BEFORE THE ENVIRONMENT COURT

Decision No. [2015] NZEnvC 90

IN THE MATTER	of an appeal under Sections 120 and 174 of the Resource Management Act 1991 (**the Act**)
BETWEEN	SUSTAINABLE MATATĀ (ENV-2014-AKL-000103) (ENV-2014-AKL-000109) Appellant
AND	BAY OF PLENTY REGIONAL COUNCIL WHAKATĀNE DISTRICT COUNCIL Respondents
AND	WHAKATĀNE DISTRICT COUNCIL Applicant

Hearing at:	Tauranga on 27 – 30 January 2015; 9 – 10 February 2015; 13 February 2015 and 16-19 February 2015 Site visit 11 February 2015
Court:	Environment Judge JA Smith - Chair Alternate Environment Judge CL Fox Environment Commissioner JA Hodges Environment Commissioner ACE Leijnen

Appearances: VJ Hamm and BL Bailey for Whakatāne District Council as Applicant (**the Applicant**)

AMB Green and BP Milo for Whakatāne District Council (the **District Consent Authority**)

RC Zame and RM Boyte for the Bay of Plenty Regional Council (**the Regional Council**)

Mr N Harris for Sustainable Matatā Incorporated (**the Residents' Group**)

RB Enright and RJ Haazen for Matatā Lot 6A Papakainga Komiti Incorporated (**the Komiti**)

D Potter for Ngāti Rangitihi Raupatu Trust Incorporated (**the Raupatu Trust**)

Date of Decision: 12 MAY 2015

DECISION OF THE ENVIRONMENT COURT

A. The resource consent for discharge to air at Lot 6A is cancelled. The Appeal is allowed to this extent.

B. The three designations relating to Lot 6A for a Wastewater Treatment Plant, Buffer zone and access are cancelled. The Appeal is allowed to that extent.

C. The application for designation and discharge consents to air and water relating to the Land Application Field are adjourned to allow the Applicant to consider whether it wishes to pursue consent on appropriate conditions. The Applicant will also need to conclude whether applications for other consents for the Land Application Field have been applied and are being pursued. The applicant is to file a memorandum within twenty (20) working days of the date of this Decision.

D. The balance of the proceedings are adjourned for further directions. Costs are reserved.

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REASONS FOR DECISION

Introduction

[1] For more than a decade the Whakatāne District Council (**the District Council**) has grappled with whether to reticulate wastewater at Matatā. The debris flow of 2005 interrupted that consideration. From 2008 various further investigations and reports have been prepared.

[2] In 2011 a funding line from the Ministry of Health's Sanitary Works Subsidy Scheme approved a provisional sum of some $6.7 million, with a later funding line of some $1.88 million from the Regional Council now shown in its 2014-2015 Annual Plan.

[3] There is funding pressure on the District Council, given that the Works Subsidy Scheme has to be confirmed by 30 June 2015 (unless a further extension is granted), and no request had been made for an extension from the Regional Council by the conclusion of the hearing in February 2015.

[4] Although funding was committed in 2011, the District Council in its capacity as Applicant (**the Applicant**) did not make application for designation and resource consent until November 2013. The District Council then appointed Independent Commissioners, and a hearing was held 11 and 12 June 2014, with a decision issuing on 16 June 2014, and appeals being filed during July 2014.

[5] Notices of interest were filed through August 2014, with the Court conducting interlocutory steps, commencing a three week hearing on 27 January 2015. The matter has been addressed promptly by the Council appointed commissioners and by the Court, particularly given the Christmas break. In fact, the Applicant and s274 parties felt the Applicant was too precipitous.

[6] Although no application for priority was pursued, the Court convened its first pre-hearing conference in August and set a timetable by the end of September for hearing in January. The delay in making application, and then moving so soon to hearings on appeal, may have affected the preparation of the Applicant's case.

Overview

[7] The proposal is encapsulated in two "consenting" regimes:

(a) a Wastewater Treatment Plant site (**the Treatment Plant**), proposed to be situated on land just east of Matatā on State Highway 2 known as Lot 6A, Matatā (**Lot 6A**);

(b) a land application field (**the LAF**) to be sited on District Council reserve on the dune formation several kilometres east of the Tarawera Cut, the current outlet of the Tarawera River.

[8] As we understand the position, the installation of the units on individual properties (**grinder units**) and the piping work within the public reserve are permitted activities.

[9] Although presented as a simple infrastructural development, significant issues became evident from reading the evidence. Much of the evidence was repeated or did not address the substantive issues in this case, as we will examine in due course.

[10] At Lot 6A the Applicant has resolved to proceed by way of three separate designations in respect of:

(a) the wastewater Treatment Plant itself;

(b) a 20m buffer surrounding that; and

(c) the access road across Lot 6A.

[11] The construction of the plant itself on the Lot 6A land is covered by the designation.

[12] The Regional consents associated with Lot 6A are unclear, but seem to be for a discharge of odour consent only. In addition we were told consents will be required for:

(a) earthworks associated with the construction of the plant;

(b) discharge of stormwater with sediment.

[13] There was no evidence of any intention to discharge wastewater to land at Lot 6A, or that any vegetation clearance is required given the site is in pastoral grasses. There is a designation sought for the LAF covering some four hectares (4 ha) on the District Council dune reserve, with a buffer area beyond that which does not require a consent, nor covered by the designation.

[14] Regional consents relevant to the LAF appear to be:

(a) the discharge of wastewater to land in circumstances where it may enter water;

(b) discharge of odour for the pump station;

(c) land use consent for earthworks consent sought for up to 5500m^3,

(d) we do not understand how such a resource consent is required at the LAF. This may relate to the access road and Pumphouse, given they are in the coastal environment, but this was not clear; and

(e) temporary discharge of stormwater containing sediment (again very limited evidence was received); and

[15] In addition we were told consent for *disturbance of land and soil resulting from vegetation clearance* would be required, although an application was yet to be made.

[16] For reasons that will become clear through the course of this decision, the conditions of consent do not clearly identify which consents relate to which site, or the extent to which certain activities, such as earthworks and sediment discharge, are authorised as a result of the designation itself.

[17] The granted Regional Council resource consents on appeal are global, and relate to both sites. It is unclear as to the relationship between the applications, the evidence to this Court and the consents under appeal. For example, we heard no evidence of odour in relation to the LAF pump building. We attach as **Annexure A** consent 67708, to show the significant difficulties which arise.

[18] Given the global nature of the Regional Council consents, it is curious that the Applicant has decided to break down its designation into four components, three of which relate to Lot 6A and one authorising the LAF and its associated pumping works on the Council reserve.

Core issues

Lot 6A

[19] In relation to Lot 6A, the issues could be summarised as:

(a) the designation of Lot 6A and the power of Trustees to enter into an agreement with the Council;

(b) whether there was a proper consideration of alternative sites for the Treatment Plant; and

(c) the impact of potential odour on any future Papakainga on Lot 6A or Lot 7A.

[20] We outline each in turn briefly.

The designation of Lot 6A

[21] In respect of Lot 6A, we accept that at the time the designation application was made, occupation rights had not been secured from the Trustees. We acknowledge that the Council did not hold any interest in land at the time of notification of the designation. Accordingly, the designation process was appropriate. However, in considering the requirement for consideration of alternatives under s 71(1) of the Act, the Applicant relies on the fact that it now holds an interest in the land, and thus the Court is not required to consider alternatives.

[22] We will deal with this issue in more detail when we reach our consideration of section 171(1). Suffice it to say the use of a designation process in respect of Māori land was the subject of extensive criticism from Mr Enright for the Komiti. In this particular regard, Mr Enright referred to the Privy Council decision ***McGuire v Hastings District Council.***[1] Although this was a case relating to the powers of the Māori Land Court to issue injunctions in relation to a proposed designation on Māori land, the Privy Council did go on to discuss the RMA, in particular regarding the question of designations. In particular, the Privy Council noted at paragraph [21]:

> The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and these include particular sensitivity to Māori issues. By s6, in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for various matters of

[1] [2001] NZRMA 557, paragraph [21]

> national importance, including "*e[t] the relationship of Māori and their culture and traditions with their ancestral lands, water sites, waahi tapu (sacred places) and other taonga [treasures].*" By s7 particular regard is to be had of a list of environmental factors, beginning with "Kaitiakitanga [a defined term which may be summarised as guardianship of resources by the Māori people of the area]." By s8 the principles of the Treaty of Waitangi are to be taken into account. These are strong directions, **to be borne in mind at every stage of the planning process.** The Treaty of Waitangi guaranteed Māori the exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes. It and the other statutory provisions quoted do mean that special regard to Māori interests and values is required in such a policy decisions as determining the routes of roads. Thus, for instance, their Lordships think that if an alternative route not significantly affecting Māori land, which the owners desire to retain, were reasonably acceptable, even if not ideal, it would accord with the spirit of the legislation to prefer that route. So, too, if there were no pressing need for a new route to link with the motorway because other access was reasonably available.
>
> [emphasis added]

[23] Although all counsel acknowledged that this dicta was still binding on this Court, there was disagreement as to its application in this case, and in particular whether it amounted to the statement from the decision Observation at page 558:

> Accordingly, where Māori land was proposed to be significantly affected by a proposed designation, then it would "accord with the spirit of the legislation" for the requiring authority to prefer alternative routes, even if those alternatives were not ideal. The Board also suggested that the need for the project would have to be carefully established in such circumstances as well (see paragraph [21]).

[24] This then moved into a significant attack by the Komiti on the Applicant's selection method that had been utilised to identify Lot 6A. There is a significant disagreement between a number of the beneficial owners of Lot 6A and the Trustees who have the legal responsibility for administering the property (granting leases and the like). Though a collateral attack had been mounted in the Māori Land Court, the Trustees were confirmed as empowered to enter into the lease. This matter has been settled, and for current purposes it was acknowledged that there was a valid lease agreement in place by the time of the hearing.

Consideration of alternative sites for the Treatment Plant

[25] The major focus of the Komiti was on the site selection method for Lot 6A. We discuss this matter at considerable length in due course.

[26] In brief, Mr Enright argued that the selection of this Māori land next to a Māori reservation required particular attention to alternatives.

[27] He attacked the site selection method for the Treatment Plant, describing it as arbitrary and a failure to consider other sites reasonably available. These issues of alternatives and reasonableness were intertwined with historic grievances and Treaty of Waitangi issues. Mr Enright argued that the selection of Lot 6A breached both the Treaty and the Designation objectives, because it was unreasonable, arbitrary and failed to take account of information on Lot 6A and its purposes.

Odour effects

[28] Finally the Komiti, supported by Mr Harris, argued the potential odour effects of the activity would prevent construction of Papakainga on Lot 6A and Lot 7A in the future, and that this:

(a) prevented the land being used for its clear purpose (intent), and

(b) was also a breach of the Treaty principles, and

(c) adversely affected cultural relationships of Māori beneficial owners with this land.

We deal with these issues in detail later in this decision.

The LAF

[29] The LAF has a different range of issues. No witness suggested that there were any odour or visual issues that could not be addressed by conditions. However, issues raised included:

(a) given the application of the wastewater to the sand dunes, were the levels of contaminants which reach the nearby farm drains and waterways, acceptable?

(b) cultural impacts.

Again, we outline these briefly.

Wastewater reaching surface water

[30] There is common evidence that discharged wastewater will percolate through the ground and enter groundwater. There was some dispute as to whether some of this would reach the ocean, but there seems to be an acceptance by the majority (if not all) of the wastewater experts that wastewater would travel via groundwater or the Vados zone and enter the farm drains to the south of the LAF.

[31] As the case developed, it became clear that there was some misunderstandings, even by the Applicant, as to the way in which this area functioned. By the end of the hearing the Regional Council had clarified the position as follows:

(a) historically the Old Rangitaiki Channel (**the ORC**) (referred to also as the Orini Stream by a number of parties) is either part of or within the bed of the Old Rangitaiki River, which was cut off during land drainage works in the early 1900s. It formerly connected the Rangitaiki and Tarawera rivers, but is now separated from the Rangitaiki, and drains to the Tarawera River;

(b) the ORC is part of the Rangitaiki drainage system established by statutes in the early 1900s and subsequently protected by transitional provisions in the RMA. This essentially makes the flow of the farm drains (and arguably their pumping) to the ORC a permitted activity. The pumping to surface water is also a permitted activity under Rule 22 of the Bay of Plenty Regional Water and Land Plan (2008);

(c) over the decades, the ground peat beds adjacent to the water ways have consolidated. This has lowered the general ground level of the paddocks surrounding the drainage channels, of which the ORC is one. This has essentially made the ORC perched above many farm drains;

(d) This situation was exacerbated by the 1997 Edgecumbe earthquake;

(e) for current purposes, the ORC water level is higher than that in drains adjacent to the LAF (Robinson's Farm) and water has to be pumped from the drains into the ORC at the position adjacent to the LAF known as SW4;

(f) the ORC discharges via a controlled structure with a flap gate, meaning water only exits from that channel on the lowering tide, and is closed by the incoming tide. There is an exception to this in that there is a pump available for emergencies. It avoids the ordinary tide action and pumps water directly into the Tarawera River;

(g) the outlet of the ORC into the Tarawera River is within the Coastal Marine Area (CMA), and the River outlet is several hundred metres from the outlet itself. Bird colonies and inanga hatchery areas are adjacent;

(h) the Tarawera River itself is subject to significant issues, including wastewater contamination from the wood and paper mills at Edgecumbe/ Kawerau. This has been the subject of a recent appeal and decision, and conditions of consent imposed seeks to reduce the levels of contaminant into that river. This has also led to the creation of the Tarawera Catchment Plan, which does not apply to the CMA area (where the outlet of the ORC is), but the ORC is identified on the plans as the old Rangitaiki Channel and part of the catchment area, as are other farm drains.

[32] The key issue in relation to the LAF is the evidence of the Applicant that, in a worst-case-scenario, there will be no attenuation of nitrogen (N) and phosphorus (P) before the wastewater surfaces in the farm drains, and that there could be a significant increase of both N and P being pumped from the farm drains into the ORC and thus entering the Tarawera River.

[33] The evidence for the Applicant is that there would be no ecological change within the ORC, and the impact on the Tarawera River (given the levels of dilution) would make the addition negligible within a very small mixing area (which was undefined).

[34] To add further complication to the situation, extensive restoration work in and around the LAF was intended, with pest treatment. The benefits of this, however, were not quantified and it was not clear from the Applicant's case that they were intending to look at some form of offset for the ecological benefits from this work against the water quality impacts in the ORC.

[35] This surface contamination brings into play both the New Zealand Coastal Policy Statement (**NZCPS**) provisions in relation to the CMA, and the provisions of the new 2014 National Policy Statement for Freshwater Management (**Freshwater Policy Statement**) and the Tarawera Catchment Plan. Furthermore, that late in the hearing the Court identified that one of the provisions of the Tarawera Catchment Plan *may* prohibit the discharge of increased levels of contaminants from human waste to the ORC.

Cultural impacts

[36] The location of the LAF gives rise to a number of cultural issues beyond potential wastewater contamination. Settlement lands have been revested nearby, including nohonga (fishing sites) near the Tarawera River mouth. The Raupatu Trust was concerned at the potential for disturbance of Māori sites or koiwi. These matters are dealt with in some detail later in this decision.

S290A – the Commissioners' Decision

[37] The Court must have regard to the Commissioners' decision. We have found that decision unhelpful in addressing the many complex issues in this case for the following reasons:

(a) the submission of the Raupatu Trust was disregarded, with no adequate reasons given. The Commissioners seem to have been under the misapprehension that only oral evidence could be considered;

(b) the decision was prior to the 2014 Freshwater Policy Statement;

(c) there is no analysis of issues or reasoning to justify the decision. For example, in the 12-page decision, the analysis of issues suggests

> by the conclusion of the hearing there were relatively few matters of significance that remained in contention.

This overlooks the consent authority's obligation to give reasons for its decision under the Act (s171(3) for designations);

(d) some conclusions as to the Applicant's case before the Council's Independent Commissioners were different from the Applicant's evidence before us. For example, the Independent Commissioner's decision states:

> *The water quality and in-stream ecology of the Orini Stream (and subsequently the lower Tarawera River) is unlikely to be affected.*

The evidence before us was that there would be a degrading of water quality in the ORC. We accept that the evidence might have been the same before the Commissioners, but subject to weighing given their conclusion that the adverse effects were no more than minor;

(e) many statements are made that requirements are met without any reason provided for such statements.

[38] The Commissioners' decision is heavily reliant on the s 42A report which was not made available to the Court. This does not assist us understanding what applications the Independent Commissioners thought they had before them. The decision is jointly that of the Regional Council and the District Council through a panel of independent hearing commissioners. It is one decision pertaining to all four of the NOR and the resource consent applications. It purports to relate to 5 regional resource consent applications, although it would appear four resource consents were actually applied for.

[39] The decision does not set out the actual NOR or Resource Consent applications. The Regional Council has combined the applications received by it under one reference number (67708) a copy of which is annexed to this decision as **Annexure A**. The District Consent Authority has lumped the NORs under one reference number (DS-2013-8212-00). While the *Wastewater Treatment System* is described in the decision (reference paragraph [2]), this does not set out the matters requiring consent or the relevant status of the various components. In short one cannot see from the decision what the applications before the hearing panel were.

[40] The conditions of consent for regional matters set out their purpose as:

> Purpose
> 1. For the purpose of discharging treated wastewater (TWW) by way of subsurface irrigation for a wastewater Treatment Plant (Treatment Plant)) to the land application field,
> 2. For the purpose of discharging contaminants to air from the Treatment Plant and Land Application Field,
> 3. For the purpose of authorising earthworks associated with the construction of the land application field.

[41] There is confusion among the members of this Court as to whether this constitutes the consents granted, given the statement in the decision at 11.1 of the Commissioners' decision:

> We therefore grant the resource consent applications sought by the Whakatāne District Council for the Matatā wastewater treatment system subject to the imposition of the conditions set out in Appendix 2.

[42] This approach has made its way through to the granting of the consents, such that there is one determination pertaining to the NORs (paragraph 11.2) and one determination relating to all of the other resource consents (para11.1). One can then understand how the Independent Commissioners came to a suite of conditions that traverse the various applications. There are instances of uncertainty as to which consent or condition relates to which consent, and whether one is connected to another. The nature of the activities allowed by the resource consents appear in the conditions pertaining to those applications which sets out three purposes. These do not encompass the stormwater discharge consent that was applied for as an addendum (Tab 5 Vol One Common Bundle). The decision refers to a total of five resource consents. There is only evidence of four being applied for.

[43] On one view the consents are void for uncertainty given the applications are vague in the extreme.

[44] Taking the view that a decision cannot grant more than that which has been applied for, the outstanding consents mean that in reality the project cannot be implemented until important pieces of the project are resolved, namely around earthworks, vegetation clearance consents and stormwater management. The issue for the Court is whether these consents are important to understanding the effects of what is proposed. Should they have been considered together? What are the cumulative effects? Are we able to understand the proposal and its effects without them?

Flexibility in applications

[45] A fundamental issue which arises in this case is a desire on the part of the Applicant for maximum flexibility. This is not uncommon; many cases before the Court are prepared on the basis that the final design is not known. In this case there is a desire to use a design-build-operate system, and thus retain maximum flexibility for the successful tenderer.

[46] In many cases there are other contingencies that may lead to variations in the design. The designation process itself recognises this need for flexibility, and utilises the concept of Outline Plans. Nevertheless, the Act recognises that effects which are identified can be dealt with as part of the designation process, and in

general consents require sufficient details for the Court to accurately be able to understand the nature and scale of effects created.

[47] In recent years there has been a tendency of consultants to *park* significant issues utilising the devices of management plans and generalised conditions to address effects. The Court has repeatedly noted its concern that it *must*, in terms of both designations and resource consents, be able to understand both the scale and significance of the various effects. Generalised conditions and an outline Management Plan often do not achieve this outcome.

[48] In this particular case the Applicant has suggested that odour can be addressed by a simple condition that there is no objectionable odour beyond the boundary, supported by an Odour Management Plan. As we will discuss, the difficulty is that there was no design, or possible design, suggested to us that could achieve this, and the exemplar that was given to us of the Maketū Wastewater Treatment Plant demonstrated clearly the contrary position at the time of our site visit when there was objectionable odour beyond the boundary observed.

[49] It is also necessary to point out that the Court has wide experience with these type of developments, including ***Puke Coal v Waikato RC***,[2] and one of its Commissioners is a very experienced wastewater engineer. Evidence in answer to cross-examination and questions by the Court of the relevant odour experts confirmed the Court's concerns that best practice would involve a separate buffer distance of between 100-160m. In the absence of a full and proper design, the concerns of the Court become obvious if there is residential housing intended. In this regard, the Court then turned to whether or not the use of this land for Papakainga can appropriately be taken into account.

[50] The other critical issue for the purposes of this decision is the intent to allow the Nitrogen (N) and Phosphorus (P) contaminants from the treated wastewater to reach surface water with minimal attenuation after discharge. Again, the evidence from the experts is that significant attenuation could be achieved by treating surface water areas, either by special planting, riparian planting or otherwise, turning the area into a wetland or destocking it. Again, the argument of the experts then turned not upon best design or best practice, but rather whether or not an increase in contaminants to the ORC was an adverse effect. There was a conflation of the issues of water quality with ecological effect.

[2] [2014] NZEnvC 223

[51] Another example is the question of vegetation clearance. That could only be relevant to the LAF given Lot 6A is in pastoral grass. It is not mentioned in the regional consents, or in the conditions beyond:

> 58. During construction of the Land Application Field the consent holder shall:
> (a) Ensure that no stripping of grass sward or topsoil is to occur on the land application field.

[52] Yet the Applicant's Assessment of Environmental Effects (AEE) refers to vegetation clearance required (page vii, page 21). However, there is no application for consent or consent granted, and we have no jurisdiction to grant such consent on this appeal. Accordingly, it appears such a consent would be required prior to works commencing.

[53] The Court must confine its consideration to the matters that have been applied for. There is scope for the Court to make a correction where a status identification has been made in error, but it can't expand the scope of the applications.

[54] In applying for resource consents and designations, the Applicant has referred to relevant parts of the AEE filed contemporaneously However, these are large complex chapters and do not always deal with the issues fully. In some cases the relevant chapter does not provide the information sought on the Council application form. One must derive the parameters of the Application from the detail of the AEE. For instance:

(a) Maximum discharge of wastewater at the LAF is in a Table at Section 5 of the AEE at 605m^3. Is that a limit? (ie a condition as to maximum discharge);

(b) Buildings are described on Lot 6A as being a maximum of 3.5m in height. The height for permitted activities is 7m. Is the height limit in the AEE a condition?

(c) The AEE shows bunds within the designation for the Treatment Plant. There is no bunding described for the Buffer zone NOR. Yet evidence to the Court suggested bunding within the Buffer zone.

(d) The bunding is described in the AEE as containment for spills. Yet the conditions of consent has a section headed Wastewater Treatment Plant/Environmental Buffer – (Condition 21(c) could apply to both), thus permitting bunding in the Buffer area.

(e) The AEE limits potential odour discharge to the Pumphouse at the LAF, whereas consent conditions grant an odour discharge consent for the LAF. There was no suggestion of odour elsewhere on the LAF so there may be a simple error.

[55] The Conditions for each application group (ie NOR and resource consents) are encapsulated in the one document for each group. The group then segregates activities, giving scope for anomalies of the type we have discussed. Although we had originally intended to address the conditions of consent in a separate annexure, the redrafting required is simply too onerous for the Court if we are to deliver a timely decision.

[56] Overall the Applications and consent conditions are ambiguous, and would be difficult to enforce. The Independent Commissioner decision relies on the AEE and consent conditions, and as a result is unclear and potentially ultra vires in some respects. Considerable work would be required to generate an appropriate and enforceable set of consent and NOR conditions if consents are to be granted.

[57] Overall, this reinforces a fundamental concern of a lack of information as to the intentions of the Applicant and the effect of the applications. Furthermore the Independent Commissioners' decision is brief in the explanation of issues or reasons for the consented conditions imposed.

Application preparation

[58] We cannot help wonder if this case would have benefitted from mediation. We note the refusal of the Applicant to engage in such mediation. More careful thought should have been given to the issues in front of the Environment Court. These fundamental failures have made this case extremely complex. Whilst we recognise that the process before this Court is iterative there are limits to the extent to which this Court can or should be required to remedy a situation of the Applicant's own creation. Mr Enright submitted the Court should be reluctant to repair major errors and omissions in the Applicant's case.

[59] Many of the issues are not assisted by the way in which the case has been presented to the Court, or the draft conditions of consent prepared. We have found a mis-match between the application for consents and the consents granted. The heavy reference back to AEEs in the original application has made it difficult for the Court

to identify what matters have been modified by evidence before the Court, and what matters may remain at large although not identified by any other party. Examples of matters that weren't addressed in any evidence before the Court include:

(a) the water bore on the waste Treatment Plant site;

(b) the discharge of sediment-laden contaminants (for which no application seems to have been made, though consent has been granted);

(c) the question of the quantity of earthworks required; and

(d) whether the earthworks are within the NoRs or will extend to the Māori roadway, and what the effects will be.

[60] This list is not exhaustive and is intended to indicate the types of problems this Court has had to grapple with in trying to understand these applications.

[61] To the extent that there are conflicts between the AEE documents and the evidence given to this Court, we have taken the evidence before this Court as the most contemporaneous and disregarded the conflicting information in the AEE. We can see no other choice, given that we would otherwise need to examine many hundreds of pages of the AEE where there are apparent conflicts with evidence given to the Court or there has been a modification of proposal or conditions. Accordingly, if consents and NOR were to be granted, reference to the AEE in any conditions would be inappropriate and clearer conditions must be drafted.

The Court's approach

[62] This scene-setting has, of course, been particularly long, but it will be clear that the issues in this case are significant, with some not only regionally important but nationally important. The particular concerns in relation to the Treatment Plant need to be understood in light of the history of land confiscation and re-grants that occurred in the nineteenth century, the subsequent drainage of the confiscated land and the creation of the cuts of the Tarawera and Rangitaiki Rivers. Moreover, the provisions of the Freshwater Policy Statement require interpretation and application in the circumstances and the regional documents applying in this case, and in reference to the NZCPS.

[63] In discussing this matter we have concluded that we need to discuss the various major strands as follows:

(a) historical, including;

a. history of the area,

b. history of studies and applications,

(b) procedural, including;

a. consultation;

b. designation matters, including consideration of alternatives and reasonable necessity;

(c) matters relating to the wastewater Treatment Plant;

(d) matters relating to the LAF:

(e) the relevant National, Regional and District Plans;

(f) Reserve issues;

(g) Part 2 evaluation, including the integration of all issues;

(h) Outcome, Conclusion and Directions.

[64] Within each of those categories significant sub-issues arise. We will address these at the beginning of each section. Because these will all integrate into a decision on the overall proposal, and the various consents and designations, it is appropriate that we draw these various strands together at the end of the decision, rather than trying to reach progressive conclusions. Although we may reach some conclusions on sub-issues, that will nevertheless still require an integrated decision to be reached.

[65] This multi-strand approach might be criticised as appearing to *park* issues through the decision. We have carefully considered whether it is possible to progressively move through the issues. However, the Court is agreed that the matter is of such complexity that it is to be addressed in this manner to try and ensure we deal effectively with the many issues that have arisen. It is difficult for the Court to find an entirely satisfactory approach that is succinct, yet covers all aspects of key issues. There is a general desire to identify an issue, discuss the matters that bear upon it, and reach a conclusion. In this case, that would lead to many hundreds of pages of decision, and a great deal of repetition.

[66] This means that under each head, a series of issues will be addressed, but final conclusions will be made later in the Decision. This recognises that the RMA process is not a liniar exercise of getting from A to B, but requires integration of many complex issues into a final Decision. Under section 5 of the Act, this Court must be satisfied that the purpose of the Act will be met in confirming the various designations and consents sought.

[67] In doing so, we must evaluate scientific, sociological, cultural, ecological, public health, economic and practical issues across a broad spectrum. We must evaluate these in the context of numerous national, regional and district RMA documents.

[68] Some matters could be considered under all headings, many under more than one. We have tried to adopt a logical and transparent methodology by which our conclusions are justified. In doing so we do not attempt to identify each piece of evidence from the thousands of pages of supporting documents and transcript that are relevant. Some evidence and documents are in conflict, and this has complicated our task. The Court represents a cross-section of skills, but we are nonetheless unanimous in our conclusions and reasoning. Given we appreciate this Decision is likely to be contentious, the Court has jointly signed the decision.

Historical matters

[69] Historical matters include those from the pre-European period and involve:

(a) the original peoples;

(b) division and confiscation of the lands in the area;

(c) subsequent land grants made to Māori, particularly Lot 6 and Lot 7, and their subsequent subdivision, sale and disposition;

(d) Treaty of Waitangi reports;

(e) hydrology and geography of this area;

(f) the town of Matatā and its relationship to the surrounding area, including debris flows, flood plains and the Tarawera and Rangitaiki Rivers;

(g) wastewater Treatment Plant within the area and in particular septic tanks, including:

(i) problems with septic tanks;

(ii) solutions available and the history of investigations and reports prepared by the Council in relation to this issue.

The original peoples

[70] Ngāti Awa (the descendents of Awa) is the earliest recorded iwi in this region.[3] Their eponymous ancestor, Awanui-a-Rangi, was the son of Toi-kai-rakau, and he lived in the Eastern Bay of Plenty area well before the major migration fleet from the Pacific.[4] The Waitangi Tribunal has noted that by the time Mataatua Waka, captained by Toroa, arrived in this district, Toi's many descendents, including Ngāti Awa, populated the region.[5] The crew of Mataatua intermarried with Te Tini-a-Toi[6] and the modern tribe Ngāti Awa draw from this combined genealogy to reflect their status as tangata whenua, claiming a sphere of influence that extends south to Ōhiwa Harbour and north-west beyond Matatā to Maketū.[7] Their names and stories for important land marks remain within the Matatā–Whakatāne district, including the original name for the Tarawera River.

[71] Ngāti Awa intermarried with other waka people including those of the Te Arawa Waka.[8] Ngāti Tūwharetoa ki Kawerau, for example, while tracing their primary descent lines from Tūwharetoa-i-te-Aupouri, nevertheless have Ngāti Awa genealogy through Tūwharetoa's mother.[9] While some of his descendants led the migration to Taupo, where that section of the tribe settled, others spread to the coast from Otamarakau to Matatā and at Kawerau.[10] Significant links with the Matatā region remain as Tūwharetoa was a direct descendent of the tohunga Ngātoroirangi, who navigated the Te Arawa Waka under its captain Tama te Kapua.[11]

[72] Together with the descendants of Tama te Kapua (known as Ngāti Rangitihi) also residing in the Matatā area, they maintain the influence of Te Arawa Waka in this region. Both Tūwharetoa and Ngāti Rangitihi claim tangata whenua status as a result.

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[3] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) p 14
[4] Ibid
[5] Ibid
[6] Ibid pp 14-15
[7] Ngāti Awa Settlement Act 2005, Acknowledgements [16]
[8] D Potter, Evidence-in-chief, Appendix B, p 1112
[9] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) p 19
[10] Ibid
[11] Ibid

[73] The Environment Court has previously described the process of settlement at Matatā to Kawerau as follows:

> "**[25]** The local tangata whenua have been in occupation for many centuries, moving into the area through a process of migration augmented by arrivals from the Pacific. The major influx of settlers occurred approximately 700 years ago with the arrival of the Te Arawa waka captained by Tama Te Kapua. The people who trace their origins to that waka include Ngāti Tūwharetoa ki Kawerau who descend from Ngātoroirangi, the tohunga on the waka. Ngātoroirangi is also associated with bringing geothermal fire to Aotearoa and the Tarawera River was named Te Awa o te Atua, literally "The River of the God" in reference to him. Rangitihi was the great, great-grandson of Tama Te Kapua. Rangitihi had eight children and they became "Ngā Pūmanawa e Waru o Te Arawa – The Eight Pulsating Hearts of Te Arawa" thus becoming the core of the Te Arawa Confederation of Tribes. Ngāti Awa enjoys different but related origins.
>
> **[26]** Descendants of these early peoples settled in the vicinity of Matatā, enjoying a reputation for the quality and quantity of the feasts they were able to provide from the rich bounty of the swamps, rivers and sea. The waters of the river were one of the constants of their life, providing water, food, transport and spiritual connection.
>
> **[27]** The waters of Te Awa o te Atua at the mouth – the combined waters of the Rangitaiki and Tarawera rivers as they flowed into the sea at Matatā, were their principal food source."[12]

Division and the confiscation of land

[74] The rise of the Māori King movement from 1856-1858, and the coming of the Pai Marire movement in 1865, would have a profound effect on the settlement of land at Matatā. The Waitangi Tribunal has noted that impact in its *Ngāti Awa Raupatu Report* (1999).[13] In 1864, Te Arawa supported and fought for the Crown against Ngāti Awa and other East Coast forces attempting to pass through their lands to fight for the Māori King.[14] Tūwharetoa of Taupo supported Te Arawa at this critical time, but Tūwharetoa ki Kawerau remained neutral.[15]

[75] Following the murder of CS Volkner in 1865, Pai Marire leaders attempted to impose a boundary line or aukati over the North Island, across which the Crown and its colonial forces were told not to cross. That line went from Taranaki in the

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[12] *Marr v Bay of Plenty Regional Council* [2011] NZRMA 89, pp 98-99

[13] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) Ch 4; see also *Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty* (April 2014) Exhibit "H" pp 5-6

[14] *Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty* (April 2014) Exhibit "H" pp 5-6

[15] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) p 37

west to Cape Runaway in the East.[16] Emboldened by their new faith, adherents in the Eastern Bay of Plenty took part in the sacking of the Te Arawa schooner, the *Mariner,* and the European owned *Kate*. Members of the crew of the *Kate* and passengers including Crown official 'James Fallon' were killed.[17] They were supported by a few members of Ngāti Awa, but Ngāti Rangihouhiri II and Ngāti Hikakino – two northern hapū of Ngāti Awa who lived in the vicinity of Matatā, were among those held responsible.[18]

[76] The Crown interpreted these combined actions as acts of rebellion and Ngāti Awa lands, and the lands of others deemed to be rebels were confiscated in 1865-1866 pursuant to the New Zealand Settlements Act 1863.[19] The Eastern Bay of Plenty Confiscation District commenced at the mouth of the Waitahanui River (north of Matatā) travelling along the coast to the Araparapara River, east of Whakatāne and it traversed some miles inland to a point marked by Pūtauaki (Mount Edgecumbe).[20] The effect of the confiscation was to extinguish all Māori customary title within that district.

[77] In 1868, a formal survey plan for the township of Richmond (now Matatā) was surveyed from the confiscated land and the township created. It continued as a base for the colonial forces after Te Kooti and his followers attacked Whakatāne.[21] By 1870, following the withdrawal of troops, many native residents of the district returned. They were joined by a number of Te Arawa groups in 1886, following the Mount Tarawera eruption.[22]

[78] By 1870 the port at Te Awa o Te Atua became central to the local economy, until direct cuts to the sea were made for the Rangitaiki River in 1913-1914 and the Tarawera River in 1917.[23] With the Rangitaiki Drainage Scheme, the diversions of

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[16] Ngāti Awa Claims Settlement Act 2005, Acknowledgements [25]
[17] Ngāti Awa Claims Settlement Act 2005, Acknowledgements [25]; see also *Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty* (April 2014) Exhibit "H" pp 5-6; Ngāti Awa Claims Settlement Act 2005, Acknowledgements [25]
[18] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) Chapter 5
[19] Ibid, Chapter 6
[20] Ibid at p 67
[21] Exhibit "H" *Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty* (April 2014) pp 6-7
[22] D Potter, Evidence-in-chief, Appendix B, p 1114; Māori Land Court Record – 4 Whakatāne Minute Book 42-44 (1888)
[23] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999), pp 103-108; Exhibit "H" *Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty* (April 2014) p 7

these two major rivers ensured that much of the swamp land in the catchment was drained for farming and settlement.[24]

Subsequent land grants made to Māori, particularly Lots 6 and 7 and their subsequent subdivision, sale and disposition

[79] Pursuant to the New Zealand Settlements Act 1863 and the Confiscation of Lands Act 1867, the Compensation Court ascertained and determined to whom land within the confiscation district should be granted. Land was either returned to local loyalist Māori or lands were awarded to other loyalist tribes who assisted the Crown. Land was also retained by the Crown for settlement by Europeans. All grantees received Crown grants. As a result of the work of the Compensation Court, the lands both east and north-west of Matatā along the coast were reallocated.

[80] By the 1880s, the Native Land Court was authorised to administer those titles still in Māori ownership following the enactment of legislation to enlarge its jurisdiction to deal with the Crown grants.[25] This was initially necessary to ensure all grantees, and not just those who held the land in trust, were accurately recorded on the titles. It was also given jurisdiction to determine successions where any grantee was deceased.

[81] On the eastern side of Te Awa o Te Atua, Parish of Matatā Allotment 1 was allocated to Ngāti Whakaue. We are not in a position to trace the former titles concerning this block, but today a small part of it is set aside as a Māori reservation for the purposes of a marae and burial ground for the common use and benefit of the Ngāti Umutahi tribe.[26] Umutahi Marae is particularly associated with both Ngāti Awa through Te Tarewa and Ngāti Tūwharetoa.[27] The Waitangi Tribunal has noted that while Umutahi was a descendent of Tūwharetoa and the left-hand amo (side carving) of the house is of Tūwharetoa-i-te-aupouri, the relationship with Ngāti Awa is demonstrated by the right-hand amo commemorating Awanui-a-rangi, the eponymous ancestor of Ngāti Awa.[28] The land upon which the Umutahi Marae is situated is administered by Marae trustees appointed by the Māori Land Court. It will benefit from free reticulation if the Treatment Plant application is granted.

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[24] Exhibit "H" *Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty* (April 2014) p 7

[25] See for example the Native Land Court Act 1886 & 1894 and the Māori Land Claims Adjustment and Laws Amendment Act 1904

[26] NZ Gazette, 21 May 1987, No 74, p 2251

[27] Waitangi Tribunal *Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) page 18; see also Application, common bundle Vol 1, 311

[28] Waitangi Tribunal *Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) page 21

[82] Parish of Matatā Allotment 3 was registered in 1874 in favour of Ngāti Rangitihi. The remnant of this block, formerly Lots 31 and 32 of Allotment 3, (now bearing the appellation Matatā 930) is where the Ngāti Rangitihi Marae (Rangiaohia) is situated, and from the car parking area and urupa the proposed Treatment Plant site can be clearly seen.[29] It was gazetted as a Māori reservation in 1974 for the purposes of a marae for the benefit of Ngāti Rangitihi Hapū and people of the district generally, and as such is administered by marae trustees appointed by the Māori Land Court.[30] This marae will also benefit from free reticulation if the Treatment Plant application is granted.

[83] The Crown grant for Allotment 6 was registered in June 1877, and it lists the "Ngāti Raukawa Natives" to whom Awa o te Atua lands were awarded "in recompense for military service rendered during the year 1865."[31] These people were Kiharoa Koha (described as an aboriginal chief) and others. Allotment 6 was subsequently partitioned into Matatā 6A, 6B and 6C in 1913.[32] Lots 6B and 6C were sold. The owners also sold Matatā 6A in 1917 to Raharuhi Pururu of Te Arawa.[33] The block was then transferred to Hakopa Haimona in 1920. The block is now Māori land administered as an ahu whenua trust by two trustees, Anthony Olsen and Robert Gardiner. As Māori land it is acknowledged to be taonga of special significance by the Preamble of Te Ture Whenua Māori Act 1993. This block (Lot 6A) is where the Appellant proposes to situate the Treatment Plant.

[84] We were told that, of the 404 beneficial owners of Lot 6A, many are descendents of Hakopa Haimona. We were told he was from Ngāti Tūwharetoa. It was the evidence for the Komiti that 45 owners are deceased and have not been succeeded to. Their estates hold approximately 30% of the total 2384 shares in the block.[34] It was also the Komiti's evidence that owners (or descendants of owners) holding approximately 20-25% of the shares in Lot 6Aoppose the application.[35] For our purposes, while we are not concerned with the actual figures, we consider the Komiti's evidence indicates that a significant number of beneficial owners oppose the application, a factor we discuss later in this Decision.

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[29] Māori Land Court Record: 60 Whakatāne Minute Book 20
[30] NZ Gazette, 24 Oct 1974, No 106, p 2483; Te Ture Whenua Māori Act 1993, ss 338 & 239; Māori Reservations Regulation 1994
[31] R. No 135/27
[32] Māori Land Court Record - 59 Rotorua Minute Book 144
[33] LTO SA275/265
[34] Exhibit "AA"
[35] Exhibit "AA"

[85] In terms of Allotment 7, the block was awarded to Ngāti Tūwharetoa ki Taupo represented by Poihipi Tukairangi, Hohepa Tamamutu and Ihakora Kahuao. They were described as aboriginal chiefs from Taupo on the Crown grant registered in June 1877.[36] The grant records the names of the Ngāti Tūwharetoa natives to whom Awa o Te Atua lands were awarded "in recompense for military service rendered during the year 1865." Allotment 7 was partitioned in 1917 into Lots 7A and 7B.[37] Lot 7B was subsequently sold. It now owned by the Burts. There are 516 beneficial owners of Lot 7A. The beneficial ownership lists for Lot 6A and 7A indicate that the ownership is significantly different, which accords with the blocks being allocated to different tribal groups.

[86] The Ōniao Marae situated on Lot 7A is particularly associated with Tūwharetoa ki Taupo and Te Kooti.[38] Mr Olsen indicated that the house was originally located at Otaramuturangi and was moved to Lot 7A as a result of directions from Te Kooti.[39] It was gazetted as a Māori reservation in 1971 for the purposes of a meeting place for the benefit of Tūwharetoa peoples, and as such is administered by marae trustees appointed by the Māori Land Court.[40] As Māori land it is acknowledged to be taonga of special significance by the Preamble of Te Ture Whenua Māori Act 1993.

[87] The description of the beneficiaries of the Ōniao Marae now includes Ngāti Tūwharetoa ki Kawerau (Bay of Plenty). Again, as with Umutahi Marae, the relationship with Ngāti Awa is portrayed in the carvings. The house is called Tūwharetoa, the left-hand amo is called Hikakino (descendent of Tūwharetoa) and the right-hand amo is called Rangihouhiri (Hikakino's son). Both these ancestors depicted on the panels are associated with the hapū of the same names (claimed by Ngāti Awa) who were accused of being in rebellion and whose lands were confiscated. According to the Waitangi Tribunal they "more than any other hapū were deprived of their sacred sites and necessary land for their future wellbeing".[41]

[88] As the sea-frontage of Lot 7A is occupied by the marae, only the rear of the block may be used in the future for Papakainga or other cultural uses. The rear of the site has direct and ready views of the Treatment Plant site. Ōniao Marae will also

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[36] R. No 135/27
[37] Māori Land Court Record - 63 Rotorua Minute Book 362
[38] Mr Haimona, Evidence-in-chief, pages 1155-1167
[39] Mr Olsen, Evidence-in-chief, pages 430-431 [42]
[40] NZ Gazette, 15 July 1971, No 53, p 1430; Te Ture Whenua Māori Act 1993, ss 338 & 239; Māori Reservations Regulation 1994
[41] Waitangi Tribunal *Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) pages 21, 137-138

benefit from free reticulation if the Treatment Plant application is granted. It is not known what the formal position of the trustees is regarding this application, but 6 trustees are deceased and two of the 5 remaining trustees have opposed it before this Court.

Treaty of Waitangi Reports

[89] There have been at least three reports of the Waitangi Tribunal relating to the Matatā – Whakatāne district. The first and most relevant is the *Ngāti Awa Raupatu Report* (1999).[42] That report details the traditional and contemporary history of the region, including the confiscations and the drainage of the Rangitaiki Swamp. The main opinion expressed in the report was that, *contrary to the Treaty of Waitangi, ... Ngāti Awa land was confiscated without just cause*, and, secondly, that affected hapū were left with *insufficient land for their needs*.[43] The Tribunal recommended that the Crown negotiate settlements with Ngāti Awa and Ngāti Tūwharetoa ki Kawerau (Bay of Plenty). The other two Waitangi Tribunal reports deal with issues concerning cross-claims prior to the introduction of legislation giving effect to the Treaty settlements for these tribes.[44]

[90] The second of these reports, the *Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report* (2003) concerned Ngāti Rangitihi cross-claims. In that report the Tribunal's key recommendation was to leave the door open for a Ngāti Rangitihi settlement, should their claims be well-founded and internal divisions resolved.[45] The Crown appears to have had no issue with that, claiming that it has the capacity to provide equal redress to Ngāti Rangitihi. The mandate process for Ngāti Rangitihi commenced in 2014.[46]

[91] The settlements for the other two tribes proceeded and the Ngāti Awa Claims Settlement Act 2005 and the Ngāti Tūwharetoa (Bay of Plenty) Claims Settlement Act 2005 were enacted. The governance entities for Ngāti Awa (Te Runanga o Ngāti Awa) and Ngāti Tūwharetoa (Ngāti Tūwharetoa (BOP) Settlement Trust) have provided CIAs in relation to this application.

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[42] Waitangi Tribunal *Ngāti Awa Report* (Wai 46, Legislation Direct, 1999)
[43] Waitangi Tribunal *Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) Letter of Transmittal
[44] Waitangi Tribunal *Ngāti Awa Cross-Claims Report* (Wai 958, Legislation Direct) and *The Ngāti Tuwharetoa ki Kawerau Settlement Cross-Claim Report* (Wai 996, Legislation Direct, 2003)
[45] *The Ngāti Tuwharetoa ki Kawerau Settlement Cross-Claim Report* (Wai 996, Legislation Direct, 2003) Letter of Transmittal and see pages 34-42
[46] See Office of Treaty Settlements Web-Site

[92] Te Mana o Ngāti Rangitihi Trust and the Ngāti Rangitihi Raupatu Trust have also provided Cultural Impacts Assessment / Statements (CIA). Te Mana o Ngāti Rangitihi Trust signed a Deed of Mandate in 2014 with the Crown to settle all outstanding Ngāti Rangitihi historical claims.[47] It is likely that a settlement will be concluded in the near future.

[93] The settlement process is relevant to both the Treatment Plant on Lot 6A and the LAF. The Lot 7A reservation remains the last coastal block at Matatā, held for the collective known as Ngāti Tūwharetoa, where Papakainga may be developed. The only other coastal blocks, obtained under their settlement, comprise a nohonga (fishing site within the vicinity of the Tarawera River mouth) and a reserve Wahieroa adjacent to the land upon which the LAF will be situated.[48] We discuss these sites in more detail below.

Present day hydrology and geography

[94] Matatā is a small coastal township located approximately 24 kilometres to the north-west of Whakatāne in the Bay of Plenty region. It is situated on a sloping terrace at the base of the Manawhahe Hills. The hills are steep and bush-covered, and rise to 300 metres above sea level. Matatā town itself slopes from an elevation of around 20 metres at the railway line to three metres above sea level at Arawa Street. Part of the town at the western end is built on low-lying coastal dune land.

[95] To the east of Matatā are the low-lying and fertile dairy lands of the Rangitaiki Plains. The general locality immediately to the east is drained by two main rivers, namely the Tarawera and the Rangitaiki Rivers, with the Whakatāne River further east again. Three small streams flow through Matatā itself; the Waitepuru, the Awatarariki and the sporadically flowing Waimea Streams.

[96] The course of the Tarawera River has been modified to provide a direct outlet to the ocean, and the original outlet on the seaward side of Matatā is now a series of lagoons. The course of the Rangitaiki River has also been modified to provide a direct outlet to the ocean, and the original Rangitaiki River bed between the Rangitaiki and Tarawera Rivers has also been modified so that it discharges only to the Tarawera River, with no remaining direct connection to the Rangitaiki River. The modified part of the old river bed was variously referred to during the hearing as the

[47] See Office of Treaty Settlements Web-Site
[48] Ngāti Tūwharetoa (Bay of Plenty) Claims Settlement Act 2005

Old Rangitaiki River bed, the Orini Stream and the Bennett's Road Stream. We refer to it as the ORC, in part to avoid confusion with the Orini Stream between the Rangitaiki and Whakatāne Rivers.

[97] The ORC is important to the proposal, in that it is the freshwater receiving environment for groundwater containing treated wastewater from the LAF. It is part of the Rangitaiki Drainage Scheme and passes through land drained by a series of east-west and north-south oriented farm drains. It is controlled by flood gates at its junction with the Tarawera River, with the gates opening on the out-going tide to allow the stream to drain, and closing again on the incoming tide to prevent inundation of the drained farmland, which is now below high tide level. The water level in the ORC is above the surrounding ground level due to consolidation of the local peat soils when the land was drained. Water from the farm drains is pumped into it through a series of pumps along its length.

[98] The land directly to the east of the township, and south of the Matatā lagoons, is characterised by a sand dune ridge running parallel to Thornton Road, with land to the south of the dunes being undulating, and forming part of the Rangitaiki Plains. The proposed site of the Treatment Plant is located on land south of the sand dunes, at an elevation of approximately nine metres above sea level.

The town of Matatā

[99] The town of Matatā (formerly Richmond) was surveyed in 1868 and is at a suburban scale. The railway line is between the headland and the housing. Many houses are on small sites, around 800-1000m^2, and there are many unbuilt sections. SH 2 splits just after entering Matatā from the north, with the State Highway branch following the headland and rail line to Edgecumbe, the other road to Whakatāne following the frontage of the town facing the lagoon. None of the housing and other facilities (schools, marae etc) have reticulated waste water, although there is reticulated power and water.

[100] The town of Matatā comprises predominantly residential dwellings, with 243 occupied dwellings at the time of the 2006 census and a population of 640 people. In addition, Matatā has three marae, two primary schools, a general store, a pub, a small number of other local retail businesses and a rugby ground. A Department of Conservation camp ground is located on sand dunes on the other side of the lagoons from the Matatā township.

[101] The town is underlain by shallow marine, estuarine, alluvial and beach deposits. In 2005 it was severely impacted by several large debris flows generated by intense rainfall within the adjacent hill country. Similar events have occurred in the locality previously.

[102] The village has a largely permanent population with a number of retirees. The costs of the Matatā Lagoon restoration have been visited on the local population by way of special rating. Furthermore, the significant disruption of the 2005 debris flow, which damaged the railway bridge and destroyed a number of houses in the Clem Elliot Drive area, are still evident to the close observer. A number of houses have been rebuilt in the debris flow path on the foredune area.

[103] After the cuts for the Rangitaiki and Tarawera Rivers, the lagoon area in front of the village languished until it was cut off from the Tarawera. Since then the lagoon has reverted to wetland. The surrounding area to Edgecumbe and Tarawera is low lying farmland. Although there are height variations, with land around the village at levels 6-9 metres above sea level, much of the wider area is around 1m above sea level. This means the area is subject to drainage (and pumping in places) to maintain the area as pastoral.

Wastewater treatment within the area, the septic tanks and problems with septic tanks

[104] Wastewater treatment and disposal in Matatā is currently by individual septic tanks and on-site disposal fields. There are approximately 265 existing individual systems. Various surveys of the existing septic tanks have been undertaken over the years, but the evidence did not provide us with a clear picture of their adequacy or the extent or seriousness of problems that have been experienced with them. We were advised that the most recent survey of septic tanks in 2012 showed that 70% did not comply with at least one requirement of the Regional Council's On-Site Effluent Treatment (OSET) Plan and 50% did not comply with two of the seven requirements.

[105] Mrs Krawczyk stated in evidence that in the majority of cases disposal fields are too small, and during questioning, advised that: [49]

> disposal fields were too small and some of the areas are low lying and the issue is really with ground water and the leaking tanks surfacing.

[106] She also stated that: [50]

> The Matatā area is not well suited to septic tank effluent fields due to a high groundwater table in parts and poor soil drainage.

[107] While the evidence indicated there have been some problems associated with individual on-site soakage systems, these were not explained in any quantified way in terms of public health risk or effects on water quality or the environment generally. In addition, a 2011 public health assessment by Institute of Environmental Science and Research Ltd (**ESR**) and Beca found:

> ... there is not a compelling case for the introduction of a reticulated sewage disposal system in Matatā on the basis of risk to human health.

[108] The report confirmed that some septic tank systems were not functioning adequately and that:

> ...quantifying the proportion of properties with issues, and whether these can be adequately rectified will require individual on-site assessments.

[109] The report went on to note that the installation of a reticulated sewerage system would have benefits, including flexibility in land use, enhanced development opportunities and the removal of sewage disposal responsibilities from the local householder, but these would need to be balanced against significant costs.

[110] The evidence of Dr Miller, the Medical Officer of Health, stated that overall the Matatā wastewater scheme as proposed will promote good health, providing increased levels of protection for Matatā and the wider community. Dr Miller considers on-site effluent treatment systems such as septic tanks can be appropriate for small numbers of scattered dwellings that are distant from significant bodies of water, or well above ground water levels, but does not consider Matatā to be a small or remote settlement. Dr Miller disagreed with the findings of the ESR report that

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[49] Transcript, page 51
[50] Mrs Krawczyk, evidence-in-chief, paragraph [20]

there is no compelling need for a reticulated system on public health grounds and considered the current systems will pose an ongoing risk to public health.

[111] Mr Bradley, a senior wastewater engineer called for the Applicant, highlighted that the existence of a safe, reticulated (piped) water borne sanitary wastewater system: [51]

> ...is required to protect the public health of the community and that it is well established that the existence of a safe sanitary/wastewater system provides immense benefits to the well being of a community in terms of health and safety.

[112] While we respect the expert opinion on public health issues, we were faced with conflicting views and very little factual information relating to Matatā to assist us in quantifying the risks and benefits. When we sought to understand the environmental benefits, we found the evidence to be largely silent. Responses to our questions did not assist us greatly either, leaving us with some difficulty in understanding the overall benefits of the scheme and how they compare to the proposed additional contaminant loads at the LAF.

[113] Table 11 of the ESR report (Tab 21 of the common bundle) shows E coli levels are generally higher in the downstream monitoring sites of the Waitepuru and Waimea Streams, but this is not consistently the case.

Solutions available and the history of investigations and reports prepared by the Council in relation to this issue

[114] Mr Harris was convinced that septic tanks were a more cost-effective option for this community and that the impost on ratepayers was unreasonable. His view was that the Districh Council had initially accepted the ERS advice, that there was no compelling health reason for a reticulated system, but had subsequently resiled from that position and proceeded with this application.

[115] Mr Harris and others also criticised the District Council for not utilising the Kawerau plant (to which sludge from the Matatā Treatment Plant would go).

[116] Mr Harris expressed suspicion that the construction of this Proposed Treatment Plant may lead to a long-term objective of processing waste from other areas through Matatā. At 15.6.1(g), the Tarawera Catchment Plant identifies possible

[51] Mr Bradley, evidence-in-chief, paragraph [55]

pumping of treated effluent to Matatā and discharge to the Tarawera River mouth. This appears to discuss industrial (Mill) waste, and it is one possibility among many.

[117] In relation to municipal sewage, four alternatives are identified at 15.4.6 of the Tarawera Catchment Plan. Of these, the alternate selected sees Kawerau and Edgecumbe municipal waste transitioning to an alternate discharge method after 2005.

[118] We examine the relevant planning instruments later in the decision under our discussion of the LAF, and here we note that the Tarawera Catchment Plan does seek improvement to water quality. Discharges such as those from the Kawerau Plant are tightly managed under that Plan, with a regime which leads to the prohibition of human sewage entering the Tarawera River. The Tarawera Catchment Plan promotes a shift to land-based treatment and disposal systems. The Whakatāne District Plan also refers to the inadequacies of existing reticulated sewerage systems and encourages a move to best practice. We pick up these matters later in the decision.

[119] In the Opus report of 15 July 2013 on Wastewater Treatment and Management Options, four options were identified at Chapter 4:

(a) Matatā and Edgecumbe each have independent treatment systems (4.2);

(b) Treatment and disposal at Kawerau (4.3);

(c) Treatment for Edgecumbe and Matatā at Matatā with two sub-options:

  (i) combined effluent discharged via ocean outfall or land application field;

  (ii) two Treatment Plants (Edgecumbe and Matatā) but combined ocean outfall or land application field

(d) Transfer to Whakatāne

[120] The third scenario is therefore a possibility, but the current Application limits the volume that can be treated, and its source.

[121] For current purposes, we cannot consider what future applications might be filed, but must consider this application on its merits.

[122] Furthermore, and in practical terms, we consider that there are likely to be significant problems with this plant accepting waste from more distant areas, for the following reasons:

(a) Long pumping lines can lead to septic waste, which is more difficult for this type of system to process.

(b) The system is sized for a maximum of around 600 homes, and any extension of this is likely to lead to significant problems in obtaining consent, given the limited size of the designations and the sensitivity of the receiving environment.

(c) There is a significant cost to pumping waste from Kawerau or Edgecumbe to Matatā.

[123] The District Council considered three different methods of wastewater collection for Matatā; a conventional gravity system, a vacuum system and a pressurised small bore diameter pipe system using individual on-site grinder pumps. Various reports were obtained and the grinder pump system adopted. Again this is a question of District Council policy. Our role is to consider whether the applications meet the purpose of the Act and the various documents prepared under it.

Process of assessing alternative sites

[124] At the time the District Council resolved to proceed with a fully reticulated wastewater system for Matatā, the site or sites at which wastewater treatment and disposal would take place were not known. Accordingly, as a matter of practical necessity, the District Council needed to identify and assess the suitability of possible sites for these two activities, regardless of any statutory requirements to consider alternatives under s171 or s105 of the Act. As wastewater Treatment Plants are generally known to have the potential to cause offensive odours beyond the boundary of the plant site from time to time, it would be reasonable for an applicant to anticipate that an assessment of alternative sites under s 171 of the Act might be a statutory requirement.

[125] One of the key objectives of any site assessment and/or selection process (site selection process) must be to first identify sites that, as far as possible, avoid potential adverse effects from natural hazards and to minimise the potential for adverse effects on the environment, as these will be important considerations in any subsequent statutory process under the Act. Put another way, the site selection process is a fundamental building block used to support future decision making. In much the same way that solid or robust house foundations reduce the risk of future problems with the house itself, so a robust site selection process reduces the risk of

problems occurring with the site or sites chosen, in terms of suitability for purpose. The converse is also true, that were a site selection process is not robust, there is a greater likelihood of later difficulties, in one form or another, with the selected site.

[126] Further important considerations when undertaking a site selection process are transparency of decision-making, clear recording of the process so that it can be readily understood by others, and mechanisms for reviewing the process if basic assumptions change through initially unforeseen circumstances. In making these comments, we make it clear there is no requirement for an applicant to select the best possible site, or to consider all potentially available sites, but whichever site is eventually selected, it must be able to meet the relevant requirements of the Act.

Scope of the appeal

[127] Jurisdictional issues regarding the nature of this appeal were raised before us. It was argued, for example, that issues such as odour from the Treatment Plant, and some cultural and relationship matters were outside this appeal. This seems to rely on the wording of s274 1(e) and (f), and s274(4B). These sections deal with evidence that can be called only if it is both within the scope of the appeal, and is a matter arising out of the previous proceedings, or on any matter on which the person could have appealed.

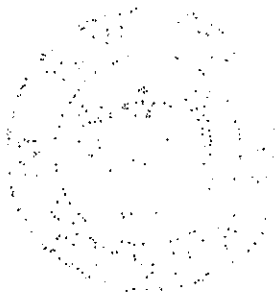
[128] Ms Hamm directed this matter at the Raupatu Trust and possibly Mr Harris (although he is the Appellant). We note that the appeal is very broadly worded, and for clarity we conclude that all issues in this hearing were relevant at first instance and are covered in the appeal.

[129] This case does raise some process issues, the key ones being:

(a) whether the Komiti could be a party;

(b) consultation; and

(c) consideration of alternatives.



The Komiti as a party

[130] Only Mr Harris appealed the decision. The Raupatu Trust and Komiti joined as s274 parties.

[131] The Raupatu Trust had submitted and appeared at the initial hearing. No issue was raised as to their status.

[132] The Komiti had not submitted separately. Some evidence for them was produced by Mr Paterson, but was given no weight by the Council-appointed Commissioners. Nevertheless, the Komiti represents persons (and is an entity under the Act) having an interest greater than the general public. Given they are beneficial owners in Block 6A, and some of 7A as well, their relationship with the land as Māori beneficial owners is recognised by s 6.

[133] Status to appear was not pressed by Ms Hamm, but for clarity we conclude the Komiti is entitled to be a party under s274(1)(d) and (da). None of the restrictions under s308 apply.

Consultation

[134] In terms of s36A of the Act there is no duty to consult when seeking resource consents or notices of requirement, but that provision does not prevent consultation if an applicant or local authority elects to do so. In this case, the District Council elected to consult, and having chosen to do so it was obliged to conduct the process in accordance with well established principles.[52]

[135] In terms of the broader Matatā community, the application indicates that the District Council commenced consultation with the community in 2004, but that the debris flow disaster in 2005 interrupted the consultation process.[53] In June 2012, a questionnaire was sent out to all property owners. The results indicated that 41% of respondents believed that a reticulated system was required, 45% believed that it was not required and 14% did not know. The results of the survey were communicated to the Matatā community by newsletter in June 2012.

[52] See *Air New Zealand & Ors v Wellington International Airport* [1993] 1 NZLR 671 for principles
[53] Application for Resource Consent & Notice of Requirements, Common Bundle, Vol 1, Tab 1, page 112

[136] In March 2013 the District Council made the decision to consider three options for wastewater disposal and proceeded to develop a consultation strategy.[54] That consultation strategy carried out by the Applicant from 20 May 2013 included:

- Meetings with individual owners of properties neighbouring the Treatment Plant and LAF sites,
- Community Updates – newsletters. We understand these were sent to every home in Matatā;
- Community meetings and forums;
- Meetings with key stakeholders;
- Newspaper articles and radio interviews;
- Press releases;
- The Applicant's webpage and social media;
- Annual Plan consultation process
- Field trips.[55]

[137] We need to comment briefly on the roles of the District Council as both the Applicant and the Consent Authority. Both can consult, but matters become murky where the parties promoting the application are also the consent authority. When it comes to dealing with Māori particularly, there was not clarity as to whether a consultation was by the Applicant or by the Consent Authority. All evidence on consultation was given for the Applicant and it is unclear if the Consent Authority considered any issues for consultation separately.

[138] The Applicant and / or Consenting Authority claims that through the Annual Plan process and the special consultation process, it received 101 submissions in total on the Wastewater Scheme. Of these, 88 were received from the Matatā community. Of the 88 respondents, 84% were in favour of full reticulation, 5% in favour of partial reticulation and 11% did not want any reticulation.[56]

[139] It is not clear to us from the surveys held in 2012 and 2013 whether a majority of residents support full reticulation, but what has been demonstrated is that a significant number of the residents do support it.

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[54] Application for Resource Consent & Notice of Requirements, Common Bundle, Vol 2, Tab 7
[55] Ms Krawczyk, Evidence-in-chief, paragraph [51-53]
[56] Application for Resource Consent & Notice of Requirements, Common Bundle, Vol 1, Tab 1, page 112

[140] In terms of the Māori community of Matatā, it was the evidence for the Applicant that a special consultation strategy was developed for consultation with iwi/hapū represented by:

- Ngāti Rangitihi – Te Mana o Ngāti Rangitihi Trust (TMONR) & Ngāti Rangitihi Raupatu Trust Incorporated (NRRTI);
- Ngāti Tūwharetoa - Ngāti Tūwharetoa (BOP) Settlement Trust (NTST);
- Ngāti Awa – Te Runanga o Ngāti Awa (TRONA);
- Ngāti Umutahi – Umutahi Marae; and
- Ngāti Mākino – Ngāti Mākino Heritage Trust (NMHT).[57]

[141] TMONR and the NRRTI both produced separate CIAs. CIAs were produced for Ngāti Awa and Ngāti Tūwharetoa ki Bay of Plenty (Kawerau). Ngāti Mākino left the issues for the local "hau kainga" people (Te Arawa whanaunga/relatives) to address, namely, Ngāti Rangitihi.

[142] In addition, the Applicant's cultural consultant held meetings with iwi representatives, and a plenary session was convened on 2 December 2013 to finalise her draft cultural report.[58]

[143] Consultation with local iwi was conducted but not all interested hapū and beneficial owners were identified. Nor were all cultural issues identified or addressed. In particular the Māori Reservation on Lot 7A and the prospect of Papakainga on Lot 6A do not seem to be addressed, although marked on Council plans used for site selection purposes. Another example relates to the cultural landscape at the LAF site, the impact, if any on the Māori land in the vicinity of the LAF and the concept of Te Mana o te Wai found in the Freshwater Policy Statement – given it is a term dependent on tangata whenua values. However, these issues have now been identified as a result of these proceedings and are covered where relevant in this judgment.

[144] In terms of local marae, three on-site consultations took place at Umutahi, Rangiaohia (Rangitihi) and Ōniao (Matatā 7A) between the Applicant representatives, the consultants, and the marae trustees "responsible for property maintenance,

[57] Ms Krawczyk, Evidence-in-chief, paragraph [54-56]
[58] Ms Hughes, Evidence-in-chief, paragraph [28-29]

including for on-site effluent disposal systems" at each marae.[59] These meetings were held on 5 November 2013 and 26 March 2014.

[145] In terms of Matatā Lot 6A Ahuwhenua Trust, it is common ground that the trustees, Anthony Olsen and Robert Gardiner, were consulted and that they have approved a lease in favour of the Applicant.

[146] The Trustees also attempted to consult the 404 beneficial owners of Lot 6A at meetings organised by the Trustees, held on 21 August 2013 and 10 August 2014.[60] These publically notified meetings were attended by the Applicant's staff involved with the Treatment Plant and LAF project but no other beneficial owners attended.[61] At a subsequent AGM held on 14 September 2014, the lease proposal was discussed, and of those 20 people present Mr Olsen told us that the majority "appeared to support the lease proposal."[62] The Komiti have since demonstrated that a reasonable number of owners oppose the application, but that is a different issue and we discuss that further below.

[147] Mr Enright for the Komiti pursued the issue of whether consultation measures were adequately conducted by the Applicant and / or Consent Authority with the owners of Lot 6A, given their default to and reliance on the Trustees to facilitate consultation. We note the usual process for notifying the beneficial owners of Māori land blocks is to send letters to the beneficial owners, for whom addresses can reasonably be ascertained from the Trustees, the Māori Land Court and/or the Electoral Roll.

[148] However, we conclude that sufficient opportunity has now been accorded to Komiti members to express their views on the Treatment Plant and the LAF. We also note that all relevant issues have been identified as a result of these proceedings and are covered where relevant in this decision. In other words, any consultation defects have now been cured by this appeal process.

Consideration of Alternatives

[149] Prior to the 2003 amendments to s 171, when territorial authorities were considering the effects on the environment of allowing the requirement, they were to

[59] Ibid, paragraph [35]
[60] Mr Olsen, Evidence-in-chief, paragraph [38-39]
[61] Ibid, paragraph [38-39]
[62] Ibid, paragraph [38-39]

have particular regard to whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work in all cases. However, this obligation is now subject to two criteria and s 171(1)(b) now reads as follows:

> (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
> (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
> (ii) it is likely that the work will have a significant adverse effect on the environment;...

[150] In the case of this designation, two questions arise in relation to s 171(1)(b). The first is whether the District Council as the Applicant, was obliged to give adequate consideration to alternatives. In other words, does this case fall into either of the categories set out in s 171 (1)(b)(i) and (ii)? The second is, if they were obliged, did they give adequate consideration to those alternatives?

Must the Territorial Authority consider alternatives?

[151] The Applicant submits that they have a sufficient interest in the land to complete the works. The land for the LAF is on a Council administered recreation reserve. There has also been an agreement to lease entered into with the Responsible Trustees for Matatā Parish Lot 6A Ahu Whenua Trust. This would cover the proposed site of the Treatment Plant itself as well as the buffer and the access road. In terms of access to the LAF, the District Council as both the Applicant and District Consent Authority points to the deed of agreement to create an easement over that land, owned by R and S Robinson Family Trust. This deed is conditional on investigation of risk of contamination and compensation in the event of contamination.

[152] In their submission in reply the Applicant insists that the interest in the land is sufficient to remove the onus in s 171, because the unfulfilled conditions are for the benefit of the District Council and because the agreement to lease attached the final form of lease, so it cannot be argued that the form is not finalised.

[153] The Applicant further submits that the work is not likely to have significant adverse effects and so they are not required to consider alternatives under s 171. In the alternative, they submit that alternatives were extensively assessed and that the consideration of alternatives has been more than adequate.

[154] The Regional Council submits that the project will not produce adverse effects and so the Applicant is not required to consider alternatives. In the alternative, they submit that the applicant has considered alternatives. Their submissions do not address whether or not the Applicant has sufficient interest in the Lot to exclude the need to consider alternatives.

[155] The Komiti submits that the Applicant does not have *sufficient interest* in land, pointing out that it is not a tenant and the lease is conditional on the NOR being confirmed. Furthermore, the Komiti submits that there are likely adverse effects from the work. In reference to the ***Nelson Intermediate School v Transit New Zealand***[63] case, they submit that consideration of alternatives should be conducted early in the process and should be considered by reference to expert evidence. The Komiti submit that the deed regarding the lease was only entered into in December of 2014 and so at the time of the Independent Commissioners' Decision the Applicant did not have any interest in the land whatsoever. They submit that the consideration of alternatives was not genuine and that the appraisal of sites was weighted to ensure a predetermined outcome.

[156] The Raupata Trust submits that the Applicant could not have reasonably excluded certain sites because of a high water table when they did not have a design yet for the Treatment Plant. Their submission is less concerned with the interest in Lot 6A and more with the consideration of alternative methods and the effect that those matters had on site selection. We are mindful that the Court must look at the intended relationship between the two criteria that limit the obligation to consider alternatives under s 171. Was it the intention that, to be excused from the obligation, the requiring authority must possess both a sufficient interest in the land, and be able to show that there will not likely be significant adverse effects? Alternatively, was the bar intended to be lower than that, with one or the other being sufficient to relieve the Requiring Authority of the obligation to consider alternatives?

[157] We note also the obiter comment in the Supreme Court ***Environmental Defence Society Inc v King Salmon***[64] at paragraph [88], where the Court noted (in discussing the NZCPS):

> ...Moreover the obligation in s8 to have regard to the principles of the Treaty of Waitangi... will have procedural as well as substantive implications, which decision makers must always have in mind, including when giving effect to the NZCPS...

[63] *Nelson Intermediate School v Transit New Zealand* [2004] ELRNZ 369
[64] [2014] NZRMA 195

[158] We agree with Mr Enright that, when combined with the other citations given, and in light of the commentary in ***McGuire v Hastings District Council***,[65] we should expect a rigorous and robust consideration of alternatives where Māori land (which is limited in this area) has been selected.

[159] This issue was considered by the Board of Inquiry into the ***Men's' Prison at Wiri.***[66] In that case, counsel for Auckland Council and the Manurewa Local Board submitted:

> ... that an obligation to consider alternatives arises where it is likely that the work will have a significant adverse effect on the environment, regardless of whether or not a requiring authority has the requisite interest in the land.[67]

[160] Counsel for the Department of Corrections did not did not disagree and the Board accepted this as the correct interpretation of s 171. The consideration of alternatives is required if either of the prerequisites in s 171(1)(b)(i) and (ii) are met, not both. We agree with the Board's reasoning in that case and adopt it here.

Is it likely that the work will have a significant adverse effect on the environment?

[161] In considering this limb, the question arises as to whether likely significant adverse effects are to be measured before or after mitigation.

[162] As is clear from other parts of this decision, the Court does not agree with the Applicant's submission that there are not likely to be potentially significant adverse environmental effects. This finding alone is enough to oblige the territorial authority to adequately consider alternatives. This makes the discussion of interest in the land sufficient to carry out the works somewhat academic in nature, but given the role that the deed of lease has played in this proceeding the Court will turn to that question now.

Is there interest in the land sufficient for undertaking the work?

[163] At what point does an interest of a sufficient nature have to be acquired in order for it to excuse the requiring authority from the obligation to consider alternatives?

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[65] [2001] NZRMA 557

[66] *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correction Facility at Wiri*, September 2011

[67] Ibid, at paragraph [135]

[164] In this case the Komiti submitted that, although the parties may have been in negotiations at the time of the Independent Commissioners' decision, there was no deed to lease yet and therefore no interest in land. In the ***Final Report and Decision of the Board of Inquiry into the Proposed Men's Correction Facility at Wiri*** the Board suggests that the consideration of alternatives can be ongoing but *typically it will be undertaken prior to the notification of the NOR.*[68] Therefore, if an interest in the land is not acquired until after the notice of requirement, it would not typically act to excuse the requiring authority from the obligation to consider alternatives. In this case the deed was not signed until after the NOR was notified and so would not have acted to relieve the requiring authority of their obligation to consider alternatives. That being said, the willingness of the owner to enter into such a deed could be relevant to this site being chosen in preference to other alternative sites.

[165] Regardless of findings on this point, potentially significant adverse effects would oblige the territorial authority to adequately consider alternatives. Assuming there are such potentially significant adverse effects we go on to consider the evaluation of alternatives.

Alternative sites evaluation

[166] In ***Queenstown Airport Corporation Ltd v Queenstown Lakes District Council***[69] at [18] Whata J set out what is required of an evaluation under s 171(1)(b) of the Act:

> [18] The Court observed that the central issue under s 171(1)(b), dealing with the assessment of alternatives, is whether QAC gave adequate consideration to alternative sites, routes or methods. The Court then adopted the principles stated in the final report and decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project as follows:
> "a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.
> b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods.
> c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.
> d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority.

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[68] *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correction Facility at Wiri,* paragraph [140]

[69] [2013] NZHC 2347

> e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options."

[167] When determining whether alternatives have been adequately considered, the question before the Court is narrow. In essence the question is whether or not the decision was reached arbitrarily. The Court is limited to the process that the authority undertook, rather than whether or not *all* alternatives were considered and whether the outcome was the *best* option. The criteria applied in assessing alternatives are policy matters, and therefore rightly a matter for the local authority process.

[168] In ***Minhinnick v Minister of Corrections***[70] the Court had this to say about the requiring authority's choice to limit alternatives considered based on the nature of the property rights that they could acquire:

> [235] We find that consideration of properties for the corrections facility site was limited to those whose owners were willing sellers. Where the site suitability factors for a public work limit the range of possible alternatives, compulsory acquisition has sometimes to be considered. But the factors making a site suitable for the corrections facility are not so constraining. A requiring authority might then properly make a policy decision to exclude from consideration properties that would have to be taken compulsorily. The authority is accountable in the political arena for that policy. In such a case the Environment Court, whose role is restricted in the way mentioned in the preceding paragraph, should not substitute a policy of its own.

[169] We have already quoted from both ***McGuire*** and ***King Salmon*** on the obligation to consider alternatives and Treaty of Waitangi obligations. Thus, while we acknowledge that the District Council should not exclude land from consideration simply because it is Māori land, the selection of Māori land brings with it the need for a robust and definable selection procedure.

Was the selection of Lot 6A arbitrary?

[170] We had considerable difficulty in understanding the process used by the Applicant to assess alternative sites for treatment and disposal of treated wastewater. No overall summary of the process was provided, and we had to search for and navigate our way through many different documents, briefs of evidence and responses to questioning at the hearing before we were able to understand the process. We had particular difficulty in understanding who had overall responsibility for managing the

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[70] A043/2004

process, the timeline and sequencing of the process, the basis of certain conclusions and decisions, and the reasons why certain things changed at particular times.

[171] It is clear from the evidence and the supporting documentation presented to us that the Applicant focused on a LAF as its preferred method of returning treated wastewater to the environment. While we are not aware that there was an explicit decision by the Applicant, it is common to all sites considered and in the comparison of the long list of options in Table 6.4 of the AEE (Page 157 of Volume 1 of the common bundle) it is stated that *Discharge to land is Ngāti Rangitihi Iwi's preferred method as outlined in the Iwi Management Plan.*

[172] The Applicant's initial intention was that, where possible, the Treatment Plant should be located within or nearby the LAF. While we consider this to be a reasonable starting point, this was not clear to us from the evidence. Based on the intent to co-locate the Treatment Plant and LAF the Applicant used the slope of the site, ground elevation and size of the site as its criteria for its first broad assessment of potentially suitable sites. These are of obvious relevance for the LAF, but of less relevance to a much smaller Treatment Plant if it was remote from the LAF. An outcome of this initial decision is that the criteria used to select the Treatment Plant site may not be appropriate.

[173] Based on the Applicant's initial intention for co-location, the information shown nn Figure 7 of the Map Book (attached here as **Annexure B**) is an adequate starting point for a site evaluation process with a LAF and Treatment Plant on the same site or in close proximity to each other. As addressed by questions from the Court, the title on the figure which says it shows sites under consideration 20/08/2013 is incorrect. The information on the plan must have been available prior to the Extraordinary meeting of the Council on 20 May 2013, when it unanimously voted to proceed with a full reticulated wastewater system at Matatā, and only a small number of sites were under consideration by 20 August 2013. In short, those sites were identified on the basis of co-location. However, we do not know who selected them and why certain sites were excluded.

[174] Ms Krawczyk advised that the Applicant decided not to proceed with analysis of sites which were not available. We are still unclear how that decision was reached. There is no evidence of any enquiry in relation to the inclusion to several sites not owned by the Council. In particular, how site P was offered is a mystery rather than Q, R and S etc.

[175] Ms Krawczyk and Mr Shaw obliquely suggested that the sites considered were derived from a map of over 40 sites attached as **Annexure B**. Yet nowhere in the evidence or the voluminous records can we find how these 40 sites were identified, or how the short list of 4 sites considered by URS was reached. Moreover, that shortlist of sites did NOT include Lot 6A.

[176] We found that in addition to Sites A, 8, W and X, site C was listed as being under consideration in the report considered by the Council at its meeting of 20 May 2013. However, this was not carried through to subsequent documents or referred to in evidence. When the Council instructed URS to undertake a more detailed constraints analysis of the four initially shortlisted sites, it included Site P as a site to be considered as a potential Treatment Plant site, but not for a LAF. We have seen no information on the process used or the reasons why P was included. Nevertheless, site P was included in an assessment undertaken by URS New Zeland Ltd (**URS**) to identify any obvious fatal flaws with the sites from a land use and natural hazards perspective only.

Alternative sites for the waste Treatment Plant

[177] We are left then with a significant issue raised by the Komiti about the selection of Lot 6A for the Treatment Plant only. The AEE produced to the Court makes several statements at 6.5 in relation to treatment and disposal options. Firstly, the options list identifies treatment in a packaged Treatment Plant and LAF in a location close to Matatā. That gives the impression that the Treatment Plant and LAF site were to be co-located. Paragraph 6.5 goes on to say a desktop study was carried out using Geographic Information System (**GIS**) information to prepare a long-list of possible local land disposal sites as shown in figure 6(2). The criteria used to identify these sites were the slope of the site, ground elevation, and the size of the site.

[178] Following the GIS analysis, the red-hatched sites shown on **Annexure B** were selected for further evaluation for *treatment and disposal locations*. There is no doubt in our mind that, in this part of the AEE, there is a conflation of the issue of a disposal (LAF) site with a Treatment Plant. Given the use of the singular earlier, the GIS evaluation considered only a single site to co-locate both the Treatment Plant and LAF. Four sites were identified including that where the LAF is now proposed (sites **A**, **W**, **X**, and **8**) but not site **G** (Lot 6A). In fact the table of the long-list options assessment relied on only five sites:

(a) Sites A and C;

(b) the western inland sites, shown on Annexure B, as W and X; one situated near Waitepuru Stream, the other in a more southerly position near the escarpment;

(c) site 8, the western dune Recreation Reserve (western reserve site) which in fact encompasses the LAF area within it.

[179] Paragraph 6.6 of the AEE provides different information again, and notes that *following the assessment of the long list options in section 6.5 above, the following sites were shortlisted for further consideration*

[180] These are:

(a) five potential sites for the Treatment Plant – A, G, W, X and the western reserve site denoted as site 8;

(b) four potential sites for the Application Field – A, W, X, or the western reserve site denoted as site 8.

[181] We have concluded that the statement is factually incorrect and misleading for the following reasons:

(a) Site G was not in the long list options in paragraph 6.5, nor is Site P. Both were added later.

(b) Figure 6.2 shows only A, W, X and 8.

(c) The list referred to in AEE 6.6 is the shortlist, not the long list of sites.

[182] The Council subsequently instructed URS to undertake additional risk assessment work. A URS memorandum dated 6 September 2013 was prepared at the request of Council to *further develop the register for the technical, constructability, operability and cost risk criteria in addition to the natural hazard risks previously covered. As part of this further assessment, site P was dropped as a potential site and Site G added.* This memorandum addressed a constraints analysis of sites A, 8, W and X and Site G, including Site G for both a Treatment Plant and a LAF.

[183] The GIS analysis undertaken is tabulated in Table 6.7 of the AEE. Site G (Lot 6A) was identified as having the lowest risk score and the lowest weighted criteria score, slightly lower than site 8 (the LAF site).

[184] We were advised by Mr Shaw[71] and Ms Krawczyk that Site **P** was dropped after WDC engineers undertook a site visit, *which confirmed the site was low lying and therefore prone to flooding.*

[185] The inclusion of Site **G** (Lot 6A) occurred sometime between the dates of the two URS reports, between 17 June and 16 September. We understand this came about as a result of a meeting between the Council and Mr Anthony Olsen in his capacity as CEO of Ngāti Rangitihi on 17 July 2013 when Mr Olsen indicated use of Site **G** (Lot 6A) might be possible.

[186] There is no explanation within the AEE as to how site **G** (Lot 6A) was substituted for site **P**, and the evidence of the witnesses was singularly silent on this issue. Niether was in the original list and the inclusion of either is a mystery. Nevertheless, documents buried in the four volumes of documents provided to this Court do elucidate this issue further. The URS report prepared on 17 June 2013 and disclosed in the second volume of documents at page 571, indicates that the GIS constraints analysis undertaken by URS was limited by instruction to an inspection of five sites for Treatment Plant; **A**, **P**, **W**, **X** and **8**; and four sites for a disposal field; **A**,**W**,**X** and **8**. Importantly, site **P** identified in that report appears to be a different site to site **C** identified in the AEE. Curiously, site **P** was selected as the preferred site after the first GIS analysis but removed by August. The reason for the inclusion of **P** later, and the exclusion of all the other sites from **A – Z** and 1-12, was not explained.

[187] Mr Enright questioned Ms Krawczyk closely regarding these issues. It appears that at least one of **W** or **X** was Māori-owned freehold land. She acknowledged that other plans and notifications to the public prior to September 2013 had indicated other sites, and there was no mention of the property in the vicinity of site **G**. She described the green areas in **Annexure B** as based upon land contours, steepness and very general information. Nevertheless she was able to give no insight as to who made that selection and why sites **C**, **G** and **P** were chosen. It is very clear from her answer to a question that **G** was included after July 2013, after a preliminary discussion with Mr Olsen.

[188] In answer to a question from the Court, Ms Krawczyk confirmed that there is not documentation to establish why **C** was removed from the July report and **P** substituted (see page 61 of the Transcript). From this we have concluded, and we understand that Ms Krawczyk acknowledged, that there was no overall constraints

[71] Mr Shaw, Evidence-in-chief, paragraph [27]

analysis and URS was simply asked to comparatively evaluate five identified properties. They did so and were then asked in August to substitute site G for site P, when P at that time was the most preferred option for a Treatment Plant.

[189] Accordingly, from this we conclude as facts:

(a) There was no overall comparative analysis of the sites identified in **Annexure B** through any robust selection process. We are not satisfied the original map identified sites for a Treatment Plant only, as opposed to a combined site.

(b) The Council officers confirmed that no general enquiries as to availability of land were made. Accordingly the availability of the sites was not tested and cannot be claimed as a valid site selection criterion.

(c) There was no comparison between site **P**, the preferred site selected in round one, with site **G**, which was substituted for **P** and became the preferred site in phase 2 August 2013.

[190] The exclusion of **P** and the inclusion of **G** appear to be unrelated to any explicit analysis. We were not assisted by the evidence of Mr Shaw who stated that the long list of sites was selected on the basis of three GIS criteria; slope, ground elevation and size of site. He then says that in May 2013 **A**, **C**, **V**, **W**, **X** and **Y** were visited. Again, there is no explanation as to why other sites were omitted, for example **C** is not identified in the initial report. He then goes on to say that five potential sites were selected. The only explanation contained in paragraph [27] of his evidence is that, between phase 1 and phase 2, the applicant undertook a visit to site **P** and confirmed that the site was low-lying and therefore prone to flooding.

[191] Curiously, the phase 1 report produced by URS explicitly considered the question of flood hazard, and at page 587 of Volume 2 of the produced documents, as part of the appendix A1 of the GIS layers, site **P** is shown to be unaffected by the flood extent in 2004. Even more interesting is the fact that Lots 6A (site **G**) and 7A (site **J**) are identified in that GIS constraints analysis as being Māori land (Lot 6A) and Māori reservation (Lot 7A) but this is given no particular attention in the overall constraints analysis.

[192] Furthermore, contour maps produced to the Court, although not fully encompassing Area **P**, seemed to show it varying between 2-4 metres in height, compared with surrounding land contour of around 1.

[193] We cannot help but observe that of the 4 sites originally short listed by the Applicant (**A**, **W**, **X** and **8**):

(a) Site **A** is a well known historical site of cultural significance.

(b) Two, **W** and **X**, are in areas of debris flow reach.

(c) Site **8** is subject to Tsunami risk.

These matters should have been considered in preparing the original short list.

Was there a proper consideration of alternative sites?

[194] In practical terms the question for this Court is whether the Council properly considered alternative sites for a Treatment Plant. It is quite clear that initial reports were based upon the co-location of the Treatment Plant with the LAF. There is no transparency whatsoever as to how the Council came to identify site **G**, or in fact site **P**, for a Treatment Plant.

[195] There was no general robust comparative analysis of sites, and in fact **G** was substituted for **P** again on the instruction of the Council. Looking at the relevant case law as discussed in ***Minhinnick v Minister of Corrections***[72] whether the Council has acted in an arbitrary or cursory way, or in ***Takemore Trustees***[73] satisfactory or sufficient consideration of alternatives, we have concluded as a fact that there was not a proper consideration of alternative sites for a Treatment Plant. In the evidence before us that selection process appears to have been cursory and arbitrary.

[196] At an earlier time when alternatives were being considered, co-location of both the Treatment Plant and the LAF were clearly the focus. It appears the Council may have entered into the evaluation process with that in mind for site **8**. How **P** was substituted for **C** in that instruction to URS is a mystery, as is its replacement with site **G**. There is a failure in the later report to properly identify the land as Māori land, and it is identified as private land, notwithstanding that the earlier report clearly identified it as Māori land with a Māori Reservation next to it.

[197] In ***Queenstown Airport***[74] Whata J indicated that the greater the impact on private land, the more careful the assessment of alternative sites not affecting private

[72] A 43/04
[73] W23/02
[74] [2013] NZHC 2347, paragraph [121] Wata J

land will need to be. This must be said to be particularly of moment when the land identified is Māori freehold land adjacent to a Māori reservation. In those circumstances we consider that the Privy Council's discussion in ***McGuire v Hastings District Council*** becomes of particular importance. Even if such an examination needs to be no more robust than that for ordinary freehold land, there is no doubt in our minds that in this case there was a cursory and arbitrary selection of site G, based apparently upon an indication from the Trustee that the site would be available for lease.

[198] We have already identified that the Council might properly reject a site because of difficulties with acquisition, or compulsory purchase in particular circumstances. There was no evidence given to us that Site P had become unavailable, or that many of other sites identified as A to Z or 1 to 12 were unavailable for whatever reason. During the course of this hearing Mr Burt advised the Court that Lots **10-12** were currently on the market for sale. According to Mr Burt this is on higher land, back from the immediate fore-dune area.

[199] It is clear from the GIS constraints analysis overlay that this land was Māori land and was next to a Māori reservation (in terms of that overlay). In the absence of any proper explanation as to how the sites identified on **Annexure B** were narrowed down to the five the subject of the original investigation, or the substitution of G for **P**, there is no clear evidence before us as to any robust or clear consideration of alternative sites prior to the decision to notify the Treatment Plant activity on Lot 6A by way of designation.

Conclusions on alternative sites

[200] Ms Hamm's primary position was that, whether or not these alternatives were considered is irrelevant as there was no obligation under s171 to do so. We have already discussed this matter in brief terms. Given our factual conclusions, a few things to us are clear:

(a) there was not a robust and contestable consideration of alternatives, especially for a standalone Treatment Plant, and site G (Lot 6A) was substituted at a late stage,

(b) it was already identified as subject to constraints relating to Māori land; and

(c) at the time of the preparation of the application for consent, the Applicant acknowledged the potential for significant odour issues, and proposed that the relevant activities would be entirely covered and fully ventilated, through a biofilter system. There was still clearly potential for significant adverse effects and thus an odour management plan was proposed

[201] We discuss the question of odour effects later, but s 171(1)(b)(ii) uses the wording of *significant adverse effects*. This wording could either mean before or after mitigation conditions are applied. If before, then the evidence was clear that odour was a potentially significant adverse effect. If it is to be assessed after all mitigation are applied then there is a difficulty in knowing at the time of the application whether alternatives need to be considered. The judgement as to whether the conditions adequately address the effect, so that they are no longer significant, will always be assessed by the consent authority after the evaluation of alternatives has occurred. Thus it would vitiate the requirement to consider alternatives. Given that effects include potential effects, we have concluded that the obligation arose in this case in respect of the Treatment Plant and the LAF to consider alternatives prior to seeking consent. Whilst this seems to have occurred for the most part in respect of the LAF site (cultural issues being an obvious point for further discussion below), the late substitution of site G (Lot 6A) and the exclusion of the majority of alternative sites leads to a considerable issue for the Applicant in relation to the Treatment Plant.

Do the reports as a whole show adequate consideration of alternatives?

[202] Clearly, as we have already noted, ongoing consideration of alternatives can occur, but in circumstances where that might lead to the selection of another site, as in this case, it does not appear that the process that the Applicant adopted is curable before this Court.

[203] We have carefully considered whether, if the matter is looked at on a holistic basis, we can conclude that there has been adequate consideration of alternative sites, even if not in a well-documented fashion. Various sites have been considered and excluded, including areas within the township, site A being the District Council reserve at the western end of Matatā, and for a Treatment Plant at site 8. We also need to keep in mind that the District Council has also acquired an interest in Lot 6A since the time of the notification, and thus would be able to undertake the works on the basis of resource consent. However, we are still left with only a limited understanding of why Lot 6A was chosen over any of the possible alternatives. Thus

we find overall that the review of alternatives was cursory and the site selection was arbitrary.

Treaty principles when using Māori land

[204] Mr Enright contended that, because the Applicant and / or the Consent Authority delegated the consultation process to the Trustees of Lot 6A, they did not adequately consult with the owners. As a result of this inadequate consultation process, Mr Enright submitted that the District Council was not in a position to adequately have regard to the principles of the Treaty of Waitangi, particularly the principle of partnership. The District Council thus breached the principles of the Treaty, which are referred to in s 8 of the Act and in the NOR application objectives.[75] This submission appears to relate to both its role as the Applicant and the Consent Authority.

[205] Mr Enright also referred to the principle of rangātiratanga which together with the principle of partnership raise the following duties:

(a) To be well informed;

(b) To actively protect lands and taonga;

(c) To act with the upmost good faith and reasonableness; and

(d) To promote Māori development.

[206] Considerable evidence was then given in relation to the effects on the beneficial owners and others in respect of the potential establishment of Papakainga on Lot 6A. For current purposes, the evidence was overwhelming, and uncontested, that it had always been intended that one day community facilities and Papakainga housing would be constructed on Lot 6A.

[207] However, despite inquiry by some beneficial owners around 15 years ago no construction has resulted. We also understand that the land has been moribund, given that it is leased to Mr Burt (a neighbour) for the cost of the rate payments and thus has no return to the Trustees or beneficial owners. The position of the Trustees is that by entering into the agreement to lease this land they not only release a sum of money, which can be used in respect of the property, but also provide essential infrastructural facilities at no cost to the Trustees or the beneficial owners. Thus there is a difference

[75] Application, common bundle, Vol 1, Tab 1, page 103 & 104

between the Trustees and the beneficial owners as to whether or not the placement of the wastewater Treatment Plant on this site will enable or disable the establishment of Papakainga housing.

[208] In addition to that, the Komiti and the Raupatu Trust identified issues in relation to both odour and visual impact, which they say are significant and are not adequately addressed by the proposed conditions. We consider these matters below in more detail.

[209] In our view, if regard had been given to the principles of the Treaty of Waitangi, and in particular the duty of active protection of taonga (in this case Māori land) a more fulsome process, including identifying the full history of these blocks, should have identified the cultural and Treaty constraints associated with Lot 6A. This was not done to any transparent degree, as we have had to piece this history together ourselves from the evidence.

[210] The issue is highlighted in ***King Salmon*** where the Supreme Court stated that the obligation in s 8 *will have procedural as well as substantive implications, which decision-makers must always have in mind.*[76] As we noted above, we consider that all that was done in terms of consultation with the owners was reasonable and or cured by this appeal process.

[211] What is not clear to us is why the Applicant, knowing the land was Māori land situated next to a Māori reservation, did not undertake a more review of its site selection process, given that even on its own matrix the site had cultural constraints. Thus we agree that the approach to site selection adopted by the Applicant raises issues regarding s 8 in failing to adequately consider the cultural constraints and Treaty principles.

The RMA provisions in relation to the Application

[212] In relation to the applications for regional consents, these are discretionary and s104 guides their consideration:

> **104 Consideration of applications**
> (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–

[76] *Environment Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38

(a) any actual and potential effects on the environment of allowing the activity; and
(b) any relevant provisions of—
  (i) a national environmental standard:
  (ii) other regulations:
  (iii) a national policy statement:
  (iv) a New Zealand coastal policy statement:
  (v) a regional policy statement or proposed regional policy statement:
  (vi) a plan or proposed plan; and
(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

[213] This will be the focus of consideration of resource consents for both sites.

[214] In relation to the discharge to land consents at the LAF, s105 and 107 are also relevant:

105 Matters relevant to certain applications

(1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—
  (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
  (b) the applicant's reasons for the proposed choice; and
  (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

(2) If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104(1), consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent.

...

107 Restriction on grant of certain discharge permits

(1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—
  (a) the discharge of a contaminant or water into water; or
  (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
  (ba) the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—

  if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:
  (c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
  (d) any conspicuous change in the colour or visual clarity:
  (e) any emission of objectionable odour:
  (f) the rendering of fresh water unsuitable for consumption by farm animals:

(g) any significant adverse effects on aquatic life.

(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—
(a) that exceptional circumstances justify the granting of the permit; or
(b) that the discharge is of a temporary nature; or
(c) that the discharge is associated with necessary maintenance work—
and that it is consistent with the purpose of this Act to do so.

(3) In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

[215] These provisions were not the focus of the parties' cases, and many aspects are subsumed within our broader discussion of effects and the relevant plans. However, both sections are mandatory and require us to evaluate the matters in 105(1)(a) to (c). As will be seen, the receiving environment includes the nearby surface drains, the ORC and the Tarawera River, as well as the coastal outlet and foreshore. We also discuss potential environmental offsets, including riparian planting, wetland creation and retrieval of land for dairying.

[216] However, we do not consider that any party was suggesting that any of the criterion s 107(1)(c) to (g) was likely in relation to the LAF. It appears that the Applicant may have assumed that compliance with the s 107(1)(c) to (g) criteria meant s105 was not relevant. There is no basis for that assumption, and although we accept the application at the LAF does not give rise to concerns under s107, it still requires assessment under s104 and s105 for the discharge to land where it makes its way into water under s15(1)(b).

[217] There is no discharge of contaminants to land or water from the Treatment Plant, and accordingly s107 does not apply.

[218] Section 171 provides:

171 Recommendation by territorial authority

...

(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—
(a) any relevant provisions of—
(i) a national policy statement:
(ii) a New Zealand coastal policy statement:

(iii) a regional policy statement or proposed regional policy statement:
(iv) a plan or proposed plan; and
(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
(ii) it is likely that the work will have a significant adverse effect on the environment; and
(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

(2) The territorial authority may recommend to the requiring authority that it—
(a) confirm the requirement:
(b) modify the requirement:
(c) impose conditions:
(d) withdraw the requirement.

(3) The territorial authority must give reasons for its recommendation under subsection (2).

[219] This section requires us to consider effects having particular regard to a number of matters. In particular, s 171(1)(b) seems to require us to consider these matters in relation to effects. In relation to odour, this requires the Court to not only consider odour as an effect under s104 in relation to the Regional Air Discharge Consent, but whether the adequate consideration of alternatives has led to any effects in respect of the designation.

[220] Importantly, both the discretionary applications and designation consideration is subject to Part 2 of the Act. Furthermore, both must consider the effects of the activity. We conclude nothing turns on the use of actual or potential effects in s104 compared to effects in s171. The s 3 definition of effects includes actual or potential effects, and accordingly is redundant in s104.

Reasonable necessity

[221] A corollary to alternatives in relation to the designation is s 171(1)(c) – whether the designation is reasonably necessary to achieve the objectives of the work. Given the stated overall project objective was stated in 2.1.5.1 of the AEE as:

Overall Project Objective
To work in partnership with the community and Tangata Whenua to achieve a sustainable, long term solution for the collection, treatment and disposal of Matatā's wastewater. The solution shall achieve a high level of public health protection, safeguard the life-supporting capacity of natural

resources, be the best practicable option, and meet the following objectives.

[222] Although referred to in the notice as 8.17 of the A.E.E this refers back to 2.1.5.1.

[223] The objectives are as follows:

Environmental Objectives

- To provide the natural character, indigenous biodiversity and visual amenity of the coastal environment.
- To ensure that the water quality of the Tarawera River is not degraded through the land application of treated wastewater.
- To enable the appropriate disposal of treated wastewater by land application rather than discharge to coastal waters.
- To ensure that the visual impact on the environment of the Wastewater Treatment Plant and Land Application Field is minimised.
- To ensure a high level of compliance with recreational, ecological and water quality standards and guidelines, and Regional and District Planning requirements.
- To promote the efficient use and development of natural and physical resources, and if appropriate the sustainable reuse of wastewater products.
- To avoid, remedy or mitigate significant adverse effects on natural and physical environments including communities within those environments.

Social Objectives

- To ensure that the Matatā Wastewater Scheme achieves the greatest practicable protection of public health.
- To ensure the Matatā Wastewater Treatment Scheme supports development and growth while continuing to meet the needs of existing residents and wider community including their recreation activities in the area.
- To work in partnership with the community, Project Control Group and key stakeholders to achieve a good understanding of the Matatā Wastewater Consents Project, so as to enable genuine and effective consultation
- To achieve more sustainable wastewater management for the Matatā Community.

Economic Objectives

- To maximise the cost effective use of the Ministry of Health subsidy and BoPRC grant.
- To provide an economically sustainable future Wastewater Scheme which will match the anticipated growth in the area, - i.e. affordable for both the existing and growth communities and businesses now and in the future.
- To promote outcomes that ensure sufficient flexibility to adopt appropriate technology and more sustainable solutions in the future, including treated wastewater reuse, where they provide more effective solutions.

- To apply appropriate technology that will protect public health and meet environmental standards and tangata whenua and community aspirations while achieving lowest whole of life costs.
- To meet the current and future needs of the community in a way that is most cost effective for households and businesses, as required by the LGA.

Tangata Whenua Cultural Objectives further being developed in consultation associated with Cultural Impact Assessment (CIA)

- To recognise and provide for tangata whenua as kaitiaki.
- To work in partnership with tangata whenua to share knowledge and achieve a good understanding of this Project, so as to enable genuine and effective consultation, engagement and participation.

Technical Objectives

- To promote outcomes that ensure sufficient flexibility to adopt new appropriate technology and more sustainable solutions in the future, including treated wastewater reuse where that provides more effective solutions.
- To provide a Scheme that can be maintained and efficiently operated to best practice standards.

[224] In particular we note that the Tangata Whenua Objective includes enabling **genuine and effective consultation.**

[225] These objectives were not so much disputed in description but their realisation. It was argued:

(a) There was not a partnership with tangata whenua. The use of this land was not appropriate or in accordance with partnership principles.

(b) No evidence of public health protection, at least in a quantifiable way. Odour from the Treatment Plant was a public health issue.

(c) The Treatment Plant did not sustain the Papakainga potential of Lot 6A or Lot 7A. The LAF did not mention the existing water quality of the ORC.

(d) There was no genuine effective consultation with the beneficial owners of Lot 6A or Lot 7A.

(e) Mr Harris was of the view that septic tanks remained the best practicable option for waste treatment at Matatā.

[226] In short, the Komiti contended that there was no reasonable need to place this Treatment Plant on Lot 6A, particularly if it had the adverse effects contended. Thus, this argument turns on a connection between alternatives and effects. This is a substantive or evaluative test reasonable, involving questions of appropriateness and balance relevant to our overall evaluation under Part 2.

[227] We now turn to consider the Treatment Plant and its effects.

The Wastewater Treatment Plant Application and Lot 6A

[228] The Wastewater Scheme consists of three main components, namely:

(a) Individual property low pressure grinder pump systems (LPGP) and the pressure sewer collection and wastewater conveyance system.

(b) The wastewater treatment system and conveyance to the LAF.

(c) The treated wastewater LAF.

[229] Each property, including dwellings, businesses, the camp ground and marae will have its own Grinder Pump system. This consists of an on-site polyethylene or fibreglass chamber with a single grinder pump in it, a piped connection from the house, a small diameter pumping main to the street and various valves and electrical controls. Chambers are constructed mainly below ground, with the top of the access lid typically 100mm above ground, and provide a minimum of 24 hours storage. System design provides very limited opportunity for stormwater to enter the system, which reduces peak flows to the Treatment Plant. The Grinder Pumps will have no discernible odour.

[230] The Council will construct and own the Grinder Pumps, and be responsible for system operation and maintenance, including pump replacement. Electricity costs will be the responsibility of the property owner and the Applicant's consumption expected in the range of $20.00-$50.00 a year for individual households. Owners will be responsible for monitoring system alarms and for any system misuse or wilful damage.

[231] From the property boundaries, ground up wastewater will be conveyed to the Treatment Plant by 50 to 100mm welded polyethylene pipes and no booster pumping is expected to be required.

[232] The Treatment Plant will be located as shown on **Annexure C**. It will be designed and constructed under a design, build and operate contract to meet performance standards specified by the Applicant and the conditions of any designations and resource consents granted. The Treatment Plant will be provided in two stages to serve an ultimate population of approximately 2,200. It will be designed for biological nitrogen removal and with the provision to add additional treatment to

meet more stringent nutrient removal requirements, and to provide UV disinfection to improve bacterial and virus removal, if shown to be necessary in the future.

[233] Key components of the Treatment Plant will be:

- An inlet storage tank or basin to manage flows into the Treatment Plant, which provides flexibility to store flows for a maximum of two hours in the event of a localised power failure at the Treatment Plant, or other emergency;
- An inlet works to remove grit and large solids, with facilities to store and take solid materials off site;
- A biological treatment stage followed by settling to remove sludge solids;
- An aerated sludge storage tank;
- A sludge dewatering facility, with dewatered sludge transported in sealed containers to Kawerau;
- A filter to remove finer solids from the treated wastewater prior to discharge to the LAF;
- Two treated wastewater holding ponds, one of which could be used to store partially treated wastewater in an emergency;
- A range of mechanical, electrical and flow metering equipment, including pumps and provision to connect and/or install standby power generation; and
- A treated wastewater pumping station and an approximately four-kilometre long and approximately 150mm-diameter treated wastewater pipeline to the LAF.

[234] The Treatment Plant will be fully covered and air extracted and treated in bio filters.

[235] A 20 meter buffer area will be provided around the Treatment Plant.

[236] Access to the Treatment Plant will be via a designated road from the existing Māori road.

[237] Approximately 10,000m^3 of earthworks will be required to construct the Treatment Plant and access road from Thornton Road to the Treatment Plant. As the

design of the works has not been completed, the actual quantity of earthworks is not known, meaning that any necessary resource consents will need to be applied for at a later time.

The physical features of Lot 6A and the locality

[238] As we noted already earlier in this Decision, the Tarawera and Rangitaiki Rivers originally flowed past Matatā and exited in the area now known as Clem Elliot Drive at the western end of town. Subsequent to the creation of the Cuts and the Rangitaiki Drainage Scheme, the Matatā reach of the river has been closed off, even from the Tarawera. Now, through recent remedial work for the debris flow, it is part of a lagoon system and wetland from the Awateririki Stream towards the Tarawera from which it is cut off. This has meant that the Lot 6A site itself gives the impression of being sand dune near the foreshore, whereas in fact it is landward of the now-Matatā Lagoon, with another fore-dune beyond that to the north that fronts the sea. We attach an overhead photograph of the site with the Treatment Plant identified on it **Annexure** C.

[239] State Highway 2 has been constructed on the edge of the lagoon, and Lot 6A rises sharply from that road (which is around 3m above sea level (ASL)) to a peak of 13m ASL. Behind those peaks the area flattens out into a relatively even area for around 100m before dropping down an escarpment around 2-4m to the back part of Lot 6A which is approximately 8-10m ASL. The rolling sand dunes in the front half of Lot 6A are contrasted to the more regular agricultural land at the rear of Lot 6A.

[240] This dune formation carries on from Matatā Township itself and the Rangitihi Marae and Urupa are built on the same fore-dune complex and overlook the rear of Lot 6A. The formation continues through the Burt land, Lot 6A and Lot 7A and then further to the east to the Tarawera River. Behind this dune formation the land drops and is then undulating, regular farmland. It appears to be the edge of the Rangitaiki Swamp in this vicinity. This land is still somewhat higher than other portions of the plain, which seem to be closer to 1-3m than 6m, according to contour data. The Tarawera River and Cut is over a kilometre to the east, and none of the other streams in the area appear to flow through Lot 6A. None of the site is within the flood plain, and we understand that the water table is in general at around less than 2m ASL, and thus well below the level of this property.

[241] Lot 6A itself is a bare site, in pastoral grasses, and shows signs of being irregularly grazed. It is fenced, but beyond this there is little in the way of improvement, trees or other features to the property. To the immediate west is a fenced strip of land, which we have identified as the Māori roadway. Beyond that is land belonging to the Burts, which looks very similar to the subject site and is farmed in the same way. Behind 6A is further land owned by Mr Burt and farmed. Although somewhat slightly lower-lying than the subject site, it still appears to be above the water table and highly productive land. The same can be said of the land to the east of the site; including the area where Mr Burt has a milking shed, barns and farm housing.

[242] To the north of this fronting the State Highway next to Lot 6A, is Lot 7A. The Ōniao Marae, which is in fairly poor condition showing little sign of use. There is a house on the eastern side of this property accessed, as far as we can see, from the Burt's tanker track. There are subdivided properties and housing further to the east on the top of the dune ridge overlooking the lagoon and towards the river.

[243] Although State Highway 2 in this vicinity is open road, the noise on Lot 6A is significantly attenuated by the initial dune height, and is not noticeable from the rear of the site, at least at the time we were visiting. There are significant views from Lots 7A and 6A towards the south, particularly towards Mt Edgecumbe (Pūtauaki) and the hills around Matatā. Nevertheless there are partial sea views from the dune ridge on the front of both lots, and it is apparent that other houses on this ridge have been built to take full benefit of the sea, lagoon and river views. The dune ridge prevents northerly views from the rear of Lots 6A and 7A.

[244] Beyond the State Highway, which provides in a broad sense access to these properties, there seems to be little in the way of council infrastructure. It is unclear whether there is water supply, but there is clearly no wastewater treatment to the properties beyond the town boundary. The access to the site from State Highway 2 directly does seem problematic, given that it is a 100km/h zone and there are very steep rises onto the property. Currently there is no vehicular access directly to Lot 6A, and Lot 7A uses an oblique angle to the State Highway – Thornton Road. Improvements to the state highway, to widen it to allow a pull-off area and to turn into site, are likely to be required.

[245] The Māori roadway on the site has not been developed, but appears as a paper road on the title to Lot 6A.[77] The relevant Native Land Court minutes of 1913

[77] LTO SA275/265

recording the partition of the block into Lots 6A, 6B and 6C indicate that the roadway was laid off at the same time.[78] However, no formal order appears to have been drawn for the roadway. Roadways such as this, by virtue of various statutes concerning Māori land, could be laid out upon partition for the benefit and use of the owners of the new parcels of land created.[79] They were restricted to such owners and/or their invitees unless declared by proclamation to be a public road.[80] No record of such a proclamation being made has been referred to us. Where there has been no proclamation, they are often referred to as Māori roadways. Given that the Applicant now has a lease, there should be no issues raised regarding rights of access over this roadway.

[246] There was some dispute as to what development is permitted on the Māori roadway, which is currently unformed paddock. TheApplicant's view was that they could construct it as road without further consent. They did acknowledge that, in the event that the earthworks went over the Regional Council limits an earthworks consent would need to be obtained. It also appears that part of the formation would occur in the Coastal Environment overlay in the Regional Plan, which may also trigger a consent requirement, but the evidence was unclear on these matters We note that the rear portion is already used as a farm access road by Mr Burt, and the formation of this portion of the road on the rear farmland appears to be relatively straightforward.

[247] We do acknowledge the point raised by Mr Potter in his submissions and questions to witnesses, that the front portion of the site, over the ridge dunes, rises very steeply. Again, no dimensions were given, but it appears that the peak is within 50-60m of the road, and the maximum gradient permitted under the plan is some 1:10. The question of the earthworks required to construct this road, and whether they required consent was unresolved at the hearing. It is certainly not part of the application for consent, and Mr Potter argued that such a consent should have been included within this suite so that the full effects of the activity could be considered.

[248] We acknowledge that the front portion of Lot 6A is within the coastal environment, and accordingly we accept that the entry to the Māori roadway would be within the coastal environment and therefore considerations under the NZ Coastal Policy Statement would arise. Any consents necessary have not been sought for this

[78] Māori Land Court Record - 59 Rotorua Minute Book 144 -147 and see in particular Folio 147
[79] See generally Māori Land Court Record – *Butler v NF Fraser & Co Ltd - Mangawhati 3B1 & Takahiwai* (2013 Chief Judge's Minute Book) 59
[80] Ibid

aspect of the activity, nor can we assume that consent to enable access along the Māori roadway, if required, would necessarily be issued.

[249] It follows logically that we should now discuss, briefly, the access road (subject of a NoR) from the Māori roadway to the proposed wastewater Treatment Plant. **Annexure C** shows the designations on Lot 6A, including the access way.

[250] The wastewater Treatment Plant is situated on the eastern side of the site because of a fault line that passes through the site. The exact reasons for the access road's placement part way through the rear of Lot 6A were not explained. The Applicant seemed to accept that an alignment along the southern boundary would have less impact upon use of 6A. Although Mr Burt did not object to this course of action, he did note that it was lower-lying, and any liquid escaping from the operations of the plant might pond on his property.

[251] The nearest house to the Treatment Plant site is the Burt farmhouse, which is around 200m from the boundary. Mr Burt's home itself is off State Highway 2, near the Māori roadway, and is around 220m from the site. A map showing the site and the surrounding properties is annexed hereto as **Annexure D** (being Figure 20 from the common bundle). As can be seen, Ōniao Marae is also around 200m, and the Ngāti Rangitihi urupa and other residences are beyond 300m, with the Ngāti Rangitihi Marae and nearest residential homes in Matatā itself being beyond the 400m radius shown on **Annexure D**.

[252] For current purposes it would be useful to note that a core issue is the likely adverse effects on any buildings within the 100 and 140m radius, which would include the majority of Lot 6A, part of Lot 7A and some Burt land, all of which is currently used for farming.

The relationship of the site to the coastal environment

[253] The regional plan shows the coastal environment as terminating on the escarpment part way through Lot 6A and adjacent properties – that is probably in the region of 30-50m north of the Treatment Plant and follows the step in the contour visible in **Annexure C** in the approximate position of the fenceline. We have considered carefully the arguments around coastal environment and the various provisions of the plan.

[254] We acknowledge immediately that there is something arbitrary in identifying a line for the coastal environment, but we acknowledge that the NZCPS requires such an approach. We are unanimous that there is a step-wise change in the nature of the environment from the top of the dunes on 6A to the area of the Treatment Plant. We agree that the area of the dunes is within the coastal environment, whereas the area to the rear is farming in nature and more properly located within the rural area, although it does have some coastal influences. Accordingly we are unable to see any problem in the Regional Council's approach to the coastal environment and adopt that line for the purposes of this case.

Cultural Landscape Issues

[255] Before discussing the potential effects of this proposal, we consider the cultural landscape and issues associated with this location. We note the background to the cultural landscape of this location has been fully canvassed above. However, it is important to reiterate that Lot 6A and Lot 7A are associated with owners and beneficiaries who, through their various genealogical connections, hold these Māori land blocks as taonga and that in the case of Lot 7A it remains the last coastal block of land for Ngāti Tūwharetoa that is available at this time for development.

[256] According to Mr Marks and Mr Tamihana, Trustees of Ōniao Marae, they also consider Lot 7A is pivotal in their role as kaitiaki of Ngāti Tūwharetoa's takutaimoana (coastal zone).

[257] The cultural issues asserted from this landscape include:

(a) The need to have regard to the integrated nature of the Māori world view. We note Maanu Paul's statement "Noku te Ao, ko te Ao ahau."[81] Loosely translated it means "I am the world and the world is me." That world is translated through the relationships that Māori have with the sky father and earth mother from whom they determine their identity as tangata whenua. We understand him to believe that the land Māori acquire by discovery, conquest and occupation cements that relationship with the natural world.

(b) A concern for the mauri of the land and the mana or authority of the tangata whenua of both Lot 6A and Lot 7A. This concern relates to the processing of human waste on the land without the necessary ceremonial removal of tapū associated with that waste. When the mauri is affected in

[81] Mr Potter, Evidence-in-chief, Appendix D, page 1137

this way, it was claimed that this would nullify the use of the land for Papakainga. That is essentially because human waste, not generated by the owners, is being processed on the land and thus the earth of the ancestors is being desecrated.

(c) Impacts of any earthworks on waahi tapu identified in the CIAs and by witnesses before us.

(d) Impacts on places such as pito (umbilical cords) and taonga burial areas. There was some suggestion that personal items of Tūwharetoa were buried on Lot 6A.

(e) Proximity to Rangiaohia (Ngāti Rangitihi) Marae and Ōniao Marae, with particular concerns regarding views, sewage overflows/leaks and odour and effects on manuhiri (visitors). The evidence was this could have consequences for the esteem of the marae and the people.

(f) A reduction in the mana of the ahikaa as kaitiaki to look after the land as a taonga, so that it may be passed onto future generations with the mana o te whenua intact. We accept that mana is an issue and that it goes to the heart of the relationship of the tangata whenua and the owners of Lot 6A with their ancestral lands as well as their role as kaitiaki.

[258] We agree with Mr Mikaere that most issues raised in the evidence can be provided for in conditions. In light of the archaeological evidence produced and the conditions that could be imposed, including the Accidental Discovery Protocol to provide for Koiwi, Taonga Tuturu, Waahi Tapu and Waahi Taonga. We conclude that adequate provision can be made to protect waahi tapu. We could also require of the Applicant that the Trustees of the block and the Komiti be given the right to remove any material on Lot 6A prior to excavation works commencing. We further note that iwi see the benefit of a reticulation system, even if they have not openly supported this application.

Use of Lot 6A and Lot 7A for Papakainga

[259] We have earlier discussed the historical situation in relation to land in this area, and the special relationship of the tangata whenua with this area. We also note that Lot 6A and Lot 7A are remnant of lands utilised by Ngāti Awa, Ngāti Tūwharetoa and Ngāti Rangitihi. Lot 7A is the last vestige of lands formerly held by Tūwharetoa ki Taupo and now set aside for the benefit of all Tūwharetoa peoples which would include Tūwharetoa ki Kawerau - Bay of Plenty. As we have already

discussed, there is different ownership to Lot 6A and Lot 7A. Nevertheless, we acknowledge that they seem to have been seen and utilised by a section of the ahi kaa as a unit.

[260] We also acknowledge that Lot 6A appears previously to have had whare, at least in the forward portion, on or near State Highway 2. There was also discussion of Lots 6A and 7A being utilised for gardens. Given that these were both much larger lots at one time, it is unclear what previous uses relate to the retained land.

[261] The unanimous view of all the witnesses we heard from is that it has been a long-held objective of the land owners to utilise this land for community facilities and Papakainga. The Trustees hold the same view, and the issue between the Trustees and the Komiti appears to be how best to achieve that goal given the current use of the land and the lack of income. Although various investigations into development have occurred, there is no longer any house on Lot 6A, although some witnesses recall one in the area of Lots 6A and7A until the 1950s. We turn now to cultural issues, visual effects and the issue of odour. This we discuss further below and when we consider Part 2 issues.

Cultural effects on the prospects of Papakainga

[262] Various witnesses argued that the presence of the plant, and the potential for odour events, had a cultural impact that made the site unacceptable for Papakainga. This nullifying cultural effect, it was contended, will result in no one being willing to live on either Lots 6A or 7A, once it is realised what Lot 6A is being used for.

[263] While we accept that this potential effect is important we also have cultural evidence from Mr Mikaere and Mr Olsen which indicates that appropriate measures may be taken to overcome the cultural distaste obvious in the evidence before us, whilst still providing for the relationship of the owners and iwi with this ancestral land.

[264] We note that the Treatment Plant itself does not discharge to ground. Accordingly, the alleged cultural offence is mitigated somewhat by this proposal as there will be no discharge from the Treatment Plant unless there is a major failure. We conclude the prospects of a leak are very low and would be detected and remedied immediately. This might include failure of either the piping or the tanks, which is likely to occur only in an extreme event. Any minor leaking is a matter that should be

detected by staff and rectified promptly. We see a simple check being to use the boreholes to check there is no contamination of groundwater. The Applicant's experts agreed.

[265] We note that the Applicant had proposed a bund to hold the contents of the plant in a catastrophic failure. That appears to us to be a relatively remote possibility and the bund is an adequate method by which to avoid any adverse effects beyond the site. This means some thought would need to be given to the vehicle entry, to avoid a concentrated escape flow. However, given the area involved is some 5,000m^2, and over half is unlikely to be built on, any bund for containment is not likely to be high. As we understand the evidence, the bund was intended to use cut-to-fill and create a Buffer. The bund shown in the diagrams produced seem to serve no containment purpose, given one side has no bund. The Applicant's landscape experts saw no particular merit in bunding for landscape purposes. Various plans show the bund within the Treatment Plant designation, or within the Buffer area. However, the application and supporting documents do not seek to use the Buffer designation for bunding. To be effective, any bunding would need to be within the Treatment Plant designation, to contain any escaped fluids. No further evidence was given as to why the whole site needed a containment bund.

Odour effects

[266] It has traditionally been seen as good practice to provide a physical buffer between wastewater Treatment Plants and adjacent sensitive uses to minimise the potential for adverse odour effects on those uses. We acknowledge that some Treatment Plants do exist close to, or even immediately alongside, sensitive uses and we anticipate these would be designed for very high levels of odour control. Whatever those circumstances and controls might be, that does not alter the requirement for us to ensure that any odour effects from the Matatā Treatment Plant are appropriate to the land uses.

[267] In terms of what an appropriate buffer distance might be, we were assisted by responses to our questions by Mr Iremonger (Transcript pages 831 and 832) that the buffer distance approach is *tried and true* and that EPA Victoria has developed a formula to calculate an appropriate buffer distance based on the population served by the Treatment Plant. Mr Iremonger considered that by using the formula, he would expect a buffer distance of between 100 and 140 metres to be appropriate for the Matatā Treatment Plant. We acknowledge this is not the formal position of the

Regional Council, but respect Mr Iremonger's professional opinion on this matter. We record his estimates are very much in line with the distance of around 150 metres that we had anticipated would be appropriate based on our own experience. To further consider this matter we referred to the document referenced by Mr Iremonger and this indicated a separation distance of around 150 metres was appropriate for a Treatment Plant the size of the Matatā Plant.

[268] Evidence on odour was given to the Court by two relevant experts, Mr Hveldt and Mr Iremonger. Mr Hveldt's modelling showed relatively low odour plumage from the site. The question, of course, was what assumptions were made for the modelling. The application itself discusses odour effects at paragraph [16.9] of the Assessment of Environmental Effects (**AEE**) and notes:

> The wastewater treatment processes that could produce nuisance odour emissions include the following:
>
> - inlet works;
> - anoxic or anaerobic zones of the reactor tanks;
> - biological treatment tanks;
> - storage facility for treated wastewater;
> - treated wastewater pump station;
> - sludge consolidation de-watering facility;
> - de-watered sludge holding tank.
>
> These components will be covered and the odious air extracted and treated using a biofilter or similar. The biological treatment unit, provided with sufficient aeration, generally has low potential to generate odour. Aeration will or may be supplied with natural processes or mechanically aerated, depending on the final design.

[269] The generality of that description is unhelpful, and led to some confusion on the Court as to precisely what was intended. In answer to queries from the Court, Mr RD Shaw, a water resource engineer, advised that everything was to be covered. Questions then arose as to whether this was in order that all air could be extracted and treated through a biofilter. Unfortunately, as the case progressed, matters did not become any clearer. In answer to questions Mr Hveldt advised:

> Our modelling assumes that everything was covered, and everything was extracted to a biofilter. We modelled from the surface of the biofilter.

[270] It was acknowledged by Mr Hveldt and Mr Iremonger that odour escape events occur – not regularly, but not infrequently. It is in the nature of the process that covers are opened for any number of reasons, particularly when there has been a failure of a particular process.

[271] At the time of our visit to the Maketu plant, which was advised to us as an exemplar of the type of design intended here, the sludge cover had been missing for some unknown period of time, and there was a strong and objectionable odour at and near the plant. If there had been residential buildings within 100m, and lower speed winds, it is more than likely that there would have been odour complaints. There was also evidence at the time of our Maketu visit that the emergency dump pond had been previously used, but we are unclear what odour was associated with that. It also appeared that there may have been a number of problems during the commissioning period leading to the release of odour. We note that that Maketu plant is largely uncovered, with only the inlet structures and sludge de-watering elements and aeration compressors covered.

[272] Under questioning, both Mr Hveldt and Mr Iremonger recognised that the 100-150m buffer has the advantage of dealing with these short-term odour releases, which they acknowledged could be problematic in proximity to residential areas. It is clear that both Mr Hveldt and Mr Iremonger prepared their evidence on the basis that this was farmland, and that there were no receptors within 150m of the plant. Mr Hveldt was unhappy with the concept of defining the FIDOL factor location as assuming a residential standard of amenity would need to be maintained at the buffer boundary. This strengthens our conclusion that, as currently proposed, there are likely to be occasions of significant adverse effects of odour if any residential buildings are built within 100m to 150m of the plant.

[273] Given no such residences could be erected without obtaining resource consent, Ms Hamm for the Applicant suggested that we should disregard such a potential effect, notwithstanding the agreement of the Council to provide services to such buildings if they are consented and erected. In doing so she turned the Court's attention to the decision of ***Queensland-Lakes District Council v Hawthorn***[82] and its definition of existing environment.

Is potential Papakainga part of the existing environment for receiving odour impacts?

[274] This brings us to the question as to whether or not cultural expectations, as they lead to a relationship between Māori and their land as a taonga, should be seen as part of the existing environment. We accept Mr Enright's submission that the ***Hawthorn*** decision was not focussed on this issue, and cannot be seen as deciding

[82] (2006) NZRMA 424

that such cultural relationship and expectations are not part of the existing environment.

[275] Clearly, construction of Papakainga would require consent as a discretionary activity. We have therefore concluded that we are not able to take into account Papakainga itself as a part of the existing environment. Nevertheless, we acknowledge that the impact of such odour upon the clear objective of the owners to develop Papakainga and community facilities on this site is a cultural effect which can and must be taken into account under the Act. It would clearly impact on the relationship of those persons with this residue land holding, particularly for its stated purpose as Papakainga and community facilities.

Conclusion on odour effects

[276] We conclude that a failure could occur where the air isn't going through the biofilter, or there is some failure of the biofilter. Mr Hveldt later confirmed that the modelling was done on the basis that the system was working properly, and that there was no odour escaping, ie *all* air had been treated through the biofilter. Mr Hveldt acknowledged that there were problems with covers being removed or doors being opened, extraction fans failing, and bio filters failing.

[277] Given that there was no further evidence advanced as to *how* these contingencies were to be covered, the question then left for the Court is if a building wasn't used to cover the plant, how would the items be covered when any maintenance work (particularly when there had been a failure of a particular item), was being undertaken? Otherwise, in those events where an odour pulse is released, it is uncontrolled and has not been modelled.

[278] We acknowledge Mr Iremonger's concession in questions that a buffer zone of 100-150m is good practice. We agree entirely. That does not mean that a Treatment Plant could not be compatible with housing, if unusual steps were taken to reduce the prospect of propagation of odour.

[279] One way would be to include all the elements of the plant within a building. That would enable an air handling and treatment system that would mean that all elements could be processed and air quality maintained through a single biofilter system. It may be theoretically conceivable to design a system other than a building that would cover all elements of the plant (one assumes including the emergency

pond) and provide some form of either reticulated air handling or individual extraction or biofilter mechanisms for each element.

[280] Accordingly we have concluded that:

(a) without a suitable design for covers and biofilter extraction, there will, from time to time, be objectionable odours at the boundary of the Treatment Plant;

(b) the buffer zone is inadequate to provide any amelioration of such odour and a separation distance of between 100-150m is appropriate.

(c) There could be significant practical difficulties in fully enclosing the Treatment Plant in a building as the Applicant has limited the maximum height to 3.5 m.

(d) This will affect the relationship of the beneficial owners of this land with the land when the clear, common expectation and understanding is that the land is available for community use and Papakainga at some time in the future.

[281] Given the unwillingness of the Applicant to provide any detailed design that might satisfy us that this issue can be overcome, we presently see this as a major impediment, giving rise to significant adverse effects and thus relevant to the question and determination of alternatives under s171(1)(1).

[282] We should finally mention that sludge trucks would be removing material on a regular basis (once or twice a week) to the Kawerau plant, and the issue of ensuring that these are air-tight and do not drip is critical. Odour effects along the roadway and State Highway would have a significantly wider potential impact, as would failure to seal any trucks used to pick up waste material.

Visual effects

[283] Our site visit made it very clear that there were views over the Treatment Plant at Lot 6A from the Ngāti Rangitihi Marae, several hundred metres to the west, and its adjoining urupa and parking area. Similarly, on Lot 7A from the top of the dune behind Ōniao Marae (not on the marae itself), clear views can be obtained over the Treatment Plant area. All of the rear portion of Lot 7A would have a clear view

into the Treatment Plant. Some buildings on the upper portion of Lot 6A and all of the rear area adjacent to the Treatment Plant would have views of the Plant.

[284] We were unable to consider the effects of the roading given the lack of any application for consent, but it appears that this may also create some significant visual effects, particularly if there needs to be a major cut to obtain appropriate gradients from the State Highway over the initial portion of the site. Towards the rear of the site it is likely that the current ground levels would be largely maintained, but the roadway itself would be relatively clear, as would any waste trucks using it.

[285] By the end of the hearing the Applicant had modified its position to suggest that one possible approach would be to utilise a landscape plan for the whole of Lot 6A, which would enable planting to occur that would not only screen the plant, but would provide amenity improvements to the site as a whole, in the event that Papakainga or community facilities were eventually constructed.

[286] From the Court's perspective this would also enable consideration to be given as to whether or not intermediate planting should be provided on the roadway to screen views from Ngāti Rangitihi Marae and the urupa towards the site, and whether other planting elsewhere on Lot 6A may provide strategic relief from views into the site, for example from the land behind the marae. Given the fact that the frontage to the State Highway is higher than the area for the Treatment Plant, intermediate planting provides the opportunity to obscure (partly or wholly) views of the plant and/or building in which the plant is contained. There would be nothing unusual in such an approach given the wide-ranging use of both shelter belts and planting surrounding other buildings in this area.

[287] We acknowledge the thoughtful evidence of the landscape witnesses on these matters and consider, on the basis of a landscape plan covering the whole of Lot 6A and the roadway and accessway, that conditions could be imposed that would render any continuing visual effects minimal.

[288] We have concluded that the visual effects can be addressed by a comprehensive development and planting plan, which takes into account the potential for Papakainga on the site, and that other measures can be incorporated into the conditions to address these concerns.

[289] Intermediate planting between the Ngāti Rangitihi Marae and urupa, the rear of the Ōniao marae on Lot 7A, and the Burt dwelling, would all have the effect of ameliorating views towards this area, and thus mitigating the effects. We appreciate that a building may have more visual effect than elements of the plan itself. The question as to whether piping, as opposed to the bare face of a building, have visual effect is a matter of personal choice, and in the end no witnesses expressed strong views one way of the other on this issue.

Benefits of reticulation to Marae

[290] There was much evidence given to us that the installation of infrastructure and the promise to connect Papakainga was of no real benefit to the owners or beneficial owners. We do not agree. We have concluded that the ability to connect to a wastewater system, to obtain water, and to have the roading placed along the length of the site is a considerable advantage to the owners of the property and would enable the construction of Papakainga, other community facilities such as a camp ground, with relative ease. When this is added to proposals for a comprehensive landscape development plan for the site, there are significant advantages. The question for this Court, which we will need to evaluate as part of the overall exercise, is whether those benefits are sufficient to overcome the potential adverse effect of odour from the property. In this regard we will discuss potential mitigation conditions beyond those proffered by the Applicant later in this decision.

Evaluation of effects

[291] Overall, our concern is that the odour from the plant is a probable intermittent effect of this activity. Although the Applicant frequently stated that there will be no odour, the reality is somewhat different. Mr Iremonger, for the Regional Council, acknowledged that a buffer zone, of between 100-140m is utilised by most councils for good reason. There are exceedences, and this gives an opportunity to avoid or minimise adverse effects. He expressed increasing concern when the concept of having a building with full extraction system was altered to one without a building and full extraction. Even with full covering and exhaust treatment system he acknowledged that there was the potential for actions of individual workers to allow odour to escape.

[292] We have considered carefully the concept of covering various tanks and / or ponds. Though we had understood originally that there was an undertaking that all of

these areas would have the air extracted, and that this is what was stated in the AEE, we are not now clear that the Applicant intends that course of action. The Applicant did not outline a full building solution to cover and extract odour. Otherwise the placement of covers over odorous materials creates an additional concentration of any odour. If the cover is removed then the odour escapes.

[293] Overall we have concluded that the prospect of periodic significant odours arising from this site is clear. Although the Applicant's proposals would mitigate this effect they would not avoid it, and accordingly we must assume that there would be escape of objectionable odour beyond the 20m buffer from time to time. As rural land, the effect of this is not likely to be significant on the nearest houses (some 200m away). However, it represents a significant constraint to the construction of Papakainga within 150 metres of the Treatment Plant. To date we have not seen any mitigation sufficient to satisfy the Court that this activity can be conducted without periodic significant adverse effects of the Treatment Plant on that relationship and legitimate expectation for Papakainga.

Additional matters

Management of surplus excavated material

[294] There was a clear cultural preference to retain the excavated soils on the site and the Applicant intends to do so. Depending on the depth of excavation on the site, there may be considerable material required to be disposed of. At this stage there is no particular arrangement with the Trustees of 6A for the use of that fill on the site. It would appear that if there was sufficient material, there may be benefits in building up 6A more evenly to enable Papakainga, housing and other uses. That is a matter we would expect to be subject to conditions if consent is to be granted.

The linking of the three designations

[295] The Court has a significant concern as to the breaking up of these three designations in the way proposed, and the potential to operate some designations but not all. It appears to us that this would need to be addressed by requiring as a condition precedent of all designations that all other designations were also utilised as a unit. Of course difficulties arise in respect of, for example, the access way where the parties may in the end determine to adopt an alternative access way and not utilise the designation. Alternatively, this Court might move the designation to the rear of

the site – that is a matter that would need to be addressed by way of conditions if consent is appropriate.

Groundwater bores for monitoring and water supply

[296] It was noted at least one bore has been placed on site, and we were told by experts that this could easily be used for groundwater monitoring to ensure that there were no leaks to groundwater from the wastewater Treatment Plant. We believe such conditions to be essential and we understand they may now have been included in the proposed conditions.

[297] So far as taking of water is concerned, this is mentioned in the AEE but there was no discussion by witnesses of this. Given there is no evidence on the issue we are unable to consider this matter further.

The Land Application Field (LAF)

[298] The proposed LAF is located on the coastal dunes to the east of Matatā. The dunes rise to approximately six metres above sea level, and form an undulating plateau that extends approximately 150 metres inland from the beach. The back dunes drop sharply to farmland that has an elevation of approximately 1m above mean sea level (**ASL**) and is relatively flat.[83] The pasture extends approximately 300m to the south before it meets the ORC.

[299] The proposed LAF is located on top of fine medium dune sands that extend to 6.5-7.5 metres below the surface and are underlain by pumicsous/rhyolitic sediments comprising predominantly coarse sands and fine gravels. In the fore dune and beach area tidal fluctuation and wave run-up creates groundwater levels in excess of mean sea level near the beach. As groundwater beneath the farmland is approximately one metre below mean sea level, the ground water flow direction under the LAF is inland towards the farm drains.

[300] The Orini River formerly flowed from the Whakatāne River, parallel with the dunes, through to the Rangitaiki River. The Rangitaiki then flowed to the north, then parallel to the ocean (ORC) before joining with the Tarawera River to the west and exiting in front of Matatā.

[83] Mr Kirk, Evidence-in-chief, paragraph [12]

[301] It was suggested by the Regional Council that there may still be some hydraulic connection between the Rangitaiki River and the remnant ORC, but no examination of this has been undertaken. Nor was there a suggestion that there was any significant amount of groundwater finding its way through that channel, given that most of the water is introduced from the farm drainage system. The ORC is either gravity fed from farm drains or, in some cases, such as the Robinsons farm to which the LAF is adjacent, pumped up to the ORC. This is essentially now a perched channel in the middle of the farm paddocks in this area. It is covered by the Tarawera Catchment Plan, and is also part of the Rangitaiki Drainage Scheme.

[302] The Robinson farm paddocks are in the former river bed, as are its surrounding wetlands, and lie between 1 and 2m ASL. This area has always been identified as wetland and swampy, and it was clear to us from our site inspection that, without constant pumping, it would be likely to revert to that condition quickly. We were told it is not stocked in winter and can have standing water in the paddocks.

[303] Given that the area to the west of the Tarawera in front of Matatā is now in wetland-lagoons, we suspect that the Robinson Farm would naturally revert to a similar condition. We have already noted that the water in the ORC flows from east to west, and exits through a flap-gate structure and pump structure at the Tarawera River.

[304] The LAF will have an area of approximately 4.6 hectares, and will be located on sand dunes within the Western Recreation Reserve as shown on Figure 6 in the bundle of drawings. Treated wastewater is expected to be discharged by sub-surface drip irrigation at a depth of up to 300mm below ground, with distribution pipes installed by mole plough. No vegetation clearance is planned. Final details will be determined by the contractor in accordance with a design/build/operate contract. The system will include filters, control valves, a flushing return pumping station and associated rising main (to return chlorinated water used to flush the system to the Treatment Plant), security and communications.

[305] No stripping of grass sward or topsoil is to occur at the LAF site, and the ground cover of the dunes is to be protected as far as possible. Approximately four kilometres of irrigation pipe and associated components will be used, in addition to distribution mains, sub-mains and flushing pipelines. The flushing pumping station will be approximately 1.8m x 1.8m by 1.8m, and partially buried to minimise visual effects. A new access road, approximately 600m long by 6m wide, will be

constructed to connect with the existing access road on the adjoining property. The total volume of earthworks for the LAF and access road will be 5,500m^3, of which 4,900m^3 is within an Erosion Hazard Zone.

[306] Treated wastewater will be applied at a rate of 30mm per day, which at the maximum design wastewater volume of 605m^3 per day will require an application area of 2 hectares. The total irrigation area available is approximately four hectares, which provides capacity to rest disposal areas on a seven day on/seven day off basis.

Cultural landscape in the vicinity of the LAF

[307] As noted above the LAF is situated on the eastern side of the Tarawera River within the fore-dune formation. All the tangata whenua tribes have claimed this area as culturally important to them. The importance of the LAF area is understood by Māori in the context of their history, culture, land ownership and activities centred upon water resources.

[308] We start by noting that on the western shore of the Tarawera River mouth are the Ngāti Awa and Ngāti Tūwharetoa nohonga (occupation site for lawful food-gathering and fishing), both respectively 1 hectare in size, returned to the tribes through the Ngāti Awa and the Ngāti Tūwharetoa treaty settlements in 2005.[84] The Ngāti Awa and the Ngāti Tūwharetoa nohonga are within the Department of Conservation Te Awa o Te Atua Wild-life Reserve at the river mouth.[85] Once Ngāti Rangitihi settle their Waitangi claim it is likely that they will also receive a nohonga in this area.[86]

[309] The settled tribes have statutory acknowledgements for their relationship with the Tarawera River and the Rangitaiki River.[87] In terms of the Tarawera River, both tribes have different stories concerning their creation and how they were named. These different stories are recorded in those statutory acknowledgements.[88] However, for our purposes we note that both statutory acknowledgements include what we have

[84] Ngāti Awa Claims Settlement Act 2005, Schedule 2 & s 92; Ngāti Tūwharetoa (Bay of Plenty) Claims Settlement Act 2005 Schedule 2 & s 75
[85] Application, common bundle Vol 1, page 326
[86] Waitangi Tribunal *The Ngāti Tuwharetoa Ki Kawerau Settlement Cross-Claim Report* (Wai 996, Legislation Direct, 2003) pages 34-42
[87] Ngāti Awa Claims Settlement Act 2005, Schedules 11 & 12; Ngāti Tūwharetoa (Bay of Plenty) Claims Settlement Act 2005 Schedules 7 & 8
[88] Ngāti Awa Claims Settlement Act 2005, Schedule 12; Ngāti Tūwharetoa (Bay of Plenty) Claims Settlement Act 2005 Schedule 8

called the ORC, due to its fresh water content, whether it is a stream or modified watercourse.[89] Once Ngāti Rangitihi settle it is likely that they will also receive such a statutory acknowledgement.

[310] On the eastern side of the river is the cemetery, Otaramuturangi urupa (set apart as a Māori reservation under Te Ture Whenua Māori Act 1993) and in which Ngāti Rangitihi, Ngāti Awa and Ngāti Tūwharetoa have an interest.[90]

[311] The cemetery abuts land owned by Ngāti Awa which was returned to them pursuant to the Ngāti Awa Claims Settlement Act 2005. That land is known as Te Toangapoto.[91] It is depicted on early maps of the area.[92] The land is land-locked and is classified as a reserve subject to s 17 of the Reserves Act 1977.[93] Ngāti Awa wishes to have access via the informal road along the coast formalised, if the LAF proceeds.[94] The Pt Allotment 273 Rangitaiki Parish Recreation Reserve upon which the LAF will be situated is immediately adjacent to and bordering this land along the coastal dunes.

[312] Ngāti Tūwharetoa also has a block in the coastal dunes known as Te Wahieroa south-east of the LAF. It was returned as part of their settlement in 2005.[95] It is also adjacent to the Pt Allotment 273 Rangitaiki Parish Recreation Reserve upon which the LAF will be situated.[96] Te Waihieroa is depicted on early maps of the area.[97] The land is classified as a reserve subject to s 17 of the Reserves Act 1977.[98] Waihieroa was described by the Waitangi Tribunal as the point midway between the mouths of the Tarawera and Rangitaiki Rivers, where hapū with joint whakapapa to Ngāti Awa and Ngāti Tūwharetoa demonstrated customary allegiance to both iwi.[99] It was a significant landing place for many waka, an ancient canoe-building and marae-site and mahinga kai (food-gathering) area.[100]

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[89] Ibid
[90] Application, common bundle Vol 1, p 341 for Ngāti Rangitihi, p 328 for Ngāti Awa; p 345 for Ngāti Tūwharetoa
[91] Ngāti Awa Claims Settlement Act 2005, Schedule 1; Proposed Matatā Wastewater Scheme - Map Book, Figure 6
[92] see also Exhibit "K" Map 3
[93] Ngāti Awa Claims Settlement Act 2005, s 32
[94] Application, common bundle Vol 1, pp 325, 329
[95] Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005, Schedule 1; Exhibit "J" Map 1 & 2; and see Proposed Matatā Wastewater Scheme - Map Book, Figure 6
[96] Proposed Matatā Wastewater Scheme - Map Book Map 6; Application, common bundle Vol 1, p 345
[97] see also Exhibit "K" Maps 3 & 4 and Exhibit " J" Maps 1 & 2
[98] Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005, s 28
[99] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) p 20
[100] Waitangi Tribunal *The Ngāti Tuwharetoa ki Kawerau Settlement Cross-Claim Report* (Wai 46, Legislation Direct, 1999) p 38

[313] Effectively this means that the Whakatāne District Council Reserve and LAF site is between both the Ngāti Awa and Ngāti Tūwharetoa settlement lands. Given the District Plan requires the Treaty settlements to be identified, it is curious that the reference in the AEE simply identifies the Treaty statutory acknowledgements, not the re-vesting.

[314] In addition, we note that the land directly opposite the current access via the bridge and road access to the Robinson property leading to the LAF site, and at V15/1209 in the archaeological evidence, is referred to as the Matatā Pā.[101] This pā along with the Omarupotiki Pā (now on the opposite side of the ORC facing the Te Toangapoto block – in evidence as V15/1020) were once Ngāti Awa island pā and are now (after drainage) Māori land blocks.[102] Having checked the Māori Land Court record, the first block is Lot 102 Parish of Matatā and the second is Lot 100 & 101 Parish of Matatā.[103] These blocks were awarded back to "Loyal Natives" under the Confiscated Lands Act 1867.[104]

[315] Given the topography of the area, any contaminants in groundwater from the LAF that may be discharged into the ORC will flow through Lot 100 & 101 Parish of Matatā toward the Tarawera River or it could flow back upstream.[105]

Effects of the LAF

[316] The issues for the LAF can be separated into two themes:

(a) cultural issues; and

(b) potential impact on surface waters, particularly the ORC and Tarawera River.

Cultural issues

[317] There are four issues raised relating to the LAF, being:

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[101] Exhibit "H" Archaeological Assessment of Proposed Matatā Waste Water Scheme, Matatā, Eastern Bay of Plenty (April 2014) p 10; and see Māori Land Court Record - Lot 102 Parish of Matatā

[102] Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) p 61; see also Exhibit "K" Maps 3 & 4 and Exhibit " J" Map 1; Ngāti Awa Claims Settlement Act 2005, Schedule 12; Application, common bundle Vol 2, p 632, and see Māori Land Court Record Lot 100 & 101 Parish of Matatā

[103] LINZ Identifier 308871 & LINZ Identifier 308885

[104] LINZ Identifier 308871, attached plan 16052; see also Waitangi Tribunal *The Ngāti Awa Report* (Wai 46, Legislation Direct, 1999) p 82

[105] Proposed Matatā Wastewater Scheme - Map Book, Figure 2

(a) original names;

(b) food gathering and fishing sites;

(c) potential earthwork impacts on cultural sites and koiwi; and

(d) views from nearby Māori land

Original names

[318] All the iwi of the Tarawera Catchment wanted the original place names used for the ORC, Wahieroa, Te Toangapoto, Te Awa o te Atua or Tarawera River.[106] The Applicant has agreed to this and we would require this in the conditions if the consent is granted.

Food gathering and fishing sites

[319] In terms of food gathering sites, there was no evidence that the ORC has been used for food gathering. Food-gathering in the main occurs on the Tarawera River or at the mouth. Given the importance of the nohonga for the iwi at the river mouth, the inanga hatchery and the clear terms of the NZCPS, we conclude that improving the discharges from ORC will provide benefits for food-gathering and fishing.

Avoiding significant cultural sites and Koiwi

[320] The area adjacent to the Tarawera River to the west of this particular site has been identified as the urupa – Otaramuturangi. Immediately next to it is Te Toangapoto, the LAF site and then Te Wahieroa. Opposite the LAF and in the vicinity are the two Māori land blocks. We would require the Applicant to make every effort to avoid any disturbance of these sites.

[321] In terms of koiwi, Mr Potter raised the question of whether or not koiwi are buried within this area of fore-dune across the subject site. The view of the Raupatu Trust is that the proper course is to use ground-penetrating radar to identify these and ensure that they are either left undisturbed or, if they must be disturbed, that they are removed in a culturally appropriate way.

[106] Ms Hughes, Evidence-in-chief, paragraph [36]

[322] The Applicant has proposed a discovery protocol, which has been agreed to at an iwi level, but is not accepted by the Raupatu Trust. Mr Potter summarised their position as a concern that the people using the digger will not be looking to see what they are disturbing, even if somebody is on site as a cultural advisor.

[323] We have carefully considered these concerns and have concluded that we can accommodate that issue through conditions. We note the Applicant recognises the need to properly train operators and all workers in this area, and there is an extensive induction process intended to ensure that the workers doing this work are aware of what to look for, and their obligations under the resource consents and in terms of cultural protocols. Although the wording of the cultural protocol might be improved, it is clear that its intent is to recognise and provide for the relationship of the various iwi to this area, to ensure that a proper procedure is adopted, firstly to identify any matters of cultural interest, and secondly to ensure that they are treated in a culturally appropriate way.

[324] Given the limited impact of the LAF field, we are satisfied that these matters are currently addressed by the application without the need for further conditions. Any potential adverse effects would be minimal, given these conditions.

Views from Te Toangapoto and Te Wahieroa to the LAF site

[325] In terms of the request for some screening of Te Toangapoto and Te Wahieroa, we consider that this may be achieved by appropriate planting of species such as Thornton Manuka in keeping with the environment and we will require a new landscape plan to be developed with Ngāti Awa and Ngāti Tūwharetoa to discuss the details.

Groundwater

[326] The Applicant's case was prepared on the basis that there would be full attenuation of all human pathological substances before the wastewater reached the first intercept drain, which we understand to be in the position approximately of BH806 or the lateral drain between SW3 and SW2. Refer to **Annexure E** (figure 8).

[327] We are told that wastewater travelling from the LAF through the dunes and surfacing by whatever means at those positions is likely to have been at least one year

from discharge, and accordingly any pathogens would have died well before reaching that exit point.

[328] However, both the expert witnesses for the Applicant made an assumption that there would be no attenuation of Nitrogen (N) or Phosphorus (P) in that process. They recognised that:

(a) this was a worst case scenario, and most wastewater would have travelled a further distance through the ground before surfacing;

(b) given that the wastewater was placed in the root zone it is likely that some N or P would be caught up in that plant growth;

(c) bacterial and other adsorption characteristics of the sand would develop over a period of time, and likely utilise some of the N and P;

(d) as a result they would expect some attenuation of N but probably little in respect of P.

[329] The end result of these formulations was to achieve contaminant of N and P at the levels of contaminants in the drain water being discharged to the ORC and other locations downstream shown in the Table 5 from Dr Chen's evidence as follows:

Table 5 Estimated contributions of TN and TP from treated wastewater into the aquatic receiving environment.

Parameter	Treated Wastewater	Groundwater		Surface Drainage Network		Orini Stream				ANZECC 2000 Guidelines Trigger Level
		Background	Impacted	Background	Impacted	Current background	Impacted (within 20m radius of discharge point)	Impacted further upstream or downstream (assuming 6:1 dilution)	Impacted further upstream or downstream (assuming 20:1 dilution)	Lowland rivers, slightly disturbed ecosystem in New Zealand
TN (mg/L)	15	0.2-1.5	10-11	0.3-1.5	2.5-3.5	1.5-2.0	2.25-3.05	1.92-2.58	1.62-2.18	0.614
TP (mg/L)	10	0.02-0.1	7	0.05-0.2	1.5-2.0	0.05-0.16	0.5-0.75	0.30-0.49	0.12-0.26	0.033

[330] It is clear that the estimated level of discharge, in particular of N and P is a significant increase over the current level. It is acknowledged that there would be an adverse impact on water quality in the ORC; however the position for the Applicant is that the water quality levels for N and P particularly are already above those of the ANZEC guideline levels. Given that they are below the new national freshwater policy, and that there was no effect on ecology, their view is that the increase in discharge was acceptable.

[331] In short, the water discharged from the drains to the ORC would represent a significant increase in contaminants, N and P. As we set out later this appears to fly in the face of the various planning documents relating to this area that seek variously improvement in water quality, reduction in contaminants and maintenance of water quality.

Is the LAF the best practicable option?

[332] It was suggested that increased contaminants to the ORC was the best practicable option. However, the relevant Applicant and Council witnesses acknowledged that the treatment of surface waters within the Robinson farmland would lead to a significant improvement in the N and P levels. In fact one witness commented that the exclusion of stock from this area would, in itself, lead to a significant improvement.

[333] From this we conclude that best practice in this case would be that the farm area between the LAF and the ORC be retired from farming and allowed to revert to wetland. That is clearly not within the scope of any application before the Court at the current time, and the land is not subject to any right by the Applicant to undertake such work. The scale of the work necessary to attenuate the extra N and P from the LAF is also unclear. No specific evidence was given to us as to what portion of the site would need to be retired from farming and/or planted in wetland to achieve maintenance or improvement of the N and P levels from the Robinson farmland.

[334] Some witnesses suggested that even a wetland planting at the toe of the dunes, say 5-10m deep, would improve the water quality entering the farm drains and thus being pumped into the ORC. Furthermore, it appears that riparian planting, at least along the main lateral drain, and along the drain leading to the pump, may also have some beneficial effect even if stock remain on the paddocks. Again, there was no quantification of this so we are unable to reach a firm conclusion as to what level of work would be required on this land before existing discharge levels of nutrients could be maintained or improved.

[335] However we conclude that there are options available to treat wastewater reaching the surface. Given there is already a lease in place for the LAF with the Robinson family we had no explanation as to why the treatment discussed could not be undertaken.

Does the level of the nutrients in the ORC matter?

[336] As we have already noted, the ORC is already enriched over ANZEC guideline values, and the stream itself is not limited for plant growth as to either N or P. In short it is a poor quality arterial drainage channel and discharges into the Tarawera River several hundred metres from its outlet to the sea. In broad terms, the volume of the Tarawera River is so great that the dilution of the ORC waters would result in no detectable change after reasonable mixing. There seems to be an assumption that its discharge so close to the river outlet means it can be discounted as an impact on the river

[337] Again, the question of reasonable mixing was one that was not explicit, and we are unclear whether this means 1-metre, 10-metres or some other figure. Nevertheless, the clear evidence was that given the current condition of the Tarawera River there would be no more than a negligible impact upon the water quality, after such reasonable mixing. The water is likely to exit fairly immediately to sea. We make the point that this position was strengthened after further information was obtained about the drainage works. It appears that the drainage channel releases during the outgoing tide and closes on the incoming tide. Although we acknowledge that some waters mixed with the river water would be driven up the channel before the flap gate closes, the majority of water would leave the channel during the outgoing tide.

The impacts on the Tarawera River

[338] The Tarawera River is already significantly compromised due to other contamination, notably the pulp and paper mills. This matter was subject to a separate decision by the Environment Court several years ago, and the Court consented to the discharges on the basis of an improving water quality regime during the 35 year period of the consent. As well as this, the Catchment Plan seeks to improve inputs generally, and this involves issues relating to the Edgecumbe and the Kawerau wastewater Treatment Plant and other discharge points, including from the Rangitikei Catchment System.

[339] We were told that there would be no ecological impact on the inanga hatchery just adjacent to the outlet, or on the bird colony on the opposite bank. Furthermore, given the negligible impact on water quality generally within the Tarawera River, any stream waters that are discharged on an incoming tide and are

driven up the Tarawera River or the channel are unlikely to have any discernible differences from the Tarawera River generally. It is clear that there are already increased nutrient levels in the river, including N and P, and lignite leads to a dark colouring of the river and accordingly limits light penetration.

[340] Nevertheless this estuarine area is very important, as is the confluence of the River with the sea. This is evident by the Department of Conservation areas adjacent, birdlife and inanga hatchery. We are told of its cultural importance although a remnant of the Te Awa o te Atua.

Conclusions as to impacts on the Tarawera River

[341] It is the Applicant's case that there would be no discernible impact on the river's water quality after reasonable mixing. Provided there was a condition to that effect, and that the mixing zone is reasonable and avoids the inanga hatchery, bird breeding colony and nohonga areas, then we can conclude that the impact upon the coastal marine area and, in fact, the sea and shore, would be negligible.

[342] The issue that arises, however, is if the Tarawera Catchment is generally improved, and the ORC discharge may in those circumstances compromise the quality of the Tarawera River. It is difficult to imagine that this would be so, given the dilution levels involved, but nevertheless it was acknowledged by the Applicant that the Regional Council had the power to review the consent if the Tarawera Catchment Plan or other plans affecting the river imposed a higher standard. Although we acknowledge that Councils have this power, it has been rarely exercised in practice. Our preference would be to see an explicit provision requiring the consent be reviewed in the event that a new catchment plan is imposed that has a higher standard than that currently applying to the Tarawera River catchment, or the CMA within this particular area.

[343] Provided the above condition is imposed, the issue is the impact upon the ORC rather than the Tarawera River. Given our views that there are methods that would improve the water quality being pumped into the ORC, particularly through wetland or riparian planting, and even removal of stock, we are at this stage not convinced that it is not possible to reduce the level of N and P entering the ORC to levels close to or better than those of the current discharge. We conclude that impacts would be avoided if there was an improvement in the N and P levels being pumped

from this part of the Robinson farm to the ORC. We conclude this is technically and practicably feasible.

Is the discharge prohibited?

[344] One possibility raised by the plans, in particular rule 15.8.4(r) of the Tarawera Catchment Plan, is whether the discharge to the ORC is a prohibited activity. Chapter 15.8.4(r) provides:

> Except for the provisions of the operative Onsite Effluent Treatment Regional Plan, and for the provisions of the Kawerau Township and Edgecumbe Township set out in (a)-(d) of this rule, and the provisions of Rule 15.8.4(x), all new or existing discharges of human sewerage or contaminants derived from human sewerage into surface water within the Tarawera River catchment will become a prohibited activity on the date on which this regional plan becomes operative.

[345] Chapter 15.8.4(x) provides for discharge of human sewage from the Kawerau township into surface water in exceptional circumstances. No-one suggested the other exceptions applied to this application.

[346] The context of this rule is explained in 15.4.6, which deals directly with sewage discharges. After noting the cultural objections, it notes:

> While some liquid wastes, including this sewage, may be treated to a higher degree before being discharged, this does not overcome the adverse effect of these discharges on the Mauri life force of a water body, unless the waste has first been passed through the cleansing properties of earth.

[347] Of course, this provision does not assist us with the question of what is a discharge to surface water.

Discharge to a water body

[348] The primary position for the Applicant was the discharge was to ground in circumstances where it then joined groundwater and/or flowed through sand before joining surface water near the Robinson's farm drains. On the other hand, the Catchment Plan identifies particularly high phosphorus levels at Matatā, and includes a comment on nitrogen:[107]

> It is apparent, therefore, that any effluent treatment measures that reduce the discharge of dissolved nutrients, particularly ammonium nitrogen, to

[107] Under figure 14, page 159 Tarawera Catchment Plan

> the Tarawera River, will benefit the oxygen supply of the lower reach of the Tarawera River.

[349] It is also recognised in the Catchment Plan 15.4.10(a) that nutrient sources from agricultural sources are difficult to control. As consents officer for the Regional Council, it was Miss JL Hollis's view that the overall concern of this aspect of the plan was towards direct discharge to surface water, rather than indirect discharge through ground.

[350] We have discussed the general purport of the Catchment Plan already, and we have concluded that the plan is particularly focussed on nutrients reaching the Tarawera River. The wording of the Rule 15.1.8(r) is ambivalent; it is not clear from its wording whether it is intended to apply to indirect as well as direct discharges. The use of the words *contaminants derived from human sewage* may be indicative that it is dealing with indirect discharges. On the other hand, as Ms Hamm submitted *it could clearly be suggesting that the direct discharge of water after it had been through a waste Treatment Plant to surface water would not be permissible.*

[351] It is in this regard that, from the Court's perspective, the real concern is that the Applicant has presented evidence on the basis that there would be no attenuation of N or P from its discharge in the LAF to its appearance in the surface waters of the drain. Our view overall is that it *must* be the intent of this rule of the Catchment Plan that there be further attenuation for indirect discharge to surface water. In answer to questions, some of the witnesses acknowledged that there probably would be attenuation, both through utilisation within the root zone by plants, and also with the bacterial and other adsorption that would occur in the sands. Overall, however, it is difficult for us to reach a conclusion that this would not amount to an un-attenuated discharge unless we can be satisfied that there will be a reduction.

[352] On balance, we have concluded that the methodology to achieve that is easily available to the Council and the landowner by adopting a riparian planting, wetland, or stock reduction approach, or a combination of these. Provided we were satisfied that there is reasonable attenuation of N and P, we would agree that the rule on its face is not intended to catch every contaminant derived from human sewage, even after treatment. It is the lack of any attenuation proposed in respect of N or P that creates the Court's difficulty.

[353] So far as the degree of attenuation to be achieved once discharged to ground at the LAF, we would have thought that this needs to be at a reasonable level. We

would expect something in the order of one half by the time of discharge to the ORC but no direct evidence as to the appropriate attenuation that would ensure this is not an indirect discharge was given. An example of an unacceptable indirect discharge might be where a waste treatment discharge was put through a chamber of earth prior to discharge to a river or poured on a rock. The rule cannot be intended to be circumvented so readily, and ground-based discharge seems to be based on the assumption that there will be reasonable attenuation, if not total attenuation, through the earth.

Modification of the wastewater discharge to ground

[354] In addition to the methods we have already discussed, we did ask questions around whether or not the discharge to ground through the LAF at 300mm underground was necessary. It appeared to be accepted by the experts that if discharge was made to surface, this would mean greater uptake of N and P by vegetation. We accept there may be difficulties with interference of the hardware by animals or people. The major concern of the Consent Authority however, was that this, as public reserve land, should still be available for public access and surface discharge would compromise that. Given the lack of evidence from the Applicant, we will not consider this possibility further given the sites proximity to Māori land and the possibility of cultural issues and Reserves Act 1977 issues arising.

The application of the various statutory documents

[355] We have considered all the planning instruments which we were directed to and we list them here for completeness:

- National Policy Statement for Freshwater Management – 2014 (National Freshwater Policy)
- New Zealand Coastal Policy Statement – 2010 (NZ Coastal Policy)
- Bay of Plenty Regional Policy Statement – 2014 (Regional Policy Statement)
- Bay of Plenty Regional Water and Land Plan - 2008 (Water and Land Plan)
- Bay of Plenty Air Plan – 2003 (Air Plan)
- Regional Plan for the Tarawera River Catchment – 2004 (Tarawera Catchment Plan)

- Regional Coastal Environment Plan – 2003 (Coastal Plan) (and proposed Coastal Plan)
- Off-Site Effluent Treatment Regional Plan – 2006 (OSETRP)
- Operative (2012) and Proposed Whakatāne District Plan (2013) (District Plan)

[356] Given that there is no discharge from the Treatment Plant, and it is outside the coastal environment, the National and Regional documents are of limited relevance. Overall, however, the LAF application matter is impacted significantly by two particular factors. The first is the relationship between the Freshwater Policy Statement and the NZCPS, given that the water from the ORC enters into the Tarawera, which is within the CMA. The second major issue is that the ORC is within the Tarawera Catchment area, and therefore subject to the Tarawera Region Catchment Plan.

[357] Both policy statements have a similar overall thrust: towards maintenance and enhancement of values. However, the different wording can lead to some confusion in cases such as the present, where waters of the Tarawera move from Freshwater to the CMA.

[358] We acknowledge that the Regional Coastal Plan has been notified to address recent changes to the NZCPS, but these changes are yet to be resolved. In relation to the Freshwater Policy Statement, no regional policy statement or plans are yet in prospect.

[359] We will now examine both national documents to identify the interrelationship for this case.

[360] The Freshwater Policy Statement is new, but nevertheless is intended to give explicit application of the Act to freshwater. It contains a number of objectives and policies that seek to maintain or improve the quality of fresh water. The NZCPS is, of course, also of significant importance in the hierarchy of documents, as confirmed by the Supreme Court in ***King Salmon***.[108] Objective 1 of the NZCPS provides inter alia:

> Maintaining coastal water quality and enhancing it where it has deteriorated from what would otherwise be its natural condition with significant adverse effects on ecology and habitat because of discharges associated with human activity.

[108] [2014] NZRMA 195

[361] We have not set out our full examination of each instrument here because that is simply not necessary given the overlap and common theme to many. We have ordered the following section with the higher order documents first, consistent with their hierarchical relationship. We have spent some time on the national policy instruments, particularly the Freshwater Policy Statement, as this document is key to parts of our decision, and being very new has not made its way to be reflected in the lower order documents.

Freshwater Policy Statement

[362] The national significance of fresh water and Te Mana o te Wai is set out at page 6 of the Freshwater Policy Statement. It states:

> This national policy statement is about recognising the national significance of fresh water for all New Zealanders and Te Mana o te Wai. A range of community and tāngata whenua values, including those identified as appropriate from Appendix 1, may collectively recognise the national significance of fresh water and Te Mana o te Wai as a whole. The aggregation of community and tāngata whenua values and the ability of fresh water to provide for them over time recognises the national significance of fresh water and Te Mana o te Wai.

[363] The Bay of Plenty Regional Plan requires amendment to reflect the Freshwater Policy Statement, and we were told that process is underway. Objective A1 concerns safeguarding the life supporting capacity, ecosystem and indigenous species including their ecosystems. It also concerns safeguarding the health of people and communities at least as affected by secondary contact with freshwater.

[364] Objective A2 requires that the overall quality of freshwater within a region is maintained or improved while, particularly relevant to this application at subsection(c), improving the quality of freshwater in bodies that have been degraded by human activities to the point of being over-allocated.

[365] The term over-allocated is defined and relies on freshwater objectives being set for management units. Thus, until a regional plan is established in accordance with the requirements of the Freshwater Policy Statement, we don't know precisely what allocation level we are working with. We note an allocation refers to both quantity and quality (see definitions in the Freshwater Policy Statement).

[366] Policy A3(b) sees Regional Councils in preparing Regional Plans, where permissible:

> ...making rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water

We conclude permissible is a reference to permissible in terms of the Objectives of the Freshwater Policy Statement and RMA.

[367] Policy A4 sets out directions under s55 RMA which provides an interim arrangement until the Councils have carried out the necessary changes to their regional plans. Subsection 1 requires[109]:

> 1. When considering any application for a discharge the consent authority must **have regard to** the following matters:
> a. the extent to which the discharge would **avoid contamination that will have an adverse effect on the life-supporting capacity** of fresh water including on any ecosystem associated with fresh water and
> b. the extent to which it is **feasible and dependable that any more than minor adverse effect on fresh water, and on any ecosystem** associated with fresh water, resulting from the discharge **would be avoided.**
>
> [emphasis added]

[368] Objective CA1 indicates that the approach to be taken in establishing objectives for fresh water will recognise regional and local circumstances as well as being nationally consistent. The scheme of the framework is set out in Policy CA1 which indicates that a regional council is to identify freshwater management units that include all freshwater bodies within its region. This then would include the ORC.

[369] Without getting in too much detail, Policy CA3 requires the Regional Council to set freshwater objectives for compulsory values set out in appendices Freshwater Policy Statement, and these values must not go below the national bottom lines except where this is caused by naturally occurring processes (or there is existing infrastructure which are to be listed in an appendix not yet added).

[370] Objective D1 concerns Tangata Whenua roles and interests, which talks of providing for the involvement of iwi and hapū to ensure tangata whenua values and interests are identified and reflected in freshwater management.

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[109] Subsection (4) indicates Subsection 1 applies and subsection (5) indicates subsection (2) does not apply because the applications were lodged prior to the date the Freshwater Policy Statement took effect being 1 August 2014 (ie 28 days after gazette notice 4 July 2014)

[371] National values and uses for freshwater are set at Appendix 1. There are Compulsory National Values and Additional National Values. The compulsory values address the maintenance of ecological processes, biodiversity and resilience to change and matters to be taken into account for a healthy freshwater ecosystem including the management of contaminants and changes in freshwater chemistry, excessive nutrients, algal blooms low oxygen and invasive species and essential habitat.

[372] This instrument is relevant to the LAF proposal. It is apparent the ORC is degraded by human activities. Whether it is considered over-allocated to a point where a freshwater objective is no longer being met is a moot point. The Freshwater Policy Statement defines Freshwater Objective as being a description of an intended environmental outcome in a freshwater management unit. A Freshwater Management Unit is defined as meaning *the quality of the fresh water at the time the regional council commences the process of setting or reviewing freshwater objectives and limits in accordance with Policy A1, Policy B1, and Policies CA1-CA4.* While the Regional Council has commenced this process the outcome is unknown and some way off. On this basis we rely on what is available to us now and that is contained in the Water and Land Plan and the Tarawera Catchment Plan.

[373] We conclude that the ORC is over-allocated because the regional documents provide a clear direction towards reduction of contaminants and enhancement. Further, the ORC, through its interaction with the Tarawera River, is contributing to the reduction of health and mauri of that river. These compulsory values would seem to put the ORC clearly in the frame of the directives of the Freshwater Policy Statement for maintenance and enhancement. It would not meet Objective A1(a) of the Freshwater Policy Statement. As a contributor to the Tarawera it must fall under A2, which signals *maintained* or *improved.*

[374] The question of the use of the word *overall* in A2 is an issue. It would seem the Applicant relies on an interpretation that, provided the quality in the region is maintained or improved *overall,* consent to reduce the quality in one area may be appropriate. In other words an *overs and unders* approach. We need to be careful confirming that this is indeed the interpretation to be given to this objective. Could it be simply an adjective referring to the overall goal to maintain/ not let things slip backwards? The Freshwater Policy Statement references this overall quality to the region. The region is clearly made up of more than one catchment.

[375] Reference to Part 2 of the Act is instructive in understanding this wording. The Act has a single purpose expressed in Section 5 and interpreted in Part 2 and the various documents prepared under it. The hierarchy requires that there must be a consistency in documents achieving the overall purpose of the Act and superior documents. In this regard the overall purpose phrase used in the National Freshwater Policy must be referable to Section 5 subsection (2)(a), (b) and (c). It would be contrary to the Act for the National Freshwater Policy to mean that individual catchments could fail to meet (a), (b) and (c). Further, there are the Regional Council's functions as set out in s30 RMA, the most relevant parts for current purposes, we set out here:

> 30 Functions of regional councils under this Act
>
> (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
> (b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
> (c) the control of the use of land for the purpose of—
> (i) soil conservation:
> (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
> (iii) the maintenance of the quantity of water in water bodies and coastal water:
> (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
> (iv) the avoidance or mitigation of natural hazards:
> (v) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:.....
> (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:.....
>
> [emphasis added]

This section indicates towards maintenance or improvement of all water bodies:

[376] The ORC is highly eutrophic. It does not meet objective A1(a) of the Freshwater Policy Statement. We were told further nutrients will not increase its ecological limitations. We were told there is an upper limit to that situation but the proposal would be below this. The suggestion then is that the stream is so ecologically compromised that the further addition of nutrients to certain limits will not make the ecological situation significantly worse.

[377] In relation to the interim provisions which the Regional Council must apply (Policy A4) adverse effects from contamination under A4(1) are to be avoided. Under

A4(2) it needs to be both *feasible and dependable* that any more than a minor adverse effect is avoided. This raises the issue of cumulative effects and long term effects. Once we consider the primary objective to safeguard the life supporting capacity and sheet this home to Part 2 and the Regional Council's functions, we conclude that maintenance at least must be assumed. Adding to an existing background level albeit degraded, will not achieve maintenance.

[378] By increasing the level of contamination of the ORC, there is the potential for the overall input from this source to the Tarawera River to increase and therefore to have a negative impact on the river. We have accepted beyond an undefined area of reasonable mixing and provided certain areas are outside the mixing zone then that risk is negligible.

[379] Concerns were raised by iwi over possible contamination of freshwater and groundwater. Those impacts are confirmed by expert evidence. There is no indication in the evidence of how the Te Mana o te Wai aspect of the National Freshwater Policy (and Objective D1) is to be addressed. In terms of cultural effects as discussed elsewhere, this would need to be addressed in order to meet Part 6 RMA matters which clearly seem to be enshrined in the Freshwater Policy Statement.

Does the Freshwater Policy Statement mean that contamination of water can occur to the Appendix 2 levels?

[380] Given the overall thrust of the documents, the proposition that increased pollution of the ORC, increased discharges of N and P, are acceptable seems counter-intuitive. The Applicant points to the fact that the discharges, although an increase over current discharges, and in excess of the ANZEC guidelines are nevertheless lower than those set out in the 2nd Schedule to the Freshwater Policy Statement.

[381] If the suggestion is that the Freshwater Policy Statement provides some permit to drive to the bottom line, or a licence to pollute, then that concept is entirely rejected by the Court. Schedule 2 needs to be read in the context of the NZCPS, the Freshwater Policy Statement as a whole, Part 2 of the Act, and the other documents related to it. As we say, overall, the NZCPS and other documents seek to maintain and improve water quality and reduce discharge of contaminants to waterways.

[382] We expected some form of nutrient or water balance argument. However, in this case the evidence as to reduction in discharges to water from the septic tanks in

Matatā was very general. The general information was that there was little, if any, attenuation through the septic tank system and its discharging to soil, particularly in respect of N and P. But there was no particular suggestion that septic tank discharges were reaching surface water with significant levels of N and P. There was some evidence of water quality around Matatā, and this did show particularly elevated areas in the lagoon area adjacent to the Matatā Hotel. However, a note to these reports indicated that a nearby owner had been discharging sewage directly to the stream, and this may explain the elevated levels. One of the other higher levels was at the upstream end of the Waitepuru Stream, above any areas of residential activity. We can only assume, therefore, that the level of contamination in that reach was due to other causes rather than human sewage.

[383] We undertook the site visit to better understand whether or not septic tanks might be generally concluded as discharging to the lagoon and/or streams. Unfortunately, the results of our site visit did not assist in this understanding. The majority of Matatā is on higher land – probably created by former debris flow, and/or collapse of the escarpment. We would need detailed evidence on groundwater, permeability and testing to have any certainty about potential contamination of waterways from septic tanks.

[384] The lagoon itself is a wetland, and would deal with N and P relatively efficiently. Certainly since the lagoon rehabilitation after the 2005 debris flow, this area has significantly improved, and the wetlands appeared in good condition, with the area functioning largely in accordance with the development concept.

[385] The land rises fairly steeply from the State Highway and the businesses and houses fronting it, and there was no evidence given that septic tank waters in these higher areas would necessarily reach groundwater or the lagoon via groundwater. Rangitihi Marae has a complex treatment system and field disposal system on the slope above State Highway 2, only 50 or so metres from the lagoon, and there was no evidence given of contamination from that either.

[386] We conclude, as a general principle, that the wastewater Treatment Plant will significantly reduce N nutrient contaminant levels, but will have more limited effects in terms of reducing P. We have no information on which we can quantify the benefit from the removal of that waste from the septic tanks when compared to its addition to the ORC. Although we accept as a basic principle that with the reduction in the contaminant levels, improvement or maintenance of the waterways might be

seen on a catchment or wider basis than the ORC, and include Matatā, or even the catchment area, there was no evidence on which we were able to reach a positive conclusion of benefits. We do accept, as did the planners for the parties, that there is a general benefit in the removal of septic tank waste and its processing this through a wastewater Treatment Plant. However this does not enable us to reach any firm conclusion as to whether the increase in nutrients into the ORC is balanced by a reduction in nutrients reaching groundwater or surface water elsewhere.

[387] So far as the NZCPS is concerned we accept that no contaminants are likely to reach the coastal waters via the groundwater directly. The impacts on the coastal waters of the Tarawera River are likely to be negligible.

Te Mana o te Wai and the LAF

[388] The Freshwater Policy Statement records the following as matters of national significance:[110]

> This national policy statement is about recognising the national significance of fresh water for all New Zealanders and Te Mana o te Wai.
>
> A range of community and tāngata whenua values, including those identified as appropriate from Appendix 1, may collectively recognise the national significance of fresh water and Te Mana o te Wai as a whole. The aggregation of community and tāngata whenua values and the ability of fresh water to provide for them over time recognises the national significance of fresh water and Te Mana o te Wai.

[389] We considered the Matatā community values concerning water by considering their responses to this application under the heading Consultation above. We note that a significant number of the community support full reticulation.

[390] We have also addressed the particular matters raised by the Appellant in this decision, and consider that in total community values have been addressed. What we have not yet completed is an analysis of what additional tāngata whenua values may be relevant and what those might add to Te Mana o Te Wai and the aggregation of values concerning freshwater in the Tarawera catchment. We note the term is not defined in the Freshwater Policy Statement, but it includes, but not limited to, those values as appropriate from Appendix 1.

[391] We also note the Preamble, the objectives and, in particular, Objective D1 and Appendix 1, must add to the term. The Preamble records that addressing tāngata

[110] Freshwater Policy Statement-FM 2014

whenua values and interests across all the well-beings in the Freshwater Policy Statement, and including iwi and hapū in the overall management of the well-beings are key to meeting obligations under the Treaty of Waitangi. In addition, it records that freshwater objectives for a range of tāngata whenua values are intended to recognise Te Mana o te Wai. It records that iwi and hapū recognise the importance of freshwater and that they have reciprocal obligations as kaitiaki to protect freshwater quality.

[392] The values listed in Appendix 1 all incorporate aspects of tāngata whenua values, and the term "mauri" is used in relation to the first three national values Under Objective D1 local authorities must take reasonable steps to involve iwi and hapū in the management of fresh water and ecosystems. They must also work with iwi and hapū to identify any additional tāngata whenua values and interests in fresh water and freshwater ecosystems, and reflect those in their management and decision-making for the region.

[393] Ms Hamm also helpfully referred to the document *Proposed Amendments to the National Policy Statement for Freshwater Management 2011 – A Discussion Document.*[111] That document, under the heading "Articulating tāngata whenua values" states that the term represents "the innate relationship" between the first three national values (now reflected in Appendix 1 of the Freshwater Policy Statement). Before the Freshwater Policy Statement was promulgated it was a term that referred to the "inherent mana of water".

[394] We were also referred to Exhibit "R" which was produced by the Minister for the Environment pursuant to s52(3) (c) of the RMA. Under that provision the Minister is required to produce a summary of recommendations and a summary of decisions made on the Freshwater Policy Statement. According to the *Summary*, the key reason for the decision to include the new term Te Mana o Te Wai related, in the Minister's view, to the *need for regional variation in the expression of tāngata whenua values*. Thus the Minister believed *that a flexible and high level approach was needed.*[112] Since that date there have been attempts to restrict the ambit of the term through draft guidelines. However, as Mr Mikaere agreed, the term must include more than mauri and thus the definition of Te Mana o te Wai in the *Ministry for the*

[111] Exhibit Q

[112] National Policy Statement for Freshwater Management 2014 – Summary of Recommendations and Minister for the Environment's Decision, Exhibit R, page 6

Environment's Draft Guidelines on the National Fresh Water Policy Statement was deficient.[113]

[395] Taking all these documents together we have concluded that the term can only be fully taken into account by reference to any additional local tāngata whenua values that aggregated with community values add to those already articulated in the Freshwater Policy Statement.

[396] In attempting to understand what those are and given that caring for the mauri of the waters in the catchment was an important issue for the local iwi, we have also asked what the relationship of te Mana o te Wai is with the term mauri. In this respect we were first assisted by the evidence given by Dr Daniel Hikuroa. He advised the following: [114]

> In terms of a key definition of mauri, a key one is derived from the Reverend Maori Marsden where he ... suggests that mauri is present in land, forests, waters and all the life they support. Together with natural phenomena such as mist, wind and rocks they all possess mauri. Clive Barlow talks about mauri as being the binding force between the physical and the spiritual. ... It is the life energy force or unique life essence that gives being and form to all things in the universe.

[397] Dr Hikuroa noted that as mauri occurs very early in the stages of the genealogical table of Māori cosmogony, it is the force that *inter-penetrates all things to bind and knit them together and as the various elements diversify, mauri acts as the bonding element creating unity and diversity.*[115] In other words, mauri is associated with the beginning of all matter in its various forms.

[398] Whilst he was not so comfortable defining the expression mana, he considered that mauri has a relationship with mana.[116] In terms of the Freshwater Policy Statement, he suggested that Te Mana o Te Wai would need to be defined by reference to tāngata whenua values and from a mātauranga Māori (Māori knowledge) base which was context specific.[117] His view was that in order for Te Mana o Te Wai to be accurately taken into account, it would have to come down to the mana of the tangata whenua.[118] Thus if the mauri of a catchment was negatively impacted, so therefore the mana was impacted. If efforts are made to restore the mauri of the

[113] Mr Mikaere, Transcript, page 632
[114] Dr Hikuroa, Evidence-in-chief, Transcript pages 719-720
[115] Ibid page 720
[116] Ibid, page 721
[117] Ibid, page 721
[118] Ibid, pages 721-722

waters, that would in turn, restore the mana of the people.[119] It was his view that one is not separate from the other as they are inextricably linked.[120]

[399] Consistent with Dr Hikaroa's views on Māori cosmology, Maanu Paul noted that Te Mana o Te Wai refers to Te Kauwaerunga (the celestial/heavenly world) and Te Kauwaeraro (the terrestrial/physical world) which are inter-connected.[121] Water has within it, he explained, the potential to link the celestial and terrestrial worlds and the whakapapa between Ranginui and Papatuanuku, the sky father and the earth mother.[122] For the Ngāti Awa people, as river people, they imbued their rivers with mana and mauri.[123] Where degraded, such as the ORC, it was his view that the mauri can be ... *returned in an enhanced position, is not destroyed, it is in abeyance until it can come back to its original condition.* He stated:[124]

> The mauri cannot be destroyed because the Te Mana o Te Wai, the power of the water is maintained by the people and as long as Ngāti Awa people live the mauri of the Orini will continue to live because it is the people who give the mana ... that results in the mauri, which is essential to think, to understand as Dr Dan Hikuroa said, it is the tangata i roto i te whenua, the people who are in the land who determine the mauri.

[400] When asked to clarify whether he was giving expert cultural evidence for both Ngāti Awa and Ngāti Rangitihi on this issue, he confirmed that he was.[125]

[401] In terms of Ngāti Tūwharetoa, the evidence we have came from Ms Vercoe who opined that mauri can never be modified by man as it is from the celestial realm.[126] In terms of water, mauri included *the currents, the water flow, the gravitational pull, everything that is not visible, it's intangible ... life forces.*[127] She described mana as the quality control tool in the physical world.[128] But, she explained, this form of management could only be assigned to those who were endowed with esoteric knowledge, namely tohunga, because they had the skills to mediate tapu – tapu being the link that tied the heavenly and physical worlds together.[129] Tohunga generally undertook such work for the benefit of their people.

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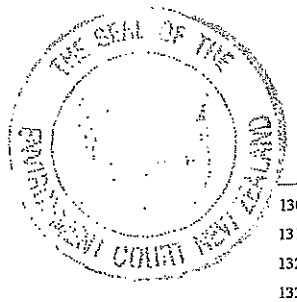
[119] Ibid, pages 722-724
[120] Ibid, page 724
[121] Mr Paul, Evidence-in-chief, Transcript, page 1034
[122] Ibid, page 1033
[123] Mr Paul, pages 1033-1034
[124] Ibid, page 1033
[125] Ibid page 1042, line [25]
[126] Mr Vercoe, Questions from the bench, Transcript pages 992-993
[127] Ibid, page 993
[128] Ibid, pages 992-993
[129] Ibid, pages 992-993

[402] It is at this juncture where the evidence of Mr Paul and Ms Vercoe demonstrate that there is a relational aspect to the term Te Mana o te Wai that is central to tāngata whenua values and their kaitiakitanga responsibilities. This relational aspect is consistent with Mr Mikaere's view when he linked Te Mana o te Wai with the identity of tangata whenua and particular water-bodies, noting the use of water bodies in tribal pepeha (proverbs).[130] He agreed that the term means something more than *mauri* and that it encapsulates the entire water body, including the banks and beds.[131] Thus we find that there is a relational value which is an additional value associated with Te Mana o te Wai in the Tarawera Catchment.

[403] This relational value was recorded in the evidence of Ms Hughes, the cultural advisor for the Applicant, who noted that the various iwi voiced concerns for all the water bodies within the Tarawera catchment, including the ORC. This concern was expressed in the interim CIAs provided by those iwi who responded before the hydrological evidence was released.[132] After the hydrological evidence became available to them, all affected iwi continued to indicate that they wanted the Applicant to prevent wastewater seepage or discharge into water, including salt water.[133] Their approach is consistent with what is recorded of their values concerning water in Chapter 8 of the Catchment Plan.

[404] The implications for this Court, relate to the Applicant's need for a consent for the discharge of treated wastewater into land, in circumstances that may result in the treated wastewater entering water. We note the evidence concerning the potential N and P loading into the groundwater was not expressed clearly in the hydrological evidence until the hearing, and we doubt the iwi were fully appraised of the issue.

[405] While not a wastewater seepage or discharge into water per se, we consider from the views expressed in evidence before us including the CIAs and in the Catchment Plan, that all of the iwi would consider that the mauri of the waters, would be affected by this proposal given the certainty that there will be some nutrient and phosphorus loadings discharged into the ORC and from there into the Tarawera River.



[130] Mr Mikaere, Questions from the bench, Transcript pages 630-631
[131] Ibid page 632
[132] Ms Hughes, Evidence-in-chief, pp 464-465 [26]
[133] Ibid, paragraph [36]

NZ Coastal Policy Statement

[406] The purpose of the NZ Coastal Policy is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand. The coastal environment has characteristics, qualities and uses that mean there are particular challenges in promoting sustainable management. These include:[134]

> The coast has particular importance to tangata whenua, including as kaitiaki
>
> Continuing decline in species, habitats and ecosystems in the coastal environment under pressures from subdivision and use, vegetation clearance, loss of intertidal areas, plant and animal pests, poor water quality, and sedimentation in estuaries and the coastal marine area

[407] The lower reaches of the Tarawera River below the Thornton Road Bridge are within the Coastal Marine Area (CMA) boundary. The ORC feeds into the lower reaches of the Tarawera River below this point therefore directly into the CMA and approximately 450m from the rivers confluence with the Pacific Ocean.

[408] The application of the NZCPS relevant here includes:[135]

> ...a consent authority, when considering an application for a resource consent and any submissions received, must, subject to Part 2 of the Act, have regard to, amongst other things, any relevant provisions of this NZ Coastal Policy (section 104(1)(b)(iv) refers);
>
> when considering a requirement for a designation and any submissions received, a territorial authority must, subject to Part 2 of the Act, consider the effects on the environment of allowing the requirement, having particular regard to, amongst other things, any relevant provisions of this NZ Coastal Policy (sections 168A(3)(a)(ii) and 171(1)(a)(ii) refer);

[409] Objective 1 is concerned with safeguarding the integrity, form, functioning and resilience of the coastal environment and sustaining its ecosystems, including marine and intertidal areas, estuaries, dunes and land by:

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and

[134] NZCPS Preamble
[135] NZCPS 2010 Application of Policy Statement, page 7

- maintaining coastal water quality and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.

[410] Objective 2 concerns the preservation of the natural character and protection of natural features and landscapes. The LAF site is within the coastal environment being a coastal sand dune which we were advised comprises a threatened land environment and an endangered ecosystem. This objective encourages restoration of the coastal environment and introduces the principles of the Treaty of Waitangi and the obligations concerning kaitiakitanga for tangata whenua, incorporating Mātauranga Māori into sustainable management practices and recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua. This relationship is further set out in Policy 2 of the NZCPS.

[411] Objective 4 is to maintain and enhance the public open space qualities and recreation opportunities of the coastal environment. We note the LAF site is a Recreation Reserve. Objective 5 concerns management of coastal hazard risk.

[412] Perhaps most relevantly Objective 6 is an enabling objective which seeks to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that amongst other things

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;
- functionally some uses and developments can only be located on the coast or in the coastal marine area;
- the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;
- the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;

- the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected;

[413] Policy 4 refers to integrated management of natural and physical resources in the coastal environment and activities that affect the coastal environment.

[414] Moving to Policy 7 (not ignoring the relevance of the other policies) a Strategic Planning policy that sets out what is required when preparing regional policy statements and plans. These documents are required to consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment at a regional and district level, and amongst other things (at subsection (2)):

> Identify in regional policy statements, and plans, coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects.
>
> Include provisions in plans to manage these effects. Where practicable, in plans, set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects are to be avoided

[415] As with the Freshwater Policy Statement, this instrument is relevant to the LAF proposal. We have not set out all of the objectives and policies relevant to the matters before us here but have considered them. The LAF is not an activity that by its nature needs to be located in a coastal environment. It has the potential to compromise the recreation/public open space function of the site and we have recognised this in our commentary later concerning the Reserves Actl 1977. We understand that the intention is for the public to continue to be able to enter the site and for signage to be installed explaining its use. We question the practicality and realistic use of the site for recreation purposes.

[416] However, the site is covered with predominantly exotic species and the proposal provides an opportunity to improve upon this with the planting of natives being enabled through the application of the LAF "water" and managed restorative planting. We also note it is fenced and we were told little use of it is made for recreational purposes other than passing by it to reach or enjoy the coastal foreshore.

[417] In addition, management of the greater dune area is proposed as part of the application with a draft Restoration Plan prepared by Wildlands and incorporated in the draft conditions put before the Court. That could be considered as an off-set

mitigation but was not offered for that purpose. We do not know the reality of this work given the ownership of the adjacent dune areas and what agreements may or may not be in place in that respect. We have not been able to place a great importance on this restorative project as it does not directly relate to the freshwater environmental impacts which we find to be a significant potentially adverse feature of the LAF.

[418] The retirement of the LAF from grazing albeit that is used for such purposes for limited periods of the year only, will also provide for the opportunity to enhance the ecological characteristics of the dunes and perhaps make this area more resilient and encourage biodiversity.

[419] There is no potential for contaminants to enter the coastal environment/sea directly based on the hydrological characteristics described to us.

[420] The remaining concern in terms of potential contaminants within the coastal environment and the CMA in particular, is the discharge of the ORC into the Tarawera River. That confluence is a sensitive area with inanga and bird ecological breading communities. Objective 1 of the NZCPS seeks to safeguard the coastal environment by in particular:

> ... maintaining coastal water quality and enhancing it where it has deteriorated from what would otherwise be its natural condition with significant adverse effects on ecology and natural habitat, because of discharges associated with human activity.

The Tarawera is such a coastal environment where the ORC discharges and thus the emphasis on its enhancement.

[421] We have discussed the issue of potential cultural effects including koiwi in relation to the LAF.

[422] The project as a whole will enable the Matatā community to provide for their social, economic, and cultural wellbeing and their health and safety through an improved wastewater treatment system which will address current needs and growth. However, this needs to be balanced against the matters set out in Objective 6 and as we comment above there are important sensitivities around the LAF site and the LAF operation which need to be addressed.

Conclusions on National Policy Statements

[423] We conclude from this evidence in relation to freshwater policy that wastewater seepage or discharge from the LAF into surface water is not acceptable to tangata whenua, and increased N and P will affect their relational values associated with Te Mana o te Wai in the catchment. These values are more consistent with the improvement and enhancement of the ORC and require adequate mitigation.

[424] Nevertheless, we acknowledge both policy documents overall seek to improve existing contamination. We conclude that the National Policy Documents would be met if:

(a) human wastewater is significantly attenuated;

(b) all e-coli are removed;

(c) levels of N and P discharged to the ORC are reduced;

Regional Policy Statement

[425] The LAF is (Map 25 Appendix I) located on the Thornton Dunes within the Coastal Environment and is within a High Natural Character Area. The attributes for which are set out in Appendix J of the document. This particular High Natural Character Area encompasses the dunes from the Rangitaiki River to the Tarawera River. It includes the Tarawera River from the sea up to the Thornton Road Bridge and therefore the confluence of it and the ORC.

[426] Objective 2 requires the preservation, restoration and, where appropriate, enhancement of the natural character and ecological functioning of the coastal environment. It relies on a series of implementation methods many of which are to be enshrined in regional plan and district plan controls.

[427] Section 2.9 deals with water quality and land use. Objectives 27 and 29 are particularly relevant requiring the quality of the mauri of water in the region to be maintained and where necessary to meet identified values to be enhanced. Land use activities are to be undertaken within the capability of the land and integrated with wider environmental values including the capacity of receiving waters to assimilate discharges.

[428] Section 2.6 of the Regional Policy Statement addresses iwi resource management. Relevant objectives include:

> Objective 13
> Kaitiakitanga is recognised and the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) are systematically taken into account in the practice of resource management
>
> Objective 15
> Water, land, coastal and geothermal resource management decisions have regard to iwi and hapū resource management planning documents
>
> Objective 16
> Multiple-owned Maori land is developed and used in a manner that enables Maori to provide for their social, economic and cultural well-being and their health and safety, while maintaining and safeguarding its mauri
>
> Objective 17
> The mauri of water, land, air and geothermal resources is safeguarded and where it is degraded, where appropriate, it is enhanced over time

[429] The resource management issues of significance to iwi authorities taken up in the objectives and policies of the Regional Policy Statement need to be reflected in the lower order planning instruments and also in the practice adopted by consent authorities in the consideration of applications for resource consent and NOR. These issues are particularly on point relative to this project in respect of both sites.

[430] These objectives relating to kaitiakitanga require a positive action. Kaitiakitanga has not been recognised in the proposals as they were presented to the Court. Consultation is identified in the Plan as a part of meeting this objective but the nature of the account taken of kaitiatikanga connects from the start of a proposal, through planning, to its implementation. In situations which involve particular sensitivities to Māori such as the cultural characteristics of a site and the health of natural resources such as waterways, this is not a matter of just accidental discovery protocols but requires a positive action to include this practice in consenting decisions. For example, the Court is familiar with conditions in other projects where technical peer review regimes have been imbedded in the consent conditions (for instance water quality management) with iwi representation on the peer review panel. Receiving a monitoring report is part of the action required but we have not found a mechanism proposed for addressing good practice in accordance with Māori kaitiakitanga obligations.

[431] Objective 16 of the Regional Policy Statement goes to the aspirations for the owners of the land at lots 6A and 7A. This is an issue which is at the heart of their concerns with the proposed Treatment Plant in particular. The objective poses the

question as to whether the social, economic and cultural well-being of these persons is enabled. We have addressed that in detail elsewhere.

[432] We were told the mauri of the ORC has been adversely affected and we could see that for ourselves when we visited the LAF site. This concern holds true for the Tarawera River too. The Regional Policy Statement indicates that where degradation has occurred *where appropriate* this should be enhanced over time. We see this as a direction picked up in the Catchment Plan which we come to later.

[433] Issues around the physical sensitivity of the LAF site are addressed in the application and we anticipate can be avoided or mitigated. This includes the hazard implications of the site and this was a not a particular matter advanced in evidence. Restoration in terms of planting is a practical mitigation although plant species suitable to combine with the LAF operation are limited. The site is however, in poor condition as far as natural flora is concerned so the proposal can be said to promote objectives around restoration. However, matters concerning the discharge and whether that can be said to be *within the capacity of receiving waters to assimilate* have not been addressed to the satisfaction of the Court, as set out elsewhere. There is a prospect though with further mitigation this concern can be addressed.

Water and Land Plan

[434] The Water and Land Plan is a key instrument in the consideration of the proposal as it implements the higher order documents in this environmental subject area. Several resource consents are required under it. These relate to site works in preparation for the Treatment Plant and the LAF and discharge to land and water at the LAF. There are, as we have indicated elsewhere, some resource consents that have been either overlooked or simply left to be applied for later. Some of these consents form a critical aspect of the proposals. They are needed to implement the activities. The earthworks at the Treatment Plant site are a good example. In addition, the provision of access to the Treatment Plant designations is key to that part of the project.

[435] This Plan carries through the objectives concerning Māori interests and Treaty principles. We do not propose to repeat those here. The Plan drills down into the detail of how the higher order documents are to be achieved. It provides specific methodologies for achieving them. It addresses integrated management of land and water. One of the issues identified is the degradation of waterways through natural

processes and human intervention, particularly to do with agricultural processes. Objectives 8 and 9 deal with this issue of integrated management. Objective 10 deals with the stewardship of natural resources which (amongst other things) sustains the life supporting capacity of soil, water and ecosystems.

[436] Objective 13 is particularly relevant to the LAF and requires that the water quality in rivers and streams is *maintained or improved* to meet the Water Quality Classifications set in the Water Quality Classification Map, and sets out relevant environmental outcomes. The ORC is classified *Drain Water Quality* and the Lower Tarawera *Fish Purposes*. The environmental outcomes listed from (a) to (h) as part of that objective do not appear to directly relate to either of these water bodies. However, the Drain Water Quality terminology is picked up within the Plan where at Schedule 5 *Maintenance Areas of River Schemes and Drainage Schemes* (Map 14) the ORC is shown to be within the *Rangitaiki Drainage Scheme Maintenance Area.* This qualification affects the application of the rules at Chapter 9 of the Plan. Objectives 15 to 19 appear relevant although not all of these were set out in the table appended to Mr Scrafton's evidence in chief. They are reproduced below:

> Objective 15: Maintenance of high quality groundwater.
>
> Objective 16: Degraded groundwater quality is improved where appropriate.
>
> Objective 17: Riparian margins are appropriately managed to protect and enhance their soil conservation, water quality and heritage values.
>
> Objective 18: Achieve the sustainable management of riparian margins (excluding artificial watercourses, and ephemeral flowpaths), which may include retirement, in the following priority catchments:...[136]
>
> Objective 19: Protect vulnerable areas from erosion.

[437] Policies which follow seek to *maintain or improve water quality* in streams and rivers to meet their Water Quality Classification. Policy 21 is to manage land and water resources within an integrated catchment management framework to amongst other things:

> k) Promote and encourage the adoption of sustainable land management practices that are appropriate to the environmental characteristics and limitations of the site to:
>
> ...
>
> (v) Take into account the assimilative capacity of the soil
>
> ...
>
> (vii) Maintain or improve the protective function of coastal sand dunes.
> (viii) Manage land and water resources according to realistic management goals that are appropriate to the existing environmental quality and heritage values (including ecosystem values) of the location.

[136] The list at Objective 18 is not relevant to this site.

[438] These objectives and policies translate into rules that allow the discharge of water from a pumped drainage area such as the receiving environment from the LAF, to discharge to surface water as a permitted activity subject to some conditions (Rule 22) and relevantly:

> (a) The discharge shall not cause the effects listed in (i) to (v), as measured at a downstream distance of three (3) times the width of the stream or river at the point of discharge:
> (i) The production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials.
> (ii) Any conspicuous change in the colour or visual clarity, except where the discharge is from peat soils.
> (iii) Any emission of objectionable odour.
> (iv) The rendering of fresh water unsuitable for consumption by farm animals.
> (v) Any more than minor adverse effects on aquatic life.

[439] It is unclear however, whether this would allow for water not associated with drainage per se to be discharged through the same system. Rule 37 captures the following as Discretionary Activities:

> Any:
> 1 Discharge of a contaminant to water.
> 2 Discharge of water to water.
> 3 Discharge of a contaminant onto or into land in circumstances which may result in the contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water.
> 4 Discharge of a contaminant from any industrial or trade premises onto or into land
> that is not:
> (a) Permitted by a rule in this regional plan.
> (b) Permitted by a rule in any other Bay of Plenty regional plan.
> (c) Prohibited by a rule in this regional plan.
> (d) Restricted discretionary status by a rule in this regional plan.
> (e) Controlled status by a rule in this regional plan.
>
> [emphasis added]

[440] The Applicant considers that the discharge which makes its way through land to water to then be pumped into the ORC is permitted by Rule 22. The discharge pathway from application at the LAF is through the sand dune and emerges in the farm drain (water). Water by definition (page 443 of the Plan) would include the open farm drainage system. That part at least was acknowledged as requiring consent and has been included in the subject of these proceedings.

[441] As discussed already, that water will then pass to the ORC with an elevated concentration of N and P. This phenomenon would mean that that discharge would lower the quality of the water of the ORC and has a consequential potential impact on the Tarawera River. So while the discharge at the farm drain might be controlled,

passage beyond that, it is suggested, is not. We have difficulty seeing how that would fit with the overall thesis of the objectives and policies within which these rules sit. Our analysis is provided elsewhere where we have examined the likely environmental effects anticipated and how these might be addressed.

[442] Further we note the caveats on the nature of the permitted discharge at Rule 22 and suggest that the cumulative effect of the proposal could have an impact on some of those measurable outcomes. It is the Court's view that overall the objective and policy guidance is at a minimum to seek to maintain water quality. We also refer to Objective 18 which seems to seek to obtain some improvement.

Tarawera Catchment Plan

[443] This Plan embodies many of the objectives and policies that we have already discussed but it is focused on the Tarawera Catchment, which includes both sites and the ORC to its mouth. Beyond that point the Tarawera River is within the CMA, and thus addressed by the Regional Coastal Plan. Thus it is the ORC and the LAF which are the focus of our discussion here. This location is described as the catchment of the Lower Reach of the Tarawera River.

[444] The justification for this Plan is set out at section 1.3 where Environment Bay of Plenty (the Regional Council) sets out the following reasons which contributed the desirability of having such a Plan.

> (a) Significant conflicts in terms of differences in attitude between industry and community groups as to the level of protection required for Tarawera River water quality.
> (b) Significant community demand for the protection of the Tarawera River by a continued reduction in the discharge of contaminants into the river.
> (c) Significant concerns expressed by tangata whenua on the effects of contaminant discharge to the river.
> (d) The need expressed by community survey to actively restore the deteriorated state of water quality in the Lower Reach of the Tarawera River.

[445] These reasons provide some understanding of the focus of the Plan. Section 4.8 identifies a number of iwi planning documents which the Regional Council had regard to in the preparation of this Plan. These are:

- Tūwharetoa Ki Kawerau Strategic Plan – Te Runanga o Tūwharetoa Ki Kawerau

- Issues for Ngāti Awa regarding participation in Statutory Resource Management Planning – Te Runanga o Ngāti Awa Trust Board
- Ngāti Awa Policy Statement – Tarawera River – Te Runanga o Ngāti Awa Trust Board
- Ngāti Tikanga Tiaki I Te Taiao – Māori Environmental Management in the Bay of Plenty; consultants report for the Operative Bay of Plenty Regional Policy Statement

[446] The Tarawera Catchment Plan was prepared against a background of community concerns that amongst other things including the lower reaches of the Tarawera River being degraded by discharges. Further, in respect of identified resource management issues of significance to Māori, there was concern for the lack of care and respect for the mauri and continued degrading and use of river water to transport or treat contaminants. Specifically the iwi indicated that the discharge of human bodily waste, either untreated or treated, to local water bodies must cease.[137]

[447] Map 6[138] describes the Lower Tarawera Environment and the ORC is described as an Artificial Watercourse Open to Fish Passage. Various standards (relating to oxygen, colour and clarity, toxicity, temperature and pH) are set in the rules pertaining to its qualities and all of its tributaries (except drains) to protect aquatic life. Relevant objectives include:

> 13.5.2(a) Protection, maintenance and enhancement of the life supporting capacity of surface water bodies in the Tarawera River catchment.
>
> 13.5.2(b) Protection, maintenance and enhancement of the indigenous vegetation, habitat and migration pathways of the remnant wetlands, lakes, rivers and their margins in the Tarawera River catchment.

[448] Policies which follow include:

> 13.5.3(a) To ensure that the natural character of wetlands, lakes, rivers and their margins is not further degraded but is enhanced or protected from inappropriate subdivision, use and development.
>
> 13.5.3(b) To ensure that wetland, river and riparian values are provided for when maintaining and establishing drainage systems.

[449] Specific provisions relating to surface water are found at Chapter 15 of the Plan. The Plan specifically addresses the history, options and ongoing management of the sewage discharges within the Tarawera catchment (15.4.6). The tenor of those provisions is to reduce and eventually remove sewage discharges. However, the

[137] TRCP Chapter 9, section 9.2
[138] TRCP Chapter 13, Map 6, Page 101

regime applying to drains differs from that applying to other waterways. The following is set out at Clause 15.5.5 under the section of the Plan discussing water quality standards:

> Drains and Canals and Wetlands on the Rangitaiki Plains
> Environment Bay of Plenty does not consider that the water quality of the wetlands in the lower river catchment, or the drains and canals on the Rangitaiki Plains, require managing through the imposition of water quality standards. Environment Bay of Plenty favours the prohibition of all discharges to wetlands, other than those associated with controlling wetlands water levels, facilitating fish passage, and eradicating plant pests.

[450] The relevant objective is 15.8.2 set out below:

> 15.8.2 Objective
> Enhance surface water quality in the Tarawera catchment to a level which safeguards the life supporting capacity of the water and meets the reasonable needs of people and communities, especially:
> (a) Reduction in the production of waste and discharge of contaminants throughout the catchment; and
> (b) The maintenance of "Fish Spawning" water quality standards in the Upper Reach of the Tarawera River and its tributaries; and
> (c) The establishment of "Fish Purposes" water quality standards in the Lower Reach of the Tarawera River; and
> (d) The conservation of lakes and tributaries in their Natural State; and
> (e) The enhancement of the water quality in Lake Okaro to that suitable for contact recreation; and
> (f) To recognise that staged changes in industrial processes and waste treatment systems will be necessary to achieve the water quality goals of this regional plan.
> (g) Unless there are exceptional circumstances there shall be no discharge of sewage into the surface water of the Tarawera River.
>
> [emphasis added]

[451] More relevant policies (15.8.3) which follow from this objective include:

> 15.8.3(a) To establish a range of surface water quality classes that provide standards for the management of surface water bodies in the catchment. The purposes of these classifications are as follows:
> .....
> (iii) The quality of water in the tributaries of the Tarawera Lakes, the tributaries of the Tarawera River, excluding the canals and drains and wetlands on the Rangitaiki Plains, and the Upper Reach of the Tarawera River will be managed for fish spawning purposes (FSUT) (see Rule 15.8.4(f).
> (iv) The quality of water in the Lower Reach of the Tarawera River will be managed for fish purposes (FPLT) (see Rule 15.8.4(h)).
> 15.8.3(b) To promote reduction of contaminant discharges into the Tarawera River
> 15.8.3(c) To reduce the discharge of contaminants into wetlands, canals and drains on the Rangitaiki Plains.
> ...

> 15.8.3(e) To encourage dischargers to avoid, remedy or mitigate any actual or potential adverse effects arising from their direct or indirect discharge of contaminants into water by:
> (a) Limiting and reducing quantities and concentrations of discharged contaminants, in particular, contaminants which can reduce the life supporting capacity of aquatic ecosystems.
> (b) Promoting discharges to land in preference to discharges into water in areas of the catchment of the Tarawera River where groundwater is not vulnerable to adverse effects from resulting contaminants *and where runoff of contaminants into water can be controlled.*
> (c) Reducing adverse effects from non- point-source discharges of contaminants to water bodies by supporting and promoting appropriate land and riparian management practices, and discouraging the application of sprays and fertilisers adjacent to or over surface water bodies.
>
> [emphasis added]
>
> ...
> 15.8.3(n) To encourage a reduction in human sewage discharges into the Tarawera River or its tributaries
> 15.8.3(o) To discourage and eventually prevent the degrading of the purity of water caused by the discharge of human sewage by:
> (a) encouraging the use of sewage treatment systems designed in consultation with tangata whenua to enhance or restore the mauri of receiving water;
> (b) prohibiting any new sewage discharges to surface water;
> (c) encouraging a shift to land based sewage treatment and disposal systems;
> 15.8.3(p) To encourage communities to develop land based treatment systems for sewage disposal.
> 15.8.3(q) To encourage the grant of consents for the discharge of treated sewage to land.
> 15.8.3(r) To allow the discharge of sewage to the Tarawera River and to its tributaries only in exceptional circumstances where no other practicable options are available, but limited in time to the duration of those circumstances.

[452] We have set out these provisions in some detail because they provide a finer grain of guidance for freshwater management relative to the LAF and they also relate to the project as a whole. As we have mentioned earlier, Ms Hollis in her evidence in chief opined that rule 15.8.4(r) *was not intended* to prohibit the discharge of treated wastewater to land in circumstances where it may enter water. We have discussed this rule earlier.

[453] If we take a look at the theme of the Tarawera Catchment Plan there is a clear direction towards reduction and enhancement of degraded waterways. This includes drains. The key objective (15.8.2) and the policies we have referred to above, indicate that this kind of discharge is to be discouraged.

[454] The Plan makes it clear that discharges to land should be promoted. However it does place a caveat on that by seeking to reduce adverse effects from non-point-source discharges of contaminants to water bodies by promoting appropriate

land and riparian management practices. This policy has not been addressed in the proposal and as a result the likely adverse effect of the LAF on the ORC has not been mitigated. We pick up on this issue elsewhere in the decision with a view to considering whether this issue is able to be addressed.

[455] As we have indicated above, the mauri of the ORC as it currently exists is already compromised. We do not understand this to be an issue in dispute. It follows then that any further degradation or restriction on the ability of that situation to be remedied would be contrary to the objectives and thrust of this Plan. Therefore we would need to see a positive move towards reduction to confirm that this Plan has been satisfied.

Coastal Plan

[456] There is in place a proposed Regional Coastal Environment Plan (2014) and the period for further submissions on it closed on 1 December 2014. For present purposes it was generally agreed given the weight that be attributed to the proposed plan this early in the process, the operative plan is most relevant here. We note that the operative plan has been updated in reference to the latest NZCPS as required under sections 55 and 57 of the RMA.

[457] We were referred to the Natural Character, Tangata Whenua Interests and Coastal Hazards sections of this plan. Many of these provisions mimic those of the other instruments we have already referred to. Matters worth discussing further are those related to natural character and coastal hazards where it clear that:

- The Council has recognised the dune system upon which the LAF is to be located as an area that requires protecting and that cumulative adverse effects upon these areas should be avoided (Objective 4.2.2 and Policy 4.2.3(c)) and that natural character must be restored where appropriate in areas where it has degraded.
- There should be no increase in the total physical risk from coastal hazards (Objective 11.2.2) and features that provide natural hazard protection such as dunes should be protected
- Matters concerning Māori are consistent throughout the Plans.

On-Site effluent Treatment Regional Plan 2006

[458] Mr Scrafton addressed this plan on the basis that it provides objectives and policies related to the management of on-site effluent treatment, and sets the background to the existing environment for the Matatā community which is currently serviced in this way. We do not consider we need to address this plan any further other than to say we have considered it and note that the Matatā community is identified in it as a *confirmed reticulation zone* on the basis that sewerage reticulation of the community will be completed by 1 December 2018. New development would enable better use of the urban land in Matatā given no onsite treatment system would be required if there was a reticulated sewer. We understand the beneficial use of the land resource that might follow although we were not provided with any specific evidence of it.

District Plan

District Plan operative

[459] Our attention was drawn to Objectives LRS1, LSR2, LRS6 and LRS7 and more relevant policies related to these objectives which appear to be the overarching objectives and policies in the Plan from which the finer grained specific objectives and policies flow. At this level we specifically note the intent of Objective LRS1 which seeks to avoid, remedy or mitigate the adverse effects of *incompatible use* and development on natural and physical resources. Its policies address separation as a tool and discourage location where reverse sensitivity issues might arise.

[460] LSR2 is particularly relevant:

> To **maintain and enhance** the traditions, lifestyle and cultural identity of Māori
>
> [emphasis added]

[461] Amongst the policies which follow this objective is the directive to maintain the mauri of water and other natural resources of significance to tangata whenua when considering the effects of subdivision, use and development.

[462] Objective LRS6 deals (relevant to these proceedings) with the maintenance and enhancement of public access along the coast and sets out a number of policies which promote this. Policy 2 however, sets out circumstances where access might be

restricted and here we note specifically the need to *protect* areas of significant indigenous vegetation and habitat, *protect* cultural values, and *protect* public health and safety.

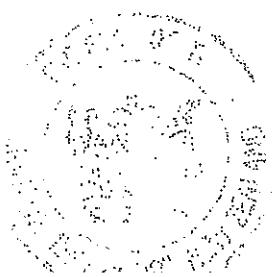
[463] Objective LRS7 deals with managing residential growth and this is directed towards encouraging infill (we take to mean increasing the intensity of development on lots which already have a house) and housing in identified growth areas where infrastructure /reticulation is provided.

[464] More specific objectives are found in the Built Environment section of the plan (2.2) where we note in addition to BE2, BE1 would appear relevant. Objective BE1 seeks to maintain and enhance the visual character of rural environs and the policies which follow address matters such as the visual effect of structures relative to their location, size, height, bulk and materials and seek to ensure physical separation of dwellings. In the explanation for these provisions of the plan we note the following passage:

> ...The focus on physically separating dwellings, but not other buildings, recognises that a dwelling is often the trigger for other buildings. On land without a dwelling, few buildings are usually constructed. Non-residential buildings are unlikely to have more than a minor effect on the visual character of a rural area. The rural character is defined in Section 2.2.1.1.
>
> Particular land activities can be visually intrusive, justifying some form of landscaping or screening. Sensitive locations are not to be compromised by visually intrusive activities.....

[465] BE2 seeks the maintenance and enhancement of the health and safety of people and communities from nuisance effects. The policies which follow include *to avoid, remedy or mitigate the adverse effects of intrusive noise, odour, glare or vibration. The policies also address dust suppression during construction and earthworks and also from vehicle access and parking and manoeuvring areas.* In the explanation for these provisions of the plan we note the following passage:

> The Council is seeking to avoid, remedy or mitigate nuisance and adverse environmental effects in rural areas so as to maintain a healthy, safe working and living environment.
>
> The Council's policy is to control intrusive noise, glare and vibration to the extent necessary to avoid, remedy or mitigate adverse effects on the health and safety of people and communities. In addition, the District Council has a limited and defined role in respect of odour and dust suppression...
>
> It is acknowledged that the rural environment includes activities such as farming, forestry or aggregate extraction which will generate nuisance effects at times. There are also activities near rural zones which can generate infrequent nuisance effects...



[466] Specifically in relation to sewage disposal Objective BE8 and its single policy are relevant. These are set out below for completeness.

> Objective BE8
> To prevent uncontrolled or unauthorised disposal of stormwater, wastewater and sewage into the environment.
>
> Policy 1
> To ensure stormwater, sewage and other wastewater is detained, collected or removed from a lot or a site without causing an adverse effect on the natural environment or to other property, or to people.

[467] Policy 5 is particularly relevant to the Treatment Plant site and access formation to it. We set out the policy below.

> Avoid, remedy or mitigate the adverse effects of earthworks associated with development and ensure the integration of earthworks with the natural landform and vegetation patterns

[468] The provisions of the plan related to natural hazards are also relevant although we did not find that this issue was particularly contentious (we do note the earthquake vulnerability of the Treatment Plant site and the vulnerability of the LAF to tsunami and coastal erosion). The sites are also part of a rural landscape where Objective LS2 and its related policies seek to maintain the character and diversity. Objectives and policies (CE1 and policies 1 and 3) are specific to the coastal environment. This objective seeks to preserve the natural character of the coastal environment and protect it from inappropriate subdivision, use and development. The LAF site is clearly in focus for this section of the plan (2.8.3). The policies which follow include a requirement to *maintain and enhance the natural ecology* of the coastal environment.

[469] Finally and specific to works and network utilities (2.6). The District Council has acknowledged in this plan the inadequacies of existing reticulated sewerage systems. In the discussion around these facilities (2.6.1.2) the district plan indicates Council will adopt the best practicable option over time to improve environmental performance. Our understanding here is that this proposal is considered a best practicable option given the community characteristics and the particular methodology adopted. Objective WNU1 provides for the Council to facilitate the development, operation and maintenance of works and network utilities throughout the district, while avoiding, remedying or mitigating adverse effects on the environment. Policies 1 and 3 associated with this objective were highlighted and they require Council to consider the benefits derived from a proposal and technical

requirements to enable efficiency, and to ensure adverse environmental effects are addressed.

District Plan Proposed

[470] The Proposed Whakatāne District Plan was notified in June 2013 and although the submission period has closed and hearings are underway we were advised by Mr McGhie (Team Leader - Consents Planning Whakatāne District Council) that no decisions relevant to these proceedings have been made. However there are provisions at Chapter 15: Indigenous Biodiversity, rules 15.2.1 (1-14) and 15.2.2 and Chapter 16: heritage rules 16.2.1 (1-10) that have immediate effect. This means that the SIB status takes immediate effect. However, a number of submissions have been received on both these areas of the proposed plan so they currently carry little weight.

[471] Both of the two sites subject to the designations are zoned *Rural Coastal* in this Plan and the LAF site is located in an area covered by a coastal protection overlay zone. It is shown as being subject to erosion risk and inundation however the actual LAF site is apparently outside both these risk areas.

[472] The LAF is also identified as within a *Significant Amenity Landscape* and a *Significant Indigenous Biodiversity Site* (SIB) (Thornton Dunes). We were told that the policy framework for the two sites is very similar and Mr McGhie identified two areas where the proposed plan does not have equivalents in the operative plan. These are:

- Objective CP1 and policies 1 and 2 (addressing natural character).
- Objective IB1 and IB2 and policies 1 and 2 for each which address the maintenance and enhancement of the full range of indigenous habitat and ecosystems and the retention and protection of identified indigenous vegetation and habitats of indigenous fauna from adverse effects of land use changes.

These provisions seem to provide more consolidation around the protection regime set out in the older plan.

[473] The separation of incompatible uses is one of the foundations of the zoning tool used for the drafting of district plan documents. Other tools include the setting of standards which limit generated effects so that differing activities can co-exist. In this

case, the general accepted practice of a buffer to account for the mitigation of odour has not been part of the proposal before us. We can understand that this may be so because the general thesis of the Plan is for there to be rural activities on the Treatment Plant site. There are activities (as acknowledged in the Plan where is deals with rural amenity) which generate effects that might be acceptable in rural areas but may not be acceptable in residential/urban areas. Odour is one of these generated effects from certain farming activities.

[474] However, the site condition here is complicated by the nature of the ownership of both the subject site and its neighbour where Māori Land expectations for the utilisation of their lands needs to be taken into account. The Applicant has been aware of those expectations, and for potential complaints about the Treatment Plant. We have addressed odour in our discussion on the environmental effects and it can be seen in relation to the provisions of the District Plan this issue is not satisfied in many ways including the actual potential for the adverse emission of odour as well as the hindrance to the maintenance and enhancement of the traditions, and relationship of Māori with their ancestral lands. The Applicant's response has been to require a non-complaint covenant in its Deed of Lease for Lot 6A. Such a clause does not avoid the potential adverse effects on Lot 6A, or Lot 7A, and the legitimate expectations of the beneficial owners.

[475] The use of the sand dune area for the LAF clearly has the potential to restrict public access to this area even though we were told foot access would be permitted. However, in a practical sense we doubt the practicality of this as we were also told of signage which would warn persons of its potential health risks and the area will be enclosed by a fence. On the positive side, the access to the foreshore will be restricted to defined locations so that this area can, with the assistance of a weed management and a planting program, be restored with indigenous plants. This feature of the proposal will enhance the environmental outcome in respect of the dune site. We consider that on balance, the use of this site (if the discharge issues can be addressed) will not be contrary to the scheme of the objectives in both the operative and proposed District Plan.

[476] We do not consider that all of the aspects of this proposal have been brought before us in a manner that we are able to make an informed decision in respect of the Treatment Plant. Particularly this relates to the effects of the formation of access to the Treatment Plant site and effect that may have on the character of the area. Further, we have not been provided with a clear understanding of mitigation measures

so that we can understand the impact of building(s) which might be employed to mitigate odour for instance. It is unclear to us in these respects whether the Treatment Plant on site 6A will meet the objectives and policies around maintenance and enhancement of the rural character, although we accept that the planting buffer must have a positive impact.

[477] We acknowledge that once sewage is reticulated that it is likely the objectives guiding residential growth will be further realised and this is a positive contribution of the project.

[478] We also acknowledge that in the general scheme of the provision of sewerage systems this project demonstrates best practice compared to existing facilities in the district. However, some of the adverse environmental effects have not been adequately addressed in respect of the Treatment Plant (protocols for excavation, incomplete details for implementation, lack of appropriate and dependable odour management), and in respect of the LAF concerning mitigation measures for discharges to fresh water. We have addressed these effects elsewhere. In light of that assessment the Treatment Plant cannot fulfil the objectives of the District Plan (nor the proposed plan). We conclude though, that with further attenuation of the LAF discharge and improved protocols regarding ground disturbance this part of the proposal is consistent with and in some cases promotes objectives and policies of the District Plan.

Iwi Management Plans

[479] We were not made aware of the specifics of iwi management plans, which it would seem do exist and would likely be relevant to this project. We understand the proponents reliance on cultural impact reports and consultation to address matters likely canvassed in these plans. We have addressed the cultural impacts and the efficacy of the consultation elsewhere in this decision.

Overall Conclusion Planning Instruments

[480] As noted we have also integrated our discussion on parts of the various planning instruments as we have considered the effects related to certain subject areas of the proposal. This has been necessary due to the approach taken in this decision given its complexity and the numerous issues. What is clear is that the purpose of the proposal is consistent with aspects of the community's aspirations as set out in the

Tarawera Catchment Plan and the District Plan to better manage the treatment of sewage. That is an intended positive environmental objective of the consents being sought. However that does not of itself outweigh the negative effects to sustainable management of the environment as we have set out elsewhere and which are clearly articulated in the relevant plans.

[481] It is clear that a number of documents are relevant to the application of Part 2, and the consideration of this application for land discharge. These include the NZCPS, the Freshwater Policy Statement, Regional Policy Statement, and the various plans including the Land and Water Plan, Coastal Plan, Tarawera Catchment Plan.

[482] Overall, it can be seen that these various documents point towards:

(a) a cautious approach to constraints within the coastal environment;

(b) a desire to maintain and enhance water quality and reduce contaminants in water;

(c) a desire to improve the natural ecology, particularly of coastal dunes and wetlands.

Reserves Act 1977

[483] We were told the LAF site is within a Recreation Reserve. The Reserves Act 1977 provides:

> **17 Recreation reserves**
> (1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as recreation reserves, for the **purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.**
> (2) It is hereby further declared that, having regard to the general purposes specified in subsection (1), every recreation reserve shall be so administered under the appropriate provisions of this Act that—
> (a) the **public shall have freedom of entry and access** to the reserve, **subject to the specific powers conferred on the administering body by sections 53 and 54**, to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary **for the protection and general well-being of the reserve and for the protection and control of the public using it**:
> (b) where scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife **are present on the reserve**, those features or that flora or fauna or wildlife **shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve**:

> provided that nothing in this subsection shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the Heritage New Zealand Pouhere Taonga Act 2014:
> (c) those qualities of the reserve which contribute to the pleasantness, harmony, and cohesion of the natural **environment and to the better use and enjoyment** of the reserve **shall be conserved**:
> (d) to the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.
>
> [emphasis added]

[484] Given this is a recreation reserve, the activities that can be conducted there are prescribed by ss17, 53 and 54, together with any relevant bylaws. We note that the LAF will only occupy some 4ha of what was described as a 385 hectare reserve. However, we see various titles, and there was no explanation as to what made up the larger reserve, and whether this includes the lands returned to iwi under the Treaty settlements.

[485] Some activities require prior ministerial approval, including leasing the site (except for farm grazing or afforestation) (s 53(1)). The Court expressed some concern at the hearing as to whether the LAF could be located in a recreation reserve without ministerial approval.

[486] The site is gazetted (January 1975, page 17) as recreation reserve with no special conditions. We conclude that a ministerial consent may be required, but that would not prevent a resource consent being issued with a condition that any consent for the activity on the recreation reserve would be obtained prior to the activity commencing. Such a condition would need to be inserted.

[487] Public access to and along the coastal marine area is of considerable importance under 6(e), but it was not suggested the LAF would affect this. The reasons for this are that the LAF is already fenced on the seaward side to allow leased grazing. Beyond the fence there is a flat area 20-40m to the top of the seaward dunes and then a similar distance to high water. There is access along the entire beachfront, and behind the seaward dunes in this area. On our site visit we noted vehicles using an informal track between the foredunes and the fence. That enables ready access along the coastal Marine Area, and there is access to this area both at the Tarawera Mouth (several kilometres west) and at various points to the east, including the Cut for the Rangitaiki River.

Part 2 issues

[488] Some issues in this case arise directly as a function of Part 2, including the question of economic impact and the health and welfare of the local community. Unsurprisingly, there are different views on these issues.

[489] Many section 6, 7 and 8 issues have been part of the evaluation of this proposal or are captured by the many statutory documents affecting the sites or catchment. Given our conclusion that the proposed Treatment Plant is not in the coastal environment, s 6(a) bears upon the consideration of the LAF as it affects the Coast and rivers. We accept the proposal would only have minimal effects on natural character, particularly if the N and P discharge to the ORC was reduced. The land surface and coastal margin will not be affected provided conditions are imposed on the discharge to land consent and regarding vegetation.

[490] We accept that s 6(b) and (c) will not apply on the facts, provided significant vegetation is protected as proposed by the Applicant.

[491] We have discussed s 6(d) in relation to the LAF, and these issues do not arise on Lot 6A. We conclude that access will be maintained with the proposal.

[492] Both s 6(f) and s 6(g) are marginally relevant, depending on one's view as to whether Lot 6A or 7A represent historic heritage. Adequate protection of koiwi is provided by the Protocols.

[493] This leaves the question of 6(e) and the relationship of Māori with Lot 6A, Lot 7A, the ORC, the Tarawera River, the coast and the area around the LAF. We conclude there is very strong evidence of that relationship recognised in ownership of Lot 6A and Lot 7A and the vesting of land in the immediate vicinity of the LAF. The new Freshwater Policy Statement, the Tarawera Catchment Plan and other statutory documents also recognise the relationship of tangata whenua with the waters. These relationships have been the focus of much of this case, and remain the dominating influence in relation to both sites.

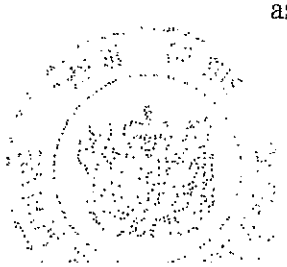
[494] Mr Harris, for Sustainable Matatā, believes the local community is having foisted on it a very expensive system, which will be expensive to maintain and will mean that all Matatā residents will be required to pay rate payments in respect of wastewater for not only their own services but those within the rest of the district into

the foreseeable future. He considers that that is an impost that residents in Matatā can ill afford. He says that it would be better to spend a significantly smaller sum of money (unspecified) on upgrading individual septic tank systems to modern requirements as required. Mr Harris acknowledges that there may be difficulties with the payment of public monies for individual property owners, and also recognises that some individual owners may be faced with significant costs of installing appropriate treatment systems depending on their personal situation.

[495] The role of the Court is not to make a policy decision on what is the appropriate wastewater treatment system for Matatā. This is a matter that is properly be addressed by the ratepayers and the District Council, and the concern of this Court under the Act is to be satisfied that the proposal put before it meets both the purpose of the Act and various documents prepared under it, in particular the designation objectives. To this end, our enquiry is not to decide which is the best alternative under s 171(1)(1)(b), but rather whether there has been adequate consideration of the alternatives. That can include alternative sites for the Treatment Plant in certain circumstances. These factors are part of our overall evaluation subject to Part 2 of the Act.

[496] We do note, however, the evidence of the Applicant in this case that the impost on individual ratepayers was being kept to a minimum by spreading the cost over the entire district. We also note that, of the estimated $12m in costs, over $8m appears to have been sourced from the regional council and central government.

[497] Most of the parties before us agreed that, in principle, a reticulated system had significant advantages. It does appear to us that the significant advantage of a reticulated system is being able to impose controls over the outlet and treatment of the wastewater, rather than having to deal on an ad hoc basis with multiple systems that may be of different ages and stages. Non compliance of septic tanks may have significant impacts on individual landowners. To that end, we were initially concerned about the grinder systems on each property, but we were told by the Council that those would be owned and maintained by the Council, and only in exceptional circumstances (such as deliberate interference) would they be looking to the landowner to meet costs. It was acknowledged that the landowners would need to pay the cost of power in respect of each in addition to the wastewater rates assessment.



[498] Overall we were unable to find in this argument anything that convinced us that there was any disabling effect of a reticulation scheme. We note that it is not opposed by the majority, and it seems to us that it will have advantages to the population generally. While we remain unconvinced that this will allow any major extension of Matatā it nevertheless does ensure that any additional properties built or subdivided will be part of a reticulated and controlled scheme.

Enabling the community

[499] Section 5 seeks to enable people and communities. It is sometimes helpful to analyse the Part 2 criteria in terms of the various parties that are enabled or not enabled through the proposal. It might be argued that a designation is not subject to the same evaluation, yet s171 does state that it is subject to Part 2 of the Act. In those circumstances we conclude that the Court is still obliged to consider whether it is satisfied that the purpose of the Act is being met.

[500] Does this application enable the social, economic, health and safety needs of the community? There are broad arguments it does, but it is difficult to evaluate the relative significance of this enabling given the lack of evidence. Thus the broad social benefit of a reticulated waste system must be considered against the impost on beneficial landowners of Lot 6A, the failure to properly consider alternative sites and the potential effects on surface water from the LAF site. The task has proved very difficult because of the need to sift through background documents to evaluate evidence, and the significant number of issues only partially considered. The Commissioners' decision issued four days after the hearing is unhelpful.

Evaluation of the Designation

[501] Although the objective of a designation is clearly an important factor, in the end we have concluded that the purpose of the Act must also be met. In this regard, in respect of the designation itself, we conclude that with some potential amendments to the designation of the LAF, it could meet the purpose of the Act, and we could be satisfied that the designation should be confirmed.

[502] Key to this is whether the impact of N and P on the ORC (and thus the Tarawera River) can be improved.

[503] In respect of Lot 6A, the situation is somewhat more problematic. As we have discussed in some detail, the issue comes down to whether or not we can be satisfied that the beneficial owners of that lot and Lot 7A will be able to establish Papakainga in future, or whether it will constitute a restriction on the land's use in the future. If this is impeded, that has a direct impact on the relationship of Māori with their Taonga (land).

[504] In the end we are satisfied that the issues of visual effects could be met by the imposition of appropriate conditions in relation to a site planting scheme and any associated fencing of the areas to be stocked in due course.

[505] So far as the question of odour is concerned, we have discussed this in some detail and reached the conclusion that, without some adequate control of odour at its source, offensive odour is likely beyond the boundary of the designation/s. Although we accept that residential amenity is not part of the current physical environment, we see it as a cultural issue relating to the appropriateness of the activity on the site, and the clear and continuing objective of having Papakainga on both Lot 6A and Lot 7A.

[506] To date, the evidence has not satisfied us that there would be no offensive odour beyond the boundary. At the end of the case, and in light of the Applicant's submissions, we are in significant doubt as to whether or not the proposed condition of no objectionable odour at the boundary could be met at all, and conclude that Mr Iremonger's view that a 100-140m buffer would be required to achieve that level of confidence is correct.

Outcome

[507] When we look at this matter under Part 2, the principle of a reticulated system for Matatā is a positive benefit, although no specific evidence weighing those benefits has been given. However, provided N and P reaching the ORC from the LAF can be attenuated, we would consider that there would be an overall benefit.

[508] That would require some specific proposals in respect of one or more of the following:

(a) Improving attenuation in the ground at the LAF;

(b) riparian planting and/or wetlands; and

(c) retirement of paddocks from stock.

[509] Further evidence should then be able to demonstrate an attenuation of nutrient levels entering the ORC from the farm drains, which would then satisfy us that the broad objectives of the Freshwater Policy Statement and the regional documents could be met. Collaterally, this would accord with the Tarawera Catchment Plan and satisfy us that the intent of Rule 15.8.4(r) is being met.

[510] In relation to the Treatment Plant on Lot 6A, we conclude that the cultural relationship is not enabled by the proposal. To that extent we see the reticulation of the three marae and in particular for any future construction on Lot 6A as a positive benefit. Nevertheless, on the basis of the evidence currently before us, it appears to us that significant adverse effects from odour could occur, and that the risk would be unacceptable in terms of any residential activity within 150m of the plant, more particularly in respect of any relationship of the beneficial owners of Lot 6A and Lot 7A with their residual lands.

[511] The Applicant's evidence in this area was variable, with the original proposal suggesting that the operation would be fully covered and ventilated, but the Applicant in final reply indicating that covers would be installed with no mention of how those would be ventilated and the odour reduced. Questions of maintenance or problems with the system were not addressed in any detail, and in particular:

- How would the elements of the plant be covered and odour extracted?
- How would items be serviced while avoiding the emission of any odour?
- How would odour effects of Treatment Plant upsets be managed?

[512] We are not satisfied that potential effects can be avoided. The condition proposed does nothing to assist in that regard. Odour would be a significant adverse effect on any Papakainga within a radius of 100-150 metres. It may have significant adverse effect from time to time beyond that. No design solution has been given to satisfy us that the odour effects will be avoided beyond the Buffer area. When combined with the other cultural factors the Designation and resource consent/s for Lot 6A must be cancelled.

[513] Overall the Applicant's case suffered from a lack of careful thought in its preparation, and an assumption that generic conditions would sufficiently control effects. The concern from the Court's point of view is how, in fact, such effects would be avoided, as opposed to mitigated. We also have considerable issues with the wording of the conditions. We do not go into these in detail simply because the conditions would need to be settled once a proposal is accepted.

[514] Having reached the conclusion that there are significant adverse effects, which are not fully addressed by the application, s 171(1)(b) would then require the consideration of alternatives. There was a clear failure to adequately consider alternative sites for the Treatment Plant. The effect of this has been to identify this site for the development of a Treatment Plant without regard to the clear expectation of development for Papakainga on Lot 6A and 7A, or the effect that this Treatment Plant will have on the relationship of the beneficial owners of both Lot 6A and Lot 7A. This Māori land was identified by URS in its June 2013 report, but was ignored in the later analysis.

[515] The Applicant's evidence-in-chief before us did not take into account this relationship or expectation for Papakainga development in respect of this land. Even if the Applicant is not required to consider alternatives, it is quite clear that the Court is able to take into account all effects under s171. The question of alternatives is merely an element of that. In that regard, we reach the conclusion that there is potential for odour to impact upon the beneficial owners of both Lot 6A and Lot 7A, which is a significant effect. The failure to properly consider alternatives go to our conclusion that we are not satisfied the Lot 6A proposal meets the purpose of the Act.

[516] This cultural input can, in any event, be considered under s 104(1)(c) – other relevant matters. We have a broad discretion to include other matters that bear upon sustainable management. We include the potential Papakainga and community facilities as part of that analysis.

[517] Whichever methodology we adopt, we have concluded unanimously, after significant consideration as to whether the matter can be remedied by the Applicant, that Lot 6A designation for the Treatment Plant cannot be granted. It follows that the designation for the buffer area, which essentially is simply vegetation and therefore permitted, serves no purpose without the plant, as does the access road. We note in respect of the access road that it itself has an effect currently in bisecting the rear of the site, and by connecting to a road which currently appears to require a consent

before it can be constructed. There is no utility in granting these designations in the absence of the plant designation and comment that we saw little utility in having separate designation for these elements in any event. Given the current lease arrangements between the Council and the Trustees, the access and buffer zone elements could be constructed in any event without a designation, given they appear to be permitted activities.

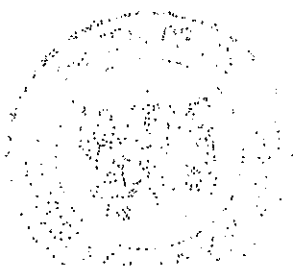
[518] We accept that an appropriately designed, operated and sited wastewater treatment system, based on grinder pump reticulation, Treatment Plant and LAF, is an appropriate system for Matatā. But Lot 6A is not an appropriate site for a Treatment Plant and the LAF has potential indirect adverse effects on the ORC that need to be addressed.

[519] Accordingly we have concluded that all three designations for the Treatment Plant site on Lot 6A must fail. Given our conclusions in respect of effects we are not satisfied with the granting of regional consent for the odour release on the properties. To the extent that there are other consents either relevant or interpolated within the broad range of consents sought, we conclude that these should be refused also. Given the lack of any clarity in both applications, and the consents granted, we say this out of caution.

Comments

[520] Given the conclusion of this Court, we again reiterate, as we have several times through this decision, that we see a reticulated system of the type suggested by the Applicant as generally desirable. We are minded to grant consent for the LAF in principle, subject to being satisfied as to the reduction of N and P to the ORC, and the redrafting and extension of other conditions.

[521] We give the Applicant an opportunity to consider, on a proper basis, alternative sites for the wastewater Treatment Plant. If a proper constraints analysis was conducted, we suspect that there are several sites around Matatā which would be appropriate.



[522] It may be that the various subsidies could be continued while a process for an alternative Treatment Plan site was entered into. Matters could be expedited even by way of a direct referral. We would expect any alternative site to factor in a separation from residential activity and/or Māori land around 150m buffer zone, with more thought given to the potential design of the site to minimise odour. We would suspect that such alternative site may even be achieved by consensus, given the position of almost all parties before us as to benefits of a reticulated system. We acknowledge that this does not address directly Mr Harris's concern about costs to the local community, but we have already noted that this aspect of his appeal is not supported by this Court.

Directions

[523] We direct that the Applicant is to advise within **twenty working days** if it wishes to finalise the Designation and consent conditions in respect of the LAF, in which case it should seek further directions from the Court for timing. We adjourn that aspect of the case.

[524] The resource consents and designations are cancelled in relation to the Treatment Plant. This appeal is allowed only to the extent set out in this decision. We particularly note that this does not endorse Mr Harris's position in respect of the question of financial matters or the necessity for a reticulated scheme.

[525] Costs are reserved for directions in due course.

SIGNED at AUCKLAND this 12th day of May 2015

For the Court

JA Smith
Environment Judge

C Fox
Alternate Environment Judge

JA Hodges
Environment Commissioner

ACE Leijnen
Environment Commissioner

Annexure List:

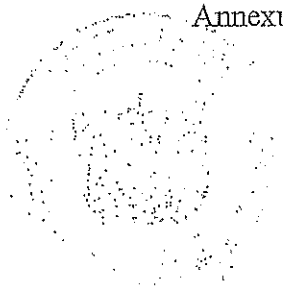
Annexure A Consent 67708;

Annexure B Figure 7 Map Book prepared for Whakatāne District Council evidence;

Annexure C Figure 3 Map Book prepared for Whakatāne District Council evidence;

Annexure D Figure 20 Map Book prepared for Whakatāne District Council evidence;

Annexure E Figure 8 Map Book prepared for Whakatāne District Council evidence.



Annexure A

Conditions of consent for the Matatā wastewater treatment system

(67708)

Purpose

1. For the purpose of discharging treated wastewater (TWW) by way of sub-surface irrigation from a wastewater treatment plant (WWTP) to the land application field.
2. For the purpose of discharging contaminants to air from the WWTP and land application field.
3. For the purpose of authorising earthworks associated with the construction of the land application field and access road.

Location

4. Wastewater Treatment Plant and Land Application Field located at Thornton Road, Matatā.

Quantity and Rate of Wastewater

5. The daily quantity of TWW discharged to the sub-surface irrigation shall be no more than 605 cubic metres per day, at an average application depth no greater than 30 millimetres per day, averaged over a period of one calendar month.

Volume of Earthworks

6. Earthworks under this consent shall not exceed a total cut and fill volume of 5,500 cubic metres.

Earthworks Location

7. Within Pt Allotment 273 Rangitaiki Parish Recreation Reserve and Allotment 109 Rangitaiki PSH BLK V Awaateatua SD, as shown on plan number C03.

Map Reference

8. Discharge of TWW at or about map reference NZTM 1935533 5798943.
9. Discharge of contaminants to air at or about map reference NZTM 1935181 5799150 and NZTM 1931281 5799263. .

Legal Description

10. WWTP site: Allotment 6A Matata Parish
11. Land application field: Pt Allotment 273 Rangitaiki Parish Recreation Reserve

Earthworks - Notifying the Regional Council

12. No less than ten working days prior to undertaking any earthworks as authorised under this consent, the consent holder shall submit a Site Management Plan to the Chief Executive of the Bay of Plenty Regional Council (Regional Council) (or delegate) for approval. This management plan will include, but not be limited to:
    a. A plan of earthworks showing cut and fill locations and volumes.
    b. How sediment, stormwater and erosion will be controlled and contained, noting that as this is a sandy soil site winter earthworks are encouraged.
    c. How the groundcover of the dunes will be protected.
    d. Site Plan.
    e. Drainage Plan.
    f. Areas to be cut and filled.
    g. Total works area expected to be disturbed.
13. No less than five working days prior to the overall start of works under this consent, the consent holder shall request (in writing) a site meeting between the principal site contractor and the Chief Executive of the Regional Council (or delegate). Notification at this time shall include details of who is to be responsible for site management and compliance with consent conditions.

14. The consent holder shall notify the Chief Executive of the Regional Council (or delegate) in writing no less than five working days before the completion of Earthworks under this consent, prior to the removal of erosion and sediment controls.

Discharge - Notifying the Regional Council

15. No less than five working days prior to the first TWW discharge from the WWTP under this consent, the consent holder shall request (in writing) a site meeting between the principal site manager and the Chief Executive of the Regional Council (or delegate). Notification at this time shall include details of who is to be responsible for site management and compliance with consent conditions.

Notification of Medical Officer of Health

16. The consent holder shall notify the Medical Officer of Health should any part of the activity set out in the document 'Matatā Wastewater Scheme: Resource Consents and Notices of Requirement Assessment of Effects on the Environment, Application Edition, November 2013' be subject to any significant change that may have an effect on public health.

Written Approvals

17. The following conditions requiring written approvals from the Chief Executive of the Regional Council (or delegate) shall be obtained before any works or discharges commence:

    a. Condition 12 relating to earthworks;

    b. Conditions 23, relating to discharges of TWW.

Wastewater Treatment Plant and Land Application Field

18. The location of the WWTP and land application field shall be as shown on plan number A02.

19. There shall be no above ground discharge or spray irrigation of wastewater, treated or untreated, from the WWTP or within the land application field.

20. Treated wastewater discharge to land shall be by way of sub-surface drip lines placed at a minimum depth of 200mm and maximum depth of 300mm below the ground surface.

21. The consent holder shall ensure that the physical works authorised under this consent are completed within a period of no longer than 15 months following their commencement.

22. The consent holder shall ensure there is no activity undertaken on top of the land application field that may cause damage to the disposal system (e.g. stock grazing, deep rooting trees or vehicle parking etc.).

Operation and Management Plan

23. The consent holder shall submit a Draft Operations and Management Plan for WWTP and land application field to the Chief Executive of the Regional Council (or delegate), no less than one month prior to the installation of the system, for approval by the Chief Executive of the Regional Council. The consent holder shall consult with the Medical Officer of Health and seek feedback on the draft Operations and Management Plan prior to submitting to the Regional Council. The draft Operations and Management Plan shall include the results of any consultation undertaken in developing the draft Operations and Management Plan. The Operations and Management Plan shall include as a minimum the following details:

    a. Location and Design of WWTP and TWW land application field:

        i. Plans detailing the key components and location of the WWTP;

        ii. Detailed design drawings; including depth and length of the land application field, layout of the land application field and reticulation within it;

        iii. Methodology for calculation and verification of the land application field's loading rate;

        iv. An explanation of the operation of the land application field, including field resting;

        v. Wastewater Treatment Plant process flow diagram;

        vi. Location and specification of groundwater monitoring wells, including depth; and

        vii. Maintenance specifications for both the WWTP and land application field.

b. Soil monitoring within the land application field:

i. Details of the monitoring methodology of the land application field soils, including:

1. Five yearly soil quality monitoring; and

2. Location, depth, frequency of sampling, dates and constituents as required in Condition 45.

c. Operation of WWTP and land application field:

i. Onsite responsibilities, including names and contact telephone numbers for operational staff and a 24 hour contact telephone number;

ii. Protocols for sampling, sample handling and analysis;

iii. Protocols for cycling land application fields;

iv. Maintenance schedules for all components of the WWTP and land application field;

v. An Environmental Risk Management Plan, including identification of potential issues, including spill and breakdown, location in the system where these may occur, issue indicators, and response plans. These should include measures to notify the Medical Officer of Health as soon as practical where a spill or breakdown occurs that may have a public health risk, including the notification of the measures being implemented to mitigate the occurrence and associated public health risk;

vi. Storage and handling procedures for any chemicals to be stored on-site as part of the WWTP process; and

vii. Timelines for any reviews associated with the operation of the WWTP and discharge field.

d. Odour Management Plan for the WWTP and land application field, including as a minimum:

i. The purpose of the odour management plan,

ii. Full process description and identification of potential sources of odour,

iii. Methods of odour mitigation and operation procedures,

iv. Biofilter (or alternative odour device that would achieve the same level of odour control) management and maintenance frequency,

v. A description of the routine inspection, monitoring and maintenance procedures to be undertaken to ensure effective WWTP operation and compliance with resource consent conditions;

vi. Key system parameters to be monitored remotely,

vii. System review and reporting procedures,

viii. Details of back up options and contingency plans and procedures, including spill, overflow and breakdown response plans; and

ix. Details of the odour complaints procedure (including the provision of odour diaries to neighbouring property owners on request), record keeping and response procedure.

e. Avian Botulism Management Plan for the surface water drainage network immediately to the south of the land application field and/or Bennett Rd Stream:

i. Surveillance actions to detect an outbreak of Avian Botulism;

ii. Actions (for example, collecting and removing dead or dying birds) that the consent holder shall undertake should there be an outbreak of Avian Botulism including proactively participating with Fish and Game New Zealand, Eastern Region; and

iii. Monitoring and mitigation measures.

24. The final Operations and Management Plan shall be submitted to the Chief Executive of the Regional Council (or delegate) for approval within three months of the completion of the initial sampling period as described in condition 32. The Operations and Management Plan shall be reviewed by the consent holder at least every three years and if revised shall be submitted to the Chief Executive of the Regional Council (or delegate).

Baseline Receiving Water Monitoring

25. At least one month before any discharge of TWW from the WWTP the consent holder shall supply the Chief Executive of the Regional Council (or delegate) no less than 12 months' worth of monthly water quality monitoring results from surface water bodies likely to receive resurfacing discharged TWW. These sampling locations shall be located generally as detailed in the Plan number C03.

26. Surface water monitoring results as required under Condition 25 shall be sampled and tested for:

    i. Dissolved Oxygen (g/m3)
    ii. Electrical conductivity
    iii. pH
    iv. Chloride (g/m^3)
    v. Total nitrogen (g/m^3)
    vi. Nitrite and nitrate nitrogen (g/m3)
    vii. Total ammoniacal nitrogen (g/m^3)
    viii. Total phosphorous (g/m^3)
    ix. Dissolved reactive phosphorous (g/m^3)
    x. E. coli (cfu/100mL)

27. At least one month before any discharge of TWW from the WWTP, the consent holder shall supply the Chief Executive of the Regional Council (or delegate) no less than 12 months' worth of quarterly groundwater quality monitoring results from the groundwater bodies likely to receive discharged TWW. These sampling locations shall be located generally as detailed in the Plan number C03.

28. Groundwater monitoring results as required under Condition 27 shall be sampled and tested for:

    i. Groundwater level (metres below ground level)
    ii. Water temperature
    iii. Dissolved Oxygen (g/m3)
    iv. Electrical conductivity
    v. pH
    vi. Chloride (g/m^3)
    vii. Total nitrogen (g/m^3)
    viii. Nitrite and nitrate nitrogen (g/m3)
    ix. Total ammoniacal nitrogen (g/m^3)
    x. Total phosphorous (g/m^3)
    xi. Dissolved reactive phosphorous (g/m^3)
    xii. E. coli (cfu/100mL)

29. The installation of monitoring bores in Condition 27 shall be undertaken in consultation with a suitably qualified and experienced hydrogeologist to ensure correct specification relative to the depth and construction of the well.

30. Results from Conditions 26 and 28 shall be submitted in writing to the Chief Executive of the Regional Council (or delegate) and the consent holder must obtain written receipt from the Chief Executive of the Regional Council (or delegate).

Initial Sampling of Treated Wastewater

31. For no less than four weeks immediately following the commencement of the TWW discharge from the WWTP, or for no less than 4 weeks if required under condition 38, results from samples taken from the WWTP (after all treatment processes and prior to discharge to the land application field) shall be taken twice weekly (measured as a grab TWW sample for E. coli and a 24 hour flow proportioned TWW sample for other parameters) for the parameters set out below:

i. Total nitrogen (g/m^3)

ii. Total ammoniacal nitrogen (g/m^3)

iii. Nitrite and nitrate nitrogen (g/m^3)

iv. Total phosphorous (g/m^3)

v. Total suspended solids (g/m^3)

vi. $cBOD_5$ (g/m^3)

vii. pH

viii. E. coli (cfu/100mL)

32. On receipt of three weeks consecutive results verifying the TWW to be within the parameters defined in Table A of Condition 35, the initial sampling period will be considered over and operational sampling of TWW shall commence. Should this condition not be achieved within six months following the commencement of the TWW discharge from the WWTP, the Regional Council may undertake a review as described in Condition 97.

Operational Sampling of Treated Wastewater

33. Following completion of the initial sampling period for the WWTP as provided in Condition 31, the consent holder shall take samples of the TWW from the WWTP (after all treatment processes prior to discharge to the land application field) once per week. Samples shall be measured using a grab TWW sample for E.coli and 24 hour flow proportioned TWW sample for other parameters, and shall be analysed by laboratory analysis for the following:

i. Total nitrogen (g/m^3)

ii. Total ammoniacal nitrogen (g/m^3)

iii. Nitrite and nitrate nitrogen (g/m3)

iv. Total phosphorous (g/m^3)

v. Total suspended solids (g/m^3)

vi. $cBOD_5$ (g/m^3)

vii. pH

viii. E. coli (cfu/100mL)

34. The total daily volume from the WWTP to the land application field shall also be recorded on a daily basis taken at approximately the same time each day.

35. Following completion of the initial sampling period for the WWTP as provided in Condition 31, the TWW discharged into the sub-surface discharge system shall not exceed the limits specified in Table A when determined as setout in condition 33 for the ten out of twelve consecutive samples, taken weekly and measured as 24 hour flow proportioned TWW samples;

Table A – TWW Limits

Process Performance Parameter	Unit	10 out of 12 Consecutive Samples Compliance Limit
$cBOD_5$	g/m^3	30
NH_4-N	g/m^3	5
NO_2-N + NO_3-N	g/m^3	10
TN	g/m^3	15
TP	g/m^3	10
Suspended Solids	g/m^3	30
pH	SU	6.5 - 7.5 (outside of range)

36. If the concentration of E.coli measured under Condition 33 exceeds 100,000 cfu/100ml the consent holder shall, within 7 days, commence weekly monitoring of the groundwater bores for E.coli levels, in order to confirm compliance with trigger levels set out under of Condition 46. If compliance with the trigger levels set in Condition 46 is demonstrated for 3 consecutive weeks the consent holder shall revert to groundwater monitoring at the frequencies set out in the Sampling Plan provided under Condition 46.

37. Laboratory analyses as required under conditions 26, 28, 31, and 33 shall be carried out as set out in the latest edition of "Standard Methods for the Examination of Water and Wastewater' - APHA - AWWA - WPCF or such other method as may be approved by the Chief Executive of the Regional Council (or delegate).

38. If under Condition 35 sample results exceed one of the specifications listed in Table A (as measured in accordance with Condition 33 and 37) the consent holder shall recommence sampling as required under Condition 31 to again satisfy Condition 32. In the event that Condition 31 cannot be satisfied following such an event, the Chief Executive of the Regional Council (or delegate) may trigger a review of the monitoring conditions in accordance with Condition 97.

39. The consent holder shall keep records verifying conditions 32, 34, 35, 36 and 37. These records shall be made available immediately upon request to the Chief Executive of the Regional Council (or delegate).

Soil Monitoring

40. At least one month before the first discharge of TWW to the land application field the consent holder shall submit to the Regional Council soil sample results for parameters as defined in Condition 45.

41. Samples taken for Condition 45 shall be taken at a depth below where the discharge drip lines will be situated and shall consist of random composite samples from no less than one sample per hectare or part thereof within the discharge field.

42. As part of the Operations and Management Plan to be submitted by the consent holder in accordance with Condition 23, the consent holder shall submit a Soil Monitoring Plan to the Chief Executive of the Regional Council (or delegate) for approval. The plan shall include how five-yearly soil analysis results for the parameters defined in Condition 45 shall be obtained and any associated methodologies.

43. Soil sampling shall be conducted once every five years in accordance with the soil monitoring as required under Condition 23.

44. Results from Condition 45 are to be submitted in writing to the Chief Executive of the Regional Council (or delegate) and the consent holder must obtain written receipt from the Chief Executive of the Regional Council (or delegate).

45. Soil sampling shall involve the following parameters:

    i. Nitrate nitrogen
    ii. Ammoniacal nitrogen
    iii. Total nitrogen
    iv. Total organic carbon
    v. Organic matter
    vi. Phosphorus
    vii. Total Sodium
    viii. Calcium
    ix. Potassium
    x. Soluble salts
    xi. Cation exchange capacity

Receiving Water Sampling

46. Following the completion of the baseline monitoring in accordance with Conditions 26 and 28, all monitoring results shall be forwarded to the Regional Council and a Sampling Plan shall be submitted to the Chief Executive of the Regional Council (or delegate) for approval. This Sampling Plan shall determine the sampling frequency and methodology used to ensure that any groundwater body and surface water body likely to receive discharged TWW is monitored for the duration of this consent, and for the provision of monitoring results to the Regional Council. The Sampling Plan shall specify the location of a minimum of four monitoring bores which are to be provided with at least one upgradient and one downgradient of the land application field, and a minimum of five surface water sampling points, as shown generally in the Plan number C03. These groundwater and surface water samples shall as a minimum be sampled quarterly. The results of this monitoring shall be reviewed in the Review Report required by condition 96 and the frequency of monitoring may be reduced by approval of the Chief Executive of the Regional Council (or delegate) on receipt of each Review Report. The Sampling Plan shall also provide trigger levels for the monitored parameters as specified in Conditions 48 and 49, to be approved by the Chief Executive of the Regional Council (or delegate).

47. In order to monitor any potential effect on groundwater seaward of the proposed land application field the consent holder shall specify in the Sampling Plan required through Condition 46 a requirement for a minimum of two monitoring bores on the seaward side of the proposed land application field, as generally shown in Plan C03 as monitoring bores BH804 and BH810. The two seaward bores shall be sampled quarterly including as a minimum one sample collected between the months of June to August. The results of this monitoring shall be reviewed in the Review Report required by condition 96 and the frequency of monitoring may be reduced by approval of the Chief Executive of the Regional Council (or delegate) on receipt of each Review Report.

48. Surface water samples required under the Sampling Plan required by Condition 46 shall be tested for:

    i. Dissolved Oxygen (g/m^3) (as measured by an appropriate method to detect the minimum diurnal dissolved oxygen concentration)
    ii. Electrical conductivity
    iii. pH
    iv. Chloride (g/m3)
    v. Total Nitrogen (g/m^3)
    vi. Nitrate and nitrite nitrogen (g/m^3)
    vii. Ammoniacal Nitrogen (g/m^3)
    viii. Total Phosphorus (g/m^3)
    ix. Dissolved reactive phosphorus (g/m^3)
    x. E.coli cfu/100ml

49. Groundwater samples required under the Sampling Plan required by Condition 46 and 47 shall be tested for:

    i. Groundwater level (metres below ground level)
    ii. Water temperature
    iii. Dissolved Oxygen (g/m3)
    iv. Electrical conductivity
    v. pH
    vi. Chloride (g/m^3)
    vii. Total Nitrogen (g/m^3)
    viii. Nitrate and nitrite nitrogen (g/m^3)
    ix. Total ammoniacal Nitrogen (g/m^3)
    x. Total Phosphorus (g/m^3)

xi. Dissolved reactive phosphorus (g/m^3)

xii. E.coli cfu/100ml

50. Groundwater samples required by Condition 46 and 47 shall be sampled for the parameters listed in Condition 49 and shall not exceed the groundwater quality trigger values established in Condition 46.

51. In the event that a single sample of the groundwater exceeds the trigger levels as established in Condition 46, the consent holder shall:

    i. Immediately notify the Chief Executive of the Regional Council (or delegate) in writing; and

    ii. Resample the groundwater immediately

52. In the event that three consecutive samples of the groundwater exceed the trigger levels as established in Condition 46, the consent holder shall formulate a Remediation Plan. The Remediation Plan shall:

    i. Address the exceedances; and

    ii. Initiate an investigation into reasons for the exceedances and include remedial actions which may include, but not be limited to, alternative or upgraded treatment methods, changes to the management and operation of the treatment plant and ultraviolet disinfection system, changes to the alarming and monitoring of key process units, and/or improvements to the designated land application field.

    The Remediation Plan shall be submitted to the Chief Executive of the Regional Council (or delegate) within 6 weeks of the first exceedance occurring.

53. In addition to the specific requirements of Condition 52, if the groundwater monitoring required under Condition 46 demonstrates any exceedance of the trigger levels for three consecutive results, the consent holder shall commence weekly monitoring of flowing surface water in the receiving streams for the parameters set out in Condition 48.

54. If any solution specified in the Remediation Plan does not result in the groundwater quality complying with the trigger levels set out in Condition 46 within 6 months after the Remediation Plan being submitted to the Regional Council, the Regional Council may then trigger a review of the consent conditions in accordance with Condition 97.

Wastewater Treatment Plant and Land Application Field Maintenance

55. The WWTP and land application field shall be operated and maintained generally in accordance with the Operations and Management Plan required under Conditions 23 and 24 at all times, to the satisfaction of the Chief Executive of the Regional Council (or delegate), provided such requirements or "satisfaction" does not affect the consent holder's ability to meet the conditions of this consent.

Reporting

56. All sampling and monitoring results and records as required by the Operations and Management Plan and consent conditions from 1 July to 30 June of each year shall be compiled into an annual report. The annual report shall discuss sampling and monitoring results and trends, exceedances and actions taken, site management, complaints and how these have been addressed, and any areas where improvement is required. The annual report shall be submitted (in writing) to the Chief Executive of the Regional Council (or delegate) before the 31 of July of each year.

    Note: For the avoidance of doubt the consent holder shall publish the annual report on their publically accessible website within two weeks of the annual report being provided to the Regional Council.

Earthworks

57. Construction and earthworks shall be carried out in accordance with the information submitted with the Site Management Plan as required under Condition 12.

58. During the construction of the land application field the consent holder shall:

    a. Ensure that no stripping of grass sward or topsoil is to occur on the land application field;

b. Protect the groundcover of the dunes as far as possible within the land application field;

c. Minimise excavation to lay pipelines within the land application field. The preference is for pipelines to be laid using mole plough pipe laying method or similar;

d. Ensure that vehicles use only the formal roadway off Thornton Road for access to the land application site.

59. The consent holder shall ensure that only cleanfill is deposited on site. For the purposes of this consent, the definition of cleanfill shall include only materials such as clay, soil, rock; or concrete, and brick.

60. No physical works associated with the construction of the Land Application Field shall occur within 5m of any kanuka vegetation

61. The consent holder shall ensure that the earthworks authorised under this consent are completed within a period of no longer than 12 weeks following their commencement.

62. The consent holder shall ensure that all exposed areas of earth resulting from works associated with this consent are effectively stabilised against erosion, by vegetative cover or other methods, as soon as practicable following the completion of works, to the satisfaction of the Chief Executive of the Regional Council (or delegate).

Temporary Signage

63. Prior to the commencement of works under this consent, the consent holder shall erect a prominent sign adjacent to the main entrance to the site, and maintain it throughout the period of the works. The sign shall clearly display, as a minimum, the following information:

a. The consent holder;

b. A 24 hour contact telephone number for the consent holder or appointed agent;

c. A clear explanation that the contact telephone number is for the purpose of receiving complaints and information from the public about dust nuisance or any other problem resulting from the exercise of this consent.

Erosion and Sediment Control

64. The consent holder shall ensure that all erosion and sediment controls detailed in the Site Management Plan as required under condition 12 and implemented on site comply with specifications set out in Bay of Plenty Regional Council Guideline No. 2010/01 - "Erosion and Sediment Control Guidelines for Land Disturbing Activities" or its successor.

65. All erosion and sediment controls shall be installed prior to the commencement of earthworks.

66. The consent holder shall ensure that all practicable measures are taken to the satisfaction of the Chief Executive of the Regional Council (or delegate) to ensure that no material is tracked off site.

67. The consent holder shall divert uncontaminated catchment runoff away from the area of earthworks.

68. The consent holder shall ensure that where runoff controls (such as diversion channels, bunds, contour drains etc.), have slopes greater than 2%, then the runoff controls shall be protected from erosion by the use of geotextile materials, rock or other suitable materials.

Dust Control

69. The consent holder shall adopt a proactive strategy for dust control, specifically by complying with the principles of dust management as set out in section 3.4 of Environment Bay of Plenty Guideline No. 2010/01 – "Erosion and Sediment Control Guidelines for Land Disturbing Activities" or its successor, so as to prevent a dust nuisance from occurring beyond the property boundary.

70. The consent holder shall ensure that an adequate supply of water for dust control and an effective means for applying that quantity of water, is available on site at all times during construction and until such time as the site is fully stabilised.

71. The consent holder shall ensure that soil moisture levels are monitored at all times when earthworks are being carried out, and at the end of every working day.

72. The consent holder shall ensure that, at all times, the soil moisture level of exposed areas is sufficient, under prevailing wind conditions, to prevent dust generated by normal earthmoving operations from remaining airborne beyond the boundary of the work site.

73. The consent holder shall ensure that, at the end of every working day until such time as the site is fully stabilised, the soil moisture level of exposed areas is sufficient to prevent a dust nuisance occurring beyond the boundary of the works site.

74. The consent holder shall ensure that, outside of normal working hours, staff are available on-call to operate the water application system for dust suppression.

75. In the event that wind conditions render dust control impracticable, the consent holder shall ensure that any machinery generating airborne dust ceases to operate until such time as effective dust control can be re-established.

76. Notwithstanding conditions 69 to 75 above, the consent holder shall undertake additional or alternative dust control measures to the satisfaction of the Chief Executive of the Regional Council (or delegate), as directed.

Erosion and Sediment Control Maintenance

77. The consent holder shall ensure that the erosion and sediment controls, spillways and associated erosion protection devices and dust controls are inspected and maintained in an effective capacity at all times during works and until the site is stabilised in accordance with condition 62 of this consent.

78. The consent holder shall ensure that, as far as practicable, any necessary maintenance of erosion and sediment controls identified by inspection under condition 77 or by Regional Council staff is completed within 24 hours.

79. Accumulated sediment shall be removed from the sediment retention devices before sediment levels reach 25% of that device's volume.

80. The consent holder shall ensure that sediment removed from the sediment retention device is placed in a stable position where it cannot re-enter the device or enter any water body.

81. The consent holder shall ensure that all-weather machinery access is maintained to any sediment retention pond.

Erosion and Sediment Control Monitoring and Reporting

82. The consent holder shall ensure that the erosion and sediment controls are inspected:

    a. at least weekly during the duration of construction works; and

    b. within 24 hours of each rainstorm event which is likely to impair the function or performance of the erosion and sediment controls.

83. The consent holder shall maintain records of:

    a. the date and time of every inspection of erosion and sediment controls on the site; and

    b. the date, time and description of any maintenance work carried out.

84. The consent holder shall forward a copy of records required by condition 82 to the Chief Executive of the Regional Council (or delegate) within 48 hours of the Chief Executive of the Regional Council (or delegate's) request.

Reinstatement and Restoration

85. The consent holder shall ensure that the ground surface within the land application field following earthworks is left in a standard of reinstatement similar to that of the adjacent undisturbed areas of the site.

86. No later than thirty (30) working days prior to the commencement of the discharge of TWW from the WWTP the consent holder shall submit a Restoration Plan to the Chief Executive of the Regional Council (or delegate) for approval. The Restoration Plan shall be prepared in general accordance with application supporting document 9, and shall include:

a. Restoration planting for the land application field and the wider designation area (as shown on plan titled 'Restoration Area for Proposed Matatā Wastewater Land Application Field', reference 01 1503);

b. The permanent retirement from grazing, and the provision of weed and pest control, for the Western Whakatāne Coastal Recreation Reserve between the Tarawera River and Walker Road (of which the land application field and wider designation area are part of); and

c. Management of the dunes between the Tarawera River and Thornton Road suitable to achieve a predominantly indigenous habitat.

The restoration plan shall be prepared by a suitably qualified person, and shall include the following details:

a. A planting plan, detailing species lists and spacing's, utilising eco sourced indigenous species where possible;

b. Weed control measures;

c. Any temporary fencing requirements;

d. Animal pest management measures; and

e. Monitoring procedures.

87. The consent holder shall ensure that the land application field, dunes and Western Whakatāne Coastal Recreation Reserve (between the Tarawera River and Walker Road) are managed in accordance with the requirements of the Restoration Plan.

Air Quality

88. The consent holder shall design, operate, manage and maintain the WWTP in a manner that shall not result in any objectionable odours at or beyond the designated boundary of the wastewater treatment plant environmental protection buffer as shown on plan titled 'Site Survey', prepared by Harrison Grierson, drawing number 135173-SS03 rev. C.

89. The consent holder shall operate, manage and maintain the land application field in a manner that shall not result in any objectionable odours at or beyond the boundary of the designated boundary of the land application field as shown on plan titled 'Site Survey Extent of Effluent Field, prepared by Harrison Grierson, drawing number 1357173–SS05, rev. B.

90. The consent holder shall maintain and keep a Complaints Register for all complaints made about the treatment and discharge operations that relate to air discharges received by the consent holder. The Register shall record:

a. The date, time and duration of the event/incident that has resulted in the complaint;

b. The name, phone number and address of the complainant, unless the complainant refuses to supply these details;

c. The location of the complainant when the event/incident was detected;

d. The possible cause of the incident;

e. The weather conditions and wind direction at the site when the incident allegedly occurred, if significant to the complaint;

f. Any corrective action undertaken by the consent holder in response to the complaint.

91. The Complaints Register shall be made available to the Chief Executive of the Regional Council (or delegate) at all reasonable times. Complaints which may indicate non-compliance with the conditions of this resource consent shall be forwarded to the Chief Executive of the Regional Council (or delegate) within 5 working days of the complaint being received.

The consent holder shall notify the Chief Executive of the Regional Council (or delegate) of any incident, including power, mechanical or process failure, leading to a significant emission of odour from the plant, within 24 hours of the incident being brought to the attention of the consent holder, or the next working day. A written report shall be forwarded to the Chief Executive of the Regional Council (or delegate) within seven working days of the event occurring describing the incident, the reasons for it occurring, its consequences (including the nature of any complaints), the measures

taken to remedy or mitigate its effects, and any measures taken to prevent a recurrence of the event, including any changes proposed to the Operation and Management Plan.

Surface Water Flow Monitoring

92. The consent holder shall liaise with the Rivers Programme Leader, Regional Council to collect data from the Robinsons pump station in order to determine the water flow being pumped from the farm drainage system (Robinsons Farm or subsequent property) into the Bennett Road Stream (Old Rangitaiki Canal). These data shall be collected according to the following parameters:

    a. Pump data will be collected on a monthly basis for 12 months prior to any discharge of TWW from the WWTP to the land application field to determine a baseline flow.

    b. Pump data will be collected on a monthly basis for a period of 2 years following commencement of the discharge of TWW from the WWTP to the land application field.

    Note: The Rivers Programme Leader, Regional Council shall provide access to the Robinsons pump station so that monitoring equipment can be installed at the consent holder's cost.

93. The consent holder shall install a temporary flow monitoring gauge in the Bennett Road Stream (Old Rangitaiki Canal) at a location to be agreed with the Regional Council (proposed location Robinsons or subsequent property owner milking shed access bridge approximately 400m to the west of the Robinsons pump station discharge) in order to determine water flows within the Bennett Road Stream (Old Rangitaiki Canal). These data shall be collected according to the following parameters:

    a. Flow data will be collected on a monthly basis for 12 months prior to any discharge of TWW from the WWTP to the land application field to determine a baseline flow.

    b. Flow data will be collected on a monthly basis for a period of 2 years following commencement of the discharge of TWW from the WWTP to the land application field.

94. All data collected will be provided to the Regional Council and Fish and Game New Zealand, Eastern Region, by 31 July of each year that data is collected.

Permanent Signage

95. For the duration of this consent, the consent holder shall install and maintain appropriate signage on the formal access point to the wastewater treatment plant site and at appropriate locations around the perimeter of the land application field warning that treated wastewater is discharged to the land. The consent holder shall seek comment and agreement on the proposed wording, size and placement of signs from the Medical Officer of Health for both sites and from Fish and Game New Zealand, Eastern Region, in terms of the land application field. Written confirmation of the signage wording, size and placement shall be provided to the Chief Executive of the Regional Council (or delegate) no less than one month prior to commencement of the TWW discharge.

Whakatāne District Council Review Report

96. The consent holder shall submit to the Chief Executive of the Regional Council (or delegate) a Review Report no later than 31 July 2020, and thereafter at six yearly intervals, for the duration of the consents. As a minimum, the Report shall:

    a. Address ongoing compliance with the conditions of the consent and, in particular, any reported non-compliance with consent conditions;

    b. Include an assessment of compliance/consistency with any relevant national or regional water quality policies, standards or guidelines in effect at the time;

    c. A summary of the monitoring undertaken as required through conditions 46 and 47 including an assessment of whether the sampling frequency can be reduced or not;

    d. A summary of any residual actual or potential adverse environmental effects of the discharge of TWW, irrespective of whether those environmental effects are in accordance with the conditions of this consent; and

    e. The appropriateness of monitoring indicators and monitoring methods including reference to any appropriate new monitoring indicators and/or guidelines.

Review of Conditions

97. The Regional Council may:

    a. on the anniversary of the commencement of the consent; or

    b. within six months of receipt of any report submitted to the Regional Council under any condition of this consent or any report required as a result of compliance monitoring by Council; or

    c. within 6 months of completion of any compliance monitoring carried out by the Regional Council, which shows that the Matata wastewater treatment scheme is a substantiated source of odour complaints; or

    d. where condition 32 cannot be satisfied as set out in condition 35; or

    e. in the circumstances contemplated by condition 54.

    serve notice on the consent holder of its intention to review the conditions of this consent, under s128 of the Resource Management Act 1991.

98. The purposes of this review may include:

    a. To modify any required monitoring/reporting and/or specify additional monitoring/reporting and/or change the monitoring/reporting frequency required to address any identified adverse effects;

    b. To assess, and if necessary to address, any identified adverse effects of any of the discharged treated wastewater on ground or surface waters;

    c. To assess and if necessary to review current discharge limits and controls;

    d. To require the consent holder to adopt the best practicable option in accordance with section 128(1)(a)(ii) of the Resource Management Act 1991;

    e. To ensure that management practices at the site are consistent with any provisions or restrictions that are required to be implemented by the Regional Council for any National Environmental Standards (NES);

    f. assess the need for treatment of air discharges from any part of the Matata wastewater treatment scheme;

    g. impose monitoring and discharge control conditions relating to odour discharges; and

    h. To require further works to be carried out on the WWTP or land application field, or to require further treatment components within the WWTP or land application field. The requirement would be after six months of a Remediation Plan being triggered under condition 51 or no solution has been reached which enables the operation of the WWTP and land application field in full compliance with consent conditions.

Accidental Discovery Protocol

99. A Taonga Tuturu Monitor shall be employed by Whakatāne District Council to monitor, act in accord with the Accidental Discovery Protocol (attachment A to this consent) and report any discoveries during earthworks.

100. The following procedures will be adopted in the event that kōiwi or taonga are unearthed or are reasonably suspected to have been unearthed during the course of construction.

    a. Immediately when it becomes apparent or is suspected by workers at the site that kōiwi or taonga have been uncovered, all activity in the immediate area will cease.

    b. The construction plant operator will act with caution by shutting down all machinery or activity in the immediate area to ensure that kōiwi or taonga remain untouched as far as possible in the circumstances and shall notify the Site Construction Manager or the on-site supervisor.

    c. The Site Construction Manager or on-site Supervisor shall take immediate steps to secure the area in a way that ensures that kōiwi or taonga remain untouched as far as possible in the circumstances and shall notify the Taonga Tuturu Monitor.

101. The Taonga Tuturu Monitor will:

a. Seek advice from kaumātua from Te Mana o Ngāti Rangitihi Trust (TMoNRT), Ngāti Rangitihi Raupatu Trust (NRRT), Ngāti Tuwharetoa BOP Settlement Trust (NTST) and Te Rūnanga o Ngāti Awa (TRONA) to guide and advise Site Managers and any other parties as to the appropriate course of action to be taken and the identity of persons to involve as appropriate to the circumstances.

b. Upon the advice of iwi contacts from kaumātua from TMoNRT, NRRT, NTST and TRONA and an archaeologist from Heritage New Zealand providing a description of the find and seeking their advice as to whether they consider it necessary to immediately request kaumātua, Pukenga, an archaeologist and/or the NZ Police attendance at the scene.

c. Ensure the find area is secure and available for inspection by Kaumātua, Pukenga, an archaeologist and/or the NZ Police and for photographic recording by the archaeologist should a decision be reached to request attendance at the scene.

d. In the event it is considered by the Taonga Tuturu Monitor and archaeologist unnecessary for kaumātua, Pukenga and the NZ Police to attend the scene, the Taonga tuturu Monitor and archaeologist will:

i. Record, photograph and report the potential findspot including reasons why attendance was not required.

ii. Take photographs of the find site to share with iwi and others and ensure the archaeologist and site manager have recorded GPS co-ordinates for the site should it be confirmed by the archaeologist the site is a newly discovered site.

iii. Take photographic records of any taonga tuturu and the find spot.

iv. Collect and retain custody of any koiwi in a suitable receptacle to be located at until the completion of the works upon which time iwi will hui to deliberate on the appropriate place for re-interment of koiwi.

e. Upon the discovery of taonga tuturu the Taonga Tuturu Monitor and archaeologist shall:

i. Photograph the taonga and findspot and record the circumstances of the find.

ii. In compliance with the Protected Objects Act 2007, register the taonga tuturu with the Senior Advisor Heritage Operations at the Ministry for Culture and Heritage, and with each iwi. The Archaeologist will seek from the Ministry for Culture and Heritage approval to place the taonga tuturu into the interim custody of the Whakatāne Museum in order to enable subsequent claims for custodianship and ownership to be lodged by iwi with the Ministry of Culture & Heritage (in compliance with Taonga Tuturu Protocols between settled iwi and the Ministry) while also providing for the enablement of processes under the Protected Objects Act 2007 that require decisions from the Maori Land Court as to custody and ownership in perpetuity.

102. In the event of a significant find and consequential attendance at the scene the Site Construction Manager shall ensure that kaumātua, Pukenga, the archaeologist and Taonga Tuturu Monitor are given the opportunity to undertake karakia (prayer) and any such other cultural ceremonies and activities at the site and affected workers, in accordance with tikanga Māori.

103. Activity in the immediate area will remain halted until kaumātua, the Police and Historic Places Trust (as the case may be) have given approval for operation in that area to recommence. In the event that rua (caves), pits or other archaeological features are discovered, a comprehensive report, inclusive of photographs are to be taken and labelled by an archaeologist with copies sent to TMoNRT, NRRT, NTST and TRONA and Heritage New Zealand, NZ Archaeological Association File-keeper and the Heritage Co-ordinator at the Bay of Plenty Regional Council.

104. At the conclusion of the proposed works a Hui-A- Iwi will be convened by the Taonga Tuturu Monitor at the expense of the Whakatāne District Council at which reports on any discovery of koiwi and or taonga tuturu will be provided including the location of protected objects and koiwi held in the interim custody of the Whakatāne Museum. The purpose of the hui will be to:

a. Provide for the Taonga tuturu monitor to request iwi deliberation, decision-making and implementation for the re-interment of koiwi.

b. Be informed of the process required by the Protected Objects Act 2007 administered by the Ministry for Culture and Heritage and determined by the Maori Land Court to enable iwi to make claims for ownership and custodianship in perpetuity for taonga tuturu.

105. The Whakatāne District Council will cover all expenses relating to the implementation of the Accidental Discovery Protocol including those incurred by kaumātua, Pukenga, the archaeologist and iwi attendees..

Term of Consent

106. This consent shall expire 35 years from the date that this consent was granted.

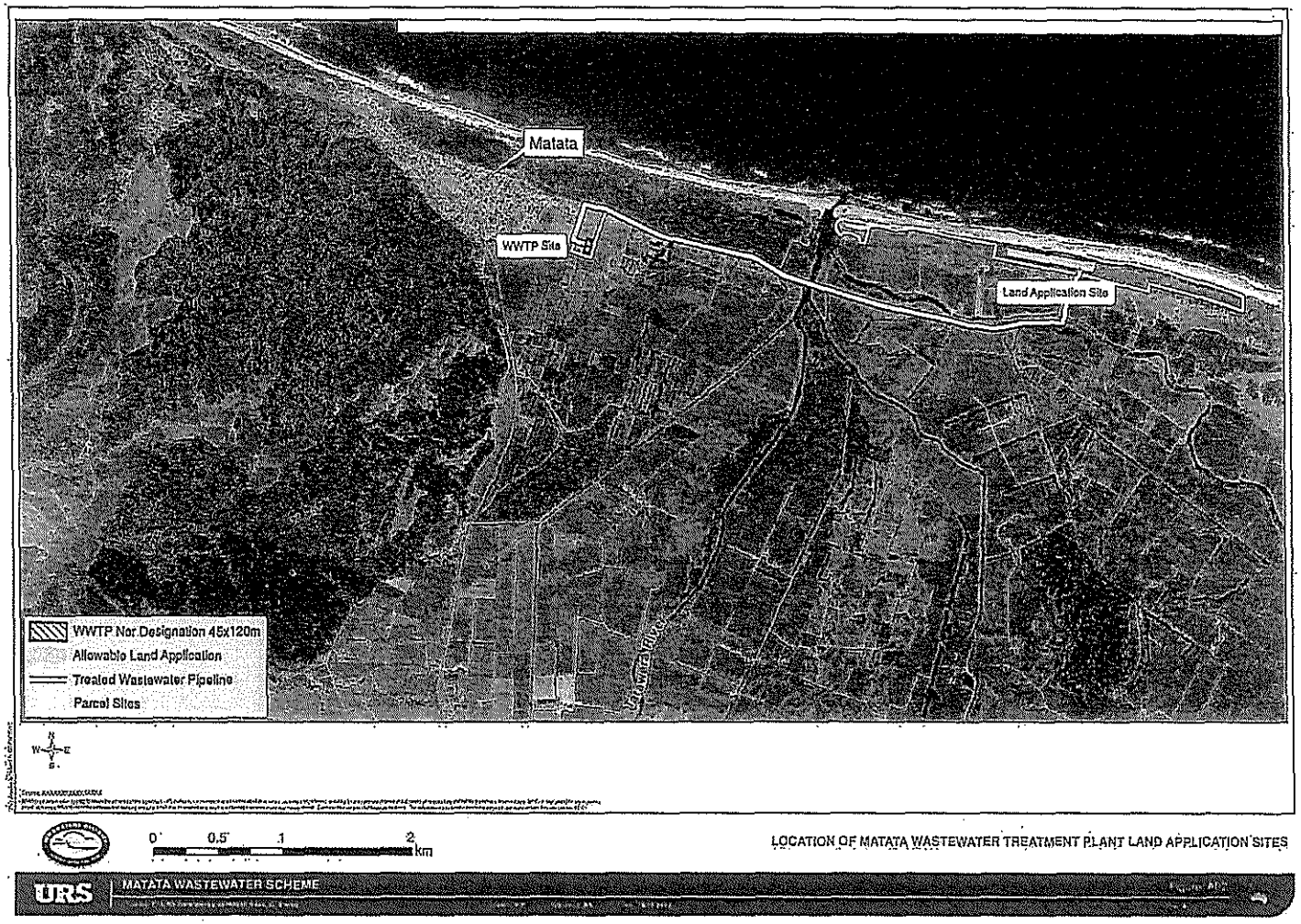
Resource Management Charges

107. The consent holder shall pay the Bay of Plenty Regional Council such administrative charges as are fixed from time to times by the Regional Council in accordance with section 36 of the Resource Management Act 1991.

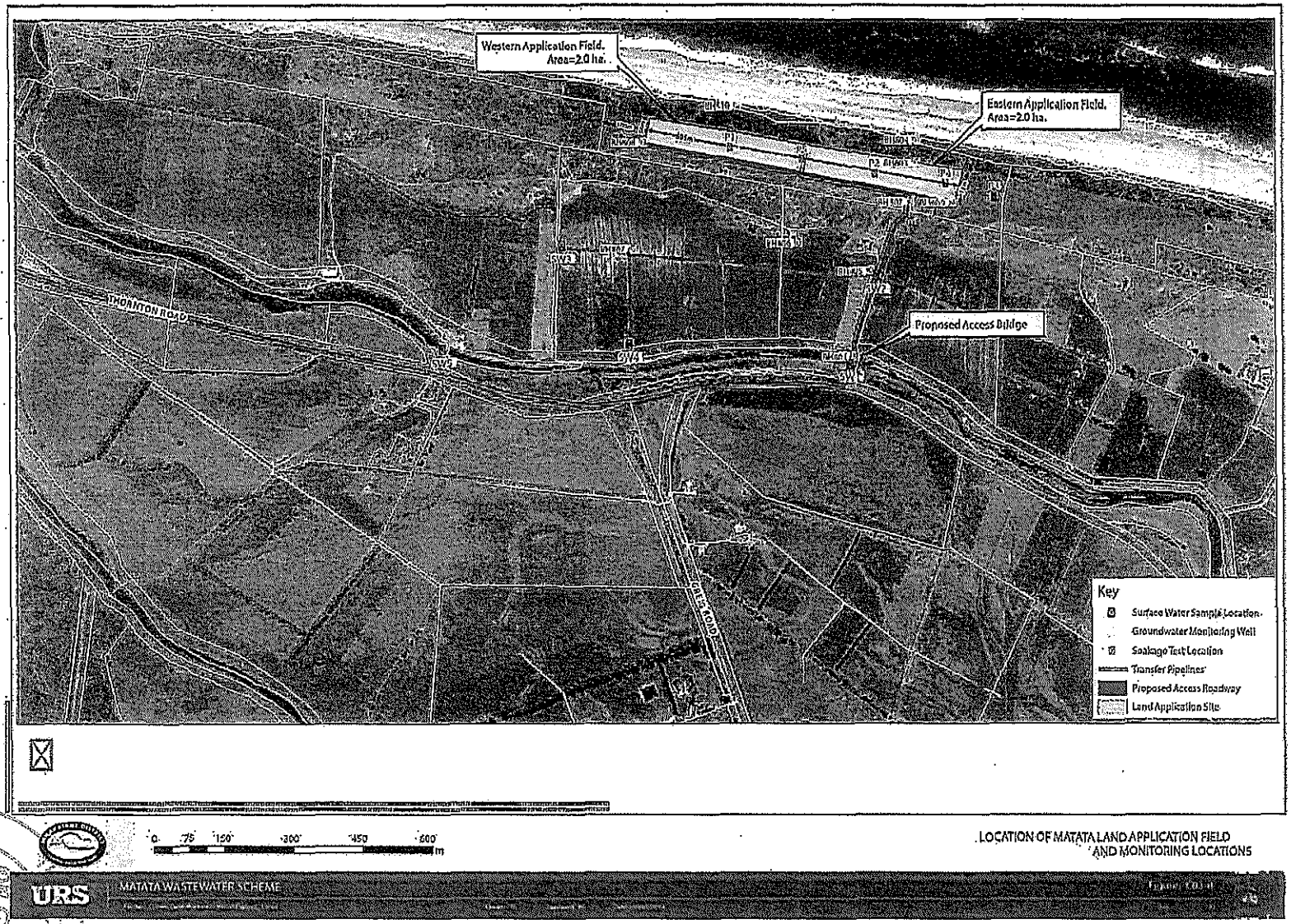
Advice Notes

1. *The Regional Council is able to provide contact details for the relevant iwi authority.*
2. *Unless otherwise stated all notification and reporting required by this consent shall be directed (in writing) to the Pollution Prevention Manager, the Bay of Plenty Regional Council, PO Box 364, Whakatāne or fax 0800 368 329 or email notify@envbop.govt.nz, this notification shall include the consent number 65977.*
3. *The consent holder is responsible for ensuring that all contractors carrying out works under this consent are made aware of the relevant consent conditions, plans and associated documents.*
4. *For clarity, the pre-operational documents and meetings and their due timeframes as detailed in these conditions are set out below. Note this list is not exhaustive and there may be a requirement for ongoing periodical submission of documents arising from the approved Operations and Management Plan, sampling plans, or other plans or documents.*

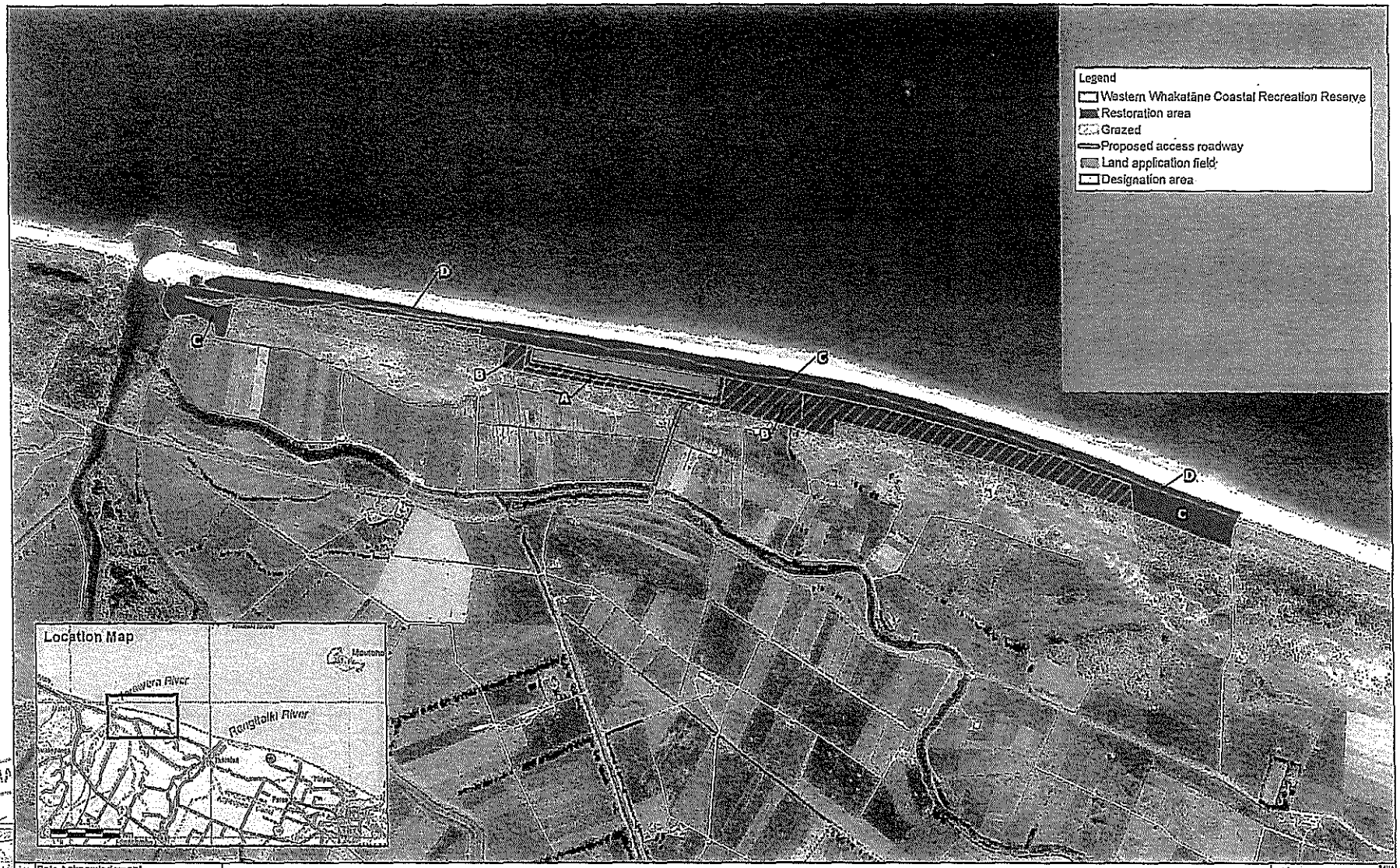
Condition	Description	Due
25	Receiving water monitoring results and analysis	1 month prior to first TWW discharge, to be commenced **at least 12 months** prior to due date.
46	Receiving water sampling plan	1 month prior to first TWW discharge, to be provided with water monitoring results
12	Earthworks site management plan	10 days prior to earthworks commencement
13	Earthworks site meeting	5 days prior to earthworks commencement
15	Discharge site meeting	5 days prior to first discharge
23	Draft Operations and Management Plan	1 month prior to system installation
24	Final Operations and Management Plan	3 months following completion of initial sampling period
85	Restoration plan	6 weeks (30 working days) prior to first discharge



Plan A02 – Location of Matatā Wastewater Treatment Plant Land Application Sites



Plan C03 – Location of Matatā Land Application Field


Legend
Western Whakatāne Coastal Recreation Reserve
Restoration area
Grazed
Proposed access roadway
Land application field
Designation area
A
B
C
D
Location Map
Matata
Awaiti River
Rangitaiki River
Data Acknowledgment
NZ TOPO250 Crown Copy Reserved
2013 Imagery sourced from EOPLASS Limited
Report: 3228c
Client: Whakatāne District Council
Refs: 01:1503
Path: E:\GIS\Matamata\TP\mxd\
File: Figure Restoration Area.mxd
N
Restoration area for proposed
Matatā Waste Water land application field
0 200 400 m
Wildlands
Scale: 1:12,500
Date: 23/05/2014
Cartographer: FM
Format: A3R


THORNTON ROAD
NOTES
KEY:
WASTEWATER TREATMENT PLANT
WASTEWATER TREATMENT PLANT ENVIRONMENTAL PROTECTION BUFFER
WASTEWATER TREATMENT PLANT ACCESS
LOT 2
DP 15708
H & G BURT
WHAKATANE DISTRICT COUNCIL
MATATA WASTEWATER PLANT
SITE SURVEY
CLIENT ISSUE
A3
135173-SS03
C

WHAKATANE DISTRICT COUNCIL
MATATA WASTEWATER PLANT
EFFLUENT FIELD

SITE SURVEY
EXTENT OF EFFLUENT FIELD

CLIENT ISSUE

A3

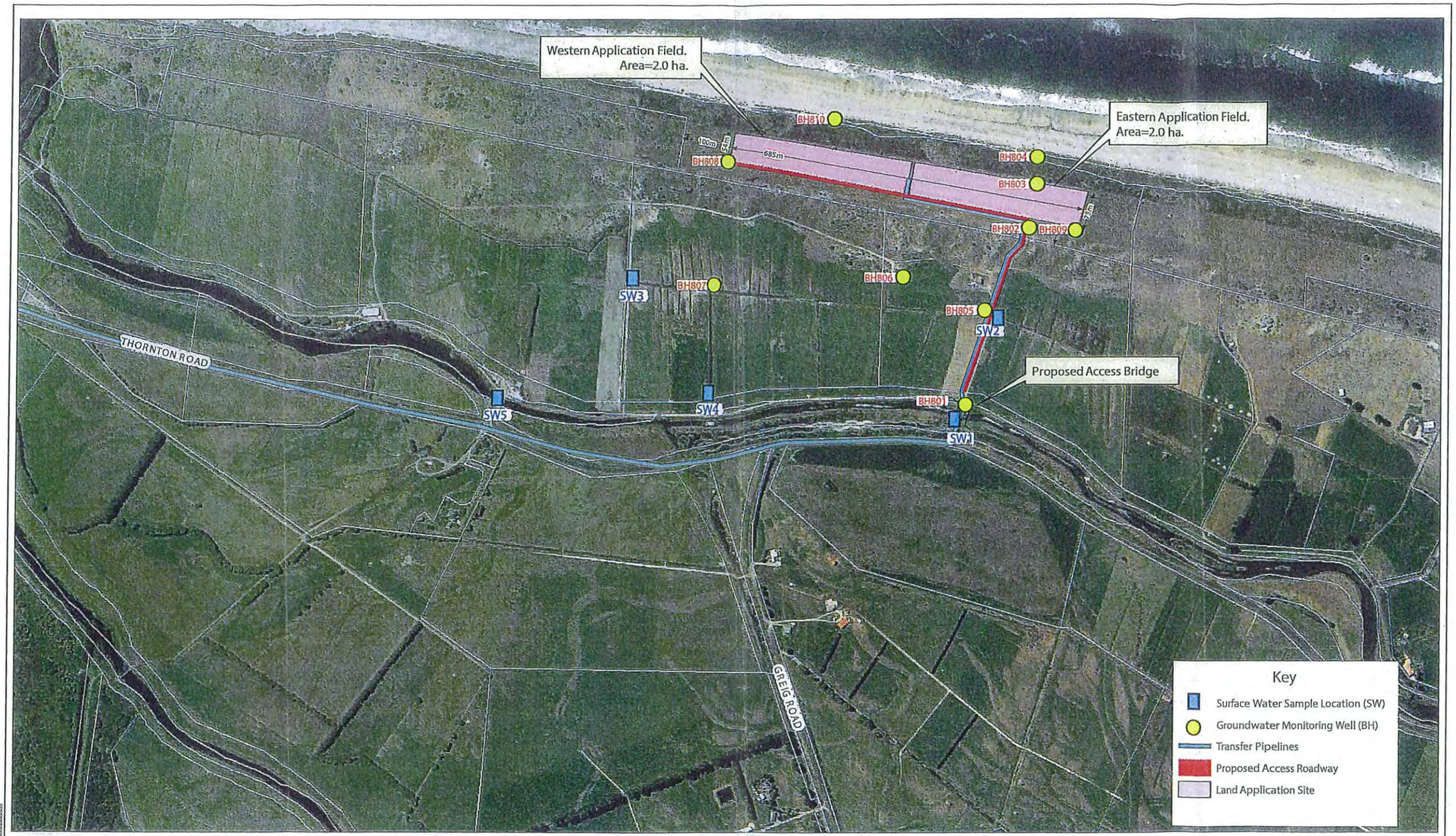
135173-SS05 B

HARRISON GRIERSON

1430

Annexure E

Figure 8: Plan C03 - Location of Proposed Groundwater and Surface Water Sampling Sites



0 75 150 300 450 600 m

LOCATION OF MATATA LAND APPLICATION FIELD
AND MONITORING LOCATIONS

URS | MATATA WASTEWATER SCHEME | Figure: C03-B

File No. C:\URS-Data\Works\42790250\Figure3_1.mxd Drawn: SS Approved: BS Date: 20/05/2014 Rev A3

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

WHAKATĀNE District Council

URS

MWH

Annexure D

Figure 20: Wastewater Treatment Plant Buffer Distances

WHAKATANE District Council www.whakatane.govt.nz	Buffers in 100m Increments from the Matata Treatment Plant	N
	Path: C:\Users\caseyb\Desktop\AddressEditCasey.mxd	Scale: 1:4,192.81
	Date of issue: 27/08/2014	Author: CB

Aerial Photography flown between 2011 and 2013, depending on the area. Parcel boundaries are to be taken as approximate only, not to be substituted for site specific survey. May contain LINZ data: Crown Copyright Reserved Note: Placenames may not conform to LINZ guidelines 2008. DISCLAIMER: While Whakatane District Council (WDC), has exercised all reasonable skill and care in controlling the contents of this information, WDC accepts no liability in contract, tort or otherwise howsoever, for any loss, damage, injury or expense (whether direct, indirect or consequential) arising out of the provision of this information or its use. Position of all assets & historical sites are approximate, actual positions are to be verified on site.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Annexure C

Figure 3: Layout of the Proposed Designation for the Wastewater Treatment Plant Site and Access Road

ASSOCIATION OF CONSULTING ENGINEERS NEW ZEALAND | ISO 9001 QUALITY ASSURED

NOTES

1. ALL EASEMENTS, COVENANTS AND OTHER LEGAL INSTRUMENTS ASSOCIATED WITH THIS SITE MAY NOT BE SHOWN ON THIS PLAN. AN INVESTIGATION OF THE MOST CURRENT LEGAL RECORDS SHOULD BE UNDERTAKEN PRIOR TO DESIGN AND CONSTRUCTION COMMENCING.
2. THIS PLAN MAY NOT PROVIDE ENOUGH INFORMATION FOR HEIGHT TO BOUNDARY CALCULATIONS. WHERE ANY PROPOSED BUILDING OR PART THEREOF IS REQUIRED TO MEET COUNCIL'S HEIGHT IN RELATION TO BOUNDARY CONTROLS, HARRISON GRIERSON SHOULD BE CONSULTED.
3. THIS PLAN IS ISSUED FOR A SPECIFIC PROJECT AND MAY NOT BE ALTERED OR USED FOR ANY OTHER PURPOSE WITHOUT THE PRIOR WRITTEN CONSENT OF HARRISON GRIERSON.
4. LEGAL BOUNDARIES HAVE BEEN TAKEN FROM THE LINZ DATABASE.
5. THIS PLAN HAS BEEN PREPARED FOR VALUATION & LEASE PURPOSES ONLY. NO DETAILED DESIGN SHOULD BE UNDERTAKEN UTILISING THIS DATA.
6. COORDINATES SHOWN ARE IN TERMS OF BOP GEODETIC 2000 DATUM.
7. THESE NOTES ARE AN INTEGRAL PART OF THIS PLAN.

KEY:

- WASTEWATER TREATMENT PLANT
- WASTEWATER TREATMENT PLANT ENVIRONMENTAL PROTECTION BUFFER
- WASTEWATER TREATMENT PLANT ACCESS

HARRISON GRIERSON

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P +64 7 308 5478
www.harrisongrierson.com

REF	REVISIONS	BY	DATE
D	BUFFER ZONE TO 5TH INCREASED / COORDS FOR DESIGN.	BWP	10.02.2014
C	INCREASE BUFFER ZONE FROM 15M TO 20M	SRW	06.11.2013
B	DESIGNATION AREA SHIFTED TO SE CNR.	BWP	24.10.2013

PROJECT:
WHAKATANE DISTRICT COUNCIL
MATATA WASTEWATER PLANT

TITLE:
SITE SURVEY

ORIGINATOR:	DATE:	SIGNED:	PLOT BY: BWP
DRAWN: BWP	DATE: 2.09.2013	SIGNED:	PLOT DATE: 10.02.14
CHECKED: SRW	DATE: 6.09.2013	SIGNED:	SURVEY BY: BWP
APPROVED:	DATE:	SIGNED:	SURVEY DATE: 28.08.2013

ISSUE STATUS: CLIENT ISSUE

PROJECT No: 1730 135173.01	SCALES: 1:2000	A3
DRAWING No: 135173-SS03		REV D

File: WHAKATANE N:\1730\135173_A\CAD\135173-SS01.DWG

THE SEAL OF THE ENVIRONMENTAL COMMISSIONER OF NEW ZEALAND

WHAKATĀNE District Council

URS

MWH. BUILDING A BETTER WORLD

Annexure B

Figure 7: Parcels Identified for GIS Constraints Analysis

Whakatane District Council www.whakatane.govt.nz	Sites Under Consideration 20/08/2013	N
	Path: G:\DATA\GIS\ArcGIS\Maps\Policy\IdentifiedSites.mxd	Scale: 1:27,248.06
	Date of issue: 20/08/2013	Author: CB

Aerial Photography flown between 2001 and 2007, depending on the area. Parcel boundaries are to be taken as approximate only, not to be substituted for site specific survey. May contain LINZ data: Crown Copyright Reserved Note: Placenames may not conform to LINZ guidelines 2008. DISCLAIMER: While Whakatane District Council (WDC), has exercised all reasonable skill and care in controlling the contents of this information, WDC accepts no liability in contract, tort or otherwise howsoever, for any loss, damage, injury or expense (whether direct, indirect or consequential) arising out of the provision of this information or its use by you. *Position of all assets & historical sites are approximate, actual positions are to be verified on site.

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