPDC has made a significant investment in the WWTP and has long-term upgrades scheduled through the LTP process. Alongside catering for future

⁴⁹ Statement of Evidence of Richard Harkness, paragraphs 155 – 180; and AEE sections 8.11.4 – 8.11.8.

⁵⁰ Statement of Evidence of Richard Harkness, paragraphs 182 – 195.

⁵¹ Statement of Evidence of Richard Harkness, paragraphs 96 – 103.

growth, the WWTP has capacity to treat wastewater from the Rangiora Business Park; and

- (d) WBOPDC will decommission the constructed wetlands and construct the rock chamber, and has made significant progress with investigating alternative disposal options.

29. With respect to s 107 of the RMA, a detailed assessment sets out the relevance of this to the WWTP and concludes that the discharge will not cause any of the effects set out in that section.⁵² The WWTP does not appear to be having any impact on fish and beyond the mixing zone the effects of the WWTP on macroinvertebrates are minor and on public health are less than minor. Proposed condition 8.1 also requires (amongst other things) that the discharge shall not cause the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials, or any significant adverse effects on aquatic life beyond the reasonable mixing zone.

Relevance of Part 2 RMA - Davidson

30. The Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council*⁵³ has confirmed that Part 2 of the RMA is relevant to resource consent applications. It does not consider that the Supreme Court in *King Salmon* intended to prohibit Part 2 being considered in resource consent applications. The Court listed the following additional three reasons to support that conclusion:

- (a) The Supreme Court made no reference to s 104 of the RMA or the phrase “subject to Part 2”;

⁵² Statement of Evidence of Richard Harkness, paragraphs 104 – 106; and AEE, section 8.2.1.

⁵³ By way of background, in 2014 the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 “*King Salmon*” determined that (contrary to existing caselaw) unless there are questions of invalidity, incomplete coverage or uncertainty of meaning in planning documents, there is no need to refer back to Part 2 when considering a plan change application. The High Court then concluded in *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 that the reasoning of *King Salmon* applies to resource consent applications and decision makers are unable to refer back to Part 2 unless the *King Salmon* caveats apply because they are bound by its expression in planning documents.

- (b) There is no indication from the decision that the Supreme Court intended its reasoning to be generally applicable, including to resource consent applications; and
 - (c) The statutory language of s 104 clearly contemplates direct consideration of Part 2 and there cannot be the same assurance outside the New Zealand Coastal Policy Statement (**NZCPS**) that plans made by local authorities will reflect the provisions of Part 2.
31. However the Court of Appeal did think that in some situations recourse to Part 2 is not required:
- (a) Where resource consent applications engage the NZCPS;
 - (b) Where plans already address Part 2 matters. On this topic, the Court of Appeal determined that relevant plan provisions are not properly had regard to if they are considered for the purpose of putting them to one side; consent authorities must conduct a “fair appraisal of the objectives and policies read as a whole”. It stated that if a plan was prepared having regard to Part 2 and has a coherent set of policies designed to achieve clear environmental outcomes then the policies should be implemented and recourse to Part 2 will not add anything, and cannot justify an outcome contrary to its policies. However consent authorities need to give emphasis to Part 2 if it appears the plan was not prepared in a manner that appropriately reflects Part 2.
32. Thus, the relevance of Part 2 to the s 104 assessment will depend on the extent to which the relevant planning documents have been prepared having regard to Part 2, and have a coherent set of policies designed to achieve clear environmental outcomes such that the policies should be implemented and recourse to Part 2 will not add anything, and cannot justify an outcome contrary to its policies.

33. In this particular case, Mr Harkness has considered the NPSFM, RPS, RNRP, Air Plan and PC13 and determined that those planning documents have given adequate regard to the relevant Part 2 matters.⁵⁴ Of particular relevance, Mr Harkness considered that these planning documents have adequately addressed ss 6(e) and 7(a) of the RMA and in any event these provisions have been taken into account in the resource consent application.⁵⁵ It is therefore my submission that recourse to Part 2 of the RMA is not required.

Conditions

34. At the time that evidence was filed, WBOPDC was largely in agreement with the conditions proposed in the section 42A report. It did seek some amendments, and those are reflected in a mark-up of the conditions attached to the Statement of Evidence of Mr Harkness at Appendix A.
35. Since the evidence was filed, and in response to the Commissioners' questions, Mr Harkness and Marlene Bosch have discussed the proposed conditions and agreed to a revised set, which will be provided to the Commissioners.

Witnesses for the applicant

36. I will be calling 7 witnesses in support of the application:
- (a) Coral-Lee Ertel – Engineering;
 - (b) Chris Nepia – Cultural;
 - (c) Robert Shaw – Alternative Options;
 - (d) Zhuo Chen – Water quality;
 - (e) Fiona Davies – Ecology;
 - (f) Richard Harkness – Planning; and
 - (g) Kelvin Hill – Operations.

⁵⁴ Statement of Evidence of Richard Harkness, paragraphs 91 – 93.

⁵⁵ Statement of Evidence of Richard Harkness, paragraphs 93 – 95.

DATED this 10th day of April 2019

A handwritten signature in blue ink, appearing to read 'Vanessa Jane Hamm', written in a cursive style.

Vanessa Jane Hamm

Counsel for Western Bay of Plenty District Council