

ORC NOTIFICATION RECOMMENDATION REPORT

ID Ref: 999859517-9112
File No: RM24.297
Application No: 2005.246.V1
2008.308.V1
2005.193.V1
2008.690.V1
2003.680.V1
Prepared for: Staff Consents Panel
Prepared by: Dwayne Daly, Principal Consents Planner
Date: 10 June 2024

Subject: Notification recommendation for the review of conditions of resource consents held by Clutha District Council, being 2005.246, 2008.308, 2005.193, 2008.690, and 2003.680 under Section 128 of the Resource Management Act 1991

1. Purpose

To report and make recommendations under sections 95A-G of the Resource Management Act 1991 (the Act) on the notification decision for the above application.

2. Background Information

Consent Holder: Clutha District Council

Applicant's Agent: N/A

Consents under review:

- 2005.246

Purpose of consent: To discharge treated domestic wastewater into the Pomahaka River for the purpose of disposal of wastewater from the Tapanui township

Location: True left bank of the Pomahaka River, approximately 100 metres south of the intersection of Seddon Hill Road and Beatties Road, Tapanui, Clutha District

Legal description(s) of the site: Crown Land Riverbed

Map reference (NZTM 2000): E1307293 N4905787

- 2008.308

Purpose of consent: To discharge treated domestic wastewater into Tuapeka Creek for the purpose of disposal of wastewater from the Lawrence township

Location: True left bank of Tuapeka Creek, approximately 680 metres downstream of the Gabriel's Gully Road Bridge, Lawrence

Legal description(s) of the site: Pt Sec 7 Blk XX Tuapeka East SD

Map reference (NZTM 2000): E1342289 N4910261

- 2005.193

Purpose of consent: To discharge treated domestic wastewater into the Matau Branch of the Clutha River/Mata-Au for the purpose of disposal of wastewater from the Stirling township.

Location: True right bank of the Matau branch of the Clutha River/Mata-Au, approximately 390 metres south southeast of the intersection of the Kaitangata Highway and Riverbank Road, Stirling.

Legal description(s) of the site: Crown Land Riverbed

Map reference (NZTM 2000): E1352308 N4872365

- 2008.690

Purpose of consent: To discharge treated domestic wastewater into the Pacific Ocean for the purpose of disposal of wastewater from the Kaka Point township

Location: Pacific Ocean, approximately 265 metres northeast of the intersection of Kaka Point Road and Selsea Street, Kaka Point, South Otago

Legal description(s) of the site: Crown Land Seabed

Map reference (NZTM 2000): E1352837 N4859143

- 2003.680

Purpose of consent: To discharge treated domestic wastewater into the Owaka River for the purpose of disposal of wastewater from the Owaka township

Location: Owaka River, approximately 475 metres upstream of the intersection of Owaka Highway and Duttons Road, Owaka

Legal description(s) of the site: Crown Land Riverbed

Map reference (NZTM 2000): E1344342 N4851271

2.1 Key issues/risks

At this stage there are no principal issues in contention that need to be raised.

2.2 Summary

I recommend the application is processed on a non-notified basis. This is because:

- Adverse effects on the environment or any persons will be nil; and
- There are no special circumstances that warrant public or limited notification.

3. Description of Proposed Amendment / Variation

3.1 Background to the Review

Clutha District Council (CDC) operates 11 wastewater treatment plants (WWTP) covered by a total of 13 consents. Formal compliance investigations were undertaken by the Consent Authority on all 11 WWTPs in late 2019/early 2020.

The Consent Authority's investigation found that all 11 sites were poorly maintained and in breach of existing resource consent conditions, resulting in environmental effects on air, land, or water from partially treated wastewater and odorous compounds. As a result, the overall compliance of each treatment plant and all 13 of the consents audited were graded 'significant non-compliance'.

Enforcement action centred around the operations of the 5 treatment plants at Lawrence, Tapanui, Kaka Point, Owaka and Stirling. Wastewater at these 5 sites is treated by a Biofiltro sewage treatment plant. The Biofiltro treatment system consists of a raised aerated bed of sawdust on rock fill over which the effluent is distributed. The sawdust is populated with worms and a microbiological community of aerobic and anaerobic bacteria, which is established naturally when irrigation of effluent is commenced. The effluent is treated in the bed by direct bacterial action, with the worms consuming the bacterial residues. The bed is aerated by pipes and by the spaces created by worms. The effluent is collected in the base of the bed and discharged through a single drain to a UV treatment system. The UV chamber provides tertiary treatment to further reduce microbial numbers in the effluent. Once treated, the effluent is discharged.

The enforcement action led to court proceedings against CDC and City Care Ltd (CCL), which at that time were contracted to manage the plants on behalf of CDC. Following charges being laid by the Consent Authority, the CDC pleaded guilty to 6 charges. On 9 December 2020 the CDC were sentenced at the District Court in Dunedin and fined \$488,253.00 (plus court fees). CCL however pleaded not guilty to all charges and Court proceedings against CCL were heard in court in late 2022. On 11 August 2023 CCL was convicted of all six charges.

During the trial, Judge Dwyer made specific reference to the interpretation of Condition 6(b) in section 79 (page 21) of the decision and rulings document and recommended a review:

“Condition 6(b) does not specify a method for calculating that 90th percentile. For conditions of this kind to work properly the means of calculating the 90th percentile must be adequately defined in those conditions. Condition 6(b) fails to do that and should be reviewed if the WWTPs are to continue operating under their present consents.”

Therefore, all 90th percentile limits under the current discharge consents for the 5 plants at Lawrence, Tapanui, Kaka Point, Owaka and Stirling are currently unenforceable.

Another condition which impacts the 90th percentile calculation is the current allowance in Condition 6(d) for CDC to undertake resamples of the final effluent following a non-compliant result:

6d) *The consent holder shall also arrange for resampling/retesting of the discharge parameter(s) in breach of the consent limits (within 7 days of receiving any*

results that exceed the values set by Condition 6(b)) and forward the results to the Consent Authority upon receipt.”

It had been previously recognised by the Consent Authority’s Compliance Team that condition 6(d) is unclear in specifying how resample results should be included (or excluded) in the 90th percentile calculation. It appears that the CDC may not be utilising the Consent Authority’s recommended procedure for calculating the 90th percentile based on resampling results. However, due to the lack of specificity in the condition, it is also currently unenforceable.

The purpose of the limited scope review as recommended, would give effect to the direction from the Court, ensure conditions are enforceable and to review the adequacy and necessity of monitoring undertaken by the Consent Holder. In doing so this review would achieve the following outcomes:

- The consent conditions are direct, certain, enforceable and intra vires.
- Adequate monitoring and reporting is undertaken by the Consent Holder.

4. Proposed Conditions

In accordance with Section 129(1)(d) Council invited CDC to propose new consent conditions. CDC suggested the following changes to conditions 6(b) and 6(d).

6(b) Effluent discharged to the [receiving waters] shall comply with the following criteria:

<i>Parameter</i>	<i>9 out of 10 consecutive samples not to exceed</i>
<i>pH (range)</i>	<i>6.5 – 9.0</i>
<i>BOD₅ (g/m³)</i>	<i>12</i>
<i>Total suspended solids (g/m³)</i>	<i>30</i>
<i>Escherichia. coli (cfu/100mL)*</i>	<i>260</i>
<i>Enterococci (cfu/100mL)#</i>	<i>140</i>
<i>Total Phosphorus (g/m³)</i>	<i>10</i>
<i>Total Nitrogen (g/m³)</i>	<i>20</i>
<i>Ammoniacal Nitrogen (g/m³)</i>	<i>20</i>

** - Lawrence, Owaka, Stirling and Tapanui (not Kaka Point)*

- Kaka Point only

6(d) The consent holder shall also arrange for re-sampling/retesting of the discharge parameter(s) in breach of the consent limits (within 7 days of receiving any results that exceed the values set by Condition 6(b)) and forward the results to the Consent Authority upon receipt. These retested results shall replace the original sample results in the compliance record.

Note: CDC did not provide individual wording for each consent and therefore the wording above does not entirely reflect the specific details of each individual condition. For the avoidance of doubt, no changes to any parameter or the associated limits were suggested by CDC or recommended as part of this review, except that the 90th percentile calculation would also apply to pH measurements.

Based on the suggested wording from CDC, the following changes to conditions 6(b) and 6(d) are recommended (additions are in bold and underlined and deletions are struck through):

2005.246 Tapanui WWTP

6(b) Effluent discharged to the Pomahaka River shall comply with the following criteria:

Parameter	For 24 months after granting of the consent	For 24 months from commissioning of the new treatment system	Remainder of consent term - <u>9 out of 10 consecutive samples not to exceed</u>
Ph, range	6.5-9.0	6.5-9.0	6.5-9.0
	90 th percentile	90 th percentile	90th percentile
BOD ₅ (g/m ³)	80	30	12
Total suspended solids (g/m ³)	120	40	30
Escherichia coli (cfu/100mL)	250,000	1,000	260
Total Phosphorus (g/m ³)	12	10	10
Total Nitrogen (g/m ³)	-	40	30
Ammoniacal Nitrogen (g/m ³)	30	30	20

6(d) The consent holder shall also arrange for re-sampling/retesting of the discharge parameter(s) in breach of the consent limits (within 7 days of receiving any results that exceed the values set by Condition 6(b)) and forward the results to the Consent Authority upon receipt. **These retested results shall replace the original sample results in the compliance record.**

2008.308 Lawrence WWTP

6(b) Effluent discharged to the Tuapeka Creek shall comply with the following limits:

Parameter	For 24 months after granting of the consent	For 24 months from commissioning of the new treatment system	Remainder of consent term - <u>9 out of 10 consecutive samples not to exceed</u>
pH, range	6.5-9.0	6.5-9.0	6.5-9.0
	90 th percentile	90 th percentile	90th percentile
BOD ₅ (g/m ³)	80	30	12
Total suspended solids (g/m ³)	120	40	30
Escherichia coli (cfu/100mL)	550,000	1,000	260

Total Phosphorus (g/m ³)	15	10	10
Total Nitrogen (g/m ³)	-	40	30
Ammoniacal Nitrogen (g/m ³)	30	30	20

6(d) The consent holder shall also arrange for re-sampling/retesting of the discharge parameter(s) in breach of the consent limits (within 7 days of receiving any results that exceed the values set by Condition 6(b)) and forward the results to the Consent Authority upon receipt. **These retested results shall replace the original sample results in the compliance record.**

2005.193 Stirling WWTP

6(b) Effluent discharged to the Clutha River/Mata-Au shall comply with the following criteria:

Parameter	For 24 months after granting of the consent	For 24 months from commissioning of the new treatment system	Remainder of consent term - <u>9 out of 10 consecutive samples not to exceed</u>
pH, range	6.5-9.0	6.5-9.0	6.5-9.0
	90 th percentile	90 th percentile	90 th percentile
BOD ₅ (g/m ³)	100	30	12
Total suspended solids (g/m ³)	200	40	30
Escherichia coli (cfu/100mL)	500,000	1,000	260
Total Phosphorus (g/m ³)	12	10	10
Total Nitrogen (g/m ³)	-	40	30
Ammoniacal Nitrogen (g/m ³)	35	30	20

6(d) The consent holder shall also arrange for re-sampling/retesting of the discharge parameter(s) in breach of the consent limits (within 7 days of receiving any results that exceed the values set by Condition 6(b)) and forward the results to the Consent Authority upon receipt. **These retested results shall replace the original sample results in the compliance record.**

2008.690 Kaka Point WWTP

6(b) Effluent discharged to the Pacific Ocean shall comply with the following criteria:

Parameter	For 18 months after granting of the consent	Remainder of consent term - <u>9 out of 10 consecutive samples not to exceed</u>
pH, range	6.5-9.0	6.5-9.0

	90 th percentile	90 th percentile
BOD ₅ (g/m ³)	30	12
Total suspended solids (g/m ³)	40	30
Enterococci (cfu/100mL)	1,000	140
Total Phosphorus (g/m ³)	10	10
Total Nitrogen (g/m ³)	-	30
Ammoniacal Nitrogen (g/m ³)	30	20

6(d) The consent holder shall also arrange for re-sampling/retesting of the discharge parameter(s) in breach of the consent limits (within 7 days of receiving any results that exceed the values set by Condition 6(b)) and forward the results to the Consent Authority upon receipt. **These retested results shall replace the original sample results in the compliance record.**

2003.680 Owaka WWTP

6(b) Effluent discharged to the Owaka River shall comply with the following criteria:

Parameter	For 24 months after granting of the consent	For 24 months from commissioning of the new treatment system	Remainder of consent term - <u>9 out of 10 consecutive samples not to exceed</u>
pH, range	6.5-9.0	6.5-9.0	6.5-9.0
	90 th percentile	90 th percentile	90 th percentile
BOD ₅ (g/m ³)	60	30	12
Total suspended solids (g/m ³)	120	40	30
Escherichia coli (cfu/100mL)	100,000	1,000	260
Total Phosphorus (g/m ³)	12	10	10
Total Nitrogen (g/m ³)	-	40	30
Ammoniacal Nitrogen (g/m ³)	25	30	20

4.1 Description of the Environment

2005.246 Tapanui WWTP

Tapanui township is located in West Otago and the Tapanui WWTP is located at the corner of Station Road and Duncan Road, approximately 1.4 km west of the township. The plant discharges to the Pomahaka River. The discharge point is approximately 3 km west of the township (Figures 1 & 2). The predominant land use in the surrounding environment is farming.



Figure 1. Discharge point for the Tapanui WWTW (yellow dot) to the west of Tapanui township (Source Otago: Maps)

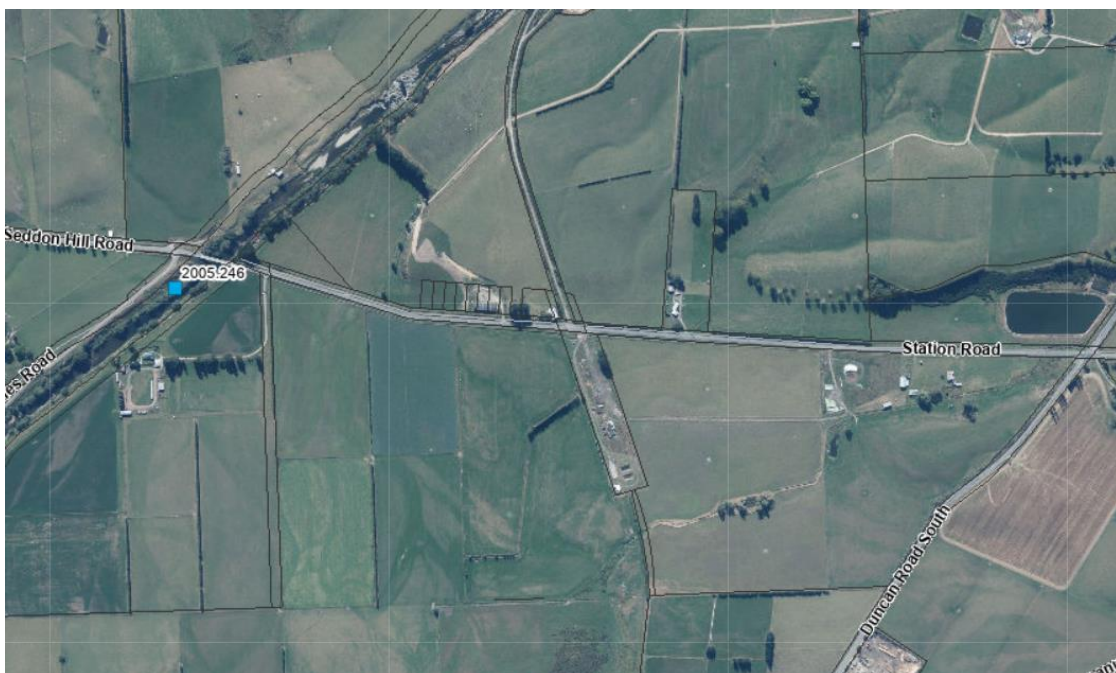


Figure 2. Discharge point for the Tapanui WWTW (blue dot) and treatment pond at the corner of Station Road and Duncan Road (Source Otago: Maps).

Schedule 1A of the RPW identifies the following natural and ecosystem values in the Pomahaka River:

- Large waterbody supporting high numbers of species and habitat variety, which can provide for diverse life cycle requirements of particular species;
- Access within the main stem of the catchment through to the sea or a lake unimpeded by artificial means, such as weirs and culverts;

- Sand, rock and gravel bed composition of importance for resident biota;
- Free from aquatic pest plants identified in the Pest Plant Management Strategy for the Otago Region;
- Presence of significant trout and salmon spawning areas;
- Presence of significant areas for the development of juvenile trout and salmon;
- Presence of riparian vegetation of significance to aquatic habitats;
- Significant presence of eels and trout;
- Presence of a significant range of indigenous fish species;
- Refers to presence of a significant range of indigenous invertebrates.
- Presence of indigenous invertebrates threatened with extinction between G45:416466 and confluence with Clutha River/Mata-Au;
- Regionally significant presence of gamebirds.

Schedule 1B of the RPW indicates that there is one known public water supplies taken from the Pomahaka River, being the Glenkenich Water Supply.

There are no known Registered Historic Places recognised within Schedule 1C of the RPW in the Pomahaka River.

The Pomahaka River is recognised within Schedule 1D of the RPW as having the following Kai Tahu Values:

- Kaitiakitanga – the exercise of guardianship by Kai Tahu in accordance with tikanga Maori in relation to Otago’s natural and physical resources; and includes the ethic of stewardship.
- Mauri – life force; for example the mauri of a river is most recognisable when there is abundance of water flow and the associated ecosystems are healthy and plentiful; a most important element in the relationship that Kai Tahu have with the water bodies of Otago.
- Waahi tapu and/or Waiwhakaheke – sacred places; sites, areas and values associated with water bodies that hold spiritual values of importance to Kai Tahu.
- Waahi taoka – treasured resource; values, sites and resources that are valued and reinforce the special relationship Kai Tahu have with Otago’s water resources.
- Mahika kai – places where food is procured or produced. Examples in the case of waterborne mahika kai include eels, whitebait, kanakana (lamprey), kokopu (galaxiid species), koura (fresh water crayfish), fresh water mussels, indigenous waterfowl, watercress and raupo.
- Kohanga – important nursery/spawning areas for native fisheries and/or breeding grounds for birds.

- Trails – sites and water bodies which formed part of traditional routes, including tauraka waka (landing place for canoes).
- Cultural materials – water bodies that are sources of traditional weaving materials (such as raupo and paru) and rongoa (medicines).

2008.308 Lawrence WWTP

Lawrence township is located between the Lammerlaw Range and the Clutha River. The Lawrence WWTP is to the west of Lawrence Township and discharges to Tuapeka Creek (Figures 3 & 4).



Figure 3. Lawrence WWTP discharge point (blue dot) into Tuapeka Creek to the west of Lawrence Township (Source: Otago Maps)

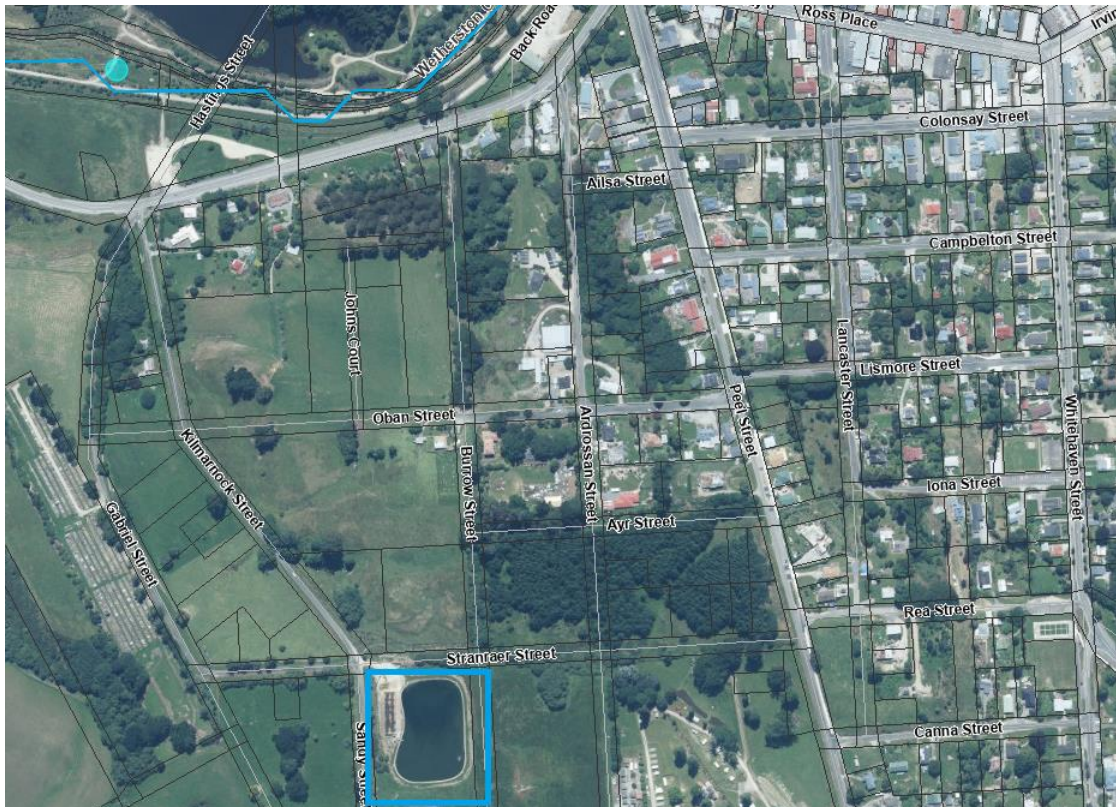


Figure 4. Lawrence WWTP discharge point (blue dot) and Lawrence WWTP (blue square) (Source: Otago Maps)

Schedule 1 of the Regional Plan: Water for Otago

Schedule 1A of the RPW outlines recognised natural and human use values of Otago's surface water bodies. Tuapeka Creek is a small rural stream that flows into the Tuapeka River. Tuapeka Creek is not identified in the RPW as holding any natural values. However, tributaries of the Tuapeka River upstream of G45:472668 (of which the Tuapeka Creek is one) are identified as holding the following values:

- Absence of aquatic pest plants (eg Lagarosiphon) identified in the Pest Management Strategy for Otago 2009.
- Presence of a significant range of indigenous fish species.
- Significant habitat for flathead galaxiid and dusky galaxiid.

The Tuapeka Water Supply is listed in Schedule 1B (Community Water Supply Values) on the Tuapeka River but is upstream of the Lawrence WWTP. There are no Schedule 1C (Registered Historic Places) listed for the Tuapeka River or Tuapeka Creek.

Schedule 1D of the RPW identifies the spiritual or cultural beliefs, values or uses associated with water bodies of significance to Kai Tahu. The Tuapeka Creek and Tuapeka River are not identified in this schedule.

2005.193 Stirling WWTP

Stirling township is located approximately 3.5 kilometres (km) southeast of Balclutha. The Stirling wastewater treatment system is located adjacent to Anderson Road, approximately 600 m south southeast of the township (Figures 5 & 6).

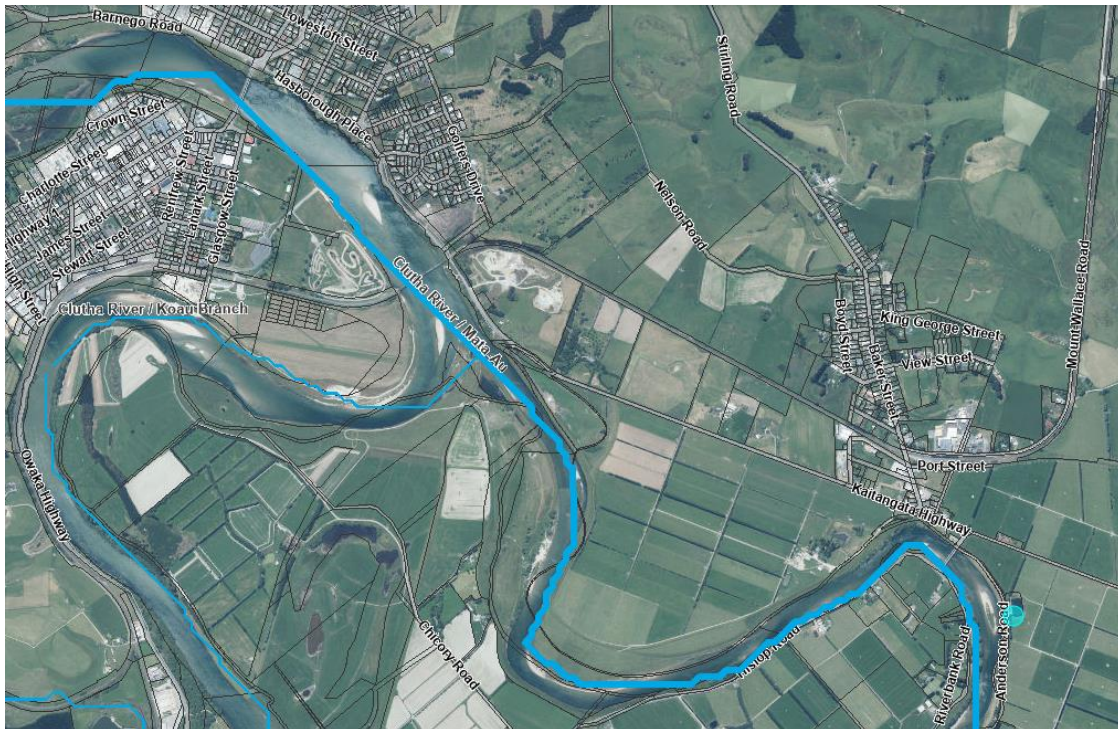


Figure 5. Location of the Stirling WWTP (blue dot) in relation to Stirling and Balclutha (Source: Otago Maps).



Figure 6. Location of effluent pond and discharge point to the Clutha River/Mata-Au for the Stirling WWTP (Source: Otago Maps).

Schedule 1A of the RPW identifies the following natural values in the Clutha River/Mata-Au between Balclutha and the sea:

- Large waterbody supporting high numbers of species and habitat variety, which can provide for diverse life cycle requirements of particular species;
- Access within the main stem of the catchment through to the sea unimpeded by artificial means, such as weirs and culverts.

- Sand and gravel bed composition of importance for resident biota;
- Presence of significant trout spawning areas;
- Presence of significant areas for the development of juvenile trout and salmon;
- Significant presence of eels, trout and salmon;
- Presence of a significant range of indigenous fish species;
- Presence of indigenous fish species threatened with extinction; and
- Regionally significant presence of gamebirds.

Schedule 1B of the RPW lists two water supplies taken from the Matau branch between Balclutha and the sea, being the Kaitangata and Wangaloa water supplies and the Bruce Water Supply.

There are two Registered Historic Places recognised within Schedule 1C of the RPW in the reach of the river between Balclutha and the sea. These are the Balclutha Bridge (State Highway 1) and the Blair Railway Bridge (State Highway 91).

This reach of the Clutha River/Mata-Au is also recognised within Schedule 1D of the RPW as having the following Kai Tahu Values:

- Kaitiakitanga – the exercise of guardianship by Kai Tahu in accordance with tikanga Maori in relation to Otago’s natural and physical resources; and includes the ethic of stewardship.
- Mauri – life force; for example the mauri of a river is most recognisable when there is abundance of water flow and the associated ecosystems are healthy and plentiful; a most important element in the relationship that Kai Tahu have with the water bodies of Otago.
- Waahi tapu and/or Waiwhakaheke – sacred places; sites, areas and values associated with water bodies that hold spiritual values of importance to Kai Tahu.
- Waahi taoka – treasured resource; values, sites and resources that are valued and reinforce the special relationship Kai Tahu have with Otago’s water resources.
- Mahika kai – places where food is procured or produced. Examples in the case of waterborne mahika kai include eels, whitebait, kanakana (lamprey), kokopu (galaxiid species), koura (fresh water crayfish), fresh water mussels, indigenous waterfowl, watercress and raupo.
- Kohanga – important nursery/spawning areas for native fisheries and/or breeding grounds for birds.
- Trails – sites and water bodies which formed part of traditional routes, including tauraka waka (landing place for canoes).
- Cultural materials – water bodies that are sources of traditional weaving materials (such as raupo and paru) and rongoa (medicines).

2008.690 Kaka Point WWTP

Kaka Point township is a small coastal community in South Otago, approximately 5 kilometres south of the mouth of the Clutha River / Mata-Au. The Kaka Point wastewater treatment system is located on farmland to the northeast of the township, approximately 420 m west of Kaka Point Road. The sewer pipeline runs across a rocky outcrop to discharge to the Pacific Ocean approximately 1 km north of the Kaka Point township (Figures 7 & 8).



Figure 7. Point of discharge (blue dot) (Source: Otago Maps)



Figure 8. Wastewater pipe leading to the point of discharge (Source: 2008.690)

Schedule 2 of the Regional Plan: Coast for Otago (RPC) identifies areas in the CMA that are to be managed for particular purposes. The point of discharge is located within the Kaka Point Coastal Recreation Area. Coastal Recreation Areas are regionally important locations for providing recreational opportunities. When considering applications for activities within or adjacent to any Coastal Recreation Area the Council must give priority to avoiding the adverse effects on the recreational values associated with that area. Kaka Point is recognised for the following recreational values:

- Patrolled swimming beach;
- Walking;
- Surfing; and
- Scuba diving and snorkelling.

The discharge location is not recognised in any other schedules of the RPC.

2003.680 Owaka WWTP

Owaka township is located approximately 25 km southwest of Balclutha. The Owaka WWTP is located approximately 850 m northeast of the Owaka township in close proximity to the Owaka River (Figures 9 and 10). The discharge of wastewater into the Owaka River occurs adjacent to the treatment system. The predominant land use in the surrounding environment is farming.



Figure 9. Owaka WWTP and discharge point in relation to Owaka Township and wider environment (Source: Otago Maps)



Figure 10. Owaka WWTP and discharge point in relation to the Owaka River (Source Otago Maps)

Schedule 1A of the RPW identifies the following natural and ecosystem values in the Owaka River:

- Large water bodies supporting high numbers of particular species, or habitat variety, which can provide for diverse life cycle requirements of a particular species, or a range of species
- Access within the main stem of a catchment through to the sea or a lake unimpeded by artificial means, such as weirs and culverts.
- Gravel bed composition of importance for resident biota;
- Absence of exotic species of fish; aquatic pest plants (eg Lagarosiphon) identified in the Pest Management Strategy for Otago 2009
- Presence of riparian vegetation of significance to aquatic biota;
- Presence of significant trout spawning areas;
- Presence of significant areas for the development of juvenile trout;
- Significant presence of eels and trout;
- Presence of a significant range of indigenous fish species;
- presence of a significant range of indigenous invertebrates.
- A high degree of naturalness within bushed catchments.

Schedule 1B of the RPW indicates that there are no known public water supplies taken from the Owaka River or the Catlins River. Nor are there any Registered Historic Places identified in the Owaka River, according to Schedule 1C of the RPW.

The Owaka River is recognised within Schedule 1D of the RPW as having the following Kai Tahu values:

- Kaitiakitanga – the exercise of guardianship by Kai Tahu in accordance with tikanga Maori in relation to Otago’s natural and physical resources; and includes the ethic of stewardship.
- Mauri – life force; for example the mauri of a river is most recognisable when there is abundance of water flow and the associated ecosystems are healthy and plentiful; a most important element in the relationship that Kai Tahu have with the water bodies of Otago.
- Waahi taoka – treasured resource; values, sites and resources that are valued and reinforce the special relationship Kai Tahu have with Otago’s water resources.
- Mahika kai – places where food is procured or produced. Examples in the case of waterborne mahika kai include eels, whitebait, kanakana (lamprey), kokopu (galaxiid species), koura (fresh water crayfish), fresh water mussels, indigenous waterfowl, watercress and raupo.
- Kohanga – important nursery/spawning areas for native fisheries and/or breeding grounds for birds.
- Trails – sites and water bodies which formed part of traditional routes, including tauraka waka (landing place for canoes).
- Cultural materials – water bodies that are sources of traditional weaving materials (such as raupo and paru) and rongoa (medicines).

4.1.1 Site Visit

A site visit was not undertaken as the review relates to improving the administration of conditions.

5. Status of the Application

Section 130(3) RMA states that sections 95 to 95G RMA apply to a review under S128, as if -

- The notice of review of consent conditions were an application for a resource consent for a discretionary activity; and*
- The references to a resource consent and to the activity were references only to the review of the conditions and to the effects of the change of conditions respectively.*

Therefore, for the purposes of the notification decision, the review is treated as if it is an application for consent to a **discretionary activity**.

6. Assessment of Adverse Environmental Effects

Pursuant to Section 130(3)(b), the effects of the change of conditions are considered assessed below:

The purpose of the review of Conditions 6(b) and 6(d) is to ensure the conditions are direct, certain, enforceable and intra vires and would require adequate monitoring and reporting by the Consent Holder.

The recommended conditions have been reviewed internally by Peter Kelliher, Team Leader Investigations, Shelly Reed, Principal Compliance Specialist, and Scott Martin, Team Leader Environmental Data who were satisfied with the suitability and enforceability of the conditions.

The recommended conditions are considered to provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters as they specify the following:

- A clear and enforceable method for calculating that 90th percentile; and
- A clear direction that resampled results are to be included in the 90th percentile calculation.

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.

7. Notification and Written Approvals

7.1 Section 95A Public Notification

Step 1: Is public notification mandatory as per questions (a) – (c) below?

(a) Has the consent holder requested that the review be publicly notified? **No**

(b) Is public notification required by Section 95C? **No**

Has further information been requested and not provided within the deadline set by Council? **No**

Has the consent holder refused to provide further information? **No**

Has the Council notified the applicant that it wants to commission a report, but the consent holder does not respond before the deadline to Council's request? **No**

Has the consent holder refused to agree to the Council commissioning a report? **No**

(c) Has the application been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977? **Not applicable**

Step 2: Is public notification precluded as per questions (a) – (b) below?

(a) Is public notification precluded by a rule in the plan or a NES? **No**

(b) Is the application for one or more of the following activities but no other activities:

(i) A controlled activity? **Not applicable**

(ii) [Repealed]

(iii) A restricted discretionary, discretionary or non-complying activity but only if the activity is a boundary activity? **Not applicable**

(iii) [Repealed]

Step 3: Does the review meet either of the criteria in (a) or (b) below?

- (a) Does the review relate to a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification? **No**
- (b) Will the review have or be likely to have adverse effects on the environment that are more than minor in accordance with Section 95D? **No**

As discussed in Section 6 of this report, I consider that there will not be more than minor adverse effects on the environment (discounting the site and adjacent sites).

Step 4: Do special circumstances exist in relation to the application that warrant the application being publicly notified? **No**

Section 95A(9) of the Act states that a consent authority must publicly notify an application for resource consent if it considers that 'special circumstances' exist, notwithstanding that the previous steps do not require or preclude public notification.

Special circumstances are not defined in the Act. However, case law has identified special circumstances as those that are unusual or exceptional, but they may be less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The consent authority should be satisfied that public notification may elicit additional information on the aspects of a proposal. However, special circumstances are more than:

- where a council has had an indication that people want to make submissions.
- the fact that some persons have concerns about a proposal.

In this case, the recommended conditions are considered to provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters as they specify the following:

- A clear and enforceable method for calculating that 90th percentile; and
- A clear direction that resampled results are to be included in the 90th percentile calculation.

The scope of the review is restricted to the enforceability of Conditions 6(b) and 6(d). The enforceability of the conditions would provide for certainty for the Consent Holder and the Consent Authority. Enforceable discharge limits would also provide for positive effects on the environment in the event of non-compliance. There are no special circumstances that would make public notification desirable.

7.2 Section 95B Limited Notification

Step 1

Section 95B(2) Are there any affected groups or persons identified under Section 95B(2):

- (a) Protected customary rights groups? **No**
- (b) Customary marine title groups? **No**

Section 95B(3)(a) Is the activity on or adjacent to, or may it affect, land that is the

subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11? **No**

Section 95B(3)(b) Is a person to whom a statutory acknowledgement is made an affected person under Section 95E? **No**

Step 2

Is Limited Notification precluded under Section 95B(6)?

- (a) Does the review relate to a resource consent for one or more activities, and each activity is subject to a rule or national environmental standard that preclude limited notification? **No**
- (b) (i) Is the activity a Controlled Activity that requires consent under the District Plan (other than a subdivision of land)? **No**
- (ii) Is it a prescribed activity under Section 360G(1)(a)(ii)? **No**

Step 3

Having regard to Section 95E of the Resource Management Act, identify persons who would be adversely affected by effects that are minor or more than minor, but not less than minor and give reasons why affected parties were identified.

The following parties were not considered to be affected parties as adverse effects of odour inadequately addressed by existing conditions, are considered to be adequately avoided, remedied or mitigated by the revised conditions.

Party	Why they are not affected
Aukaha on behalf of Mana Whenua	The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.
Adjoining or Adjacent Neighbours	The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.
Fish and Game	The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.
Department of Conservation	The recommended conditions would not result in any change to the operation of the plants, and would

	<p>provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.</p>
Submitters on 2005.246	<p>The application for resource consent 2005.246 was limited notified on 22 September 2010. The submissions period closed on 21 October 2020. Submissions were received from the following parties:</p> <ul style="list-style-type: none"> • Fish & Game • LINZ <p>The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.</p>
Submitters on 2008.308	<p>The application for resource consent 2008.308 was publicly notified on 30 August 2008. The submissions period closed on 26 September 2008. Submissions were received from the following parties:</p> <ul style="list-style-type: none"> • Ross Douglas Young • Lawrence / Tuapeka Community Board • Jason Keith Martin • Betty Louise Walford • Public Health South (withdrawn) • J A Howell and M W J Patterson • Wayman Roughan <p>The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.</p>
Submitters on 2005.193	<p>The application for resource consent 2005.193 was publicly notified on 17 June 2009. The submissions period closed on 14 July 2009. Submissions were received from the following parties:</p>

	<ul style="list-style-type: none"> • Paul Gouman • Allen Roxburgh and Maree Roxburgh • Fraser Morrison (withdrawn) • Thomas Smith • Public Health South (withdrawn) • Otago Fish and Game Council • William White (withdrawn) • Eileen Meekin • Heather Keach and Neville Keach • John Johnson and Charlotte Brettell • Charles Weir <p>The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising from the recommended changes to the conditions are considered to be nil.</p>
Submitters on 2008.690	<p>The application for resource consent 2008.690 was publicly notified on 21 September 2010. The submissions period closed on 19 October 2020. No submissions were received.</p>
Submitters on 2003.680	<p>The application for resource consent 2003.680 was publicly notified on 17 June 2009. The submissions period closed on 14 July 2009. Submissions were received from the following parties:</p> <ul style="list-style-type: none"> • Brian Crawford • Public Health South (withdrawn) • John Spicer and Moira Spicer • Jillian Buckingham • Dave Catherwood • Denise Leonard • Otago Fish and Game Council • Darryl Atkinson <p>The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any additional adverse effects arising</p>

	from the recommended changes to the conditions are considered to be nil.
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Have all persons identified as affected under Step 3 provided their written approvals? N/A

Step 4 Further notification in special circumstances

Do special circumstances exist that warrant notification to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under Section 95E as not being affected persons)? **No**

Section 95B(10) of the Act states that a consent authority must limited notify an application for resource consent if it considers that 'special circumstances' exist, notwithstanding that the previous steps do not require or preclude public notification.

Special circumstances are not defined in the Act. However, case law has identified special circumstances as those that are unusual or exceptional, but they may be less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The consent authority should be satisfied that public notification may elicit additional information on the aspects of a proposal. However, special circumstances are more than:

- where a council has had an indication that people want to make submissions.
- the fact that some persons have concerns about a proposal.

In this case, the recommended conditions are considered to provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters as they specify the following:

- A clear and enforceable method for calculating that 90th percentile; and
- A clear direction that resampled results are to be included in the 90th percentile calculation.

The scope of the review is restricted to the enforceability of Conditions 6(b) and 6(d). The enforceability of the conditions would provide for certainty for the Consent Holder and the Consent Authority. Enforceable discharge limits would also provide for positive effects on the environment in the event of non-compliance. There are no special circumstances that would make limited notification desirable.

If Notification or limited notification is required, then has the applicant paid the additional notification fee? Not applicable

7. NOTIFICATION RECOMMENDATION:

In accordance with the notification steps set out above, it is recommended that the review proceed on a non-notified basis.



Dwayne Daly
Principal Consents Planner
10 June 2024

Decision on notification

Sections 95A to 95G of the Resource Management Act 1991

Date:

Application No: RM24.297

Subject: *Decision on notification of review of consent conditions under delegated authority*

Decision under Delegated Authority

The Otago Regional Council decides that this review of conditions is to be processed on a **non-notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991.

The above decision adopts the recommendations and reasons outlined in the Notification Report prepared by Dwayne Daly on 10 June 2024 in relation to this application.

This decision is made under delegated authority by:



Allan Cubitt
Independent Decision Maker for Otago Regional Council

ORC SECTION 42A REPORT

1. Summary of Recommendation

I recommend that the new conditions discussed at the end of this report be included in the consents.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision.

There are no principal issues in contention with the application because it was processed on a non-notified basis, without a hearing. The key risks/issues with the application were discussed in section 2 of the Notification Report.

2. Section 131 and 132 Evaluation

Section 131 Matters to be considered in review

(1) When reviewing the conditions of a resource consent, the consent authority—

(a) shall have regard to the matters in section 104 and to whether the activity allowed by the consent will continue to be viable after the change; and

(aa) in the case of a review under section 128(2), must have regard to any reasons that the court provided for making the order requiring the review; and

(b) may have regard to the manner in which the consent has been used.

(2) Before changing the conditions of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or 15B to include a condition requiring the holder to adopt the best practicable option to remove or reduce any adverse effect on the environment, the consent authority shall be satisfied, in the particular circumstances and having regard to—

(a) the nature of the discharge and the receiving environment; and

(b) the financial implications for the applicant of including that condition; and

(c) other alternatives, including a condition requiring the observance of minimum standards of quality of the receiving environment—

that including that condition is the most efficient and effective means of removing or reducing that adverse effect.

The recommended conditions are considered to provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters as they specify the following:

- A clear and enforceable method for calculating that 90th percentile; and
- A clear direction that resampled results are to be included in the 90th percentile calculation.

The conditions would therefore be the most efficient and effective method of monitoring compliance with conditions and thereby address potential adverse effects. The conditions would also provide certainty to the Consent Holder, which would reduce any potential financial implications on them. The activities are therefore considered to remain viable following the recommended changes.

The nature of the discharge and surrounding environment, and the manner in which the consent has been used are described in Sections 3 and 4 of the Notification Report. The matters in section 104 are discussed in Section 3 of this report.

132 Decisions on review of consent conditions

(1) A consent authority may change the conditions of a resource consent (other than any conditions as to the duration of the consent) on a review under section 128 if, and only if, 1 or more of the circumstances specified in that section applies.

(2) Sections 106 to 116 (which relate to conditions, decisions, and notification) and sections 120 and 121 (which relate to appeals) apply, with all necessary modifications, to a review under section 128 as if—

(a) the review were an application for a resource consent; and

(b) the consent holder were an applicant for a resource consent.

(4) A consent authority may also cancel a resource consent if—

(a) it reviews the consent under section 128(2); and

(b) there are significant adverse effects on the environment resulting from the exercise of the consent.

In accordance with Section 128(1)(a)(iii) of the Resource Management Act 1991, the Otago Regional Council initiated a review of conditions.

Section 128 (1)(a)(iii) - The review occurred within the timeframe specified by the applicable resource consents for the purpose of amending or altering the monitoring programme based on the monitoring results received.

3. Section 104 Evaluation

Section 104 of the Act sets out the matters to be considered when reviewing conditions of consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

The consent authority must also consider whether the activity allowed by the consent will be viable after the proposed change of conditions.

The consent authority may have regard to the manner in which the consents have been used.

3.1 Section 104(1)

The matters of Section 104 to be considered are:

(a) the actual and potential effects on the environment of allowing the activity;

(ab) any measure proposed or agreed to by the Consent Holder 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;

(b) any relevant provisions of a national environmental standard, other regulations, a national policy statement, the Regional Policy Statement (RPS), RPW; and

(c) any other matter the Council considers relevant and reasonably necessary to determine the application.

3.2 S104(1)(a) – Actual and potential effects on the environment of allowing the activity

The actual and potential adverse environmental effects of the proposed activity were considered earlier in the Notification Report.

The recommended conditions are considered to provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters as they specify the following:

- A clear and enforceable method for calculating that 90th percentile; and
- A clear direction that resampled results are to be included in the 90th percentile calculation.

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects arising from the recommended changes to the conditions are considered to be nil.

It is considered that the proposed conditions will have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, while providing for the continuation of infrastructure providing an essential community function.

3.3 S104(1)(ab)

The Consent Holder has not proposed or agreed to any measures to offset or compensate for adverse effects that will or may result from the recommended conditions as any adverse effects are considered to be nil.

3.4 S104(1)(b) Relevant Planning Documents

3.4.1 National Policy Statements

National Policy Statement for Freshwater Management

The National Policy Statement for Fresh Water Management 2020 (“NPS-FM”) provides direction to local authorities and resource users regarding activities that affect the health of freshwater and sets out objectives and policies for freshwater management under the RMA.

The NPS-FM came into force on 3 September 2020, replacing the previous 2014 and 2017 NPS-FM. Although it retains some of the same principals as the NPS-FM 2014, including a strengthened focus on Te Mana o te Wai, the NPS-FM 2020.

Part 2 of the NPS-FM sets out the national objective for future freshwater management and 15 separate policies that support this objective. The Objective and relevant policies from the NPS-FM are considered below:

Objective

(1) *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*

(a) *first, the health and well-being of water bodies and freshwater ecosystems*

(b) *second, the health needs of people (such as drinking water)*

(c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.

Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

Policy 7: The loss of river extent and values is avoided to the extent practicable.

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

Policy 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.

Include an assessment of the relevant objective and policies.

The recommended conditions would allow people and communities to continue to provide for their social, economic, and cultural well-being. To this extent, it sits third on the NPS-FW priority list. The recommended conditions would contribute towards the avoidance of adverse effects on the health and well-being of freshwater, and the health needs of people. Therefore, it is considered consistent with this overall objective.

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on freshwater arising from the recommended changes to the conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, while providing for the continuation of infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the NPS-FW.

National Policy Statement for Greenhouse Gas Emissions from Industrial Process Heat

Not Applicable

National Policy Statement for Highly Productive Land

Not Applicable

National Policy Statement for Indigenous Biodiversity

The NPS-IB came into force on 4 August 2023 and applies to Aotearoa's indigenous biodiversity. Indigenous Biodiversity is defined in the NPSIB as the living organisms that occur naturally in New Zealand, and the ecological complexes of which they are part, including all forms of indigenous flora, fauna, and fungi, and their habitats.

The NPS-IB sets out the national objective for future freshwater management and 17 separate policies that support this objective. The Objective and relevant policies from the NPSIB are considered below:

2.1 Objective

(1) The objective of this National Policy Statement is:

(a) To maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and

(a) To achieve this:

- i. through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and*
- ii. by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and*
- iii. by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and*
- iv. while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.*

Policy 1: Indigenous biodiversity is managed in a way that gives effect to the decision-making principles and takes into account the principles of the Treaty of Waitangi.

Policy 2: Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through:

(a) managing indigenous biodiversity on their land; and

(b) identifying and protecting indigenous species, populations and ecosystems that are taonga; and

(c) actively participating in other decision-making about indigenous biodiversity.

Policy 3: A precautionary approach is adopted when considering adverse effects on indigenous biodiversity.

Policy 5: Indigenous biodiversity is managed in an integrated way, within and across administrative boundaries.

Policy 8: The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for.

Policy 10: Activities that contribute to New Zealand's social, economic, cultural, and environmental wellbeing are recognised and provided for as set out in this National Policy Statement.

Policy 13: Restoration of indigenous biodiversity is promoted and provided for.

No areas subject to this application have been identified as an SNA. None of the activities are established activities as per Section 3.15 of the NPS-IB.

The recommended conditions are considered to provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters as they specify the following:

- A clear and enforceable method for calculating that 90th percentile; and
- A clear direction that resampled results are to be included in the 90th percentile calculation.

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on indigenous biodiversity arising from the recommended conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, while providing for the continuation of infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the NPS-IB.

National Policy Statement for Renewable Electricity Generation

Not Applicable

National Policy Statement on Electricity Transmission

Not Applicable

National Policy Statement on Urban Development

Not Applicable

New Zealand Coastal Policy Statement

The NZCPS came into force on 3 December 2010 and applies to Aotearoa's coastal environment.

The NZCPS sets out 7 objectives and 29 separate policies that support the objectives. The relevant objectives and associated policies from the NZCPS are considered below:

Objective 1

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;*
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and*
- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.*

Objective 2

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

- recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- encouraging restoration of the coastal environment.*

Objective 3

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

- recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*
- promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;*
- incorporating mātauranga Māori into sustainable management practices; and*
- recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

Objective 6

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*

- *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*
- *functionally some uses and developments can only be located on the coast or in the coastal marine area;*
- *the coastal environment contains renewable energy resources of significant value; • the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;*
- *the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;*
- *the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and*
- *historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.*

Policy 1 Extent and characteristics of the coastal environment

Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage

Policy 3 Precautionary approach

Policy 4 Integration

Policy 6 Activities in the coastal environment

Policy 11 Indigenous biological diversity (biodiversity)

Policy 13 Preservation of natural character

Policy 23 Discharge of contaminants

The recommended conditions would not result in any change to the operation of the plants, including the Kaka Point WWTP, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the coastal environment arising from the recommended changes to the conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, while providing for the continuation of infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the NZCPS.

3.5

3.5.1 Regional Policy Statements

Otago Regional Policy Statement

The Otago Regional Policy Statement 2019 (ORPS 2019) became fully operative on 4 March 2024.

Objective 1.1 Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities

Policy 1.1.1 Economic wellbeing

Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources

Policy 1.1.2 Social and cultural wellbeing and health and safety

Provide for the social and cultural wellbeing and health and safety of Otago's people and communities when undertaking the subdivision, use, development and protection of natural and physical resources by all of the following:

- a) Recognising and providing for Kāi Tahu values;*
- b) Taking into account the values of other cultures;*
- c) Taking into account the diverse needs of Otago's people and communities;*
- d) Avoiding significant adverse effects of activities on human health;*
- e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing;*
- f) Promoting good quality and accessible infrastructure and public services.*

Objective 1.2 Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago

Policy 1.2.1 Integrated resource management

Achieve integrated management of Otago's natural and physical resources, by all of the following:

- a) Coordinating the management of interconnected natural and physical resources;*
- b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment;*
- c) Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest;*
- d) Ensuring that resource management approaches across administrative boundaries are consistent and complementary;*

- e) *Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits.*
- f) *Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement.*
- g) *Promoting healthy ecosystems and ecosystem services;*
- h) *Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.*

Objective 2.1 The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions

Policy 2.1.2 Treaty principles

Ensure that local authorities exercise their functions and powers, by:

- a) *Recognising Kāi Tahu's status as a Treaty partner; and*
- b) *Involving Kāi Tahu in resource management processes implementation;*
- c) *Taking into account Kāi Tahu values in resource management decision-making processes and implementation;*
- d) *Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;*
- e) *Ensuring Kāi Tahu have the ability to:*
 - i. *Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;*
 - ii. *Determine how best to express that relationship;*
- f) *Having particular regard to the exercise of kaitiakitaka;*
- g) *Ensuring that district and regional plans:*
 - i. *Give effect to the Ngāi Tahu Claims Settlement Act 1998;*
 - ii. *Recognise and provide for statutory acknowledgement areas in Schedule 2;*
 - iii. *Provide for other areas in Otago that are recognised as significant to Kāi Tahu;*
- h) *Taking into account iwi management plans.*

Objective 3.1 The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded

Policy 3.1.1 Fresh water

Safeguard the life-supporting capacity of fresh water and manage fresh water to:

- a) *Maintain good quality water and enhance water quality where it is degraded, including for:*
 - i. *Important recreation values, including contact recreation; and,*

- ii. Existing drinking and stock water supplies;*
- b) Maintain or enhance aquatic:*
 - i. Ecosystem health;*
 - ii. Indigenous habitats; and,*
 - iii. Indigenous species and their migratory patterns.*
- c) Avoid aquifer compaction and seawater intrusion;*
- d) Maintain or enhance, as far as practicable:*
 - i. Natural functioning of rivers, lakes, and wetlands, their riparian margins, and aquifers;*
 - ii. Coastal values supported by fresh water;*
 - iii. The habitat of trout and salmon unless detrimental to indigenous biological diversity; and*
 - iv. Amenity and landscape values of rivers, lakes, and wetlands;*
- e) Control the adverse effects of pest species, prevent their introduction and reduce their spread;*
- f) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion; and,*
- g) Avoid, remedy or mitigate adverse effects on existing infrastructure that is reliant on fresh water.*

Policy 3.1.5 Coastal water

Manage coastal water to:

- a) Maintain coastal water quality or enhance it where it has been degraded;*
- b) Maintain healthy coastal ecosystems, the range of indigenous habitats provided by the coastal marine area, and the migratory patterns of indigenous coastal water species or enhance these values where they have been degraded;*
- c) Maintain or enhance important recreation values;*
- d) Maintain or enhance, as far as practicable:*
 - i. Coastal values; and*
 - ii. The habitats provided by the coastal marine area for trout and salmon unless detrimental to indigenous biological diversity.*
- e) Control the adverse effects of pest species, prevent their introduction and reduce their spread.*

Policy 3.1.9 Ecosystems and indigenous biological diversity

Manage ecosystems and indigenous biological diversity in terrestrial, freshwater and marine environments to:

a) Maintain or enhance:

- i. Ecosystem health and indigenous biological diversity including habitats of indigenous fauna;*
- ii. Biological diversity where the presence of exotic flora and fauna supports indigenous biological diversity;*

b) Maintain or enhance as far as practicable:

- i. Areas of predominantly indigenous vegetation;*
- ii. Habitats of trout and salmon unless detrimental to indigenous biological diversity;*
- iii. Areas buffering or linking ecosystems;*

c) Recognise and provide for:

- i. Hydrological services, including the services provided by tall tussock grassland;*
- ii. Natural resources and processes that support indigenous biological diversity;*

d) Control the adverse effects of pest species, prevent their introduction and reduce their spread.

Policy 3.1.10 Biodiversity in the coastal environment

Avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

- a) Areas of predominantly indigenous vegetation in the coastal environment;*
- b) Habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;*
- c) Indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;*
- d) Habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;*
- e) Habitats, including areas and routes, important to migratory species; and*
- f) Ecological corridors, and areas important for linking or maintaining biological values identified under this policy.*

Policy 3.1.12 Natural character in the coastal environment

Recognise the values of natural character in the coastal environment are derived from one or more of the following attributes:

- a) Natural elements, processes and patterns;*

- b) *Biophysical, ecological, geological and geomorphological aspects;*
- c) *Natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, estuaries, reefs, freshwater springs and surf breaks;*
- d) *The natural movement of water and sediment;*
- e) *The natural darkness of the night sky;*
- f) *Places or areas that are wild or scenic;*
- g) *A range of natural character from pristine to modified;*
- h) *Experiential attributes, including the sounds and smell of the sea; and their context or setting.*

Policy 3.2.6 Managing highly valued natural features, landscapes and seascapes

Maintain or enhance highly valued natural features, landscapes and seascapes by all of the following:

- a) *Avoiding significant adverse effects on those values that contribute to the high value of the natural feature, landscape or seascape;*
- b) *Avoiding, remedying or mitigating other adverse effects;*
- c) *Encouraging enhancement of those values that contribute to the high value of the natural feature, landscape or seascape.*

Policy 3.2.14 Managing outstanding freshwater bodies

Protect outstanding freshwater bodies by all of the following:

- a) *Maintaining the values that contribute to the water body being outstanding;*
- b) *Avoiding, remedying or mitigating other adverse effects on the water body;*
- c) *Controlling the adverse effects of pest species, preventing their introduction and reducing their spread;*
- d) *Encouraging enhancement of those values that contribute to the water body being outstanding.*

Objective 5.4 Adverse effects of using and enjoying Otago's natural and physical resources are minimised

Policy 5.4.1 Offensive or objectionable discharges

Manage offensive or objectionable discharges to land, water and air by:

- a) *Avoiding significant adverse effects of those discharges;*
- b) *Avoiding significant adverse effects of discharges of human or animal waste directly, or in close proximity, to water or mahika kai sites;*
- c) *Avoiding, remedying or mitigating other adverse effects of those discharges.*

Policy 5.4.2 Adaptive management approach

Apply an adaptive management approach, to avoid, remedy or mitigate actual and potential adverse effects that might arise and that can be remedied before they become irreversible, by both:

- a) Setting appropriate indicators for effective monitoring of those adverse effects; and*
- b) Setting thresholds to trigger remedial action before the effects result in irreversible damage*

Policy 5.4.9 Activities in the Coastal Marine Area

In the coastal marine area minimise adverse effects from activities by all of the following:

- a) Avoiding activities that do not have a functional need to locate in the coastal marine area;*
- b) When an activity has a functional need to locate in the coastal marine area, giving preference to avoiding its location in:
 - i. Areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - ii. Outstanding natural features, landscapes and seascapes;*
 - iii. Areas of outstanding natural character;*
 - iv. Places or areas containing historic heritage of regional or national significance;*
 - v. Areas subject to significant natural hazard risk;**
- c) Where it is not practicable to avoid locating in the areas listed in b) above, because of the functional needs of that activity:
 - i. Avoid adverse effects on the values that contribute to the significant or outstanding nature of b)i.-iii;*
 - ii. Avoid significant adverse effects on natural character in all other areas of the coastal environment;*
 - iii. Avoid, remedy or mitigate adverse effects on values as necessary to preserve historic heritage of regional or national significance;*
 - iv. Minimise any increase in natural hazard risk through mitigation measures;*
 - v. Avoiding, remedying, or mitigating adverse effects on other values;**
- d) Providing for the efficient use of space by requiring structures be made available for public or multiple use wherever reasonable and practicable;*
- e) Applying a precautionary approach to assessing the effects of the activity, where there is scientific uncertainty, and potentially significant or irreversible adverse effects;*

Assessment

The recommended conditions would not result in any change to the operation of the plants, including the Kaka Point WWTP, and would provide for direct, certain, enforceable

and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the freshwater, the coastal environment, indigenous biodiversity therein, or any human use value arising from the recommended changes to the conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, which would maintain or improve the water quality and associated human use values of the relevant water bodies, including coastal water, while providing for the continuation of existing infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the operative Otago Regional Policy Statement.

Proposed Regional Policy Statement

The proposed Otago Regional Policy Statement 2021 (pORPS) was notified on 26 June 2021. Following a determination by the High Court, the pORPS 2021 was separated into two parts: a freshwater and a non-freshwater planning instrument. The non-freshwater instrument kept the original notification date and the freshwater planning instrument part was notified on 30 September 2022. Otago Regional Council notified its decisions on submissions on the proposed Otago Regional Policy Statement on 30 March 2024.

MW-01 – Principles of Te Tiriti o Waitangi

The principles of Te Tiriti o Waitangi are given effect in resource management processes and decisions, utilising a partnership approach between councils and Papatipu Rūnaka to ensure that what is valued by mana whenua is actively protected in the region.

MW-P1 – Treaty obligations

Promote awareness and understanding of the obligations of local authorities in regard to the principles of Te Tiriti o Waitangi, tikaka Māori and kaupapa Māori.

MW-P2 – Treaty principles Local authorities exercise their functions and powers in accordance with Treaty principles, by:

(1) recognising the status of Kāi Tahu and facilitating Kāi Tahu involvement in decision-making as a Treaty partner,

(2) including Kāi Tahu in resource management processes and implementation to the extent desired by mana whenua,

(3) recognising and providing for Kāi Tahu values and resource management issues, as identified by mana whenua, in resource management decision-making processes and plan implementation,

(4) recognising and providing for the relationship of Kāi Tahu culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka by ensuring that Kāi Tahu have the ability to identify these relationships and determine how best to express them,

(5) ensuring that regional and district plans recognise and provide for Kāi Tahu relationships with Statutory Acknowledgement Areas, tōpuni, nohoaka and customary fisheries identified in the NTCSA 1998, including by actively protecting the mauri of these areas,

(6) having particular regard to the ability of Kāi Tahu to exercise kaitiakitaka,

(7) actively pursuing opportunities for:

(a) delegation or transfer of functions to Kāi Tahu, and

(b) partnership or joint management arrangements, and

(8) taking into account iwi management plans when making resource management decisions.

MW-P3 – Supporting Kāi Tahu well-being

The natural environment is managed to support Kāi Tahu well-being by:

(1) protecting customary uses, Kāi Tahu values and relationships of Kāi Tahu to resources and areas of significance, and restoring these uses and values where they have been degraded by human activities,

(2) safeguarding the mauri and life-supporting capacity of natural resources, and

(3) working with Kāi Tahu to incorporate mātauraka in resource management.

IM-O1 – Long term vision

The management of natural and physical resources in Otago, by and for the people of Otago, including Kāi Tahu, and as expressed in all resource management plans and decision making, achieves healthy, resilient, and safeguarded natural systems, and the ecosystem services they offer, and supports the well-being of present and future generations, mō tātou, ā, mō kā uri ā muri ake nei.

IM-O2 – Ki uta ki tai

Natural and physical resource management and decision making in Otago embraces ki uta ki tai, recognising that the environment is an interconnected system, which depends on its connections to flourish, and must be considered as an interdependent whole.

IM-O3 – Environmentally sustainable impact

Otago’s communities carry out their activities in a way that preserves environmental integrity, form, function, and resilience, so that the life-supporting capacities of air, water, soil, ecosystems, and indigenous biodiversity endure for future generations.

IM-P1 – Integrated approach

The objectives and policies in this RPS form an integrated package, in which:

(1) all activities are carried out within the environmental constraints of this RPS,

(2) all provisions relevant to an issue or decision must be considered,

(3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and

(4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM-O1 to IM-O4.

IM-P2 – Decision priorities

Unless expressly stated otherwise, all decision making under this RPS shall:

- (1) firstly, secure the long-term life-supporting capacity and mauri of the natural environment,*
- (2) secondly, promote the health needs of people, and*
- (3) thirdly, safeguard the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

IM-P5 – Managing environmental interconnections

Coordinate the management of interconnected natural and physical resources by recognising and providing for:

- (1) situations where the value and function of a natural or physical resource extends beyond the immediate, or directly adjacent, area of interest,*
- (2) the effects of activities on a natural or physical resource as a whole when that resource is managed as sub-units, and*
- (3) the impacts of management of one natural or physical resource on the values of another, or on the environment.*

IM-P13 – Managing cumulative effects

Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.

IM-P14 – Human impact

Preserve opportunities for future generations by:

- (1) identifying limits to both growth and adverse effects of human activities beyond which the environment will be degraded,*
- (2) requiring that activities are established in places, and carried out in ways, that are within those limits and are compatible with the natural capabilities and capacities of the resources they rely on, and*
- (3) regularly assessing and adjusting limits and thresholds for activities over time in light of the actual and potential environmental impacts.*

CE-O1 – Safeguarding the coastal environment

The integrity, form, functioning and resilience of Otago’s coastal environment is safeguarded so that:

- (1) the mauri of coastal water is protected, and restored where it has degraded,*
- (2) coastal water quality supports healthy ecosystems, natural habitats, water-based recreational activities, existing activities, and customary uses, including practices associated with mahika kai and kaimoana,*

(3) the dynamic and interdependent natural biological and physical processes in the coastal environment are maintained or enhanced,

(4) representative or significant areas of biodiversity are protected, and

(5) surf breaks of national significance are protected.

CE-O3 – Natural character, features and landscapes

Areas of natural character, natural features, landscapes and seascapes within the coastal environment are protected from inappropriate activities, and restoration is encouraged where the values of these areas have been compromised.

CE-O5 – Activities in the coastal environment

Activities in the coastal environment:

(1) make efficient use of space occupied in the coastal marine area,

(2) are of a scale, density and design compatible with their location,

(3) are only provided for within appropriate locations and limits, and

(4) maintain or enhance public access to and along the coastal marine area, including for customary uses.

CE-P3 – Coastal water quality

Coastal water quality is improved where it is considered to have deteriorated to the extent described within CE-P1(2), and otherwise managed, so that:

(1) healthy coastal ecosystems, indigenous habitats provided by the coastal environment, and the migratory patterns of indigenous coastal water species are maintained or enhanced,

(2) Kāi Tahu relationships with and customary uses of coastal water are sustained,

(3) recreation opportunities and existing uses of coastal water are maintained or enhanced, and

(4) within identified areas where takata whenua have a particular interest, adverse effects on these areas and values are remedied or where remediation is not practicable, are mitigated.

CE-P4 – Natural character

Identify, preserve and restore the natural character of the coastal environment by:

(1) identifying areas and values of high and outstanding natural character which may include matters such as:

(a) natural elements, processes and patterns,

(b) biophysical, ecological, geological and geomorphological aspects,

(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, estuaries, reefs, freshwater springs and surf breaks,

- (d) the natural movement of water and sediment,*
- (e) the natural darkness of the night sky,*
- (f) places or areas that are wild or scenic,*
- (g) a range of natural character from pristine to modified,*
- (h) experiential attributes, including the sounds and smell of the sea, and their context or setting,*
- (2) avoiding adverse effects on natural character in areas identified as having outstanding natural character,*
- (3) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on natural character outside the areas in (2) above, (4) encouraging de-reclamation of redundant reclaimed land where it would restore the natural character and resources of the coastal marine area and provide for more public open space, and*
- (5) promoting activities and restoration projects that will restore natural character in the coastal environment where it has been reduced or lost.*

CE-P5 – Coastal indigenous biodiversity

Protect indigenous biodiversity in the coastal environment by:

- (1) identifying and avoiding adverse effects on the following ecosystems, vegetation types and areas:*
 - (a) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists,*
 - (b) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened,*
 - (c) indigenous ecosystems and vegetation types in the coastal environment that are threatened or are naturally rare,*
 - (d) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare,*
 - (e) areas containing nationally significant examples of indigenous community types, and*
 - (f) areas set aside for full or partial protection of indigenous biodiversity under other legislation, and*
- (2) identifying and avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on the following ecosystems, vegetation types and areas:*
 - (a) areas of predominantly indigenous vegetation in the coastal environment,*
 - (b) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species,*

(c) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable,

(d) areas sensitive to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh,

(e) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes,

(f) habitats, including areas and routes, important to migratory species, and

(g) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

CE-P10 – Activities within the coastal marine area

Use and development in the coastal marine area must:

(1) enable multiple uses of the coastal marine area wherever reasonable and practicable,

(2) maintain or improve the integrity, form, function and resilience of the coastal marine area, and

(3) have a functional or operational need to be located in the coastal marine area, or

(4) have a public benefit or opportunity for public recreation that cannot practicably be located outside the coastal marine area.

LF-WAI-01 – Te Mana o te Wai

The mauri of Otago’s water bodies and their health and well-being is protected, and restored where it is degraded, and the management of land and water recognises and reflects that:

(1) water is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,

(2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, connecting past, present and future,

(3) each water body has a unique whakapapa and characteristics,

(4) water and land have a connectedness that supports and perpetuates life, and

(5) Kāi Tahu exercise rakatirataka, manaakitaka and their kaitiakitaka duty of care and attention over wai and all the life it supports.

Policies LF-WAI-P1 – Prioritisation

In all management of fresh water in Otago, prioritise:

(1) first, the health and well-being of water bodies and freshwater ecosystems, te hauora o te wai and te hauora o te taiao, and the exercise of mana whenua to uphold these,

(2) second, the health and well-being needs of people, te hauora o te tangata; interacting with water through ingestion (such as drinking water and consuming harvested resources) and immersive activities (such as harvesting resources and bathing), and

(3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

LF-WAI-P4 – Giving effect to Te Mana o te Wai

All persons exercising functions and powers under this RPS and all persons who use, develop or protect resources to which this RPS applies must recognise that LF-WAI-O1, LF-WAI-P1, LF-WAI-P2 and LF-WAI-P3 are fundamental to upholding Te Mana o te Wai, and must be given effect to when making decisions affecting fresh water, including when interpreting and applying the provisions of the LF chapter.

Objectives LF-VM-O2 – Clutha Mata-au FMU vision

In the Clutha Mata-au FMU:

(1) management of the FMU recognises that:

(a) the Clutha Mata-au is a single connected system ki uta ki tai, and (b) the source of the wai is pure, coming directly from Tawhirimatea to the top of the mauka and into the awa,

(2) fresh water is managed in accordance with the LF-WAI objectives and policies,

(3) the ongoing relationship of Kāi Tahu with wāhi tūpuna is sustained,

(4) water bodies support thriving mahika kai and Kāi Tahu whānui have access to mahika kai,

(5) indigenous species migrate easily and as naturally as possible along and within the river system,

(6) the national significance of the Clutha hydro-electricity generation scheme is recognised,

(7) in addition to (1) to (6) above:

(c) in the Lower Clutha rohe:

(i) there is no further modification of the shape and behaviour of the water bodies and opportunities to restore the natural form and function of water bodies are promoted wherever possible,

(ii) the ecosystem connections between freshwater, wetlands and the coastal environment are preserved and, wherever possible, restored,

(iii) land management practices reduce discharges of nutrients and other contaminants to water bodies so that they are safe for human contact, and

(iv) there are no direct discharges of wastewater to water bodies, and

(8) the outcomes sought in (7) are to be achieved within the following timeframes:

(a) by 2030 in the Upper Lakes rohe,

(b) by 2045 in the Dunstan, Roxburgh and Lower Clutha rohe, and

(c) by 2050 in the Manuherehia rohe.

LF-VM-O6 – Catlins FMU vision

By 2030 in the Catlins FMU:

- (1) fresh water is managed in accordance with the LF-WAI objectives and policies,*
- (2) the ongoing relationship of Kāi Tahu with wāhi tūpuna is sustained,*
- (3) water bodies support thriving mahika kai and access of Kāi Tahu whānui to mahika kai,*
- (4) the high degree of naturalness and ecosystem connections between the forests, freshwater and coastal environment are preserved,*
- (5) water bodies and their catchment areas support the health and well-being of coastal water, ecosystems and indigenous species, including downstream kaimoana, and*
- (6) healthy, clear and clean water supports opportunities for recreation and sustainable food production for future generations.*

Objectives LF-FW-08 – Fresh water

In Otago’s water bodies and their catchments:

- (1) the health of the wai supports the health of the people and thriving mahika kai,*
- (2) water flow is continuous throughout the whole system,*
- (3) the interconnection of fresh water (including groundwater) and coastal waters is recognised,*
- (4) native fish can migrate easily and as naturally as possible and taoka species and their habitats are protected, and*
- (5) the significant and outstanding values of Otago’s outstanding water bodies are identified and protected.*

LF-FW-010 – Natural character The natural character of wetlands, lakes and rivers and their margins is preserved and protected from inappropriate subdivision, use and development.

LF-FW-P7 – Fresh water

Environmental outcomes, attribute states (including target attribute states) and limits ensure that:

- (1) the health and well-being of water bodies is maintained or, if degraded, improved,*
- (2) the habitats of indigenous species associated with water bodies are protected, including by providing for fish passage,*
- (3) specified rivers and lakes are suitable for primary contact within the following timeframes: (a) by 2030, 90% of rivers and 98% of lakes, and (b) by 2040, 95% of rivers and 100% of lakes, and 131*
- (4) mahika kai and drinking water are safe for human consumption,*
- (5) existing over-allocation is phased out and future over-allocation is avoided, and*
- (6) fresh water is allocated within environmental limits and used efficiently*

LF-FW-P13 – Preserving natural character

Preserve the natural character of lakes and rivers and their beds and margins by:

(1) avoiding the loss of values or extent of a river, unless:

(a) there is a functional need for the activity in that location, and

(b) the effects of the activity are managed by applying:

(i) for effects on indigenous biodiversity, either ECO-P3 or ECO-P6 (whichever is applicable), and

(ii) for other effects, the effects management hierarchy,

(2) not granting resource consent for activities in

(1) unless Otago Regional Council is satisfied that:

(a) the application demonstrates how each step of the effects management hierarchies in (1)(b) will be applied to the loss of values or extent of the river, and

(b) any consent is granted subject to conditions that apply the effects management hierarchies in (1)(b), 133 (3) establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body,

(4) wherever possible, sustaining the form and function of a water body that reflects its natural behaviours,

(5) recognising and implementing the restrictions in Water Conservation Orders,

(6) preventing the impounding or control of the level of Lake Wanaka,

(7) preventing modification that would reduce the braided character of a river, and

(8) controlling the use of water and land that would adversely affect the natural character of the water body.

LF-FW-P14 – Restoring natural character

Where the natural character of lakes and rivers and their margins has been reduced or lost, promote actions that:

(1) restore a form and function that reflect the natural behaviours of the water body,

(2) improve water quality or quantity where it is degraded,

(3) increase the presence, resilience and abundance of indigenous flora and fauna, including by providing for fish passage within river systems,

(4) improve water body margins by naturalising bank contours and establishing indigenous vegetation and habitat, and

(5) restore water pathways and natural connectivity between water systems.

LF-FW-P15 – Stormwater and wastewater discharges

Minimise the adverse effects of direct and indirect discharges of stormwater and wastewater to fresh water by:

(1) except as required by LF-VM-02 and LF-VM-04, preferring discharges of wastewater to land over discharges to water, unless adverse effects associated with a discharge to land are greater than a discharge to water, and

(2) requiring: (a) all sewage, industrial or trade waste to be discharged into a reticulated wastewater system, where one is available,

(b) all stormwater to be discharged into a reticulated system, where one is available,

(c) implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring for reticulated stormwater and wastewater systems,

(d) on-site wastewater systems to be designed and operated in accordance with best practice standards,

(e) stormwater and wastewater discharges to meet any applicable water quality standards set for FMUs and/or rohe, and

(f) the use of water sensitive urban design techniques to avoid or mitigate the potential adverse effects of contaminants on receiving water bodies from the subdivision, use or development of land, wherever practicable, and

(3) promoting the reticulation of stormwater and wastewater in urban areas

ECO-01 – Indigenous biodiversity

Otago’s indigenous biodiversity is healthy and thriving and any decline in quality, quantity and diversity is halted.

ECO-02 – Restoring or enhancing

A net increase in the extent and occupancy of Otago’s indigenous biodiversity results from restoration or enhancement.

ECO-P6 – Maintaining indigenous biodiversity

Maintain Otago’s indigenous biodiversity (excluding the coastal environment and areas managed under ECO-P3) by applying the following biodiversity effects management hierarchy in decision-making on applications for resource consent and notices of requirement:

(1) avoid adverse effects as the first priority,

(2) where adverse effects demonstrably cannot be completely avoided, they are remedied,

(3) where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated,

(4) where there are residual adverse effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with APP3, and

(5) if biodiversity offsetting of residual adverse effects is not possible, then:

- (a) the residual adverse effects are compensated for in accordance with APP4, and
- (b) if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.

ECO-P7 – Coastal indigenous biodiversity

Coastal indigenous biodiversity is managed by CE-P5, and implementation of CE-P5 also contributes to achieving ECO-O1.

EIT-INF-04 – Provision of infrastructure

Effective, efficient and resilient infrastructure enables the people and communities of Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth within the region within environmental limits.

EIT-INF-P10 – Recognising resource requirements

Decision making on the allocation or use of natural and physical resources must take into account the needs of nationally and regionally significant infrastructure.

EIT-INF-P11 – Operation and maintenance

Except as provided for by ECO-P4, allow for the operation and maintenance of existing nationally and regionally significant infrastructure while:

- (1) avoiding, as the first priority, significant adverse effects on the environment, and
- (2) if avoidance is not practicable, and for other adverse effects, minimising adverse effects.

Assessment

The recommended conditions would not result in any change to the operation of the plants, including the Kaka Point WWTP, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the freshwater, the coastal environment, indigenous biodiversity therein, or any human use value arising from the recommended changes to the conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, which would maintain or improve the water quality and associated human use values of the relevant water bodies, including coastal water, while providing for the continuation of existing infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the proposed Otago Regional Policy Statement.

Regional Plan: Water

5.3.1 To maintain or enhance the natural and human use values, identified in Schedules 1A, 1B and 1C, that are supported by Otago's lakes and rivers.

5.3.2 To maintain or enhance the spiritual and cultural beliefs, values and uses of significance to Kai Tahu, identified in Schedule 1D, as these relate to Otago's lakes and rivers.

5.3.3 To protect the natural character of Otago's lakes and rivers and their margins from inappropriate subdivision, use or development

5.3.4 To maintain or enhance the amenity values associated with Otago's lakes and rivers and their margins.

5.3.6 To provide for the sustainable use and development of Otago's water bodies, and the beds and margins of Otago's lakes and rivers.

5.4.2 In the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, to give priority to avoiding, in preference to remedying or mitigating:

(1) Adverse effects on:

(a) Natural values identified in Schedule 1A;

(b) Water supply values identified in Schedule 1B;

(c) Registered historic places identified in Schedule 1C, or archaeological sites in, on, under or over the bed or margin of a lake or river;

(d) Spiritual and cultural beliefs, values and uses of significance to Kai Tahu identified in Schedule 1D;

(e) The natural character of any lake or river, or its margins;

(f) Amenity values supported by any water body; and

(2) Causing or exacerbating flooding, erosion, land instability, sedimentation or property damage.

5.4.3 In the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, to give priority to avoiding adverse effects on:

(a) Existing lawful uses; and

(b) Existing lawful priorities for the use, of lakes and rivers and their margins.

5.4.8 To have particular regard to the following features of lakes and rivers, and their margins, when considering adverse effects on their natural character:

(a) The topography, including the setting and bed form of the lake or river;

(b) The natural flow characteristics of the river;

(c) The natural water level of the lake and its fluctuation;

(d) The natural water colour and clarity in the lake or river;

(e) The ecology of the lake or river and its margins; and

(f) The extent of use or development within the catchment, including the extent to which that use and development has influenced matters (a) to (e) above.

5.4.9 To have particular regard to the following qualities or characteristics of lakes and rivers, and their margins, when considering adverse effects on amenity values:

- (a) Aesthetic values associated with the lake or river; and
- (b) Recreational opportunities provided by the lake or river, or its margins

7.B.1 Manage the quality of water in Otago lakes, rivers, wetlands and groundwater by:

- (a) Describing, in Table 15.1 of Schedule 15, characteristics indicative of Good Quality Water; and
- (b) Setting, in Table 15.2 of Schedule 15, receiving water numerical limits and targets for achieving Good Quality Water; and
- (c) Maintaining, from the dates specified in Schedule 15, Good Quality Water; and
- (d) Enhancing water quality where it does not meet Schedule 15 limits, to meet those limits by the date specified in the Schedule; and
- (e) Recognising the differences in the effects and management of point and non-point source discharges; and
- (f) Recognising discharge effects on groundwater; and
- (g) Promoting the discharge of contaminants to land in preference to water.

7.B.2 Avoid objectionable discharges of water or contaminants to maintain the natural and human use values, including Kāi Tahu values, of Otago lakes, rivers, wetlands, groundwater and open drains and water races that join them.

7.B.3 Allow discharges of water or contaminants to Otago lakes, rivers, wetlands and groundwater that have minor effects or that are short-term discharges with short-term adverse effects.

7.B.6 When assessing any consent to discharge contaminants to water, consider the need for and the extent of any zone for physical mixing, within which water will not meet the characteristics and limits described in Schedule 15, by taking account of:

- (a) The sensitivity of the receiving environment; and
- (b) The natural and human use values, including Kāi Tahu values; and
- (c) The natural character of the water body; and
- (d) The amenity values supported by the water body; and
- (e) The physical processes acting on the area of discharge; and
- (f) The particular discharge, including contaminant type, concentration and volume; and
- (g) The provision of cost-effective community infrastructure; and
- (h) Good Quality Water as described in Schedule 15.

7.C.12 Reduce the adverse effects of discharges of human sewage from existing reticulated wastewater systems, including extensions to those systems, by:

(a) Preferring discharges to land over discharges to water, unless adverse effects associated with a discharge to land are greater than a discharge to water; and

(b) Requiring systems to be operated, maintained and monitored in accordance with recognised industry standards; and

(c) Promoting the progressive upgrading of existing systems; and

(d) Requiring the implementation of appropriate:

(i) Measures to progressively reduce the frequency and volume of wet weather overflows; and

(ii) Measures to minimise the likelihood of dry weather overflows occurring; and

(iii) Contingency measures to minimise the effects of discharges of wastewater as a result of system failure or overloading of the system; and

(e) Recognising and providing for the relationship of Kāi Tahu with the water body, and having particular regard to any adverse effects on Kāi Tahu cultural and spiritual beliefs, values, and uses.

Assessment

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the freshwater, or any human use value arising from the recommended changes to the conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, which would maintain or improve the water quality and associated human use values of the relevant water bodies while providing for the continuation of existing infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the Regional Plan: Water.

Regional Plan Coast

10.3.1 To seek to maintain existing water quality within Otago's coastal marine area and to seek to achieve water quality within the coastal marine area that is, at a minimum, suitable for contact recreation and the eating of shellfish within 10 years of the date of approval of this plan.

10.3.2 To take into account community, cultural and biological values associated with Otago's coastal marine area when considering the discharge of contaminants into Otago's coastal waters.

10.3.3 To safeguard the life-supporting capacity of Otago's coastal marine area.

10.3.4 To enhance water quality in:

- (a) Coastal protection areas; and*
- (b) Coastal recreation areas; and*
- (c) Areas adjacent to marine mammal or bird sites; and*
- (d) Areas where there is a direct discharge containing human sewage; and*
- (e) Areas where there is a direct discharge of wastes from commercial, industrial or production activities.*

10.4.2 For activities involving the discharge of water or contaminants, priority will be given to avoiding adverse effects on values associated with any area identified in Schedules 2 and 3 of this Plan as being a coastal protection area, a coastal recreation area, an area of outstanding natural features and landscapes or an area important to marine mammals or birds.

Assessment

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the coastal marine area or any human use value arising from the recommended changes to the conditions are considered to be nil.

The recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, which would maintain or improve the water quality and associated human use values of Kaka Point while providing for the continuation of existing infrastructure providing an essential community function. Consequently, the proposed conditions are considered to be consistent with the Regional Plan: Coast.

Section 104(1)(c) Any other matters

The Kai Tahu ki Otago Natural Resource Management Plan 2005

The Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP) is also a relevant matter for consideration. The following objectives of are of most relevance to this application:

5.3.3 Wai Māori General Objectives

- i. The spiritual and cultural significance of water to Kāi Tahu ki Otago is recognised in all water management.*
- ii. The waters of the Otago Catchment are healthy and support Kāi Tahu ki Otago customs.*
- iii. There is no discharge of human waste directly to water.*
- iv. Contaminants being discharged directly or indirectly to water are reduced*
- v. Flow regimes and water quality standards are consistent with the cultural values of Kāi Tahu ki Otago and are implemented throughout the Otago Region and lower Waitaki Catchment.*

5.3.4 Wai Māori General Policies

1. To require an assessment of instream values for all activities affecting water.

4. To protect and restore the mauri of all water.

Discharges:

8. To require land disposal for human effluent and contaminants.

There are no sites of significance adversely affected by the current activity as there are no such sites in the vicinity.

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the freshwater, the coastal environment, indigenous biodiversity therein, or any human use value, including Iwi values, arising from the recommended changes to the conditions are considered to be nil.

While the existing activities are not entirely consistent with NRMP as they require the discharge of treated human effluent to water, the recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, which would maintain or improve the water quality and associated Iwi cultural values, of the relevant water bodies while providing for the continuation of existing infrastructure providing an essential community function. Consequently, the recommended conditions are considered to be consistent with the NRMP.

Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008

The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (NREIMP) is also a relevant matter for consideration. The following objectives of are of most relevance to this application:

6. Avoid the use of water as a receiving environment for the direct, or point source, discharge of contaminants. Even if the discharge is treated and therefore considered “clean”, it may still be culturally unacceptable. Generally, all discharge must first be to land.

10. Require that the highest environmental standards are applied to consent applications involving the discharge of contaminants to land or water (e.g. standards of treatment of sewage).

15. Any discharge activity must include a robust monitoring programme that includes regular monitoring of the discharge and the potential effects on the receiving environment. Monitoring can confirm system performance, and identify and remedy any system failures.

There are no sites of significance adversely affected by the current activity as there are no such sites in the vicinity.

The recommended conditions would not result in any change to the operation of the plants, and would provide for direct, certain, enforceable and intra vires monitoring and reporting of discharge parameters. Therefore, any adverse effects on the freshwater, the coastal environment, indigenous biodiversity therein, or any human use value, including Iwi values, arising from the recommended changes to the conditions are considered to be nil.

While the existing activities are not entirely consistent with NREIMP as they require the discharge of treated human effluent to water, the recommended conditions would have the positive effect of providing for enforceable conditions required for the monitoring of water quality limits, which would maintain or improve the water quality and associated Iwi cultural values, of the relevant water bodies while providing for the continuation of existing infrastructure providing an essential community function. Consequently, the recommended conditions are considered to be consistent with the NREIMP.

There are no other matters of concern that the Council considers relevant to this application.

4. Part 2 of the Act

Under Section 104(1) of the RMA, a consent authority must consider resource consent applications "subject to Part 2" of the RMA, specifically, sections 5, 6, 7 and 8.

The Court of Appeal has stated how to approach "subject to Part 2" in section 104(1). In *R J Davidson* the Court of Appeal found that (in summary):¹

- Decision makers must consider Part 2 when making decisions on resource consent applications. The extent to which Part 2 of the RMA should be relied on to depends on the nature and content of the planning documents being considered.
- Where the relevant planning documents have been prepared having regard to Part 2 of the RMA, and with a coherent set of policies designed to achieve clear environmental outcomes, consideration of Part 2 is not ultimately required. In this situation, the policies of these planning documents should be implemented by the consent authority. The consideration of Part 2 "would not add anything to the evaluative exercise" as "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome". However, the consideration of Part 2 is not prevented, but Part 2 cannot be used to subvert a clearly relevant restriction or directive policy in a planning document.
- Where it is unclear from the planning documents whether consent should be granted (and on what terms) or refused, and the consent authority has to exercise a judgment, Part 2 should be considered.
- If it appears that the relevant planning documents have not been prepared in a manner that reflects the provisions of Part 2, the consent authority is required to consider Part 2.

Section 5 Purpose

The recommended conditions provide for the on-going use of a resource that provides for the social, economic and cultural well-being while remedying and mitigating adverse effects on water quality, human use values, including cultural values, indigenous biodiversity and natural character.

Section 6 Matters of National Importance

The proposed conditions provide for:

¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.

Section 7 Other Matters

The proposal has appropriate regard to:

- (b) the efficient use and development of natural and physical resources
- (d) intrinsic values of ecosystems:
- (f) maintenance and enhancement of the quality of the environment
- (g) any finite characteristics of natural and physical resources
- (h) the protection of the habitat of trout and salmon

Section 8 Treaty of Waitangi

There are no specific sites of cultural significance to Kāi Tahu adversely affected by the current activity as there are no such sites in the vicinity of the activity. However, the proposed conditions would provide for better monitoring and management of the activity. This would ensure the mauri of water is maintained for future generations.

Overall, the proposed conditions are considered to be consistent with Part 2 of the Act.

5. Recommendation

- That the Council grants the review of 2005.246.V1 as shown on the attached amended consent.
- That the Council grants the review of 2008.308.V1 as shown on the attached amended consent.
- That the Council grants the review of 2005.193.V1 as shown on the attached amended consent.
- That the Council grants the review of 2008.690.V1 as shown on the attached amended consent.
- That the Council grants the review of 2003.680.V1 as shown on the attached amended consent.

5.1 Reasons for the Recommendation

- (a) The recommended conditions are expected to have nil adverse effects and to provide positive effects
- (b) The recommended conditions are consistent with the relevant statutory requirements.

- (c) The recommended conditions are consistent with the relevant planning documents and Part 2 of the Act.



Dwayne Daly
Principal Consents Planner
10 June 2024

DECISION ON REVIEW OF

Section 113 of the Resource Management Act 1991

Date:

Application No: RM24.297

Subject: *Decision on non-notified review under delegated authority*

1. Notification

The review was approved to be processed non-notified and under delegated authority on **13 June 2024**.

1) Decision and Reasons for Decision

I have considered the information provided, reasons and recommendation in the above report. No principal issues were in contention as this was a non-notified consent that did not require a hearing.

I agree with the reasons and recommendations provided by Dwayne Daly, Principal Consents Planner in the above report and adopt them as the reasons for decision under Section 132. This decision, report and any accompanying letter are the written decision under Section 113(4).

2) Decision under delegated authority

Resource consents 2005.246, 2008.308, 2005.193, 2008.690, 2003.680 are amended by the Otago Regional Council under delegated authority by:



Allan Cubitt

Independent Decision Maker for Otago Regional Council

13 June 2024