

Resource consent application

Being in relation to an Application of **Remediation (NZ) Limited** to;

- a) Discharge contaminants to land, including in circumstances which may result in those contaminants (or other contaminants emanating from those contaminants) entering water in the Haehanga Stream catchment;
- b) Discharge contaminants directly to an unnamed tributary of the Haehanga Stream; and
- c) Discharge contaminants to air.

The application for consents 5838-3.0 and 5839-3.0 was made in accordance with the Resource Management Act 1991 (the RMA), and lodged with the Taranaki Regional Council (the Council).

HEARING PANEL DECISION

Dated: 26 May 2021

Decision: The resource consent application is **Declined**

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1 Proposal Overview, Location, and Existing Character

1.1 Introduction

1. The proposal and the receiving environment are set out in full in the Council Officers' Report¹. A summary of the proposal is given below.
2. The Council Officers' Report, which was provided 15 days before the hearing, recommended granting the consents subject to the conditions they saw necessary to achieve the purpose of the RMA. After hearing the evidence, Council Officers modified their recommended conditions.

1.2 Proposed activity

3. Remediation (NZ) Limited (the Applicant) is a vermicast (worm casting) and compost production company that supplies organic fertiliser to both organic and conventional growers. These products are produced from a range of locally sourced organic waste streams such as paunch² and chicken mortalities.
4. The site receives over 100,000 tonnes of organic waste every year³.
5. The vermiculture operation is carried out from Pad 2, which receives paunch only. The worms within the beds digest the paunch and convert it into vermicompost⁴ and then to vermicast. Stormwater runoff and leachate from the paunch pond is directed to a wetland treatment system (WTS), which discharges to an unnamed tributary of the Haehanga Stream.
6. Pad 1 receives organic material which will then be blended with shredded green waste and untreated sawdust to achieve the required carbon/nitrogen ratios, and windrowed. Stormwater and leachate from Pads 1 and 3 is collected and directed to a pond treatment system (PTS) before being irrigated to land.
7. The stormwater and leachate will be irrigated to 8 separate irrigation areas, providing a total irrigation area of 13.18 ha⁵.
8. Pad 3, formerly referred to as the 'drilling mud pad', now holds more than 20,000 tonnes of stockpiled material. Drilling waste material along with organic material (such as chicken mortalities, fish waste, hatchery waste, and any other organic material), was unloaded into the collection pond beside Pad 3. This material was removed with a digger and blended with bulking agents, such as shredded greenwaste, sawdust, and wood shavings, and then stockpiled on Pad 3.

¹ Prepared in accordance with Section 42A of the RMA.

² Partly digested grass from a cattle beast's stomach at slaughter.

³ Remediation NZ consent application, page 2.

⁴ Humus-like material produced by worm composting.

⁵ Council Officers' Report, paragraph 81.

9. Contrary to what was described in the previous consent applications (2010), the current application indicates that the vermiculture and composting processes operate completely separate to one another i.e. none of the material received on Pad 1, or the drilling waste, have gone through the vermiculture process as previously stated (resulting in the stockpile on Pad 3).
10. As a result of the issues associated with the existing stockpiled material, the Applicant stopped receipt of all drilling waste material as of 31 December 2020 – although it is our understanding that organic material continues to be deposited to the collection pond and added to the stockpile.
11. If the stockpiled material is unable to be sold off-site, the Applicant proposes to utilise the material as a ‘soil conditioner’ onsite.
12. The application proposes to mitigate adverse effects of the proposed activities by implementing the following measures to improve onsite management:
 - further expansion of the irrigation area to a total of 13.18 ha (confirmed by way of drone survey);
 - steps to manage the stockpiled material on Pad 3 that has been unable to be sold off-site due to its association with drilling activities;
 - changes to site operations to reduce nutrient and contaminant loads in the irrigation ponds;
 - having a detailed understanding of the nitrogen cycle onsite, and steps to mitigate N losses/leaching;
 - the decision to cease the receipt of drilling waste material as of 31 December 2020.

1.3 Location and existing character

13. The subject site is 641 ha in total area and the composting operations (which occupy a small area of the site), are situated approximately 1.3 km inland of State Highway 3 and approximately 2 kilometres from Uruti Village.

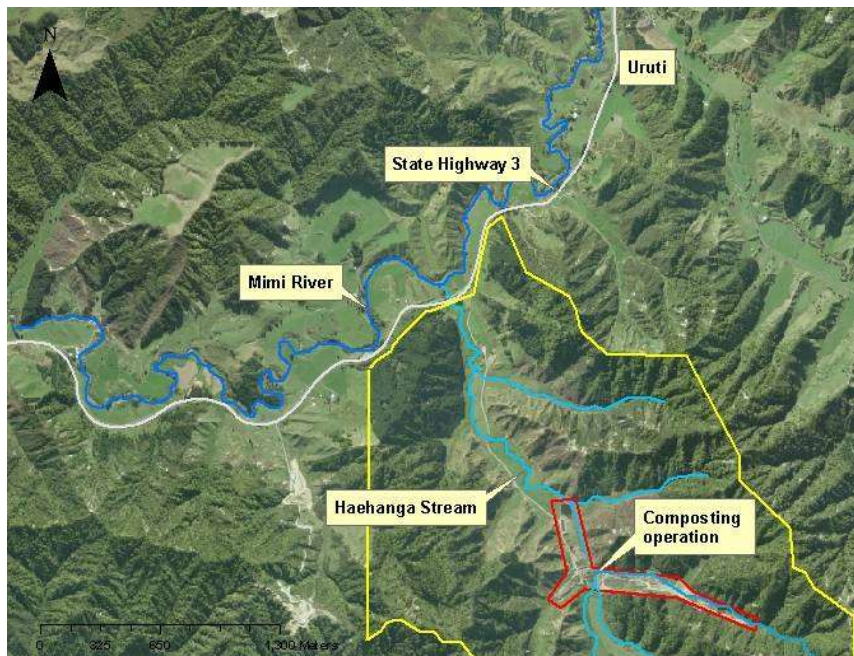


Figure 1: Location of the subject site

14. The Council Officers' Report⁶ describes the location as an erosive-type environment that naturally generates a sediment load within the watercourses, especially during heavy rainfall events. The surrounding hills are steep with a mixture of grass cover, scrub, and native bush, and the valley floor is generally comprised of shallow alluvial soils with a papa clay base.

2 Report structure

15. Our report is structured to provide a decision with respect to the resource consent application.
16. Resource consent applications require a decision to be made, either granting consent (with or without conditions), or declining consent. Statutorily, we must consider certain matters with respect to this resource consent application, however at the outset we note that Section 113(3) of the RMA states:

A decision prepared under subsection (1) may,

(a) instead of repeating material, cross-refer to all or a part of -

(i) the assessment of environmental effects provided by the applicant concerned:

(ii) any report prepared under section 41C, 42A, or 92; or

(b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.

17. We intend to adopt the approach enabled by Section 113(3) in this decision.
18. Section 113(1) also identifies the matters that we must include in our decision.
19. Where we have generally agreed with the Applicant, Council Officers, submitters or technical expert evidence, we will cross reference where possible to avoid unnecessary duplication.

3 Resource Consents

3.1 Resource consents required

20. The Applicant seeks resource consent from the Council under both the operative Regional Freshwater Plan for Taranaki (RFWP) and the operative Regional Air Quality Plan for Taranaki (RAQP). The consents are to replace those that expired in 2018.
21. Since 2018, the Applicant has been operating under the expired consents in accordance with Section 124 of the RMA.

3.2 Previous consents

22. Consents 5838-1.0 and 5839-1.0 were first granted by the Council on 24 July 2001. On 27 May 2010, a Council appointed Hearing Committee determined that the applications be renewed for a period of 8 years, subject to conditions which placed emphasis on the use and appropriate management of treatment facilities.

⁶ Council Officers' Report, paragraphs 113-114.

23. The consents were granted on the basis that the activities would be undertaken as described in the applications, i.e.:
- material received on Pad 1 would be blended with shredded greenwaste and then screened and blended for sale;
 - paunch received on Pad 2 would be wedge piled, fed to the worm beds, and then screened and dried to form vermicast (which is then sold);
 - drilling waste received in the collection pond would be blended with bulking agents (shredded greenwaste and sawdust) prior to being stockpiled in rows for composting, and then processed through the vermiculture process.
24. However, almost all of the material received onsite for the past 10 years, including some unauthorised material (but also authorised organic material that could otherwise be composted), has been deposited into the collection pond, blended with bulking agents, and then stockpiled on Pad 3⁷.
25. As a result, the stockpile on the Pad 3 is now greater than 20,000 tonnes. This material does not comply with composting standards (after approximately 15 years) which the Applicant believes to be a result of ineffective turning of the material and not turning it frequently enough. This has caused what's referred to in the application as a "legacy" issue, as the Applicant has been unable to sell this product off-site due to its association with drilling activities.

4 Process Before Hearing

4.1 Consultation

26. The Applicant had direct consultation with Ngāti Mutunga prior to lodging consent, which included a site visit on 28 September 2017⁸. Representatives also met with Ngāti Mutunga officials on 18 April 2018 and 17 May 2018. A further site visit was undertaken on 8 June 2018⁹.
27. The Applicant also had meetings and discussions with immediate neighbours of the operation.
28. We understand that a common issue raised in engagement with immediate neighbours was the nature and extent of odour generated from the property, and the perceived lack of action by the Applicant to avoid, remedy or mitigate this.
29. The cultural significance of the area to Ngāti Mutunga was discussed and this is covered in more detail later in this report. It is our understanding that a breakdown in the relationship between the Applicant and Ngāti Mutunga had a direct impact on early and meaningful consultation.

4.2 Public notification and submissions

30. The application was publicly notified on 12 January 2019. Notice of the application was served on 8 affected/interested parties including individuals and organisations.

⁷ Council Officers' Report, paragraph 22.

⁸ Council Officers' Report, paragraph 132.

⁹ Remediation NZ consent application section 6, page 82.

31. Twenty two (22) submissions were received. Ten (10) submissions were received in support or conditional support of the proposal, and twelve (12) were received in opposition. No neutral submissions were received. The submitters were:

- Glen & Dawn Bendall
- Sydney & Jennifer Baker
- Vikki Bazeley
- Paora Laurence
- Carol Shenton
- Urs Singer
- Climate Justice Taranaki Incorporated
- Anne-Maree McKay
- Rawiri McClutchie
- Te Runanga o Ngāti Mutunga
- Taranaki Energy Watch (TEW)
- Urenui & Districts Health Group Incorporated
- Fonterra Kapuni
- Ross Whelan (Contract Resources)
- Tegel Foods Ltd
- Clelands Tiimber
- Brough Earthworks Ltd
- Blackstock Roadsweeping
- Waste Management NZ Ltd
- Envirowaste NZ Ltd
- Intergroup Ltd
- New Plymouth District Council (NPDC)

32. The issues raised in the submissions were summarised in the Council Officers' Report¹⁰. We see no need to repeat this level of detail in this decision. We adopt that summary and address the principal issues in contention in section 7 of this decision report.

33. Prior to the hearing closing, the following organisations withdrew their submissions and therefore any material associated with these submissions was not taken into account by the Hearing Panel:

- Fonterra Kapuni
- Brough Earthworks
- Waste Management NZ
- NPDC

¹⁰ Council Officers' Report, pages 34-39.

4.3 Pre-hearing meeting

34. A pre-hearing meeting was held on 31 August 2020. Details of this meeting are included in the Council Officers' Report¹¹.
35. The report notes that no issues were resolved at the meeting.¹²

4.4 Site visit

36. The Hearing Panel undertook a site visit on 23 March 2021. We were accompanied by Jared Glasgow (Senior Investigating Officer), and were met by Herbert Van Veen (Remediation NZ).
37. We visited a number of areas including Pad 3, an irrigation paddock, vermicast area, wetland and site operations office. We also viewed the air sanitiser in operation.
38. As with most site visits, it was very useful to see the operation and we thank the staff for their co-operation.

4.5 Commissioners' minutes

39. We issued a Minute on 28 April 2021 formally closing the hearing.
40. We issued a second Minute on 18 May 2021 which extended the time limit for giving notice of a hearing decision by 5 working days¹³.

5 Expert Conferencing

41. No expert or joint witness conferencing was undertaken.

6 Hearing Overview and Matters in Contention

6.1 Hearing Panel appointments

42. The Hearing Panel comprising Councillors Michael Joyce (Chair) and Neil Walker, and independent commissioner Rawiri Faulkner was delegated authority by the Council under Section 34A(1) of the RMA to hear and determine the resource consent application.

6.2 Hearing schedule

43. The hearing was held over 24 and 25 March 2021 at the Devon Hotel, New Plymouth. The hearing was formally closed on 28 April 2021 via Minute 1, after we received further information that had been requested during the hearing.

¹¹ Council Officers' Report, paragraphs 145-148.

¹² Council Officers' Report, paragraph 148.

¹³ In accordance with Section 37A of the RMA.

6.3 Applicant appearances

44. We heard from the Applicant and their expert witnesses. The Applicant's representatives and expert witnesses included:
- John Maassen (Legal Counsel)
 - David Gibson (Remediation NZ General Manager)
 - Kathryn Hooper (Planner)
 - Andrew Curtis (Chemical Engineer and Air Quality Expert)
 - Colin Kay (Agricultural Consultant)
 - Hayden Easton (Water Scientist and Stormwater Management Expert)

6.4 Council appearances

45. We heard from Matt Conway (Legal Counsel) and Colin McLellan (Consents Manager). Also in attendance from the Council was Kim Giles (Consents Officer) and Nathan Crook (Environmental Scientist).

6.5 Submitter appearances

46. We heard from 10 individual submitters. The individual submitters were:
- Ngāti Mutunga
 - Carol Shenton
 - Rawiri McClutchie
 - Anne-Maree McKay
 - Glen & Dawn Bendall (with support from John Oxenham)
 - Jennifer Baker
 - Taranaki Energy Watch (Sarah Roberts)
 - Paora Laurence
 - Climate Justice Taranaki (Catherine Cheung)
 - Urenui & Districts Health Board (Rodney Baker and Alison Gillespie)
47. Members and supporters of Ngāti Mutunga were assisted by technical evidence and legal submissions. The following gave technical evidence or legal submissions on behalf of Ngāti Mutunga:
- Sarah Ongley (Legal Counsel)
 - Jamie Tuuta (Chair of Ngāti Mutunga)
 - Anne-Maree McKay and Marlene Benson (Environmental Officers)
 - Katie Beecroft (Environmental Scientist)
 - Kathryn McArthur (Freshwater Expert)
48. Individual submitters were also assisted by technical evidence and legal submissions. The following gave technical evidence or legal submissions on behalf Glen and Dawn Bendall:
- Ruby Haazen (Legal Counsel)
 - Duncan Backshall (Air Quality Expert)

49. The main concerns of submitters in opposition included:
- Offensive and objectionable odour;
 - The adverse effects of the proposed activity on the Haehanga Stream and Mimitangiatua River;
 - The impacts of the proposed activity on the cultural values of Ngāti Mutunga;
 - Non-compliance with existing consents;
 - The proposed activity being inconsistent with the National Policy Statement for Freshwater Management (NPS-FM), the Regional Policy Statement (RPS), the Regional Air Quality Plan (RAQP), and the Regional Fresh Water Plan (RFWP);
 - Adverse effects on the health of the community including skin irritation, asthma and respiratory issues.
50. Submitters in support of the application identify the following positive aspects:
- No other facility like this one exists in Taranaki;
 - Sustainable disposal of waste that would otherwise go to landfill;
 - Well-constructed drop off and wash down facility;
51. These issues are addressed in more detail in this decision.

7 Principal Issues in Contention

52. Section 113(1) of the RMA requires us to identify the principal issues of contention and to state our main findings in relation to those issues.
53. The Applicant provided an extensive summary of these matters as part of the Assessment of Environmental Effects report (AEE). Having considered the application documents, the submissions, the evidence presented to the hearing and the Council Officers' Report, we consider that the following are the principal issues in contention.

7.1 Discharges to water – Issues and effects

54. The AEE¹⁴ provides a summary of the effects of the discharges on water quality. These include flora and fauna, amenity, cultural values and mahinga kai.
55. In her planning evidence,¹⁵ Ms Hooper provides a response to the Ngāti Mutunga concerns and NPS compliance.
56. The main areas in contention are summarised below.

Applicant evidence and submissions

57. Expert evidence was presented by Ms Hooper and Mr Easton on behalf of the Applicant.

¹⁴Remediation NZ AEE, paragraph 7.2.1.

¹⁵ Evidence of Kathryn Hooper, paragraph 44.

58. Mr Easton's evidence stated that the treatment ponds and wetland treatment system are holding water (therefore groundwater contamination from these sources is likely to be negligible), and that storm water is controlled and directed to treatment devices.
59. Mr Easton also concluded that the concentration of Total Ammoniacal Nitrogen (TAN) at some monitoring sites exceeded the national bottom line guidelines in the NPS-FM. However, Ms Hooper's evidence argued that the Applicant has committed to transition their site operations to achieve the bottom lines, and that the NPS-FM certainly didn't anticipate 100% compliance the day it came into force.

Council Officers' Report

60. The Council Officers' Report included an assessment of previous monitoring data, which showed an increase in certain contaminants down the length of the Haehanga Stream. The report notes that the concentrations of contaminants were compliant with consented limits. However, it also notes that the national bottom line values for ammonia (outlined in the NPS-FM) are currently being exceeded, and therefore recommended a consent condition that required the standard to be complied with by June 2026. After hearing evidence at the hearing, Council Officers recommended that this condition be amended to require compliance with the standard by June 2022.
61. The report states that, results of macroinvertebrate surveys suggest that there is a progressive increase in the organic enrichment of the Haehanga Stream. However, as a result of upstream conditions (no stock exclusion or riparian planting), it is difficult to assess the impact of site activities on the macroinvertebrate community health of the Haehanga Stream.

Submitter summary and evidence

62. The Council Officers' Report¹⁶ provides a useful summary of the concerns raised by submitters and the experiences they have had regarding water quality. The concerns ranged from low fish numbers to the potential impact of leachate on the Haehanga Stream and the Mimitangiatua River.
63. Expert evidence was presented by Ms McArthur on behalf of Ngāti Mutunga.
64. Ms McArthur assessed the results of water quality and aquatic ecological monitoring data against the NPS-FM, and ecological guidelines and thresholds in published reports. Ms McArthur concluded that there is evidence of significant adverse effects on water quality and ecosystem health as a result of contaminants being discharged both directly and indirectly to water.
65. Ms McArthur's evidence stated that water quality standards contained in the consent conditions proposed by Council Officers would not be sufficient to avoid significant adverse effects on ecosystem health and mahinga kai values from occurring, particularly in the short term, or in the longer term with respect to nutrient enrichment and subsequent effects on macroinvertebrate/ecosystem health.

¹⁶ Council Officers' Report pages 34-39.

7.2 Discharges to air – Issues and effects

Applicant evidence and submissions

66. Expert evidence was presented by Mr Curtis on behalf of the Applicant.
67. Mr Curtis' evidence concludes that with the implementation of mitigation measures proposed in the application together with the additional measures recommended (including monitoring), there is low potential for off-site odour effects.
68. Mr Curtis disagreed with the suggestion to exclude some waste streams from the compost process, as full implementation of the mitigation measures would allow any materials of concern to be composted successfully without resulting in off-site odour nuisance.
69. The Applicant, in their final submission, offered additional conditions of consent to assist with mitigating the concerns of submitters regarding odour. These included the provision of an 'accountable person' onsite to be responsible for mitigating odour issues, amongst other responsibilities.

Council Officers' Report

70. The Council Officers' Report stated that submissions from neighbouring landowners suggest they are still regularly subjected to offensive and objectionable odour beyond the site boundary, however in most cases, Council Officers responding to odour complaints have not detected an offensive or objectionable odour.
71. The report also states that there are difficulties with enforcing consent conditions, measuring odour compounds and their effects is not practically possible, and even with the use of mitigation measures, odour will not necessarily be prevented. The report states that 'noticeable' odour is allowed beyond the boundary as long as it is intermittent and not extensive, and therefore not offensive or objectionable.

Submitter summary and evidence

72. Expert evidence was presented by Mr Backshall on behalf of Glen & Dawn Bendall (individual submitters).
73. Mr Backshall identified katabatic flows as a key issue as odour mitigation alone may be inadequate to sufficiently reduce odour beyond the site boundary to a level that avoids offensive or objectionable effects.
74. Mr Backshall agreed with Mr Curtis' recommendation to include specific mitigation measures as consent conditions, however he also had serious reservations as to whether implementation of these control measures would result in no offensive or objectionable odour beyond the boundary (due to previous compliance history and the presence of katabatic flows).
75. Other submitters raised concerns about the regular occurrence of objectionable odour and the impact of this odour on the wellbeing of residents.

7.3 Cultural matters – Issues and effects

76. Ngāti Mutunga are recognised as having mana whenua status in the area through their Claims Settlement Act. In this section we provide an analysis of the cultural matters relevant to this decision.
77. As noted earlier, Ngāti Mutunga were consulted directly by the Applicant.

Applicant evidence and submissions

78. In section 7.11 of the application, an assessment is provided regarding the effects on Tangata Whenua. A cultural impact assessment (CIA) was also provided as Appendix S.
79. In the summary of effects on Tangata Whenua, the Applicant provides a number of mechanisms including cultural monitoring and a formal Memorandum of Understanding (MOU) to mitigate the concerns raised by Ngāti Mutunga.
80. The Applicant considers that proposed conditions will mitigate the adverse effects of the proposed activity on the cultural values of Ngāti Mutunga¹⁷.

Council Officers' Report

81. The Council Officers' Report identifies cultural considerations relevant to this application. These include:
- 1) RMA Section 6(e) - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga; and
 - 2) RMA Section 7(a) kaitiakitanga and Section 8 – Principles of the Treaty of Waitangi.
82. The report acknowledges that the discharges will result in adverse effects on cultural values regardless of whether or not adverse effects on water quality/ecology can be adequately mitigated.

Ngāti Mutunga submission and evidence

83. A number of submitters spoke to the impact that this activity has had on the Haehanga Stream and Mimitangiatua River¹⁸.
84. In evidence, Ngāti Mutunga also provided results of some monitoring through the development of a 'Mauri Compass' report¹⁹ and reference to certain provisions within the Iwi Environmental Management Plan.
85. Ngāti Mutunga also gave evidence regarding the impact of the proposed activity on their cultural practices (mahinga kai, etc) and shared a deep concern for the overall health of the iwi members regarding the inability for them to 'connect' with the river.

¹⁷ Offered conditions 3, 10, 19, 32, 35, 36, 37, 38.

¹⁸ Jamie Tuuta, Katie Beecroft, Kathryn McArthur, Anne-Maree McKay and Marlene Benson, Carol Shenton, Rawiri McClutchie.

¹⁹ Te Runanga o Ngati Mutunga (2020). Mauri Compass Assessment of the Urenui River and the Mimitangiatua River.

7.4 Stockpiled material – Issues and effects

Applicant evidence and submissions

86. The Applicant's AEE proposed more active management of the stockpiled material to try and accelerate the breakdown process, and in particular to reduce the hydrocarbon levels. Approximately 1000 m³ of this material could then be used around the site per year.
87. Evidence presented by Mr Gibson at the hearing, provided information regarding a proposed new strategy for bioremediation of the material, which involved treating a sample of the stockpiled material with an enzyme and then bioremediating it. As a result, Mr Gibson concluded that the stockpiled material could be bioremediated over a 3 year period using the new strategy.

Council Officers' Report

88. The Council Officers' Report stated that the stockpiled material would remain a constant source of chloride until fully processed and used around the site as proposed by the Applicant (optimistically 40 years).
89. After hearing evidence at the hearing, Council Officers modified their initial recommendation to include a consent condition requiring the stockpiled material to be removed from the site.

Submitter summary and evidence

90. Expert evidence was presented by Ms Beecroft on behalf of Ngāti Mutunga.
91. Ms Beecroft's evidence stated that there is insufficient detail regarding the composition of contaminants in the stockpiled material, and therefore the effects of discharging this material to land could not be adequately assessed.
92. Ms McKay's evidence also stated that creating a contaminated site within the rohe of Ngāti Mutunga was offensive, and creating cold air bunds as a way to solve the problem, even if 'capped', was unacceptable.
93. Taranaki Energy Watch raised concerns about the stockpiled material and in particular the impact of the stockpiled material on the surrounding environment.
94. A number of other submitters²⁰ also raised concerns regarding their experience with the stockpiled material.
95. Submissions in support stated that the facility provided a service not available elsewhere in the region.

7.5 National Policy Statement for Freshwater Management 2020 – Issues and effects

96. An assessment of the application against the provisions of the NPS-FM is considered in the planning assessment later in this decision (section 9.1).

²⁰ Ngāti Mutunga, Glen & Dawn Bendall, Sydney & Jennifer Baker, Paora Laurence, Climate Justice Taranaki.

8 Section 104(1)(a) Consideration of Effects

97. This section of our report draws on the preceding discussion of issues and effects in section 7 above, and presents our findings related to:
- Discharges to water;
 - Discharges to air;
 - Cultural matters; and
 - Stockpiled material.
98. Our consideration under Section 104(a) excludes any matters we have found as being out of scope.

8.1 Discharges to water

99. We refer to discharges to water matters in section 7.1 of our report.
100. Submissions on behalf of Ngāti Mutunga identified a number of issues associated with discharges to the Haehanga Stream and subsequently to the Mimitangiatua River. In submissions and evidence there were examples of how the 'Mauri Compass' monitoring and provisions within the Iwi Environmental Management Plan identified key areas of concern regarding the impact of discharges to water.
101. Mr Easton also concluded that TAN exceeded limits at some sites.

Findings on water discharges

102. Overall, we find that the proposed mitigation will not address the effects appropriately. In reaching our conclusion we have had regard to the following matters:
- 1) We acknowledge the adverse effects on ecosystem health and mahinga kai values of the Haehanga Stream.
 - 2) We note that the adverse effects on the cultural values of Ngāti Mutunga are significant as identified through evidence.
 - 3) We note the Applicant's commitment to achieving compliance with NPS-FM standards, however as noted by Ms McArthur, the impact of the proposed activity will not avoid significant adverse effects on ecosystem health.
103. In summary we find that the application will lead to a significant adverse effect on water quality. We are not satisfied that the consent conditions proposed by the Applicant will adequately mitigate the adverse effects of the proposed activity on water quality.

8.2 Discharges to air

104. We refer to discharges to air in section 7.2 of our report.
105. The matters of contention were between the technical evidence of Mr Curtis and Mr Backshall.

Findings on discharges to air

106. Overall, we find that the effects of discharges to air are unacceptable. In reaching our conclusion we have had regard to the following matters:
- 1) We acknowledge the efforts made in the revised conditions by the Applicant to address odour (accountable person), however we are not satisfied that this would be an effective mitigation due to the lack of clarity regarding what effects this person would actually mitigate. We note that just having a person 'available' does not mitigate the risk of odour beyond the boundary.
 - 2) We accept the evidence that enforcing conditions is difficult due to the subjective nature of odour. However, we are not convinced that the application addresses the concerns raised by submitters and the response to previous concerns.

8.3 Cultural matters

107. We refer to cultural matters in section 7.3 of our report.
108. We note the statutory considerations, the Applicant's efforts at consultation, and a proposed condition of consent.

Findings on Cultural Matters

109. Overall, we find that the Applicant's proposal will not adequately address the adverse effects on the cultural values of Ngāti Mutunga.
- 1) We acknowledge the Applicant's attempt to consult during the early stages of the application, however the Applicant has **not** engaged or consulted appropriately or meaningfully with Ngāti Mutunga to ensure the adverse effects on cultural values could be mitigated.
 - 2) We note that the Applicant did not provide a full analysis of the statutory acknowledgement, the cultural association of Ngāti Mutunga to the area, and the tikanga associated with cultural connection²¹.
 - 3) The historic association of the Haehanga Stream and Mimitangiatua River and the relevant provisions within the Iwi Environmental Management Plan have not been appropriately considered.
 - 4) We note the conditions offered by the Applicant, however we are not satisfied that the conditions will mitigate the adverse effects on cultural values.

8.4 Stockpiled material

110. We refer to stockpiled material matters in section 7.4 of our report.

²¹ Evidence of Jamie Tuuta, paragraph 26.

Findings on stockpiled material

111. Overall, we find that the proposed remediation is unacceptable. In reaching our conclusion, we have had regard to the following matters:
- 1) After considering all of the evidence provided, we are not satisfied with the Applicant's proposal for remediation of the stockpiled material.
 - 2) We acknowledge that removal or remediation can be achieved, but we remain concerned regarding the lack of detail (especially in relation to adverse effects that may occur during removal or remediation), and the potential long term impacts of the stockpiled material.

9 Section 104(1)(b) Consideration of Planning Instruments

112. We accept that relevant provisions from the following planning instruments have been appropriately identified by the planning experts. We have had regard to these in reaching our decision.

9.1 National Policy Statement for Freshwater Management 2020

113. The Council Officers' Report provides a useful overview of the National Policy Statement for Freshwater Management²².
114. On 20 November 2020 the Council sought additional information from the Applicant in relation to the provisions of the NPS-FM, in particular an assessment of the relevance of Clause 3.24.
115. In response, the Applicant wrote to the Council on 7 December 2020 outlining that in their legal opinion the provisions of Clause 3.24 do not apply to this application as the clause applies to physical changes in the river stem. The Applicant contends that there are no changes to the river stem as a result of the proposed activity.
116. The Applicant also took the opportunity to respond to functional need, the effects management hierarchy, and Te Mana o Te Wai. These matters are covered in more detail below.

Te Mana o Te Wai

117. Policy 1 of the NPS-FM requires freshwater to be managed in a way that gives effect to Te Mana o Te Wai and refers to the fundamental importance of water. Te Mana o te Wai is a holistic concept that ensures that a water body will sustain the full range of environmental, social, cultural and economic values held by the Iwi and the community.
118. In their letter of response dated 7 December 2020, the Applicant stated the AEE within the application provides the necessary information to confirm that the activity is consistent with the principle of Te Mana o Te Wai.

²² Council Officers' Report section 12.2.1, page 84.

119. Further to this view, during questioning in his legal submission presentation, Mr Maassen, on behalf of the Applicant, stated that Te Mana o Te Wai allowed for adverse effects providing there were appropriate off-sets. During questioning Mr Maassen pointed out that it was still early days with regard to these provisions and that approaches to mitigating this are still being developed.
120. Ms Hooper contends that the 'entire site' needs to be considered in the context of Te Mana o Te Wai and not just the discharge to water²³. Also the benefit of the operation to the wider Taranaki community should be considered.
121. In the legal submission of Ms Ongley and the statement of evidence from Mr Tuuta, and others, reference was made to the Ngāti Mutunga Iwi Management Plan which states "natural and physical resources are managed in a holistic and integrated way".
122. Ngāti Mutunga contend that the proposed activity is inconsistent with this approach and also Te Mana o Te Wai.
123. Ngāti Mutunga consider water is not a commodity to benefit land based production, nor does water exist to receive nutrients from land based activities²⁴.
124. Further, Mr Tuuta states water, land and people are interconnected "the Mimitangiatua River is its headwaters down to the Mimitangiatua estuary"²⁵.

Findings on Te Mana o Te Wai

125. Overall we find the application to be inconsistent with Te Mana o Te Wai. The Applicant has not provided sufficient information regarding how the activity will comply with Te Mana o Te Wai.
126. We accept the evidence of Mr Tuuta outlining the adverse impact the proposed activity would have on the application of Te Mana o Te Wai.
127. We consider that the Applicant has not given due consideration to the effects of the activity on the application and intent of Te Mana o Te Wai.
128. We note that the community has not yet identified the values of Te Mana o Te Wai, however, this is not a reason to avoid considering this activity against these provisions.
129. We do not agree with the Applicant that off-setting is a justified mitigation as we believe this is inconsistent with the purpose and intent of the NPS-FM.
130. We consider the broader site issues raised by Ms Hooper's evidence (as referred to in paragraph 120 above) as being inconsistent with the intent of the NPS-FM.

²³ Evidence of Kathryn Hooper, paragraph 106.

²⁴ Evidence of Jamie Tuuta, paragraph 39.

²⁵ Evidence of Jamie Tuuta, paragraph 42.

Clause 3.24 of the NPS-FM

131. Clause 3.24 of the NPS-FM 2020 requires regional councils to insert a policy in their regional plans that states:
- The loss of river extent and values is avoided, unless the council is satisfied:*
- (a) that there is a functional need for the activity in that location; and*
- (b) the effects of the activity are managed by applying the effects management hierarchy*
132. The Applicant contends that Clause 3.24 of the NPS-FM does not apply as the provisions only apply to physical changes to the river stem (which are not proposed). However, the Applicant contends that if Clause 3.24 **does** apply, then there is a functional need.
133. Further, in the letter of response to further information²⁶ Ms Hooper states that *'it is unreasonable to read the NPS as developing an avoidance policy for all renewals and there is no evidence from the framework that this was intended'*.
134. The Council Officers' Report²⁷ and the legal submission of Ms Ongley, legal counsel for Ngāti Mutunga, discuss the issue of functional need in detail.
135. Ms Ongley points out that functional need means *'the proposal or activity to traverse, locate, or operate in a particular environment because the activity can only occur in that environment'²⁸.*
136. According to Ms Ongley this differs from operational need which is defined as *'the need for a proposal or activity to traverse, locate, or operate in a particular environment because of technical, logistical, or operational constraints'*. Ms Ongley contends that there is an operational need for the discharge but no functional need so, on that basis, the loss of river values must be avoided.
137. The Council Officers' Report noted that there is a functional need for the activity to occur because the discharges can only occur in this environment.

Findings on Clause 3.24

138. We accept that Clause 3.24 does apply to this activity. We also agree that there is a functional need for the activity to occur in the existing environment, and we note that this aligns with the conclusion of the Council Officers.
139. We note the summary in the Council Officers' Report provides useful context to this matter.

²⁶ Remediation NZ letter of reply to further information, 7 December 2020.

²⁷ Council Officers' Report, paragraphs 376-378.

²⁸ National Planning Standards definition.

140. In the letter of response to further information²⁹, Ms Hooper provides a summary of the Effects Management Hierarchy. In this summary Ms Hooper outlines how the Effects Management Hierarchy applies to this activity. However, based on our discussion of adverse effects earlier in this decision, we have concluded that there are residual effects that are more than minor. No offsetting or compensation has been provided by the Applicant.

9.2 Regional Policy Statement for Taranaki

141. The Council Officers' Report provides an assessment of the proposed activities against the RPS provisions³⁰. We adopt this assessment in a general sense, subject to comments made below.
142. The report notes that the majority of policies in the RPS that are relevant to the application are refined and expanded on in the RFWP and the RAQP, and therefore makes an assessment of WST Policy 1, relating to waste management practices. The report states that the Applicant's proposal to reprocess waste into a usable product is consistent with this policy.
143. In her evidence Ms McArthur identifies that the Mimitangiatua River is recognised as having high natural ecological and amenity values. She contends that this application does not recognise the high natural values of the Mimitangiatua River in a way that would be consistent with these RPS provisions. We provide a summary of this further in our assessment against the RFWP below.

9.3 Regional Freshwater Plan for Taranaki

144. The Applicant provides a summary and assessment of the proposed activity against the RFWP in section 8.2.3 of the application.
145. In this section the Applicant identifies the relevant policies and finishes with a statement '*The AEE provided has shown that the proposed activities are able to occur in a manner that is consistent with the relevant policies in the RFWP*'.
146. The Applicant also refers to the CIA for an assessment of the activity against cultural relationships with land and water.
147. The Council Officers' Report provides an assessment of the proposed activities against the provisions of the RFWP.
148. The Council Officers' Report notes that Ngāti Mutunga are generally supportive of the idea of reprocessing waste streams³¹. However, Ngāti Mutunga are concerned about the way the site is managed and the impact this is having on the Haehanga Stream and Mimitangiatua River. At the hearing, it was clear that the concerns raised by Ngāti Mutunga remained unchanged in regard to this.

²⁹ Remediation NZ letter of reply to further information, 7 December 2020.

³⁰ Council Officers' Report, paragraphs 382-385.

³¹ Council Officers' Report, paragraph 392.

149. Overall, Council Officers concluded that the proposal is consistent with the provisions of the RFWP. However, we are not satisfied that the proposed activity is consistent with the RFWP.

150. In her evidence, Ms McArthur makes the following statement³²:

The Taranaki Regional Policy Statement (RPS) and the Regional Freshwater Plan for Taranaki (RFWP) recognise the Mimitangiatua River as having high natural, ecological and amenity values and it is listed in Appendix 1A of the RFP. Policies within the RPS afford protection to the rivers and streams listed in Appendix I of the RPS (including the Mimitangiatua). Policy 3.1.4 of the RFP states: "The high natural, ecological and amenity values of those rivers and streams listed in Appendix 1A will be maintained and enhanced as far as practicable. Adverse effects of activities on these values will be avoided as far as practicable, or remedied or mitigated"

151. She also contends that *there is little information to determine whether and to what degree the proposed activities are having an adverse effect on water quality and aquatic life in the Mimitangiatua River*. Ms McArthur goes on to say *"there is certainly not enough information to determine there is no effect or to support such statements in the AEE or applicants evidence"*³³.

152. Policies 4.1.1 – 4.1.6 of the RFWP recognise the cultural associations iwi and hapu have with rivers, and aims to protect these values and areas from any adverse effects. They also encourage active participation of iwi in fresh water management.

Findings on RFWP

153. It is clear from the evidence of Mr Tuuta and others that the proposed activity will impact on the cultural association and is therefore inconsistent with the above policies. Nor is this resolved by the CIA.

154. We consider that the application and the CIA³⁴ do not provide a robust assessment against the relevant policies.

155. We consider that the proposed conditions will not mitigate the adverse effects of the activity in a manner that is consistent with the RFWP.

9.4 Regional Air Quality Plan for Taranaki

156. The applicant provides a summary and assessment of the activity against the relevant policies of the RAQP in section 8.2.4. The policies are primarily related to odour, smoke and dust.

157. The applicant states that the proposed activity is consistent with these policies.

158. In her planning evidence, Ms Hooper provides a useful assessment against the RAQP provisions.³⁵ This included an assessment which was much broader than what was in the original application.

³² Evidence of Kathryn McArthur, paragraph 36.

³³ Evidence of Kathryn McArthur, paragraph 113.

³⁴ CIA, pages 14-15.

³⁵ Evidence of Kathryn Hooper, paragraphs 91-99.

159. Ms Hooper's evidence included assessments against Policies 5.1, 5.2 and 5.3.
160. The economic benefits of the operation are also considered by Ms Hooper as part of this assessment.
161. The Council Officers' Report provides an assessment of the proposed activities against the provisions of the RAQP.
162. The report notes that it is unlikely that discharges of contaminants to air would occur at a rate and volume which would adversely affect human health or other environments, and that the site can be managed to ensure there is no offensive or objectionable odour beyond the boundary.
163. Overall, Council Officers consider the proposed activities could occur in a manner that is consistent with the relevant policies, provided they were well managed.

Findings on RAQP

164. When considering the evidence presented at the hearing and the assessment of effects, we are not satisfied that the proposed activity will be consistent with the RAQP.
165. In particular we consider that the proposed activity is inconsistent with Policy 5.1 and the applicant has not provided sufficient evidence to satisfy the Hearing Panel that the effects of the discharges will be appropriately avoided, remedied or mitigated.
166. We note that although additional conditions were offered by the applicant to mitigate the adverse effects, we are not convinced that these will adequately address adverse effects in a manner that is consistent with the provisions of the RAQP.

10 Section 104(1)(c) Consideration of Other Matters

10.1 Compliance history

167. Compliance history has been considered as an 'other relevant matter'. Section 10 of the Council Officers' Report provides a useful summary of the compliance history of this operation³⁶.
168. In summary there have been a number of non-compliance issues including poor record keeping, receipt of unapproved material, lack of maintenance and monitoring or sampling not undertaken.
169. Whilst we note there have been issues with compliance in the past, we have not placed significant weight on those matters and have instead focused on whether or not we can be satisfied with the effects of the future operation of the activities.

³⁶ Council Officers' Report, page 40.

11 Sections 105 and 107 – Discharges

170. With regard to discharges, the RMA requires us to consider certain matters. These are set out by Sections 105 and 107.

105 Matters relevant to certain applications

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

107 Restriction on grant of certain discharge permits

- (1) *Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—*
- (a) the discharge of a contaminant or water into water; or*
 - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or*
 - (ba) the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—*
if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:
 - (c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;*
 - (d) any conspicuous change in the colour or visual clarity;*
 - (e) any emission of objectionable odour;*
 - (f) the rendering of fresh water unsuitable for consumption by farm animals;*
 - (g) any significant adverse effects on aquatic life.*

11.1 Section 105

171. The relevance and implications of these Sections of the RMA are set out in the Council Officers’ Report³⁷.

172. However, in legal submissions, Ms Ongley states that the RPS and RFWP identify the Mimitangiatua River as ‘high sensitivity’ and it is also recognised by statute.

³⁷ Council Officers’ Report, section 12.3.

173. Ms Ongley goes on to state the RFWP requirements of Policy 3.1.4 are to *'avoid, remedy or mitigate the adverse effects on rivers and streams listed in Appendix 1A'*³⁸.
174. Ms Ongley also states that the alternatives assessment provided by the Applicant is very brief, and the alternative of moving the operation elsewhere is not discussed³⁹.

11.2 Section 107

175. The Council Officers' Report summarises Section 107 matters in section 12.4.
176. The Council Officers' report considers there will be no adverse effects after reasonable mixing.
177. However, in her evidence Ms McArthur provides a useful analysis and finds that the discharge of un-ionised ammonia from the wetland is having a significant adverse effect⁴⁰.
178. Ms McArthur goes on to state that she fundamentally disagrees with the Council Officers' Report and considers the ammonia from both the wetland and irrigation to land are having significant adverse effects.⁴¹
179. In her legal submissions, Ms Ongley also considers that the Council Officers' Report recommendation to roll over the current ammoniacal nitrogen limit is unacceptable to Ngāti Mutunga⁴².
180. In evidence, Ms McArthur also considers that the proposed conditions will not adequately mitigate the adverse effects sufficiently to meet the requirements of Section 107.
181. In his legal submissions⁴³, Mr Maassen states that the assessment of Ms McArthur is both legally wrong and scientifically unsafe⁴⁴. Mr Maassen considers that the standard only applies after reasonable mixing and that Ms McArthur has not taken this into account in her assessment.
182. Mr Maassen also considers that there is no safe assumption that the applicants discharge is the primary or dominant cause of the effect.

Findings on Section 107 of the RMA

183. We consider that the proposed activity is inconsistent with Section 107 and agree with the assessment of Ms McArthur and Ms Ongley that the significant adverse effects will not be effectively mitigated.

³⁸ Sarah Ongley Legal Submission, paragraph 38.

³⁹ Sarah Ongley Legal Submission, paragraph 40.

⁴⁰ Evidence of Kathryn McArthur, paragraphs 53-73.

⁴¹ Evidence of Kathryn McArthur, paragraph 111.

⁴² Sarah Ongley Legal Submission, paragraph 43.

⁴³ John Maassen Legal Submission, paragraphs 51-56.

⁴⁴ John Maassen Legal Submission, paragraph 52.

184. We are not satisfied that the proposed conditions will mitigate the adverse effects sufficiently to meet the requirements of Section 107 of the RMA.

12 Part 2 RMA Assessment

185. The Court of Appeal⁴⁵ has determined that while decision makers should usually consider Part 2 when making decisions on resource consent applications, where the relevant plan provisions have clearly given effect to Part 2 there may be no need to do so as it *would not add anything to the evaluative exercise*. In other words, *genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome*.
186. However it has been more than 20 years since the RFWP was notified, so it is appropriate for the avoidance of doubt that a specific Part 2 assessment is made in this case.
187. The application⁴⁶ states that there are no matters under Section 6 that will be affected by the application, and that the proposal is consistent with the requirements of Section 7 and not inconsistent with the principles of the Treaty of Waitangi in terms of Section 8.
188. In their assessment, Council Officers provided robust analyses of the application against Part 2 of the RMA.
189. Section 6 identifies matters of national importance including natural character, significant indigenous vegetation and relationships of Māori with their culture and traditions.
190. Ngāti Mutunga provided evidence that the cultural association with the Haehanga Stream and Mimitangiatua River have been adversely effected from this activity. In her evidence⁴⁷ Ms Hooper agrees with Ngāti Mutunga that the application did not appropriately address Section 6(e) matters. Ms Hooper states that planned riparian planting and other initiatives will address this as conditions of consent.
191. Section 7 'other matters' requires particular regard to be had to specific matters in relation to the management, use, development, and protection of natural and physical resources, including Kaitiakitanga, the ethic of stewardship, maintenance and enhancement of amenity value, intrinsic value of the ecosystem, and the quality of the environment.
192. In her evidence, Ms Hooper states that with early consultation and changes to the application and the cessation of receipt of drilling mud, the adverse effects on cultural values can be avoided.
193. The Council Officers' Report identified that cultural values will be adversely affected even if the effects on water can be managed.
194. Section 8 identifies the principles of the Treaty of Waitangi. Although early consultation was undertaken with Ngāti Mutunga, the Applicant has not satisfied the Hearing Panel that the principles of the Treaty of Waitangi have been appropriately considered.

⁴⁵ RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316.

⁴⁶ Remediation NZ consent application, section 8.1.

⁴⁷ Kathryn Hooper Evidence, paragraph 131.

Findings on Part 2 Matters

195. We find the following with regards to Part 2 matters:

- The proposed activity is inconsistent with Section 6(e) of the RMA. The proposed activity will have a significant impact on the relationship of Ngāti Mutunga with Section 6(e) matters.
- Section 7 matters have not been adequately addressed by the Applicant. In particular, Section 7(a) regarding kaitiakitanga. The lack of meaningful, early and focused engagement with Ngāti Mutunga has had a direct impact on their ability to act as kaitiaki in the Haehanga Stream and Mimitangiatua River.
- The Applicant has not effectively taken into account the principles of the Treaty of Waitangi. We note the attempt by the Applicant to undertake early consultation with Ngāti Mutunga, however it has not been consistent or meaningful enough to be consistent with Treaty of Waitangi principles.

13 Decision

196. Having regard to the evidence presented, the relevant statutory provisions identified in this report and for the reasons set out below, we (the Hearing Panel) **decline** the application for consents 5838-3.0 and 5839-3.0 to:

- a) Discharge contaminants to land, including in circumstances which may result in those contaminants (or other contaminants emanating from those contaminants) entering water in the Haehanga Stream catchment;
- b) Discharge contaminants directly to an unnamed tributary of the Haehanga Stream;
and
- c) Discharge contaminants to air.

13.1 Reasons for the Decision

197. Section 113(1) of the RMA requires that we state the reasons for the decision. Although it will be clear from the assessment carried out above, for the avoidance of doubt we confirm that the principal reasons for decline are:

- the proposed activities will have a significant adverse effect on water quality and ecology, and we are not satisfied that the revised suite of conditions (offered by the Applicant) will adequately mitigate these effects;
- the effects of discharges to air are unacceptable;
- the Applicant has not engaged or consulted appropriately or meaningfully with Ngāti Mutunga, and conditions offered up after the hearing will not mitigate adverse effects on cultural values;
- although removal or bioremediation of the stockpiled material could be achieved, we remain concerned regarding the lack of detail and the potential long term adverse effects of the stockpiled material;

- the application is inconsistent with Te Mana o Te Wai;
- in terms of the effects management hierarchy, there are residual effects that are more than minor, and no offsetting or compensation has been provided by the Applicant;
- the application is inconsistent with Sections 6(e), 7(a) and 8 of the RMA;
- the application is inconsistent with the relevant policies of the RFWP;
- the application is inconsistent with Policy 5.1 of the RAQP; and
- the application is inconsistent with Section 107 of the RMA.

14 Acknowledgements

198. We would like to thank the participants for their constructive engagement in the process. We note in particular, the contribution of all submitters and their witnesses. We also acknowledge all individual personal appearances which we found valuable in providing additional context for the issues we needed to consider.
199. The careful consideration and technical assessment provided by the Applicant and other parties was appreciated.
200. Finally, we gratefully acknowledge the assistance of the hearing administrators before, during and after the hearing.

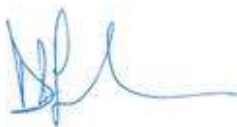
Hearing Commissioners



Cr Michael Joyce (Chairperson)



Cr Neil Walker



Mr Rawiri Faulkner