

OTAGO REGIONAL COUNCIL

<p>Report and Decision of the Hearing Commissioner Hearing held at the Edgar Centre, Dunedin on 24 January 2022 commencing at 9:00 am</p>
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Independent Hearing Commissioner Dr Rob Lieffering was appointed by the Otago Regional Council to hear and determine the application for a discharge permit lodged by the Clutha District Council to discharge treated wastewater from the Waihola Wastewater Treatment Plant to the Lake Waihola outflow channel. The application, made in accordance with the Resource Management Act 1991, was lodged with the Otago Regional Council on 23 December 2015 and referenced as application RM15.364.01.

Representations and Appearances

Applicant:

Ms R. Vaughan, Consultant Planner

Mr G. Essenberg, Capital Delivery Manager, Clutha District Council

Submitters:

Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ōtakou, and Te Nohoaka o Tukiaua/Sinclair Wetlands Trust

Ms J. Riddell, Legal Counsel

Mr E. Ellison, Local hapū member, Chair of Aukaha¹

Ms P. Tamati-Elliffe, Local hapū member and Trustee of Te Nohoaka o Tukiaua/Sinclair Wetlands Trust

Mr T. Vial, Senior Planner, Aukaha

¹ Aukaha is a consultancy owned by various rūnanga, including Te Rūnanga o Ōtakou.

Mr S. Bryant, Local hapū member, former Trustee of Te Nohoaka o Tukiaua/Sinclair Wetlands Trust (did not appear but tabled written evidence)

Otago Regional Council:

Mr R. Henderson, Consultant Planner, Boffa Miskell

Dr M. Greer, Senior Freshwater Scientist, Aquanet (via Zoom)

Ms K. Bagnall, Hearing Administrator, Otago Regional Council

Ms T. Grigg, Hearing Administrator, Otago Regional Council

Ms T. Robertson, Hearing Administrator, Otago Regional Council

BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of independent Hearings Commissioner Dr Rob Lieffering. I was appointed by the Otago Regional Council (**the ORC**) to hear and decide the application lodged by the Clutha District Council (**the Applicant or CDC**) for a discharge permit associated with the operation of the Waihola Wastewater Treatment Plant (**the WWTP**).
2. The WWTP services the Waihola community. The discharge of treated wastewater from the WWTP is authorised by discharge permit 2002.046 which 'expired' on 1 September 2017. The Applicant applied for new consents for the same activity on 23 December 2015, meaning it has been able to continue to exercise discharge permit 2002.046 pursuant to section 124 of the Resource Management Act 1991 (**RMA**) while the application for a new discharge permit is processed and a decision made.
3. The hearing commenced at 9:00 am on Monday 24 January 2022 and was adjourned at 2:45 pm on the same day. The hearing was held at the Edgar Centre, Dunedin. Mr Ellison opened the hearing by way of a karakia and Mr Vial delivered a karakia prior to the adjournment – I thank Mr Ellison and Mr Vial for these karakia.
4. A report was produced pursuant to section 42A of the RMA (**Staff Report**) by the ORC's Reporting Officer, Mr Henderson, a consultant Planner.
5. The Staff Report provided an analysis of the matters I must consider under the RMA in making my decision. The Staff Report also included a recommendation that the application should be granted, subject to a suite of recommended consent conditions (I discuss these in greater detail later in this decision).

6. Prior to the hearing I issued a Minute² addressing procedural matters and made directions to ensure a smooth hearing process.
7. The Staff Report, the Applicant's evidence, and the Submitters' evidence was pre-circulated to the parties prior to the hearing in accordance with section 103B of the RMA. The application documentation, submissions, the ORC request for further information, the Applicant's response to that further information request, the Staff Report, and the pre-circulated evidence was pre-read by me, and I directed that all these documents be 'taken as read' during the hearing³.
8. I undertook a site visit on Tuesday 25 January 2022. I was accompanied by Ms Rebecca Jackson of the ORC and met with Mr David Karrol (a Senior Operations Engineer employed by the CDC), Ms Cynthia Dewi (a Project Engineer employed by the CDC), and Ms Jessie Marsh (an Operations Assistant employed by the CDC) at the WWTP – none of these people had any involvement in the hearing process. I visited the WWTP and surrounding area, however I was unable to visit the outfall where the treated wastewater discharges to the Lake Waihola outflow channel. The Applicant did provide me with video footage taken by a drone which provided useful information on the discharge point and its surrounds.
9. Ms Vaughan, a consultant planner engaged by the Applicant, tabled a statement prepared by Mr Essenberg, who works for the Applicant. I made an interim determination that the tabled statement would not be received as Mr Essenberg had not prepared pre-circulated evidence⁴, however I stated that I would review it during the morning tea break and make a final determination on whether I would accept it. Having read the statement during the break, I made a determination that it would be accepted, namely because most of the matters covered in the statement were discussed by the Applicant in response to my questions when it presented its case prior to the tea break.
10. Towards the end of the hearing I ran through the outstanding information that was to be provided by the Applicant and Dr Greer (a consultant Senior Freshwater Scientist engaged by the ORC), the latter who was to recalculate the existing discharge quality and quantities/rates based on the most up to date data available (which was to be provided by the Applicant). I also directed that the three planners (Mr Henderson, Ms Vaughan, and Mr Vial) conference on conditions of consent and prepare a Joint Witness Statement (**JWS**) which identified agreed conditions and points of disagreement (including reasons). I set out timeframes for the provision of the further information, the JWS, and the Applicant's written right of reply.

² Minute #1 dated 30 November 2021.

³ As provided for by section 41C(1)(b) of the RMA.

⁴ Section 103B of the RMA requires all statements of evidence from the Applicant (expert and non-expert) to be pre-circulated.

11. I received a number of iterations of Dr Greer's recalculations – being by way of letter reports and spreadsheets.
12. I received an unsolicited email from a Ms J Jack, who works for the CDC, on 4 February 2022 which outlined the Applicant's proposed investigations on land treatment options for various WWTPs in the district. I received a further unsolicited email from a Ms J Gardner, who also works for the CDC, on 24 February 2022 which included a copy of the same material previously provided by Ms Jack, as well as a review of Dr Greer's recalculations, undertaken by Beca Limited (labelled as 'Draft'), a report by Marshall Projects on proposed WWTP upgrades, and a letter from a Mr J Witt (the CDC's Group Manager Service Delivery)⁵.
13. I issued Minute #2 on 25 February 2022 in which I requested further information from the Applicant and Dr Greer. I received the Applicant's information on 2 March 2022 and Dr Greer's information on 7 March 2022.
14. I received the JWS from the planners on 11 March 2022 and received the Applicant's written right of reply on 21 March 2022. The written right of reply covered matters which appeared to be at odds with previous evidence provided during the hearing, which prompted me to issue Minute #3 on 25 March 2022 in which I asked for further information from Dr Greer, Messrs. Henderson and Vial, and the Applicant. I received responses from these parties over the course of a number of weeks, the last of which was received on 11 April 2022.
15. Having satisfied myself that I had sufficient information to make my decision, I formally closed the hearing on 19 April 2022.
16. I would like to thank Ms Bagnall, Ms Grigg, and Ms Robertson for the excellent assistance they provided throughout the hearing process.

THE APPLICATION

17. The nature of the activity for which consent is sought was described in the application documents and the Staff Report, and I do not repeat that information here, save to say that the application seeks to discharge treated wastewater from the Waihola WWTP to one of Lake Waihola's outflow channels located approximately 1.5 km north of the WWTP.
18. The application sought a 35-year duration, however the Applicant subsequently amended its application and a reduced term of consent of six years is now being sought.

⁵ These emails and documents were subsequently also provided with the Applicant's written right of reply.

REGIONAL PLAN RULES AFFECTED

19. The discharge is classified as a **discretionary** activity under rules 12.A.2.1 and 12.B.4.1 of the operative Regional Plan: Water for Otago (**RPW**).
20. There was agreement between all the planners regarding overall status of the activity as being discretionary.

SITE DESCRIPTION

21. The site of the WWTP, the wetlands, and surrounding area, including the receiving watercourses, are described in detail in the application documents and the Staff Report. I do not repeat that material here, however the following are key points:
 - (i) The WWTP is located in a rural setting adjacent to Titri Road, north of Waihola township. Part of Lake Waihola and adjacent wetlands are located to the northwest of the WWTP;
 - (ii) Wastewater is treated in an oxidation pond which then flows through a constructed surface flow wetland (made up of two cells with wastewater flowing through the two cells in parallel);
 - (iii) The treated wastewater from the constructed wetlands is then discharged to an outflow located on the bed of one of Lake Waihola's outflow channels approximately 1.5 km north of the WWTP. The wastewater discharges into the receiving environment either by gravity or by pumping (with the maximum pumping rate being 8 L/s). The point of discharge is tidally affected and the treated wastewater is discharged within a six hour window, being the period commencing three hours before high tide and finishing three hours after high tide, so as to minimise the likelihood of the discharged wastewater entering Lake Waihola via 'backflow' processes. This discharge window is specified as a condition of the existing consent and seeks to avoid treated wastewater backflowing into Lake Waihola. ;
 - (iv) An extensive wetland area exists between Lake Waihola and Lake Waipori, known as Te Nohoaka o Tukiaua/Sinclair Wetlands; and
 - (v) The outflow channel into which the treated wastewater is discharged flows into the Waipori River which flows in a southeast direction where it converges with the Taieri River downstream of the State Highway 1 bridge. The Taieri River then flows in a southeast direction and discharges into the Pacific Ocean at Taieri Mouth.

NOTIFICATION AND SUBMISSIONS

22. The application was publicly notified on 17 August 2019.
23. The Staff Report stated that three submissions were received, and these were summarised in the report. The submissions were from Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ōtakou, and Te Nohoaka o Tukiaua/Sinclair Wetlands Trust (**the Submitters**⁶).
24. All three Submitters opposed the application and sought that the application be declined. I was provided with, and have read copies of, their submissions and consider these were accurately summarised in the Staff Report. I adopt that summary for the purpose of my decision as provided for by section 113(3)(b) of the RMA. I discuss the key objections later in my report as many of them relate to the matters which were in contention and all three had very similar themes.

ASSESSMENT

25. In assessing the application, I have considered the application documentation, the ORC's request for further information, the Applicant's response to that information request, the Staff Report, all submissions received, and the evidence provided during the hearing process.
26. I record that the findings I have made and the decision I have arrived at are based on all the evidence before me and my consideration of that material within the context of the statutory framework.

Statutory Considerations

27. Section 104(1) of the RMA states that, when considering an application for resource consent and any submissions received, I must have regard to:
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*

⁶ The three submitters appeared jointly at the hearing and, accordingly, I refer to them together as 'the Submitters'.

(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.

28. In terms of section 104(1)(b) of the RMA, I was advised that the relevant⁷ statutory planning documents for this application are the:

- National Policy Statement for Freshwater Management 2020 (**Freshwater NPS**)
- Partially Operative Otago Regional Policy Statement 2019 (**RPS 2019**⁸);
- Proposed Otago Regional Policy Statement 2021 (**Proposed RPS 2021**);
- RPW; and
- Proposed Plan Change 8 (Discharge Management) to the RPW (**PPC8**).

29. I record here that Ms Vaughan's evidence did not identify the Proposed RPS 2021 as being relevant, but instead she considered the 'Otago Regional Policy Statement 2015' to be relevant⁹. In answers to questions, she stated she could not explain why she had not covered the Proposed RPS 2021 in her evidence, but agreed that it was a relevant consideration for the application.

30. Section 104(1)(c) of the RMA requires me to have regard to any other matters that are relevant and reasonably necessary to determine the application. Messrs. Henderson and Vial identified the Kai Tahu ki Otago Natural Resource Management Plan 2005 (**NRMP**) and the Te Rūnanga o Ngāi Tahu Freshwater Policy Statement 1999 (**NTFPS**) to be relevant to determine this application. Ms Vaughan did not identify or discuss either of these two documents in her evidence and, in answers to questions, stated she could not explain why she had not covered them but agreed they were both relevant.

31. Section 104(2) of the RMA states that, when forming an opinion for the purposes of section 104(1)(a), I *may* disregard an adverse effect of the activity on the environment if a national

⁷ Mr Henderson also listed the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 as being relevant, however he stated there were no registered drinking water supplies downstream of the discharge so I interpret this to mean that these Regulations are therefore not relevant in this case.

⁸ The abbreviations used for the Partially Operative Otago Regional Policy Statement 2019 and the Proposed Otago Regional Policy Statement 2021 varied between the planners and because the abbreviations end up being very similar, leading to potential confusion, I have simply referred to them as the 'RPS 2019' and the 'Proposed RPS 2021', respectively.

⁹ Neither Mr Henderson nor Mr Vial referenced a document by this name. Further, the provisions which Ms Vaughan cited as being relevant from this document appear to be the same (or very similar) to the provisions she cited as being relevant from the RPS 2019.

- environmental standard or the plan permits an activity with that effect. This is referred to as the application of the 'permitted baseline'. I discuss this later in this decision.
32. Section 104(2A) states that, when considering an application affected by section 124 of the RMA (which is the case here), I must have regard to the value of the investment of the existing consent holder. I discuss this later in this decision.
33. Section 104(3)(a)(ii) states that I must not have regard to the effect on any person who has given written approval to the application. The Staff Report identifies written approvals were provided from the Department of Conservation and Public Health South.
34. Section 104B of the RMA applies in this case as I am dealing with a discretionary activity. This section states that I may grant or refuse the application sought and, if granted, I may impose conditions under section 108 of the Act. I discuss conditions of consent later in this decision.
35. Section 105 of the RMA states that, when considering a discharge permit, I must, in addition to 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 reason for the proposed choice; and*
 - (c) *Any possible alternative methods of discharge, including discharge to any other receiving environment.*
36. Section 107(1) of the RMA states that I am prevented from granting a consent allowing any discharge into a receiving environment which would, after reasonable mixing, give rise to all or any of the following effects, unless the exceptions specified in section 107(2) apply¹⁰ -
- (c) *The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended material:*
 - (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.*
37. My assessment of the application considers sections 105 and 107 of the RMA later in this decision.

¹⁰ The exceptions being:

- (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.

SECTION 104(1)(a) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

38. The discharge of treated wastewater to water will result in various actual and potential effects on the environment, both positive and adverse. I discuss these in the following sections¹¹.

Positive Effects

39. I heard evidence from Mr Henderson and Ms Vaughan regarding the positive effects that the WWTP provides. In particular, the WWTP was constructed to replace on-site wastewater systems (mainly septic tanks) which had the potential to create a significant public health risk. Providing a reticulated wastewater system and treating the wastewater at a central location (the WWTP) provides the Waihola community with a sanitary system to deal with their wastewater. This, in turn, enables these communities to provide for their social and economic wellbeing, and for their health and safety. I agree that the WWTP provides a significant positive effect for the Waihola community.

40. I also note that the Submitters, whilst being opposed to the application, acknowledged that the WWTP provided a benefit to those who are connected to it.

Principal Issues in Contention

41. I have focused my assessment on the following potential and actual effects which formed the basis of much of the evidence presented during the hearing and which I consider to be the ‘principal issues in contention’¹²:

- Receiving environment water quality effects;
- The quantum of the current quantity/rate of discharge and what quantum should be authorised by the new discharge permit;
- Effects of the discharge on the relationship of Māori and their culture and traditions with their ancestral water, sites, and other taonga, including effects on kaitiakitanga; and
- Alternative wastewater disposal options.

42. All four matters listed above are interrelated and I therefore assess them together below. I begin with a summary of the evidence heard¹³ (first by the Applicant, second by the Submitters, and third by the reporting officers) and then present my main findings on these principal issues¹⁴.

¹¹ I note that there were differences in the way different witnesses spelled various place names and features (e.g. Waihora vs Waihola, Waipōuri vs Waipori, and Taiari vs Taieri). I use the spelling that each witness presented.

¹² As required by section 113(1)(ac) of the RMA.

¹³ As required by section 113(1)(ad) of the RMA.

¹⁴ As required by section 113(1)(ae) of the RMA.

43. The Applicant provided no expert evidence in terms of the actual or potential effects of the discharge on water quality or ecological values within the receiving environment despite the fact that it had engaged consultant scientists to prepare a number of reports on such effects – these reports being included with the application and in response to further information requests of the ORC.
44. Ms Vaughan, in her Statement of Evidence, stated the Applicant “...*is prepared to amend application RM15.364 for the renewal of the Waihola discharge to reduce the volume of discharge sought to the levels currently being discharged and to a reduced duration to enable the activity to continue while a more effective solution is sought*”.
45. Ms Vaughan stated ‘*The application has shown there is no adverse effect on the water quality of this discharge as it is currently*’ and that the ‘*CDC recognise there is no adverse effects of the discharges, however, there are adverse effects on the values associated with discharge of human effluent...*’. In answers to questions on what she meant by ‘no adverse effect’, she stated it was very difficult to ascertain or measure any effects in the receiving environment and that no adverse effects can be seen. She acknowledged that the discharge of human effluent to surface water is contrary to the values of tangata whenua and Te Mana o te Wai.
46. Ms Vaughan reiterated the Applicant had agreed to amendments to the application (as lodged), in particular a shorter duration of six years and ‘*the volume of discharge to reflect current usage*’. There was a difference of opinion between Ms Vaughan and the reporting officers (Mr Henderson and Dr Greer) regarding what the volumes of discharge currently are. I discuss this matter later in this decision.
47. Ms Vaughan stated the Applicant was ‘*...expecting an increase in required treatment capability...*’ and is proposing to upgrade the WWTP. Mr Essenberg confirmed the WWTP would be upgraded and that the Applicant ‘*wants to do a good job on this*’. The application, as lodged, proposed a significant upgrade to the WWTP so that the treated wastewater would be significantly better than the limits on the current (expired) discharge permit.
48. Ms Vaughan had no comments to make in terms of the discharge quality limits recommended by Mr Henderson (Condition 6 in his Staff Report). However, attached to Ms Vaughan’s evidence was an Appendix 3 which she advised was prepared by Mr Essenberg – Appendix 3 contained a commentary on Mr Henderson’s recommended conditions of consent. In response to the recommended discharge quality limits, Appendix 3 stated the Applicant ‘*...must undertake a substantial capital upgrade programme as the existing infrastructure is unable to meet these requirements*’. While details of the proposed upgrade are not currently known, Mr Essenberg stated the Applicant had budgeted \$1.5 million for the upgrade and would involve:

- Ongoing reduction in infiltration and inflow (**II**) within the reticulation system (to reduce wet weather inflows to the WWTP);
 - Modifications to the pumping set up so that all volumes of treated wastewater are able to be discharged within the tidal window specified by the consent; and
 - Treatment to reduce nitrogen, phosphorus, suspended solids, and ‘organisms’.
49. In terms of the discharge quality limits (Condition 5 of the JWS¹⁵), Ms Vaughan’s written right of reply stated “*CDC are seeking that consent parameters be established based on the average of 12 months records after the plant [upgrades] has been commissioned and that thereafter all parameters should show an improvement when based on a 12-month trend*” and “*Total phosphorus and ammoniacal nitrogen remain a concern. These concentrations will also be present with the upgrade and there will not be an immediate change to the discharge concentrations. Compliance with consent conditions could be met if there is a limit before and after the upgrade*”.
50. The application included discussion on alternatives to discharging to water and concluded there were no suitable soil types near the WWTP. In answers to questions, Mr Essenberg stated the Applicant had engaged a consultant to undertake a further assessment of the feasibility of discharging the treated wastewater to land but he was unable to advise when the consultant’s report would be ready. Mr Essenberg also stated the Applicant was undertaking a much wider review of wastewater management within the district and various options for the WWTP were being considered, including construction of a ‘megaplant’ which could include wastewater from Waihola, Milton, and possibly other townships. The review would also be considering discharge options into the Taieri or Tokomariro catchment, coastal forest, or possibly a coastal discharge. He advised that this work was being progressed and cultural values/effects would be included as part of the assessment. In answers to further questions, Mr Essenberg confirmed the planned upgrade to the WWTP would still go ahead while the other investigations and assessments were being completed.
51. Ms Riddell presented legal submissions on behalf of the Submitters. She summarised the Submitters’ position and outlined relevant obligations and principles from Te Tiriti o Waitangi and Ngāi Tahu settlement legislation which she stated apply not only to the Applicant but also the ORC. She described the concept of Te Mana o te Wai and how it is incorporated into statutory planning documents. Ms Riddell outlined how sections 104, 105, 107, and Part 2 of the RMA are to be applied in this case. Lastly, she discussed proposed amendments to the conditions of consent recommended by Mr Henderson in his Staff Report.

¹⁵ The condition numbering in the JWS version of the conditions differ slightly from those in Mr Henderson’s Staff Report – Condition 6 in his Staff Report became Condition 5 in the JWS version of the conditions.

52. Ms Riddell stated the Submitters oppose the application as the discharge of wastewater to water is considered abhorrent by mana whenua and their preference was for an effective land-based disposal system. However, she stated the Submitters recognised that there is currently no alternative disposal option available for the Waiholo community and, accordingly, there *'...are little options other than allow for a transition period for the applicant to move from the status quo to a more appropriate wastewater treatment and disposal system'*. Ms Riddell stated that, notwithstanding the fact the application is contrary to the purpose of the RMA, the Submitters' position was that an amended proposal to continue to discharge treated wastewater to the outflow channel could be granted on an interim measure provided:
- The consent duration is no longer than six years;
 - The conditions recommended in Mr Henderson's Staff Report are adopted;
 - Condition 15 recommended by Mr Henderson is amended as set out in the evidence of Mr Vial; and
 - The Applicant offers a lawfully binding commitment, through a volunteered condition of consent, to have an alternative land-based treatment and disposal system confirmed, funded, and consented by the expiry of the new consent (being a six year period).
53. Ms Riddell emphasised that the ORC should not find itself in the same position in six years' time of having to be reconsidering another 'rollover' consent. She also raised concerns about the Applicant's commitment to improve the quality of the treated wastewater being discharged being predicated on a continuing discharge to the overflow channel.
54. Ms Riddell discussed the restrictions on granting discharge permits under section 107 of the RMA and she noted that Dr Greer was of the view that the effects specified in this section could occur if consent were granted to the volumes of discharge sought by the Applicant in its application (as lodged). She discussed the Environment Court's decision of *Paokahu Trust and Ors v Gisborne District Council* [A162/2003] which dealt with the concept of 'exceptional circumstances' provided for in section 107(2) of the RMA. Ms Riddell considered that case to have similarities to the current application in that the Court found the discharge of wastewater (to coastal waters in the Gisborne case) violated tikanga and resulted in a major adverse effect on cultural and spiritual sensitivities of the tangata whenua. She stated the Court acknowledged that refusing the consent would mean Gisborne would be unable to legally use its wastewater system and the Court therefore granted a short-term consent (two years) with conditions requiring the Council to undertake work to ensure consent for an alternative system was lodged before the consent expiring. Ms Riddell stated this was consistent with the Submitters' position and noted the Court felt *'compelled to send a clear message to the*

Council that time is running out and she considered the same should be stressed to the current Applicant.

55. Mr Ellison described the centrality of freshwater to mana whenua identity and wellbeing. He stated:

Water is a central element in mana whenua creation traditions and whakapapa, and our past, present and future relationship with te Taiao (the natural environment). The rights of rakatirataka and the obligations of kaitiakitaka in relation to the natural environment arise from, and are fundamentally linked to, whakapapa. Due to this connection, the state of health and wellbeing of wai māori and te taiao is seen as a reflection on the mana, health and wellbeing of mana whenua.

56. Mr Ellison stated the direct discharge of human waste to natural water is considered abhorrent by mana whenua – mana whenua support natural mixing of wastewater through land, a subsurface wetland, or a similar environment that provides a natural buffer or transition zone and makes use of the natural cleansing and purifying processes of Papatūānuku (the earth). He stated the proposed WWTP upgrades to improve the quality of the discharge do not address the fundamental issue for mana whenua. Mr Ellison stated the discharge of wastewater from the WWTP:

- Degrades the health and wellbeing of the receiving and consequently the health and wellbeing of mana whenua;
- Renders the receiving environment unfit for cultural use; and
- Degrades the mauri of the Waihora-Waipōuri wetlands and frustrates the exercise of rakatirataka and kaitiakitaka.

57. Ms Tamati-Elliffe described mana whenua values and associations with the Waihora-Waipōuri wetlands, the mana whenua history of loss in the Taiari catchment, and the proposed restoration of the biodiversity values of this catchment through the Te Nukuroa o Matamata project. She stated there were significant mana whenua values associated with the wetlands as evidenced through wāhi tupuna (interconnected ancestral places and landscapes), wāhi ikoa (place names), mahika kai and taoka species, and kāikai (settlements) and nohoaka (temporary settlements).

58. Mr Bryant prepared a statement of evidence but did not appear at the hearing, but I was advised by Ms Riddell that he was able to answer any questions by way of email. He stated Te Nohoaka o Tukiauau (Sinclair Wetlands) was vested in Te Rūnanga o Ngāi Tahu as part of the settlement of the Ngāi Tahu Claim. The Te Nohoaka o Tukiauau / Sinclair Wetlands Charitable Trust (the Trust) was subsequently set up to manage the wetlands. The Trust

includes representatives from Te Rūnanga o Ōtākou, Tatawai, and up to eight volunteer trustees. Mr Bryant outlined the objectives of the Trust, which are to:

- Restore and enhance the natural habitat and indigenous character;
- Restore and enhance the mahika kai values of the wetlands;
- Enrich cultural awareness and values, and connection with the community;
- Initiate collaborative partnerships / sponsorships and seek external funding; and
- Manage the wetlands as responsible kaitiaki putting the environment first in a sustainable manner for future generations.

59. Mr Bryant stated he frequently visits the wetlands by boat and noted they are used for fishing and birding (duck shooting). He stated that his 'rule of thumb' was not to fish or bird within the wetlands any further downstream than the boundary of Tatawai because of the wastewater discharge. He noted the wetlands and lakes were influenced by the tides and anything discharged to the outflow channel on an incoming tide gets '*pushed up through the wetland channels into Te Nohoaka o Tukiauau and Tatawai*'. Mr Bryan stated the outflow channel flows into the Waipōuri River and there is potential, depending on the tide, for the wastewater discharge to also have effects on the Taiari River. He stated he could tell when the WWTP was discharging into the outflow channel because of a brownish stain that appears on the river and the discharge is quite noticeable. He described the nature of the discharge in that it '*...fans out as it enters the Waipōuri River, and it is dispersed by the time it reaches the State Highway bridge*'.

60. I asked Mr Bryant (via Ms Riddell) whether he had read the 'Backflow Minimisation Report' attached as Appendix 2 to Ms Vaughan's evidence and whether he concurred with the description of the fate of the discharged wastewater within the receiving environment. In an email response Mr Bryant advised:

"My comments are from personal observations but in saying that I do understand the methodology and science used by the engineers. I don't think many people realize the huge volume of water that moves in and out of the wetlands and lakes complex with both the ingoing and outgoing tides. It's quite visible if you are standing on the embankments and I have found kelp as far up stream as Lake Waipori. The tidal influence affects all of the waterways that feed into the main channels and the two main rivers (Waipori and Taieri) and I am not surprised that they had trouble following their dye due to the volume and natural discoloration of the water."

61. Mr Vial presented planning evidence and summarised the Applicant’s engagement with mana whenua. Relying on the evidence of Mr Ellison, Ms Tamati-Elliffe, Mr Bryant, and Mr Henderson’s Staff Report, Mr Vial considered:
- The cumulative effects of the discharge are substantial, including effects on Ngāi Tahu cultural associations with Lake Waihora and the wetlands;
 - The proposed increase in nutrient concentrations on the outflow channel and potential effects on ecosystem values, human health, and cultural well-being may be more than minor; and
 - The effects on cultural values are more than minor.
62. Mr Vial agreed with Mr Henderson’s identification and assessment of the relevant provisions of the RMA, Freshwater NPS, RPS 2019, Proposed RPS 2021, RWP, NRMP and NTFPS. He agreed with Mr Henderson’s conclusion that the application does not achieve the purpose of the RMA and is inconsistent with the provisions relating to Māori freshwater values in the relevant statutory planning documents. In answers to questions, Mr Vial stated that, from a strictly planning perspective, the application should be declined, but he acknowledged that ‘special circumstances’ similar to the Gisborne District Council case (discussed earlier in paragraph 54) exist which would enable a short-term consent to be granted to allow the Applicant time to have an alternative land-based treatment and disposal system consented by the expiry. He advised that while the Gisborne case dealt specifically with the restrictions on granting discharge permits under section 107 of the RMA, such ‘special circumstances’ could also be considered under section 104(1)(c) – Other matters – of the RMA for this application.
63. Mr Vial presented suggested amendments to Mr Henderson’s Condition 15 which would require the Activity Management Plan to, amongst other things, establish a plan for the discharge to be removed from the outflow channel by the expiry of the consent and include a process for engaging with mana whenua and the wider community on alternative discharge methods.
64. Dr Greer stated the current adverse effects of the discharge on water quality and ecology within the receiving environment are unlikely to be more than minor as it contributes a very small proportion of the total nutrient load to the Waipori/Waihola Lake-Wetland complex (**LWC**). He did, however, state the cumulative adverse effects of all nutrient discharges to Lake Waihola (which includes nutrients from the WWTP) are substantial. Dr Greer was of the view that the (higher) discharge volumes sought to be discharged by the Applicant in its application have the potential to cause more than minor adverse effects on water quality and ecology as those volumes are substantially higher than the volumes currently discharged from the WWTP. For these reasons Mr Henderson recommended that the discharge volume (or rate) be limited to that currently being discharged.

65. I asked Dr Greer and Mr Henderson to clarify the basis of discharge standards that were included in the recommended conditions of consent contained in the Staff Report as these appeared to be more lenient than the current (expired) consent as well as those contained in the application. Dr Greer explained the recommended discharge standards were intended to reflect the quality of the treated wastewater currently being discharged as the adverse effects associated with the current discharge are unlikely to be more than minor.
66. Mr Henderson's Staff Report outlined the matters which I need to consider in making my decision, including identification and analysis of the relevant provisions of the RMA, Freshwater NPS, RPS 2019, Proposed RPS 2021, RWP, NRMP and NTFPS. Mr Henderson, relying on the evidence of Dr Greer, considered the current discharge was having adverse effects (other than cultural effects) that are 'less than minor', and that the adverse effects on cultural effects the discharge causes are unacceptable. Mr Henderson stated the discharge is inconsistent with the relevant statutory documents and he considered the discharge was '*...not consistent with the concept of sustainable development*'. Despite this, he recommended that the consent be granted, subject to a reduced volume of discharge (reflecting current discharge volumes).
67. Dr Greer provided further information following the hearing in respect of the quality and quantity of the treated wastewater that has been discharged from the WWTP. This additional work was undertaken on a more complete dataset which was provided by the Applicant following the hearing. In terms of wastewater quality, Dr Greer stated that, despite the addition of new data, all his revised recommended discharge standards were the same as those outlined in the recommended conditions contained in the Staff Report except for the 95th percentile for total phosphorus (which increased from 7.7 to 8.2 g/m³).
68. In terms of discharge volumes, Dr Greer noted that since 2018 high discharge volumes (>400 m³/d) have frequently lagged behind wet weather (rainfall) events. He also noted that discharge volumes during 2021 were ~30% higher than any other years assessed (2016-2019¹⁶) and this did not appear to be driven by rainfall as 2021 was a relatively dry year. Dr Greer advised careful consideration should be given to the appropriateness of including 2021 discharge volume data in any calculations to set limits for the consent. He stated including these data could result in greater nutrient loads being discharged to the LWC than what occurred during the term of the previous consent (i.e. during the period 2003-2017, reflecting the 'current discharge'). Dr Greer provided an assessment of the potential increase in nitrogen and phosphorus load to the LWC if an average of 160 m³/d were discharged from the WWTP (this being the high 2021 daily average plus a 10% buffer) compared to if an average of 102 m³/d were discharged (the figure presented in the table on page 7 of the application as being the measured average daily discharge at that time) – he stated the increases would be small

¹⁶ Data for 2020 were not provided to Dr Greer by the Applicant.

(<1% for both nitrogen and phosphorus) but it still represented an increased risk of national bottom lines for total phosphorus specified in the Freshwater NPS being exceeded in Lake Waihola.

69. In response to Minute #2, Dr Greer stated that it was largely irrelevant which average daily discharge rate was considered to be the 'current discharge' and that they all result in small (<1%) increases in total nitrogen and total phosphorus loads to Lake Waihola. His main concern was the effect of the Applicant's proposed approach of a single maximum discharge volume of 680 m³/d.
70. The JWS canvassed the proposed conditions, including the appropriate limit on the rate of discharge. Both Messrs. Henderson and Vial had concerns regarding allowing a daily maximum of 680 m³/d to be authorised as sought by the Applicant, however they accepted this volume provided it was for a short duration (up to 31 December 2024) and subject to the Applicant implementing its scheduled infrastructure programme (including the ongoing I/I reductions programme) during this period.
71. The JWS confirmed that Messrs. Henderson and Vial considered 128 m³/d to better reflect the current average daily discharge, this being the maximum average daily discharge (+10% buffer) calculated by Dr Greer following the hearing, excluding the 2021 data. However, Ms Vaughan preferred the limit to be 160 m³/d (which is based on the 2021 average daily discharge of 148 m³/d plus 10% buffer) and she stated that having a lower limit would potentially be setting up the Applicant 'to fail'.
72. The letter of Mr Witt included in the Applicant's written right of reply stated I/I contributes to the flows to (and therefore from) the WWTP and the rate of I/I is dictated by rainfall, not only in the catchment of the WWTP but also the surrounding area, including the catchment of the Taieri River which determines lake levels and consequent groundwater levels. The Applicant stated it has an active programme to address I/I and proposes to continue to investigate and remedy sources of I/I.
73. As noted earlier in this decision (in particular paragraphs 44 and 46), the Applicant's evidence presented at the hearing was that amendments to the application had been made such that it was now seeking a discharge volume which reflected the 'current discharge' over the reduced six-year duration of consent. However, in the written right of reply Ms Vaughan included conflicting information in that it clearly stated that the new discharge permit should not only authorise the current discharge but also provide for future growth. Paragraph 4 of the written right of reply stated "*...it is estimated that a further 50 to 60 Lots (at least) will required [sic] connection to the Wastewater System*" and that "*It is anticipated that the minimum dry flow [sic] will be 312 m³/day*". Further, paragraph 22 of the written right of reply stated "*In the next 5 years it is predicted in the AMP that there will be up to 368 connections*".

74. The written right of reply also outlined the implications of having the discharge volume limit proposed by Messrs. Henderson and Vial (those which they specified in the JWS) and that these would, *inter alia*, curtail future urban growth. The written right of reply noted that Waihola had been identified as one of the growth areas within the Clutha District and that even a limit of 250 m³/d¹⁷ would limit the planned urban growth. In light of this apparent change in position, I issued Minute #3 and asked the Applicant to explain why it had changed its position and to provide/confirm the volumes/rates it is now seeking to be authorised (including full calculations or evidence to support these). I also asked Messrs. Henderson and Vial for their views on the practicality of their recommended Condition 1 contained in the JWS, in particular their recommended limit post-1 January 2025 of a maximum discharge rate of 128 m³/d.
75. In response to Minute #3, Messrs. Henderson and Vial reconsidered the practicality of their recommended Condition 1 (contained in the JWS) and provided an alternative simplified wording which did not include pre- and post-1 January 2025 discharge limits. They noted that the rationale for the reduction in volumes proposed by Condition 1(b) was based on the implementation of the Applicant's proposed I/I remediation measures and that this was supported by Ms Vaughan at expert conferencing (albeit there were differences in opinion as to the appropriate rate of discharge). However, Messrs. Henderson and Vial noted that, because Ms Vaughan no longer supported this position (based on the contents of the written right of reply), and acknowledging that Dr Greer's analysis indicated there appeared to be no direct correlation between I/I and higher discharge rates from the WWTP, they both accepted that the threshold set in Condition 1(b) of the JWS may not be achievable.
76. Messrs. Henderson and Vial accordingly revised their recommended Condition 1 to a more simplified version which included maximum average daily discharge limit of 160 m³/d and a daily maximum limit of 680 m³/d for the duration of the consent. In terms of Ms Vaughan's concerns (expressed in the written right of reply) about the proposed limits curtailing future urban growth, Messrs. Henderson and Vial stated:

We note Ms Vaughan's observation that the proposed limits may constrain the growth of the Waihola township but have not seen clear evidence that this can be undertaken without adversely affecting the receiving environment. Providing for urban growth as proposed by Ms Vaughan is inconsistent with the direction of the National Policy Statement for Freshwater Management 2020 which prioritises the health and well-being of Lake Waihola.

There are two areas in which capacity may be available for growth, namely:

- (a) *The Applicant's proposed I & I work programme may free up capacity within the system to enable growth, and*

¹⁷ No information was provided as to the source of this rate, noting it had not been referenced before in any evidence provided by the Applicant.

(b) *The reason for the significant increase in the rate of discharge that occurred in 2021 is unclear, as this does not appear to be linked directly to either growth or rainfall events. While there is no explanation for this increase, we are recommending that the 2021 average daily discharge rate be used to set the threshold for this consent. Accordingly, further investigation and resolution of this issue may provide capacity for future growth, as the discharge rate during 2021 was on average 30% higher than previous years.*

77. In response to Minute #3 the Applicant (prepared by Ms Vaughan with input from Mr Essenberg) stated:

“The Clutha District Council has anticipated that this consent allows for future growth and connections of existing dwellings. Given that the consent period is to be for 5¹⁸ years then the number of connections anticipated at the end of this period by the Activity Management Plan is 368. The number of connections is an expected number and is subject to the growth rate of Waihola, this is not controlled by the Engineering section of the Council with the expectation that, as connections occur, engineering improvements will be made to ensure adequate treatment.”

78. In terms of the volume/rate being sought by the Applicant, the response to Minute #3 stated the volume that can be discharged was restricted by the (current) pumping capacity, which equated to 383 m³/d. The response then presented various calculations of likely future flows to the WWTP based on 80% of projected 368 properties being connected in the next five years, the different calculations being based on differences in assumed current discharge rates. The three rates calculated were 167 m³/d¹⁹, 136 m³/d²⁰, and 160 m³/d²¹.

79. The Applicant’s response to Minute #3 concluded that “A maximum flow rate of 383m³ per year [sic]²² is still requested as this allows for optimum utilisation of the existing infrastructure and this is marginally more than the QMax observed in 2021 when pumping occurred as allowed by the existing consent”. Further, the Applicant considered the following conditions to be appropriate:

1. A Q50 of 160m³ per day being a dry weather flow.

2. A QMax of 383m³ [sic]²³ being a wet weather flow with an exception for rain events of greater than 50mm in a 48-hour period.

¹⁸ I note that this response, and the written right of reply, referred to the next ‘5 years’ despite there being agreement between the parties that a six year term for the new discharge permit was appropriate.

¹⁹ Average daily flow based on 2021 average daily flow of 135 m³/d.

²⁰ Average daily dry weather flow assuming no change in occupancy type of properties in Waihola.

²¹ A dry weather flow allowable for 50% of a year.

²² I assume the Applicant meant ‘per day’, not ‘per year’.

²³ I assume the Applicant intended this volume to be ‘per day’ despite no unit of time being specified.

80. I asked Dr Greer to provide his opinion on the Applicant's response to Minute #3 in terms of the justification of the volumes/rates being sought and his opinion on the potential adverse effects of the requested discharge rates. Dr Greer advised me that the maths behind the Applicant's calculations was quite hard to follow. He outlined various issues he considered there to be with the Applicant's approach, including the fact that the assumed Q50 of 130 m³/d for 2021 did not reflect median dry weather flows as the statistic had been calculated on all 2021 data, including wet weather discharge days. Dr Greer concluded the discharge volume regime proposed by the Applicant was 'very permissive' and could result in an 83% increase in discharge volumes compared to the 2021 baseline – noting that this increase is unlikely to occur in practice but demonstrated the lack of control that the Applicant's proposed conditions have over the volume of wastewater.
81. Dr Greer stated the biggest potential issue with the Applicant's proposed discharge volumes/rates related to the increase in contaminant loads to Lake Waiholā. He considered the statements made by the Applicant to downplay the risks of increased loads occurring were "...all incorrect or unsubstantiated".

Findings on the Matters in Contention

82. I find that providing a reticulated wastewater collection, treatment, and disposal system provides the Waiholā community with significant positive effects. The system, including the WWTP, enables the community to provide for its social and economic wellbeing and for its health and safety.
83. I find that the discharge of treated wastewater from the WWTP to the outflow channel results in significant adverse effects on cultural values and associations of Ngāi Tahu. I find the activity is therefore inconsistent with, and in some cases contrary to, the relevant provisions in the Freshwater NPS, RPS 2019, Proposed RPS 2021, RWP, NRMP, and NTFPS relating to Māori freshwater values (discussed later in this decision).
84. The only technical evidence presented to me in terms of adverse effects on water quality and ecological values within the receiving water bodies was from Dr Greer, who considered the current discharges from the WWTP are 'unlikely to be more than minor' but any increase in discharge volume has the potential to result in more than minor adverse effects – I interpret this to also mean unacceptable adverse effects could occur if discharge rates are greater than current rates. The Applicant did not present any expert evidence on water quality or ecological effects, but the application did include supporting technical reports which concluded the effects of the current discharge were 'less than minor to minor'. I record here that I find it surprising that the Applicant did not call any expert witnesses on water quality and/or ecological values given it had engaged consultants to assist with preparing supporting reports on these matters in the Application and in response to further information requests issued by the ORC.

85. I agree with Ms Riddell that this application has similarities to the Environment Court's decision of *Paokahu Trust and Ors v Gisborne District Council* [A162/2003], discussed earlier in paragraph 54. In that case the Court found the discharge of wastewater to coastal waters to be an affront to the cultural sensitivity of tangata whenua and a violation of tikanga. However, the Court noted there would be adverse social, economic, and health effects (beyond comprehension) if the Council were required to terminate its wastewater discharge. Accordingly, the Court exercised its discretion and granted a short-term consent, with conditions which sent a 'clear message' to the Council that time is running out for it to address its wastewater management and to implement its wastewater strategy. The current application is, likewise, an affront to cultural values and associations of Ngāi Tahu, but declining the application would leave the Applicant, and the Waihola community, without an ability to treat and discharge municipal wastewater – resulting in significant adverse social, economic, and health effects. I agree with Mr Vial that this constitutes a special circumstance which can be considered under section 104(1)(c) of the RMA ('other matters') which would justify the granting of a short-term consent to enable the Applicant time to undertake its 'robust planning of alternative options' for the discharge.
86. There was initially agreement between the parties regarding the discharge quality limits that should be imposed on the short-term consent (on the basis that Ms Vaughan's evidence had no comments to make on Mr Henderson's recommended Condition 6 in his Staff Report (which became Condition 5 in the JWS). However, as discussed in paragraph 49, Ms Vaughan's written right of reply sought that the discharge quality limits be established following the upgrade of the WWTP (based on the average of 12 months of record following the upgrade). I find that it is not appropriate for discharge quality limits to be set after the consent is issued. The discharge quality limits in recommended Condition 5 of the JWS are based on the quality of wastewater currently produced by the WWTP. The Applicant is proposing to upgrade the WWTP by installing BioShells® and, if anything, this will improve the quality of the wastewater, particularly in terms of total ammoniacal nitrogen, biochemical oxygen demand, and total suspended solids. The Applicant provided a report prepared by Marshall Projects which includes some indicative/target improvements following installation of the BioShells® at the WWTP. I note, however, the report includes assumptions regarding discharge volumes which are significantly greater than the limits being placed on this consent – what difference lesser flows will make to the improved quality of the treated wastewater following installation of the BioShells® is not currently known, but one would expect the improvements to be, if anything, better with less flow through the WWTP. I therefore find the discharge quality limits proposed in Condition 5 of the JWS to be appropriate.
87. There were differences in opinion regarding the appropriate discharge quantity/rate limit. I disagree with the Applicant's (revised) proposed discharge limits for the reasons Dr Greer outlined in response to Minute #3 – that is, they could result in unacceptable adverse effects

on water quality and ecological values within the receiving environment. Further, I find it inappropriate for the Applicant to have changed its position so significantly in terms of discharge volumes being sought between the time of the hearing and submitting its written right of reply. Ms Vaughan made it clear in her evidence that the application had been amended so that the volume being sought for the short term consent is *'the volume of discharge to reflect current usage'* (outlined in paragraphs 44 and 46). This position was carried through to the JWS by Ms Vaughan, albeit that she had a difference in opinion as to which discharge limits should be imposed post-1 January 2025. The written right of reply (and responses to Minute #3 provided by the Applicant) sought much greater volumes/rates and, if this really was the Applicant's position, then evidence to justify these increased rates should have been provided in the evidence pre-circulated ahead of the hearing.

88. I find the revised limits in recommended Condition 1 presented by Messrs. Henderson and Vial in response to Minute #3 to be appropriate and reflect the 'current discharge' – these being based on Dr Greer's calculations of the available data (including the 2021 higher discharge rates). I find that, provided the Applicant complies with these limits, then the discharge will result in adverse effects on water quality and ecological values within the receiving environment which are unlikely to be more than minor and acceptable – I rely on the evidence of Dr Greer in making this finding.
89. I disagree with the Applicant's claims that these limits will curtail urban development of the Waihola community and, instead, agree with Messrs. Henderson and Vial that capacity may be available for growth via two mechanisms, namely the reduction in I/I and addressing the currently unexplained 30% higher than normal flows that occurred during 2021 – dealing with these two issues will create an incentive for the Applicant so that it can provide additional capacity for growth. In any case, even if such capacity is unable to be provided through these two mechanisms, any curtailment in urban growth is the Applicant's own making as it could have, and probably should have, already undertaken its 'robust planning of alternative options' (Ms Vaughan's words) that it is proposing to undertake over the course of the next six years. To lay the blame on the ORC (and me as decision maker on this application) for any curtailment of urban development of the Waihola community due to limits on this discharge permit is, in my opinion, inappropriate because had this been an application for a 'new' discharge to water I would have declined it – it is only because it is an existing discharge from an existing WWTP that warrants this discharge permit to be granted under 'exceptional circumstances'.

SECTION 104(1)(ab) - ENVIRONMENTAL OFFSETS AND COMPENSATION

90. Section 104(1)(ab) of the RMA requires me to have regard to any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
91. The Applicant is not proposing any offsetting or compensation for any adverse effects.

SECTION 104(1)(b) OF THE RMA - RELEVANT PLANNING PROVISIONS

92. I am required to have regard to the relevant objectives and policies of the Freshwater NPS, RPS 2019, Proposed RPS 2021, and the RWP. An analysis of the relevant planning provisions in these documents was provided by Mr Henderson, Mr Vial, and Ms Vaughan.
93. Mr Henderson's assessment was based both on the application, as lodged, and a lower discharge rate being authorised scenario (i.e. the current discharge rate), however there was some confusion in this respect. In his Summary of Evidence he stated "*...it is my opinion the application as lodged is inconsistent with the policy direction of the NPSFM 2000²⁴ and the PO-RPS²⁵ and PRPS²⁶. The proposal is also inconsistent with the key policies of the Regional Plan Water, in particular Policy 7.C.12.*" Policy 7.C.12 of the RPW seeks to reduce the adverse effects of discharges of human sewage from reticulated systems by various means, including preferring such discharges be to land and having particular regard to any adverse effects on cultural values. Overall Mr Henderson considered that providing a short-term consent for the continued discharge from the WWTP is appropriate as an interim measure while the Applicant undertakes 'robust planning of alternative options'.
94. Mr Vial considered the application was inconsistent with Policies 1 and 2 of the Freshwater NPS and the objectives and policies of the RPS 2019 that relate to Kāi Tahu values and interests. He considered the application was contrary to Policy LF-WAI-P3 and LF-FW-P15 of the Proposed RPS 2021 which provide for Te Mana o te Wai, as well as the Mana Whenua chapter of the Proposed RPS 2021.
95. Ms Vaughan provided a very brief analysis of how the application aligned with the relevant planning documents. She noted "*The discharge of human effluent to surface water is contrary to the values of Tangata whenua and Te Mana o Te Wa*", but considered the application was consistent with Policies 2 to 15 (excluding Policy 14 which she considered was not applicable) of the Freshwater NPS. In respect to the relevant objectives and policies of the RPS 2019,

²⁴ Which I refer to as the Freshwater NPS.

²⁵ Which I refer to as the RPS 2019.

²⁶ Which I refer to as the Proposed RPS 2021.

the Proposed RPS 2021, and the RPW, Ms Vaughan considered the application was either consistent with, or partly consistent with, those provisions.

96. I have had regard to all of the relevant provisions outlined in evidence in making my decision. I find that the amended application, which includes the shorter duration and reduced discharge volumes, will at least maintain the quality of the receiving environment both in terms of water quality and ecological effects so, to that end is consistent with the relevant policies of the planning documents which seek maintenance of such effects. However, the amended application is contrary to those provisions which seek reductions in discharges of contaminants or improvements in the receiving environment. Further, the application is contrary to the provisions which relate to avoiding adverse effects on cultural values and associations and it does not give effect to Te Mana o te Wai, a fundamental concept that underpins the Freshwater NPS.

SECTION 104(1)(c) - OTHER RELEVANT MATTERS

97. Section 104(1)(c) requires me to have regard to any other matters that are relevant and reasonably necessary to determine the application.
98. As discussed in paragraph 30, Mr Henderson and Mr Vial identified the NRMP and the NTFPS to be relevant to determine this application.
99. Mr Henderson considered the application was not consistent with objectives and policies of either the NRMP or NTFPS which relate to discharges to water and protection of mauri of the water. Mr Vial agreed with Mr Henderson's conclusions in this regard and so do I.
100. Ms Vaughan did not identify or discuss either of these two planning documents in her evidence.
101. As discussed earlier (paragraph 85), section 104(1)(c) also provides me the ability to determine that special circumstances exist in this case to grant a short-term consent for what is an existing activity which I would otherwise have declined.

SECTION 104(2) – PERMITTED BASELINE

102. Section 104(2) of the RMA states that, when forming an opinion for the purposes of section 104(1)(a), I *may* disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as the application of the 'permitted baseline'. Mr Henderson provided a brief statement on this principle and concluded there was no permitted baseline to be applied in this case. I agree.

SECTION 104(2A) – VALUE OF INVESTMENT

103. Section 104(2A) states that, when considering an application affected by section 124 of the RMA (which is the case here), I must have regard to the value of the investment of the existing consent holder.
104. Mr Henderson stated the Applicant had not provided any information regarding the level of investment at the WWTP. However, I asked questions of Mr Essenberg regarding the value of investment the Applicant had made in respect of the WWTP. He was unable to provide an accurate answer but estimated it to be between \$1-2 million. I have had regard to this value of investment in making my decision.

SECTION 105 of the RMA

105. Section 105 of the RMA applies to this application because a discharge permit has been applied for that contravenes section 15 of the RMA. Section 105 requires me to have regard to the nature of the discharge, the sensitivity of the receiving environment to adverse effects, the Applicant's reasons for the proposed choice, and any possible alternative methods of discharge, including discharge into another receiving environment.
106. The application included a consideration of alternatives and made reference to a 2007 study into land disposal options undertaken by Landcare Research Limited which concluded that the author was not confident of finding appropriate soils within the pre-defined 3.75 km radius of the WWTP but there appeared to be suitable soils ~ 6 km from the site.
107. Ms Vaughan's analysis of section 105 of the RMA stated the only alternative was to 'cease to reticulate' meaning households would have to rely on individual on-site wastewater treatment and disposal systems.
108. Earlier in this decision I discussed the more recent evidence provided by the Applicant on its plans to investigate alternatives in the future, however because that information is not in front of me I am unable to consider it under section 105 of the RMA.
109. Mr Henderson addressed section 105 of the RMA in his Staff Report and concluded the current discharge to be the best option in the interim. In other parts of his Staff Report he discussed the fact that the short-term consent will allow the Applicant time to undertake robust planning of alternative options.
110. Ms Riddell considered that, having regard to section 105 of the RMA, the application should be refused because the Applicant has not undertaken further investigations into alternative options in the six years since it lodged its application and because it dismissed alternative solutions to the treatment of wastewater for reasons of cost.

111. I am satisfied that I have had regard to all the matters outlined in section 105 of the RMA in making my decision on this application. It is clear the application has been amended, in part, to allow the Applicant time to undertake a comprehensive assessment of alternatives (something that should have been done earlier in my view).

SECTION 107 of the RMA

112. Section 107 of the RMA applies to this application because a discharge permit has been applied to discharge contaminants directly to water.

113. Section 107(1) states that I cannot grant such a discharge permit:

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.*

114. Mr Henderson considered the application, as lodged, could result in the effects described in section 107(1) of the RMA. However, he considered that, based on the evidence of Aquanet (Dr Greer), there was little risk of the current discharge resulting in the effects described in section 107(1) of the RMA after reasonable mixing.

115. Ms Vaughan considered there was nothing in section 107 of the RMA that would prevent the granting of the consent.

116. Ms Riddell noted section 107(2) of the RMA provides for certain exceptions whereby a consent authority may grant a consent which results in any of the effects listed in clauses (c) to (g) of section 107(1) (listed in the previous paragraph). Section 107(2) of the RMA states:

- (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.*

117. Ms Riddell also stated section 107 of the RMA is not the threshold above which all discharge permits must be granted but, rather, it is a minimum threshold below which no discharge permit should be granted. She stated once section 107 of the RMA is met there is still an obligation to consider all relevant matters in sections 104 and 105 of the RMA.

118. Based on the evidence of Mr Henderson (who in turn relies on the evidence of Dr Greer), I consider there is little risk in the current discharge resulting in the effects described in section 107(1) of the RMA after reasonable mixing. However, if such effects do occur, I consider there are exceptional circumstances in this case (discussed in paragraph 54) such that the exception provided in section 107(2) of the RMA would apply. Section 107 of the RMA does therefore not create a barrier for consent to be granted in this case.

PART 2 of the RMA

119. The matters specified in section 104(1) that I must consider are 'subject to Part 2' of the RMA. These words, and how they apply to the consideration of resource consent applications, has been the subject of a number of cases heard in the Environment Court, High Court, and more recently the Court of Appeal.

120. The Court of Appeal decision on *RJ Davidson Family Trust v Marlborough District Council*²⁷ (**the Davidson decision**) provides the latest, and most authoritative, position on this matter. Mr Henderson discussed the Davidson decision in his Staff Report.

121. In summary, the Davidson decision directs that where the New Zealand Coastal Policy Statement (**NZCPS**) is relevant to an application and it is clear from the relevant NZCPS policies whether consent should be granted or refused, then there is no need for a decision maker to refer back to Part 2 RMA matters as it would not add anything to the required evaluative exercise – that is, separate recourse to Part 2 RMA matters is not required as those matters are already reflected in the NZCPS objectives and policies. As the Court of Appeal stated²⁸:

“Putting it another way, even if the consent authority considered pt 2, it would be unlikely to get any guidance for its decision not already provided by the NZCPS. But more than that, resort to pt 2 for the purpose of subverting a clearly relevant restriction in the NZCPS adverse to the applicant would be contrary to King Salmon and expose the consent authority to being overturned on appeal”.

²⁷ CA97/2017 [2018] NZCA 316

²⁸ At para [71]

122. The Davidson decision also provides guidance on whether Part 2 RMA matters need to be considered where the NZCPS provisions do not provide clear guidance on whether consent should be granted or refused, and situations for applications where the NZCPS is not relevant – the latter being the case for the current application as the NZCPS is not relevant. In both situations the decision maker needs to determine whether the relevant plan has been ‘competently prepared’ under the RMA – that is, whether it contains a coherent set of policies designed to achieve clear environmental outcomes. If the relevant plan meets these criteria then there is no need to consider Part 2 RMA matters, and if the relevant plan does not meet these criteria then the decision maker should consider Part 2 RMA matters and determine whether they provide assistance in making a decision on the application.
123. Mr Henderson noted that the RPW is yet to give effect to particular higher order planning documents, namely the Freshwater NPS and the RPS and RPS. However, he did not identify any specific incompleteness or coverage but did consider it prudent to consider Part 2 matters for complexity.
124. Mr Henderson addressed sections 5, 6(a), 6(c), 6(e), 7(a), 7(b), 7(c), 7(f), 7(h), and 8 of the RMA and concluded the application, as lodged, was not consistent with Part 2 of the RMA. However, based on the imposition of his recommended conditions, in particular a lower discharge volume based on the ‘current discharge’, he did consider activity would meet the purpose of the RMA. However, he was of the view that the activity would still offend a number of section 6 and 7 RMA matters.
125. Ms Vaughan did not address the Davidson decision nor Part 2 RMA matters in her evidence.
126. Mr Vial agreed with Mr Henderson that assessment of the proposal against Part 2 matters was appropriate. He noted the Submitters concerns related specifically to Part 2 matters, in particular section 6(e), 7(a), and 8 of the RMA. Mr Vial considered the application fails to provide active protection of the relationship of mana whenua with Lake Waihora and the surrounding wetlands. He considered improvements to the conditions (as recommended by himself) could be made to better achieve the purpose of the RMA. Mr Vial concluded that to give effect to sections 6(e), 7(a), and 8 of the RMA, any consent should only be granted for the time required by the Applicant to put in place an appropriate land-based discharge system – including conditions which set out clear steps and timeframes to achieve this, together with a clear role of mana whenua in this process.
127. I agree with Mr Vial’s assessment and consider that, provided appropriate conditions of consent are imposed to require the Applicant to investigate and put in place an alternative management regime for the wastewater from Waihola, that the purpose of the RMA is best achieved by the granting of this consent.

CONCLUSION AND OVERALL DETERMINATION

128. On the basis of the evidence in front of me, I have determined that the discharge permit should be granted subject to conditions. I discuss the conditions in the next section of this decision.
129. In coming to my decision to grant the consents, I am mindful that these consents are essentially 'interim' in nature to allow the Applicant time to undertake its robust planning of alternative options.
130. I am hopeful that a land disposal option is found, either solely for the Waihola WWTP discharge, or for a combined 'megaplant' which may service other communities.
131. Had this been a new (greenfield) application I would have declined it. It is only because this is an existing WWTP and discharge that exceptional circumstances exist which justify the granting of a short-term consent with discharge limits which reflect the current discharge. There will be incentives for the Applicant to address I/I and other inflow issues as these will provide opportunities for the Applicant to allow additional connections to the system, whilst still complying with the 'current discharge' volumes specified on the consent.

Conditions

132. The Staff Report contained a set of recommended conditions and Ms Vaughan's evidence included a commentary on these together with a further 'Engineering Assessment of Conditions'. Mr Vial supported Mr Henderson's recommended conditions but considered further improvements could be made to them, in particular recommended Condition 15²⁹ which would require the preparation of an Activity Management Plan. Mr Vial considered the Activity Management Plan should specify that its objective is the removal of the discharge from the Waihora outflow channel and consultation being required with mana whenua (and the wider community) on alternative wastewater management solutions.
133. The expert conferencing which took place between the planners following the hearing also focussed on the conditions of consent. The JWS identified those conditions which the planners had agreement over and those where there were differences of opinion, including the reasons for the differences.
134. Having read the JWS it is apparent that Ms Vaughan had not sought or obtained critical advice from the Applicant on a number of matters beforehand – this is evidenced by statements in the JWS such as '*CDC engineers have yet to confirm with RV³⁰ that this figure [relating to discharge volumes] can be met and she will confirm this through her right of reply*' and '*RV to*

²⁹This being Condition 15 recommended in the Staff Report, noting this condition was renumbered Condition 13 in the final set of conditions included in the JWS.

³⁰ The JWS included initials, RV being Ms Vaughan.

address methodology used to calculate wastewater quality values and whether CDC can meet these values by way of her right of reply. It is unfortunate that Ms Vaughan was not properly briefed on these matters before attending the conferencing.

135. As discussed earlier in this decision, one of the main matters in contention was the appropriate discharge volume limit(s) specified in Condition 1 and I presented my findings in paragraph 88. I do not repeat those here.
136. In the written right of reply Ms Vaughan raised concerns (including the costs of compliance) regarding collection of samples at the point of discharge and within the receiving environment despite the fact that she agreed to Condition 4, which specifies sampling locations for the discharge and receiving environment, during the expert conferencing on conditions. In terms of the concerns raised in collecting a sample from the outfall pipe, I note Condition 4 is worded to provide flexibility in that the sample may also be collected from the two wetland cells instead of the outfall. However, I do agree with the Applicant that measurement of the flow rate and water depth of the outflow channel of Lake Waihola will involve significant additional work (flow gauging) and its costs outweigh the benefits of collecting that information for this short-term consent. I have therefore removed that requirement from Condition 4, however I have retained the requirement for field measurements and sample collection to occur upstream and downstream of the discharge.
137. I discuss my findings on the appropriate discharge quality limits (Condition 5) in paragraph 86 and do not repeat those here.
138. I have amended the language of Condition 7 to reflect the fact that the receiving water quality parameters stated are ‘targets’ rather than standards or limits. An advice note has also been added to explain the genesis of the targets being from Schedule 15 of the RPW.
139. Condition 8 was poorly drafted and crossed referenced Condition 7 incorrectly (it should refer to the discharge quality limits specified in Condition 5). The revised wording makes it clear that there are three scenarios which trigger a requirement for notification of non-compliance to the ORC, advice on corrective actions taken, and preparation of an Incident Report – these three scenarios being: 1) exceedance of any of the discharge quality limits set out in Condition 5 (once confirmed following a resample or retest); 2) an exceedance of either of the discharge volume limit(s) set out in Condition 1; or 3) if any of the effects outlined in Condition 6 occur as a result of the discharge.
140. Condition 9 incorrectly cross-referenced Condition 8 when it is intended to refer to Condition 7 (being the Schedule 15 RPW targets). Further, all references to ‘limits’ in Condition 9 have been amended to ‘targets’ for the reasons set out in paragraph 138 (above).
141. The cross-referencing error in Condition 11 has been fixed – it should be referring to Condition 12 (not Condition 14).

142. Condition 13, which requires an Activity Management Plan to be prepared, was a matter in contention. Ms Vaughan was of the view that one of the objectives of the Plan should be to establish a 'process' for the discharge to be removed from the Lake Waihola outflow channel by the expiry of the consent whereas Messrs. Vial and Henderson considered the word 'plan' should be used instead. Ms Vaughan's concerns relate to the funding process that will need to be followed for the Applicant to commit to removing the discharge from the Lake Waihola outflow channel, namely through the Annual Plan process which is subject to an approval process by the Clutha District Council. Mr Henderson considered it somewhat irrelevant whether the condition used 'plan' or 'process' because the same Annual Plan process will need to be followed – I agree. I also agree with Mr Henderson that using the word 'plan' makes it clear that an output is required within a prescribed timeframe.
143. Ms Vaughan considered the Activity Management Plan should be submitted to the ORC 'for approval' rather than 'for certification' as she was unfamiliar with the latter term. Mr Henderson noted 'certification' was a standard term used for conditions. I am surprised that Ms Vaughan was not familiar with the use of the term 'certification' for submitted plans as that is commonplace throughout New Zealand. While older consents have traditionally included conditions that required plans to be submitted 'for approval', such conditions are not lawful because it leaves a decision to a subjective discretion.
144. The conditions I have imposed on the resource consent are contained in Appendix 1 to this decision. The conditions are generally based on the final version of conditions provided in the JWS, subject to the changes I have discussed in earlier parts of this decision.
145. I have also made additional minor amendments to the conditions including grammatical changes, typographical corrections, as well as changes to ensure consistency in the use of terminology. None of these changes alter the intent of those conditions.
146. I am satisfied that the conditions, both singularly and in total, are necessary and appropriate to avoid, remedy, or mitigate potential adverse effects identified by the application and the evidence.

Duration

147. The application sought a 35-year duration, however as discussed earlier in this decision, the Applicant has volunteered a significantly reduced term of consent of six years, this reflecting the 'interim' nature of the consent that would be issued.
148. Mr Henderson and the Submitters agreed with a six-year duration for this consent. I find this to be an appropriate duration for this interim consent.

DECISION

For the above reasons, it is my decision, pursuant to sections 104B of the Resource Management Act 1991, to **GRANT** the following resource consents to the Clutha District Council, subject to terms and conditions set out in Appendix 1, attached to this decision:

RM15.364.01 Discharge treated wastewater from the Waihola Wastewater Treatment Plant to an outflow channel of Lake Waihola.

Dated this 12th day of May 2022



Dr Rob Lieffering

Independent Hearing Commissioner

APPENDIX 1: CONDITIONS

Resource Consent No. RM15.364.01

DISCHARGE PERMIT

Pursuant to section 104B of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Clutha District Council

Address: 1 Rosebank Road, Balclutha

To discharge treated wastewater to an outflow channel of Lake Waihola for the purpose of disposal of wastewater from the Waihola Wastewater Treatment Plant.

For a term expiring **12 May 2028**

Location of Point of Discharge: An outflow channel of Lake Waihola located approximately 1.2 kilometres northwest of the intersection of Titri Road and Taieri Plains Highway (State Highway 1), Waihola.

Legal Description of Point of Discharge: Between riverbed and Lot 1 DP 20844

Map Reference at point of discharge: NZTM (2000) 1376557E 4902692N

Conditions

Specific

- 1 This consent authorises the discharge of treated human wastewater into the outflow channel of Lake Waihola at the point shown in Map 1 attached as **Appendix A** to this consent:
 - (a) The annual average daily rate of discharge must not exceed 160 cubic metres per day; and
 - (b) The maximum rate of discharge on any single day must not exceed 680 cubic metres per day.

2.
 - (a) Wastewater discharged from the treatment system must only be pumped into the Lake Waihola outflow channel during the latter half of the incoming tide and/or the initial half of the outgoing tide;
 - (b) Prior to the exercise of this consent the Consent Holder must provide tidal information for the following six-month period;
 - (c) The Consent Holder must keep up-to-date forecasts of tidal flows at the point of discharge into the Lake Waihola channel; and

- (d) Discharge volumes, times, and tidal state at the time of discharge must be recorded and the information forwarded to the Consent Authority at six-monthly intervals together with the monitoring required under Condition 4.

Performance Monitoring

- 3.
 - (a) The Consent Holder must ensure a discharge flow meter, with an accuracy range of +/- 5% and datalogger, are installed and maintained at all times to record the wastewater volumes discharged when the discharge is occurring;
 - (b) The Consent Holder must provide records from the datalogger to the Consent Authority annually by 31 March each year, and at any time upon request. Data must be provided electronically giving the date, times, and flow rates in no more than 15-minute increments and the datalogger downloaded annually and sent to the Consent Authority by 31 March each year; and
 - (c) The Consent Holder must provide written verification to the Consent Authority that the discharge flow meter has been verified as accurate by a suitably qualified person by 31 March of the first year of the exercise of this consent and then at five-yearly intervals thereafter.

- 4. Surface water and discharge quality monitoring must be undertaken by a suitably qualified person throughout the duration of the consent. Samples must be collected, and measurements made, monthly when the discharge is occurring and must be undertaken at the following locations on the same day:
 - (a) From both wetland cells or from the outfall pipe prior to its discharge into the outflow channel of Lake Waihola;
 - (b) the outflow channel of Lake Waihola, no more than 50 metres upstream of the discharge point; and
 - (c) the outflow channel of Lake Waihola, no more than 50 metres downstream of the discharge.

At the time of sampling field measurements of pH, temperature, turbidity, electric conductivity, dissolved oxygen, in-stream visual clarity (measured through black disk), and direction of flow must be recorded.

Analysis of surface water and discharge samples must be undertaken for the following parameters:

Parameter
5-day carbonaceous biochemical oxygen demand (cBOD ₅)
Total suspended solids (TSS)
Total nitrogen (TN)
Total ammoniacal-nitrogen ([NH ₃ +NH ₄ ⁺]-N)
Total nitrate + nitrite nitrogen (NNN)
Dissolved inorganic nitrogen (DIN)
Total phosphorus (TP)
Dissolved reactive phosphorus (DRP)
Particulate organic matter
Total faecal coliforms (FC)
<i>Escherichia coli</i> (<i>E.coli</i>)

5. The quality of treated wastewater immediately before it is discharged to the outflow channel of Lake Waiholā must:

(a) Not exceed any limit specified below:

Parameter	Units	Samples must not exceed median limits in more than 8 out of 12 consecutive samples	Samples must not exceed 95 th percentile limits in more than 2 out of 12 consecutive samples
5-day carbonaceous biochemical oxygen demand (cBOD ₅)	g/m ³	75	140
Total suspended solids (TSS)	g/m ³	100	175
Escherichia coli (<i>E.coli</i>)	cfu/100mL	80,000	315,000
Total ammoniacal nitrogen ([NH ₃ +NH ₄ ⁺]-N)	g/m ³	23	31
Total phosphorus (TP)	g/m ³	5.7	8.2

(b) Be within the pH range of 6.5 – 9.0; and

(c) Be no less than 2 g/m³ of dissolved oxygen as an average of any five consecutive weekly measurements taken at approximately 9.00 am.

- 6 The following monitoring parameters must be used to assist with assessing the effects of the wastewater discharge to the outflow channel of Lake Waiholā:

(a) The discharge must not cause the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;

(b) The discharge must not cause bacterial and / or fungal slime growths visible to the naked eye as plumose growths or mats;

(c) The visual clarity must not be reduced by more than 30% between upstream and downstream of the discharge;

(d) The Quantitative Macroinvertebrate Community Index (QMCI) must not be reduced by more than 20% between upstream and downstream of the discharge; and/or

(e) The maximum cover of visible streambed of periphyton as filamentous algae more than 2 centimetres long should not exceed 30%.

- 7 From 31 March 2025, samples of receiving water taken from the outflow channel of Lake Waihola in accordance with Condition 4 must be monitored against exceedances of the following targets when calculated over a rolling five-year period:
- (a) The 80th percentile for total nitrogen (TN) concentrations should not exceed 0.55 g/m³;
 - (b) The 80th percentile for dissolved reactive phosphorus concentrations should not exceed 0.033 g/m³; and
 - (c) The 80th percentile for turbidity should not exceed 5 Nephelometric Turbidity Units (NTU).

Advice Note: The targets specified in Condition 7 are those from Schedule 15 of the Regional Plan: Water for Otago for Receiving Water Group 4, being applicable for Lake Waihola..

- 8 In the event of one or more of the limits set out in Condition 5 being exceeded, the Consent Holder must resample and/or retest that parameter within five working days of the exceedance to confirm, or otherwise, the exceedance. In circumstances where one or more of the limits set out in Condition 5 are exceeded on two consecutive sampling occasions and these results are confirmed exceedances (i.e. it is not due to faulty testing or other parameters affecting the results) the Consent Holder must report to the Consent Authority as follows:
- (a) The Consent Authority must be notified in writing within 48 hours of any confirmed non-compliance;
 - (b) The notification referred to in clause (a) of this condition must include advice of any corrective actions taken by the Consent Holder; and
 - (c) An incident report must be provided to the Consent Authority in writing within 20 working days of the notification of the exceedance referred to on clause (a) of this condition. This report must include:
 - (i) identification of the likely cause of the limit exceedance;
 - (ii) the resulting effects within the receiving environment likely to arise because of the limit exceedance;
 - (iii) the management responses undertaken, or which may be necessary to prevent any further non-compliance occurring; and
 - (iv) remedial action undertaken or which may be necessary and confirmation of implementation if it is within scope of this consent.

In addition, in the event that either of the two discharge limits set out in Condition 1 are exceeded, or if the discharge has caused any effect outlined in Condition 6, then the Consent Holder must also comply with the requirements of clauses (a) to (c), above.

9. Should any of the targets set out in Condition 7 be exceeded, the Consent Holder must prepare a report by a suitably qualified person within 20 (twenty) working days of the first exceedance of the target(s) that were assessed identifying:
- (a) why the target(s) has not been met;
 - (b) actions to be taken to ensure targets are met, including timeframes for the implementation of the actions;
 - (c) the actual and potential adverse effects the discharge is causing on water quality; and

- (d) if there has been improvement in the discharge quality since the commencement of the consent.

The report must be provided to the Consent Authority within 5 (five) working days of its completion for certification that clauses (a)-(d) have been fulfilled. The Consent Holder must implement any actions outlined under clause (b) within the timeframes specified.

10.
 - (a) Within three months of the commencement of this consent, the Consent Holder must prepare an Operations and Maintenance Manual for treatment and disposal system with the objective of ensuring the effective and efficient operation of the Waihola Wastewater Treatment Plant at all times. The Operations and Maintenance Manual must include, but not necessarily be limited to, the following:
 - (i) a brief description of the treatment system, including a detailed site map indicating the location of the treatment system, discharge location, sampling and monitoring sites;
 - (ii) key operational matters, including the detailed monthly maintenance checks and a schedule of system maintenance;
 - (iii) details around the methodology of providing accurate tidal information to determine discharge times as required by Condition 2;
 - (iv) monitoring requirements and procedures, including discharge rates, volumes and limits to be complied with and reporting procedures;
 - (v) contingency plans for response to non-compliance with this discharge permit or system malfunctions or breakdowns;
 - (vi) the means of receiving and dealing with any complaints and system malfunctions; and
 - (vii) Key personnel, contact details and emergency phone numbers.
 - (b) The Consent Holder must provide a copy of the Operations and Maintenance Manual to the Consent Authority within 5 (five) working days of its completion for certification that the objective and minimum details have been fulfilled;
 - (c) The Consent Holder must adhere to the certified Operations and Maintenance Manual at all times; and
 - (d) Should changes to the Operations and Management Manual be required, the Consent Holder must provide the updated version to the Consent Authority on request.
11. Records of maintenance, complaints, malfunctions, and breakdowns must be kept in a log and this log must be submitted, along with the report required under Condition 12, to the Consent Authority by 31 March each year and upon request.
12. Before the first anniversary of the exercise of this consent and by 31 March in each year thereafter, an Annual Monitoring Report must be prepared relating to the activities authorised by this consent over the preceding 12-month period. This report must be prepared by a suitably qualified person and must include, but not necessarily be limited to, the following:
 - (a) Flow monitoring records required by Condition 3;
 - (b) A record of any discharges that exceeded the discharge rates as set in Condition 1;
 - (c) Discharge flow monitoring records providing detail of the timing of discharge in relation to tidal flows at the point of discharge

- (d) A summary of all sampling and analyses undertaken under this consent in the previous 12-month period and an assessment of compliance with limits set by Condition 5 and the targets specified in Condition 7;
 - (e) Analysis of surface water quality monitoring and the difference in water quality upstream and downstream of the discharge required by Condition 4;
 - (f) An overview of compliance with the requirements of the Operations and Maintenance Manual;
 - (g) Overview of compliance with all conditions of this consent;
 - (h) Recommendations for improvements in the system;
 - (i) Maintenance service records and malfunctions or breakdowns and the corrective action taken;
 - (j) Any complaints received and action taken; and
 - (k) Confirmation of funding to ensure any upgrades are adhered to in accordance with Condition 13.
- 13.
- (a) Within the first year of the exercise of this consent, the Consent Holder must prepare an Activity Management Plan. The Activity Management Plan must be prepared by a suitably qualified person and have the following objectives:
 - (i) To ensure the discharge will meet current water quality standards;
 - (ii) To ensure improvement in the quality of the discharge throughout the duration of the consent; and
 - (iii) To establish a plan for the discharge to be removed from the Lake Waiholā outflow channel by the expiry of this consent.
 - (b) The Activity Management Plan must include, but not necessarily limited to, the following:
 - (i) Proposed upgrades to the wastewater treatment plant throughout the duration of the consent;
 - (ii) An assessment of alternative discharge methods to remove the discharge from the Waiholā outflow channel;
 - (iii) Timing and budgeting for any proposed upgrades;
 - (iv) The timing, budgeting and other steps required to identify and develop an alternative discharge method to discharging to the Waiholā outflow channel;
 - (v) Analysis of how upgrades under both Condition 13(b)(i) and (b)(iv) above will ensure the objectives of the Activity Management Plan will be met;
 - (vi) A process for engaging with mana whenua, designed in collaboration with Te Rūnanga o Ōtākou, on alternative discharge methods;
 - (vii) A process for engaging with the wider community on alternative discharge methods; and
 - (viii) A process for confirming, funding, and consenting the preferred discharge method by the expiration of this consent.
 - (c) The Consent Holder must provide the Activity Management Plan to the Consent Authority within 5 (five) working days of its completion for certification that the objectives have been met as specified in Condition 13(a).
 - (d) The Consent Holder must adhere to the Activity Management Plan that has been certified by the Consent Authority in accordance with Condition 13(c).

General

14. (a) The Consent Holder must erect and maintain suitable signage that warns the public of the discharge that can be visible and read at a distance of no less than 5 (five) metres at the following locations:
 - (i) Adjacent to the outfall; and
 - (ii) 100 metres upstream and downstream of the outfall.
- (b) Signage identifying the location of the discharge outfall must be erected and maintained at the Waihola and Henley boat ramps. Signage must include a map of the location of the discharge outfall; and
- (c) All signage must display warnings in both English and Te Reo.

Review

15. The Consent Authority may, in accordance with sections 128 and 129 of the Resource Management Act 1991, serve three months' notice on the Consent Holder of its intention to review the conditions for the purpose of:
 - (a) Determining whether the conditions of this consent are adequate to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage, or which becomes evident after the date of commencement of the consent;
 - (b) Ensuring the conditions of this consent are consistent with any National Environmental Standards, relevant regional plans, and/or the Otago Regional Policy Statement;
 - (c) Reviewing the frequency of monitoring or reporting required under this consent to ensure consent requirements are being met;
 - (d) Amending the monitoring programme set out in accordance with Condition 4; or
 - (e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

APPENDIX 1 – Location of Discharge



Map 1. Location of the point of discharge to the outflow channel of Lake Waihola from the Waihola Wastewater Treatment Plant.