

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

APP-20181129 Application by Southland District Council for resource consent to discharge a maximum annual average of 55m<sup>3</sup>/ day of treated wastewater to land and water, and to use land for construction of an effluent storage facility, for the Tokanui township sewage treatment system at 118 McEwan Street, Tokanui

**BETWEEN**

**SOUTHLAND DISTRICT COUNCIL**  
**Applicant**

**AND**

**SOUTHLAND REGIONAL COUNCIL**  
**Respondent**

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**REPORT AND DECISION OF HEARINGS COMMISSIONERS**  
**Mr David McLernon and Mr Rob Enright**  
**5 July 2019**

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Heard on 16 May 2019 in Council Chambers, Environment Southland, Corner Price Street and North Road, Waikiwi, Invercargill.

## **Representations**

### **Applicant:**

**Mr Michael Garbett**, Counsel, Anderson Lloyd

**Mr Bevan McKenzie**, Senior Water and Waste Engineer, Southland District Council

**Mr Rainer Hoffman**, Process Engineer, Stantec New Zealand

**Mr Brydon Hughes**, Hydrogeologist, LWP Ltd

**Ms Sue Bennett**, Principal Environment Scientist, Stantec New Zealand

**Mr Janan Dunning**, Principal Planner, Stantec New Zealand

### **Submitter in support:**

**Public Health South**

### **Submitters in opposition:**

**Te Ao Marama Inc (on behalf of Te Rūnanga O Awarua)**

**Department of Conservation**

### **Section 42A reporting officer:**

**Mr Stephen West**, Principal Consents Officer (Southland Regional Council)

**It is the decision of the Southland Regional Council, pursuant to sections 104, 104B, 105, 107, and 108, and subject to Part 2 of the Resource Management Act 1991, to GRANT the application by Southland District Council for resource consent to discharge a maximum annual average of 55m<sup>3</sup>/ day of treated wastewater to land and water, and to use land for construction of an effluent storage facility, for the Tokanui township sewage treatment system at 118 McEwan Street, Tokanui**

## BACKGROUND AND PROCEDURAL MATTERS

1. This is the decision of independent Hearings Commissioners, Mr David McLernon (Chair) and Mr Rob Enright. We were appointed by **the Southland Regional Council (Environment Southland – ES)** to hear and decide an application by **Southland District Council (SDC/ Applicant)** for resource consent to discharge a maximum annual average of 55m<sup>3</sup>/ day of treated wastewater to land and water, and to use land for construction of an effluent storage facility, for the Tokanui township sewage treatment system at 118 McEwan Street, Tokanui.
2. The application for the two consents was initially lodged on 21 February 2018 and was 'publicly notified' on 20 March 2018. At the time submissions closed on 18 April 2018, three submissions had been received. One submitter supported the application and two submitters opposed. All indicated that they wished to be heard at a hearing.
3. On 3 May 2018, the application was placed on hold at the request of the Applicant under s91A of the RMA to enable further correspondence and discussions with submitters to try and resolve their concerns.
4. After discussions/negotiations between the Applicant and submitters, all submitters agreed to withdraw their right to be heard subject to various conditions being included within any consent if we were of a mind to grant. For clarity, the submitters did not withdraw their submissions and did not amend or alter the relief sought. But no expert or other evidence was filed in support of those submissions and (as noted) agreement was indicated to conditions if approval was granted.
5. The s91A suspension ceased on 30 October 2018 and on 2 November 2018 the Applicant advised that they wished to proceed to a hearing.
6. On 4 February 2019, the Applicant sought a time extension under s37 of the RMA and our Minute #1 dated 11 February 2019 granted an extension to 13 May 2019 with the requirement that the hearing take place no later than 20 working days from that date.
7. On 20 February 2019, a report was produced pursuant to s42A of the Act by ES's reporting officer, Mr Stephen West. The 's42A report' provided an analysis of the matters requiring consideration but did not provide a recommendation as to whether the consents should be granted, subject to a number of proposed conditions, or declined. The report included proposed conditions in the event that consents were granted.
8. Our Minute #2 issued on 2 April 2019 set out the timing and requirement for the pre-circulation of technical evidence by the Applicant two weeks prior to the hearing. Written technical evidence from the Applicant was pre-circulated in accordance with this minute on 2 May 2019.
9. The hearing commenced at 9.00am on 16 May 2019 in Council Chambers at Environment Southland in Invercargill. After hearing from the Applicant and s42A reporting officer, Counsel for the Applicant confirmed that he did not wish to make his right-of-reply in

writing and instead made a brief summary statement of the Applicant's position and requested time to prepare an amended set of proposed conditions for our consideration.

10. The s42A report writer confirmed, when called upon, that he was willing to support the grant of consent (subject to conditions) as a result of evidence provided by the applicant at the hearing, including responses to questions from Commissioners. The recommendation by the s42A report writer is not of course determinative, but we were assisted by the officer's adherence to the expert Code of Conduct by his objective assessment and position. As noted, no competing evidence (in opposition to the proposal) was provided at the hearing.
11. Given the differences between the Applicant's proposed conditions and those of the reporting officer, the two planners were instructed to confer and prepare an agreed set of conditions by 24 May 2019 (or if not in agreement to provide reasons) for consideration by us and the Applicant. The Applicant was to consider the proposed agreed set of conditions and forward their comments and any further suggested amendments by no later than 31 May 2019.
12. Following this, we adjourned the hearing pending the receipt of the agreed set of conditions. We then made our site visit to Tokanui late in the afternoon of 16 May 2019.
13. The agreed set of conditions from the two planners was received on 24 May 2019; the Applicant confirmed that it accepted conditions agreed as between the planners on 31 May 2019; and we closed the hearing on 14 June 2019. We record our understanding that (as between the applicant and the s42A report writer) the wording of proposed conditions are agreed; and that the proposed conditions include the amendments requested by submitters (in the event that consent is granted, as is the case).

## **THE APPLICATION**

14. Southland District Council has applied for resource consents to discharge a maximum of 55m<sup>3</sup>/day of treated wastewater to land and to water, and to use land for construction of an effluent storage facility (an infiltration trench), for the Tokanui sewage treatment system. The duration of the consents sought was 25 years.
15. The wastewater treatment system currently consists of two oxidation ponds in series with the treated wastewater then discharging through a pipe to the Tokanui River. There is significant evaporation from the ponds, particularly in summer. Although the ponds are clay-lined, a portion of the wastewater is discharged at a slow rate into the ground through the base of the ponds.
16. The applicant intends to upgrade the system by creating an infiltration trench as a replacement for the pipe between the ponds and the river although the outlet itself to the river will remain. The proposed infiltration trench will reduce the volume of the discharge to the Tokanui river to some extent, but is primarily intended to provide land contact prior to discharge. This allows for partial mitigation of the cultural effects, identified in the submission by Te Ao Mārama, and discussed below. The proposed trench will allow

wastewater to trickle through the media in the channel, partially discharging to the land beneath, with residual flow discharging to the river via the existing outfall pipe. In other words, the intention is that most wastewater will be lost to evaporation and soakage into the ground from the ponds and trench during dry periods, but may discharge excess flow to the Tokanui River during winter and following rain events.

17. The application included a plan showing a sketch of the proposed trench in profile, and its approximate location relative to the oxidation ponds and river, together with an Assessment of Environmental Effects (AEE) and a set of proposed conditions if consent were to be granted.

## NOTIFICATION AND SUBMISSIONS

18. The application was initially lodged on 24 February 2018 and it was 'publicly notified' on 19 March 2018. Submissions closed on 18 April 2018 at which time three submissions had been received. One submitter supported the application and two submitters opposed. All indicated they wished to be heard at a hearing.

19. The key issues raised by the submitter in support, Public Health South, were that:

- chemical or microbiological hazards can lead to sickness;
- the infiltration trench is an improvement;
- the proposal will potentially reduce risks to public health.

20. The key issues raised by submitters in opposition to the application, Te Ao Marama Inc and the Department of Conservation, were as follows:

- Effects on cultural values and the cultural landscape of the Tokanui River
- Discharge of human effluent to water should be avoided, with discharge to land to be preferred
- Proposed duration
- That the proposal was inconsistent with the policies of the relevant Regional Planning instruments and Iwi Management Plan
- Inadequate assessment of treatment options
- Receiving waters are already degraded and the discharge will have adverse effects on water quality.

21. On 3 May 2018, the Applicant requested that the application be placed on hold under s91A of the RMA to enable discussions and correspondence with the submitters to try and resolve their concerns. We record that it was material to our ultimate decision to grant approval that an agreed position was reached with those submitters resulting in no competing evidence being called at the hearing (albeit, that their position remained as stated in their submissions, including that the proposal be declined).

22. On 30 May 2019, the submitter in support (**Public Health South**) provided a written withdrawal of their right to be heard as a result of discussions and on the basis that agreement had been reached with the Applicant that the latter would:

- Meet the proposed conditions by implementing a planting programme
  - Undergo (sic) a technological review during the period of consent to evaluate if the current technology can be improved and
  - Ensuring that the infiltration trench will be as long as possible.
23. On 13 September 2018, **Te Ao Marama Inc (TAMI)** wrote to Environment Southland advising that they were withdrawing their right to be heard as they had reached agreement with the Applicant subject to the following:
- Implement a planting programme (trench and riparian margin within the boundary of the amended designation)
  - Ensure the trench is as long as possible within the constraints of the site
  - Undertake a periodic review of treatment technology relevant to the Tokanui WWTP throughout the term of the consent
  - Copy monitoring results to both TAMI and DoC
  - Implement erosion and sediment control measures during earthworks
  - Apply an accidental discovery protocol (as provided by TAMI) during earthworks
  - Seek a 15-year term.
24. On 26 September 2018, the **Department of Conservation (DoC)** wrote confirming that they no longer wished to be heard as they had reached agreement with the Applicant that they would:
- Implement a planting programme (trench and riparian margin within the boundary of the amended designation)
  - Ensure the trench is as long as possible within the constraints of the site
  - Undertake a periodic review of treatment technology relevant to the Tokanui Wastewater Treatment Plant throughout the term of the consent and reporting on this
  - Copy monitoring results to both Te Ao Marama Inc (TAMI) and the Department of Conservation
  - Implement erosion and sediment control measures during earthworks
  - Apply an accidental discovery protocol (as provided by TAMI) during earthworks
  - Seek a 15-year consent duration; and
  - DOC to be consulted on the development of the *“Southland Wastewater Treatment Plant Strategy”*.
25. In other words, all submitters had withdrawn their right to be heard (although it is important to note that they had not withdrawn their submissions, including relief) subject to conditions being offered by the Applicant in accordance with the agreements noted above. A key part of the agreements was that the duration of the consents if granted would be reduced to 15 years rather than the 25 years originally sought; the consent holder will therefore have to apply for a fresh consent in a shorter timeframe. At that time, the consent holder will have to address a revised planning framework that includes water quality objectives and environmental bottom lines arising from the National Policy Statement for Freshwater Management 2014 (NPSFM) (where these are not already incorporated into the proposed Water and Land plan).

26. On 30 October 2018, the s91A suspension ceased and on 2 November 2018 the Applicant confirmed that they wished to proceed to a hearing.
27. On 4 February 2019, the Applicant sought a time extension under s37 of the RMA and our Minute #1 dated 11 February 2019 granted an extension to 13 May 2019 with the requirement that the hearing take place not later than 20 working days from that date.

## **THE HEARING**

28. The hearing was convened on 16 May 2019 in the Council Chambers of Environment Southland.

### **Applicant's case**

29. **Mr Michael Garbett**, Counsel for the Southland District Council, conducted the Applicant's case presenting legal submissions and calling five witnesses. In summary, he made the following key points:
  - a) The wastewater treatment ponds at Tokanui have been operating since 1972 and the current discharge is consented under existing resource consent 201599. This expired on 8 September 2018 (note this is more than six months after this application was lodged, so discharges can continue under s124 of the RMA).
  - b) The Applicant had originally applied for a consent duration of 25 years but, following negotiations with submitters, had agreed to reduce this to 15 years. They had also agreed that:
    - Monitoring results would be provided to Te Rūnanga O Awarua and DOC
    - Technological reviews would be undertaken after 7 and 14 years
    - Indigenous planting would be undertaken along the infiltration trench and on the true right bank of the Tokanui River
    - An accidental discovery protocol would be adopted for earthworks.
  - c) Mr Garbett submitted that, whilst the activity was non-complying, the application passed both "gateways" of s104D as would be demonstrated by the expert evidence to follow.
  - d) He noted that the WWTP's were critical infrastructure for the community in terms of public health and the Tokanui system would be upgraded by the proposed works. Submissions from the Applicant would focus on the key issues of:
    - Effects on the environment
    - Leakage/ good management practice/equivalence with farm discharge effluent (FDE) ponds and
    - Consent term.

- e) He disagreed strongly with the s42A Officer's viewpoint that the treatment ponds should be treated in a manner similar to farm effluent ponds. In his view, they were fundamentally different in purpose i.e. one was a treatment system for domestic wastewater where leakage from the base was acceptable and the other was a storage pond for high strength wastewater (often from dairy operations) with no treatment aspect. The treatment for the latter came from spreading the dairy effluent onto pasture.
  - f) For this reason, there was no inconsistency in policy in granting consent for critical domestic wastewater treatment infrastructure such as at Tokanui as against privately owned farm effluent storage ponds. They are not equivalent.
  - g) He confirmed that the Applicant had agreed to reduce the term of the consent to 15 years during negotiation with the submitters.
  - h) In response to questions, Mr Garbett confirmed that he did not consider a 6 year term to be appropriate to align the consent expiry with anticipated revisions to the planning framework relating to the NPSFM.
30. **Mr Bevan McKenzie** is a Senior Water and Waste Engineer, Southland District Council. His evidence pre-circulated prior to the hearing addressed the scheme background and operation, the costs of installing a liner to the ponds, the location of monitoring boreholes, the priority of the Tokanui upgrade in relation to the upgrade of other wastewater treatment plants (WWTP's) operated by the SDC, alternative options for treatment and discharge and the term and conditions of consent.
31. In his summary evidence, which he tabled and spoke to at the hearing, he made the following main points:
- a) There are 61 properties connected to the Tokanui WWTP and 77 rate-able units. The scheme operates all year round with very few issues.
  - b) The cost of lining the ponds is estimated at \$500,000 plus GST which would be a high cost per rate payer.
  - c) The SDC's preference was to use their available funding of \$35.1m for upgrading three other larger schemes rather than for Tokanui given its low impact on the environment.
  - d) In addition, he noted that SDC had additional funding available to replace the existing vertical timber sides of the ponds with a 3:1 rock revetment to better protect the embankments of the pond from wave action and erosion.
  - e) He noted alternative options that SDC had considered for treatment and discharge included discharge to a nearby, privately owned forestry block and irrigated to land. This had not been proceeded with as the trees were to be cut down in the near future which meant it could not be used for disposal (and would probably require trucking of wastewater offsite) with the associated high costs. He also noted the requirement for a larger disposal area that would be needed in winter due to wet ground conditions.



- f) He confirmed that the SDC was now seeking a reduced consent duration of 15 years as agreed with the Runanga and other submitters, and that they adopted the revised proposed conditions as recommended by Mr Dunning as part of their application.
- g) During discussions following his evidence, he stated that the WWTP was operated by Downers on behalf of SDC. Whilst he was in general agreement with the draft conditions proposed by the s42A reporting officer, he was concerned about the minimum requirement proposed under condition 13 for a 'level 4' operator under NZQA's 'NZ Certificate in Water Treatment' qualification. There had been no training available for the last five years but in any event, he did not consider Level 4 was required for this simple pond system which relied on natural sunlight and wind to treat the wastewater rather than a complex mechanical system.

32. **Mr Rainer Hoffman** is a Process Engineer with Stantec New Zealand and has extensive experience in the field of wastewater process engineering systems. He read excerpts from his written evidence as follows and addressed the seepage of water through the base of the pond and ES's concerns that this was not best practice:

- a) He confirmed his qualifications and experience and that he had read the Code of Conduct for expert witnesses and that his evidence was given in compliance with that Code.
- b) He provided an overview of Waste Stabilisation Ponds (WSP's) and confirmed that they are amongst the most commonly used methods for treating domestic wastewater in NZ and throughout the world. They are simple to construct, operate and maintain.
- c) WSP's use wind to introduce oxygen to the pond surface waters which, with sunlight and algae over a period of weeks, breaks down and reduces the concentrations of many of the constituents in wastewater.
- d) It is typical with a WSP for wastewater to seep through the base of the pond. At Tokanui, this was determined by a pond "drop-down" test and calculated to be approx. 3.9mm/day or 10m<sup>3</sup>/day.
- e) Mr Hoffman referred to Mr Duncan Mara, a UK global expert in pond design, who recommends that lining of the base of the pond is not required unless the seepage is about 8mm/day.
- f) To maintain the water level in the WSP, the inflow should exceed the losses due to evaporation and seepage. During the summer of 2018/19, the inflow averaged 28.3m<sup>3</sup>/day vs losses of 21m<sup>3</sup>/day.
- g) The use of synthetic liners is not common for sealing WSP's and it is more usual to use natural materials such as clay, bentonite or concrete which are put in place at the time the ponds are being constructed. This is because retro fitting later is a major and costly exercise once they are operating.
- h) He referred to Water NZ's recently published "The Good Practice Guide for Waste Stabilisation Ponds : Design and Operation", November 2017. This notes ponds should

not be constructed where soils allow wastewater to “quickly” percolate down through the pond bottom to groundwater but “quickly” is not defined.

- i) He considered the use of the wastewater ponds at Tokanui to be appropriate for the small size of the community and was an acceptable method to protect public health.
  - j) Neither the seepage from the base of the ponds nor the direct discharge to the river was excessive and was not causing any water quality or other issues on the receiving environment based on monitoring results.
  - k) Mr Hoffman then contrasted the operation and mechanisms of WSP’s with those of Farm Effluent Ponds (FEP’s).
  - l) The former were treatment systems for low strength domestic wastewater with constant water levels whereas FEP’s were essentially storage ponds for high strength effluent from dairy farming operations with the pond level ranging considerably i.e. they had different functions and purposes.
  - m) Policy 17 of the proposed Southland Water and Land Plan requires that FEP’s must be sealed so they do not leak or allow contaminate to seep out.
  - n) On the other hand, he considered that lining the existing WSP ponds at considerable cost would provide no environmental benefit.
  - o) In response to questions, Mr Hoffman noted that if the ponds were to be lined, untreated wastewater would need to be trucked to Invercargill or temporarily treated on site with a mobile unit. (Mr McKenzie advised that removal of sludge from the base of the pond (de-sludging) would not be needed for approx. 15 years).
33. **Mr Brydon Hughes** is a Hydrogeologist and Director of LWP Ltd, an environmental and natural resources management consultancy based in Christchurch. His area of expertise was hydrogeological and groundwater investigations with significant experience in groundwater abstraction and the discharge of wastewater to land.
34. He read from and spoke to the Executive Summary of his pre-circulated evidence and noted the following:
- a) He confirmed his qualifications and experience and that he had read the Code of Conduct for expert witnesses and that his evidence was given in compliance with that Code.
  - b) He described the subsurface geology in the Tokanui area and the hydrogeological investigations undertaken at the site. This included the installation of 6 piezometers to enable the monitoring of groundwater levels and quality in the area surrounding the WWTP site with groundwater flow generally being from north to south.
  - c) Seepage from the ponds resulted in slight “mounding” of the water table which led to a local variation in groundwater flows in the unconfined aquifer to the south-east which

meant the flows reached the Tokanui River a short distance downstream of the WWTP site just before a rocky outcrop.

- d) Sampling of the groundwater indicated that the groundwater quality down-gradient of the ponds contained lower concentrations of contamination than both up gradient and in the Tokanui River.
  - e) As such, he concluded that seepage from the ponds was likely to result in minor effects on the down gradient water quality and less than minor effects on the water quality in the Tokanui River.
  - f) Mr Hughes also confirmed that it was expected during summer that a large proportion of the effluent would evaporate such that there would be little or no discharge to the Tokanui River.
  - g) In response to my question, Mr Hughes confirmed that the 55m<sup>3</sup>/day average discharge sought under the application equated to about 630ml/second (or about two beer cans/second as I put it). It was noted that the figure of 55m<sup>3</sup>/day was derived from the daily inflow records over the period July 2013 to June 2017 (as set out in 2.3.1 of the application) as there was no reliable method to accurately measure outflows of the treated wastewater.
35. **Ms Sue Bennett** is a Principal Environmental Scientist with Stantec New Zealand and has over 27 years' experience in environmental consulting, primarily involved with wastewater, stormwater, solid waste and biosolids management. Her specialist area was the environmental effects of discharges. She read and referred to the Executive Summary of her pre-circulated evidence and noted the following key points:
- a) She confirmed her qualifications and experience and that she had read the Code of Conduct for expert witnesses and that her evidence was given in compliance with that Code.
  - b) She considered that there was sufficient information on the nature of the discharge to the Tokanui River, and the effects of the discharge, to be certain that the assessment of the discharge from the base of the ponds and the proposed infiltration trench were such that the impact of the treated wastewater discharge on surface water and aquatic ecology were less than minor and the impact on groundwater was minor.
  - c) The addition of an infiltration trench before discharge to the river will reduce the volume and frequency of discharge, and the planting of the trench will result in a number of beneficial effects.
  - d) She also considered the proposed monitoring programme to be appropriate to confirm that the ongoing effects of the discharge will be as determined.
  - e) She considered the contaminant of major concern to be microbiological i.e. faecal coliforms but that upstream sampling indicated that the stream is impacted by upstream land use and the discharge would not alter water quality after mixing.

- f) In response to questions, Ms Bennett confirmed:
- there were benefits to planting the infiltration trench with indigenous plants in terms of increased evapotranspiration. Planting elsewhere such as on the pond embankments would have to be carefully considered as the treatment process in the ponds relied on wind to introduce oxygen i.e. only low planting should be considered, and this would require site assessment.
  - the existing outfall pipe could be extended so as to be below the river water level at all times.
  - the detailed design of the trench needed to be optimised to maximise meandering and slow down flow i.e. the detailed design should be submitted to ES for certification.
  - She outlined in her evidence a proposed monitoring programme to be included within new consent conditions.

36. Mr Janan Dunning is a Principal Planner with Stantec New Zealand with over 18 years' experience in resource management planning. He read from and referred to the Executive Summary of his pre-circulated evidence and made the following key points:

- a) He confirmed his qualifications and experience and that he had read the Code of Conduct for expert witnesses and that his evidence was given in compliance with that Code.
- b) He noted that the proposed infiltration trench was intended to facilitate the discharge of treated wastewater to land and to provide land contact prior to discharging to the Tokanui River.
- c) He confirmed that while the discharge was a discretionary activity, overall the proposal was non-complying based on the proximity of the proposed infiltration trench to the Tokanui River. Regardless, he considered the application passed both the policy and effects "gateways" of s104D and as such there was no barrier to the granting of consent under s104B subject to conditions.
- d) He noted that the operation of the existing WWTP ponds was consistent with industry standards and good management practice with existing effects on the receiving environment less than minor.
- e) He considered that lining the ponds as suggested by the s42A Officer's Report was inconsistent with industry standards, and not considered necessary and the effects of doing so had not been considered in detail.
- f) He stated that the comparison in the Officer's Report between WWTP ponds and Farm Effluent Ponds was not appropriate given their different purpose and function, different environmental effects and are addressed specifically by the regional rules and policy frameworks.
- g) There was therefore no conflict within the planning framework that would have an adverse effect on the integrity of the regional planning framework.

- h) He expressed concern about the need for a level 4 operator for the ponds, as per Mr West's proposed condition, as against level 3 which he considered appropriate for a simple system such as this, particularly given the current lack of training providers.
- i) Mr Dunning proposed that the detailed design of the infiltration trench and of the planting plan after its construction be provided to ES for certification.
- j) He noted that the trench provides benefits over the existing discharge and that, whilst the stream did not meet the current standards, the discharge does not adversely affect it after reasonable mixing.
- k) Mr Dunning commented on the weight to be given to Manawhenua Policy when they had chosen not to be heard and noted that the conditions proposed by the Applicant were reflective of Manawhenua views.
- l) He noted that the Regional Water Plan was the operative instrument and the proposed Water and Land Plan should only be given reasonable weight as it was substantively under appeal. He accepted that the proposed plan better reflected higher order instruments such as the NPSFM. This was relevant to weight.
- m) Mr Dunning concluded his evidence with comments on a number of the conditions proposed by the s42A Reporting Officer.

### **Submissions**

- 37. When submissions closed, three submissions had been received, one in support and two in opposition with all the submitters wishing to be heard. During the subsequent negotiations between the Applicant and the submitters, they all decided that they did not wish to be heard (but did not withdraw their submissions).

### **Submitter in Support**

- 38. **Public Health South** made a submission in support of the application noting the following key points:
  - Chemical or microbiological hazards can lead to sickness
  - The infiltration trench is an improvement
  - Proposal will potentially reduce risks to public health
  - A consent period of no more than 15 years
  - The infiltration trench be as long as possible to reduce bacterial loading
  - Riparian vegetation along river
  - Monitoring
- 39. Following discussions with the Applicant, Public Health South withdrew their right to be heard subject to conditions meeting their concerns about the above matters being adopted by the Applicant.

## Submitters in Opposition

40. **Te Ao Marama Inc (TAMI) (on behalf of Te Rūnanga o Awarua)** made a submission opposing the application. In summary they expressed concern about the following points:
  - Effects on cultural values
  - The discharge of human effluent to water
  - The proposed duration.
41. Following discussions with the Applicant, TAMI had withdrawn their right to be heard subject to conditions meeting their concerns as outlined above being adopted by the Applicant.
42. **Department of Conservation (DoC)** made a submission in opposition to the application. In summary, they made the following points:
  - Proposal is inconsistent with the policies of the regional plan
  - Inadequate assessment of treatment options
  - The receiving waters are already degraded and the discharge will have adverse effects on water quality.
43. Following discussions, with the Applicant, DoC had withdrawn their right to be heard subject to conditions meeting their concerns about the above matters being adopted by the Applicant.

## Section 42A Report

44. **Mr Stephen West**, Principal Consents Officer for ES, spoke to his s42A report and addressed his opinion that the key issue was that a significant portion of the discharge is through the base of the treatment ponds which is inconsistent with best management practice, and will adversely affect groundwater.
45. At the time of writing the report, he saw this as inconsistent with and contrasting with the management of agricultural effluent storage ponds. The latter were required not to leak and he considered that this had the potential to bring the integrity of the proposed Water and Land Plan into disrepute and undermine its implementation.
46. Having heard from Mr Hughes, and the applicant's other experts at the hearing, he considered the effects to be significantly lower than originally assessed.
47. In terms of Mr Hoffman's evidence, in particular his comments in relation to Water New Zealand's "The Good Practice Guide for Wastewater Stabilisation Ponds: Design and Operation", November 2017, Mr West acknowledged this was a recognised industry standard and that leakage from the bottom of ponds was allowed. This was compelling to Mr West.
48. Accordingly, he now recommended support for the application and the granting of consent as there was no inconsistency with the proposed Water and Land Plan in that Policy 17 related to agricultural effluent management and Policy 17A related to the specific

management of community WWTP's. In other words, the granting of this consent would not be contrary to policy or cause any difficulties with the future administration of the plan.

49. There were clear differences between the purpose and design/ construction of WWTP's and Farm Effluent Ponds and which the plan recognised.
50. We would like to acknowledge the professionalism of Mr West in accepting the technical evidence and for shifting his stance/ position in relation to the application.
51. Mr West then noted that the application was a non-complying activity (being the highest activity status against the relevant Regional Planning Documents) but based on the evidence presented, it passed the "gateway" provisions of s104D of the RMA, in that the adverse effects on the environment were minor, and that the proposal was not contrary to the objectives of the operative or proposed Regional Plans.
52. Mr West then addressed conditions proposed by the Applicant. We have not recorded specific comments as (subsequent to the hearing) Mr West reached agreement on proposed consent conditions with the applicant's planner.

### **Applicant's Right of Reply**

53. Mr Garbett chose to make his right of reply/ closing statement on behalf of the Applicant verbally rather than in writing. This included discussion regarding a revised set of proposed conditions.
54. Given the differences between the s42A Reporting Officer's draft conditions and those offered as part of Mr Dunning's evidence, it was agreed that the two planners would confer and develop an agreed set of conditions (or provide reasons where they did not agree). These were to be provided to us and the Applicant within a week i.e. by 24 May 2019.
55. The Applicant was to consider the proposed agreed conditions and forward them to us with any comments and/ or amendments for our consideration within a further week i.e. by 31 May 2019.
56. We then adjourned the hearing and made our site visit.

### **SITE VISIT**

57. We carried out our site visit after adjourning the hearing and we record our thanks to Ms Lacey Bragg of ES who drove us to and from Tokanui, and to Mr Paul Reid of Southland District Council who showed us over the WWTP site explaining each aspect of it. We appreciate their assistance, especially the provision of appropriate wet weather gear on what was a bitterly cold day. The adverse weather conditions did however allow us to see the wastewater system in probably its worst operating status.

## ASSESSMENT

58. In assessing the application, we have considered the application documentation including Assessment of Environmental Effects (AEE), the s42A report, all submissions received and the evidence provided during and after the hearing.
59. Given the nature of the application and the protracted nature of the overall process, we have included a reasonably detailed summary of the evidence presented. This approach has enabled us to avoid repetition below. While our assessment does not specifically address all the points raised, we confirm we have considered all of the matters raised in making our determination.
60. In making our assessment, we are required to consider the actual and potential effects of the application on the existing environment, which includes existing activities, permitted activities and activities authorised by existing resource consents.
61. An accurate description of the affected existing environment was provided in SDC's Consent Application and section 3.3 of the s42A report, which we adopt and will not repeat here.

### Status of the Application

62. The starting point for our assessment of the application is to determine the status of the activity under the Regional Planning Framework. As per the s42A report, Resource Consents for the proposed activity are required under the following:
  - Regional Effluent Land Application Plan – the discharge of effluent onto or into land from a community sewerage scheme is a **discretionary activity** under Rule 5.2.1.
  - Regional Water Plan – assessed as a **discretionary activity** under Rule 1 and Rule 3
  - Proposed Southland Water and Land Plan – assessed as a **discretionary activity** under Rule 7; as a **non-complying activity** under Rule 33(b) and 32(b)

Note: Regional Air Plan – assessed as a **permitted activity** under Rule 5.5.3

63. Overall, the application is assessed as being a **non-complying activity**.

### Statutory Considerations

64. In terms of our responsibilities for giving consideration to the application, we are required to have regard to the matters listed in sections 104, 104B, and 105 of the Act, and ss108 and 108AA RMA (for proposed consent conditions, if we grant consent, which we have decided to do).
65. In terms of section 104(1), and subject to Part 2 of the Act, which contains the Act's purpose and principles, we must to have regard to-
  - (a) *Any actual and potential effects on the environment of allowing the activity;*



- (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
  - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
66. In terms of section 104B, we may grant or refuse the application, and if granted we may impose conditions under section 108.
67. As this is a non-complying activity, we must consider whether it passes the “gateway” threshold of s104D.
68. In terms of section 105, when considering a section 15 (discharge) matter, we must, in addition to section 104(1), have regard to-
- a) *The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
  - b) *The applicant’s reason for the proposed choice; and*
  - c) *Any possible alternative methods of discharge, including discharge to any other receiving environment.*

### **Actual and potential effects on the environment**

69. The key effects of the discharge on the environment are considered to be:
- Impact on cultural and spiritual values
  - Water quality effects on groundwater
  - Water quality and ecological effects on the Tokanui River
  - Positive effects for the community.

### **Cultural and Spiritual effects**

70. The Applicant consulted with Te Ao Marama Inc prior to lodging the application. In consequence, TAMI provided a cultural impact assessment which was submitted as part of the application. This identified potential adverse cultural effects if the proposal was to be granted.
71. Relevant cultural values include:
- Ki uta ki tai, interconnection between activities in the upper and lower catchment;
  - Mahinga kai is central to Ngāi Tahu identity, with cumulative effects of water quality reducing access to mahinga kai. Tokanui River, its surrounding waterways and the land were important ancestral waters to Murihiku Māori for mahinga kai. It is important to halt the decline and improve water quality.
  - Cultural landscape of the Tokanui River, especially the coastal area where the river flows to the sea;
  - Presence of wāhi tapu and adverse impacts of human waste discharge on wāhi tapu downstream;
  - Discharge of human waste to water and its adverse impacts to cultural values.

- Te Ao Marama Inc exercises kaitiakitanga in relation to the subject proposal, and the wider catchment.
72. Wai is fundamental to health and wellbeing of Māori. The proposal has both physical and metaphysical impacts on values identified by Te Ao Marama. Disposal of waste and treatment and disposal of human effluent and wastewater is of major concern for Ngāi Tahu. It results in physical and spiritual contamination of the waterway. An identified bottom line was to avoid discharge of wastewater to water, which adversely impacts mauri, wairua, mahinga kai and wāhi tapu. Wastewater should be treated to remove contaminants, then discharged to land via wetlands and riparian areas to allow Papatūānuku to provide a natural filter for waste. Where not practical and feasible, then a high standard of treatment and robust monitoring is expected.
  73. In light of these values, the proposal resulted in adverse cultural effects and Te Ao Marama's opposition in its submission.
  74. Having stated these values, Te Ao Marama confirmed that the proposal was an improvement by installing an infiltration trench to allow wastewater to filter through this before entering the Tokanui River; while acknowledging that in wet winter months, there may be no infiltration of wastewater.
  75. The submitter identified relevant Ngā Kaupapa/Policy including Te Rūnanga o Ngāi Tahu Act 1996, Ngāi Tahu Claims Settlement Act 1998, and s6(e), s7(a) and s8 RMA. These require consideration of relevant Māori cultural values, and the Commissioners note that these are reflected in the planning provisions, discussed below, including Te Mana o te Wai.
  76. We have placed significant weight on the agreed position reached by the applicant with Te Ao Marama Inc.<sup>1</sup> Failure to reach an agreed position, including as to consent conditions and duration, may have resulted in a different outcome on the subject application given the emphasis placed on consideration of cultural values and effects under statutory and planning provisions relevant to water quality. This finding is of course specific to this subject application on its merits; and we note the importance of the community of Tokanui continuing to have access to functional wastewater treatment and disposal. The latter is of course an important wellbeing in terms of the health and safety of people and communities under s5 RMA.

### **Water Quality Effects on Groundwater**

77. As set out in the evidence of Mr Hughes, analysis and testing of groundwater samples from the piezometers surrounding the ponds indicated that the groundwater quality down gradient of the ponds contained lower concentrations of contaminant than upgradient and in the Tokanui River.
78. As such, the seepage from the ponds was likely to result in only minor (or less than minor) physical effects on the down gradient water quality.

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<sup>1</sup> Again acknowledging that Te Ao Marama still sought decline of the proposal.

## **Water Quality and Ecological Effects on the Tokanui River**

79. In relation to the effects on the Tokanui River, Mr Hughes concluded that the discharge would have less than minor effects in the water quality in the Tokanui River.
80. The absence of adverse effects on groundwater and water quality, based on the uncontested expert evidence, was a material factor in granting approval to the proposal.

### **Positive Effects**

81. The positive effects of the application include:
  - Ongoing health benefits to the public through the continued operation of the critical Tokanui WWTP infrastructure.
  - Cessation of the discharge of wastewater directly to water through the addition of an infiltration trench. This increased the opportunity for soakage and evaporation during summer as well as providing an improved cultural outcome as a result of the wastewater touching Papatuanuku before reaching the Tokanui River.
  - Planting of the infiltration trench would improve evapotranspiration.
  - Proposed consent conditions including monitoring, s128 RMA review, and a limited term of 15 years so that the consent holder has sufficient certainty for operation of its facility but must (within the lifespan of the consent) revisit water quality, cultural impacts and other effects of the wastewater treatment ponds.

### **Section 107**

82. In terms of s107, we are of the view that consent can be granted in that the effects of the discharge onto land or into water are minor or less than minor as per the uncontested expert evidence of Mr Hoffman. The addition of the infiltration trench is likely to improve the quality of the discharge over the current situation.

### **Conclusion**

83. Overall, we are of the view that the actual and potential effects on the environment are generally minor or less than minor and can be managed through appropriate conditions.

### **Relevant planning provisions**

84. Analyses of the relevant planning provisions were provided by both Mr Dunning on behalf of the Applicant and by Mr West in the s42A report.
85. As outlined in Mr West's s42A report, the relevant documents and standards were considered to be:
  - National Policy Statement for Freshwater Management (NPSFM) 2014
  - National Environmental Standard for Sources of Human Drinking Water Regulations 2007
  - Southland Regional Policy Statement 2017
  - Regional Water Plan for Southland 2010

- Regional Effluent Land Application Plan 1998
- Proposed Southland Water and Land Plan 2018
- Southland Regional Air Plan 2016
- Te Tangi a Tauria, the Iwi Management Plan for Southland
- Good Practice Guide for Waste Stabilisation Ponds: Design and Operation – November 2017.

86. Mr West’s s42A report provided a comprehensive review of the impact of the proposed activity in relation to the various documents and we do not propose to repeat them here. Rather we generally adopt Mr West’s comments and assessments as set out in his report in relation to each of the relevant planning documents, albeit we do not adopt the written report’s statement that the proposal is contrary to relevant policies.
87. We have given full consideration to the relevant policy framework identified in the s42A report, and addressed by the Applicant’s planner. A few additional comments are merited as follows:

**Cultural effects**

- NPSFM 2014, Objective AA1 (Te Mana o te Wai); Objective D1 & Policy D1.
- RPS Objective TW3 and Policy TW4
- Regional Water Plan, Policy 1A
- Regional Effluent Land Application Plan, Objective 4.1.5, Policy 4.2.8
- Proposed Southland Water & Land Plan, Objective 3, Objective 4, Objective 5, Objective 13, Policy 1, Policy 2, Policy 3,

88. There is a distinct emphasis in the cascade of planning instruments to consideration of the interests of tangata whenua in management and protection of water. As noted, the applicant commissioned a cultural impact assessment and consulted with Te Ao Marama Inc prior to lodging the application. We have had regard to the conditions agreed by Te Ao Marama Inc (albeit without prejudice to their submission). The conditions incorporate tangata whenua values to address adverse cultural impacts on water from the proposal.

**Quality of water**

- NPSFM, Objective A2
- RPS, WQUAL 1, WQUAL 2
- RPS, WQUAL9
- Regional Water Plan, Objective 2, Objective 3, Objective 4, Objective 8, related objectives and policies (as identified in the s42A report)
- Regional Effluent Land Application Plan (various objectives and policies as identified in the s42A report)
- Proposed Southland Water and Land Plan (various objectives and policies as identified in the s42A report)

89. In summary terms, the high-level policy intent is that the overall quality of water is to be maintained or improved, having regard to identified values. We do not need to resolve, on the facts of this proposal, whether “overall quality” (as that expression is used in both the

NPSFM 2014, and regional instruments sitting below the NPSFM<sup>2</sup>) should be read as applying to specific discharges, on the facts of an individual application, as compared to wider areas, catchments and activities.

90. We have relied on the uncontested expert evidence that the proposed infiltration trench will reduce the frequency of discharge to the river, particularly during low flow periods, resulting in an improvement over the existing discharge.
91. As noted in the s42A report, in terms of RPS WQUAL9, all wastewater passing through the pond bases to groundwater will have, at minimum, primary treatment. Wastewater that discharges to the infiltration trench or the river will also have at minimum primary treatment.
92. As to the operative Regional Water Plan, we observe that the s42A report identified that Policies 3, 4 and 25 do not provide absolute bottom lines as they “essentially kick back the decision to the purpose of the RMA” (at p25). Sections 6 and 8 RMA do arguably create bottom lines; and of course s5 RMA requires consideration of the wellbeing of the Tokanui community, which is reliant on access to safe and effective wastewater treatment. We have otherwise discussed Pt 2 RMA below.

### **Community wellbeing and critical infrastructure**

NPSFM, Objective A4 and Policy A7

RPS, WQUAL7, INF1Policy 13, Policy 26A

Proposed Southland Water and Land Plan, Objective 9B, Objective 13, related policies identified in the s42A report, Policy 40

93. These are generally supportive of the application, in that the wastewater system contributes to the well-being of the Tokanui community. This is addressed in our discussion of “positive effects” and Pt 2 RMA.
94. Policy 40 of the Proposed Southland Water and Land Plan reinforces that we may limit the term of a consent (beyond that proposed by the Applicant) to address adverse effects where these are uncertain, and that we should have regard to the term sought by the applicant, in this case now 15 years. The s42A report originally recommended a term less than 15 years but Mr West changed his recommendation after hearing the Applicant’s evidence.
95. Whilst at the time of writing his report, Mr West was concerned that the granting of consent might bring the planning framework into disrepute and cause difficulty in administration, at the hearing he acknowledged his concerns had been met in light of the technical expert evidence. The purpose and operation of WSP’s and FEP’s were accepted as fundamentally different and recognised as such in the Plans.

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<sup>2</sup> Noting that several of the regional plan instruments were promulgated before the NPSFM 2014 was operative; and that parts of the NPSFM 2014 are still to be given effect to, prior to 2022.

96. In relation to cultural effects:
- There are two relevant iwi management plans, Te Tangi a Tauira and the Ngāi Tahu Freshwater Policy Statement.
  - These focus on providing for Ngāi Tahu's kaitiaki role, consideration of the cultural values of water, avoiding the discharge of contaminants to water, striving for the highest appropriate water quality, protection of the life supporting capacity of land and water, restoration of habitat and monitoring of resource consents.
  - The Ngāi Tahu Freshwater Policy Statement focuses on restoring and protecting the mauri of freshwater resources, maintaining healthy mahinga kai populations and habitats and enabling kaitiakitanga.
97. The proposal is consistent with many of these policies, as it avoids discharge to water and will have an overall positive effect on water quality. Other provisions relevant to cultural effects were identified by the s42A report, including the RPS, and operative and proposed Water and Land Plans.

#### **Conclusion on relevant plans**

98. Overall, having considered all of the evidence and submissions, we are of the view that the application can be said to be generally consistent with the objectives and policies in the relevant planning documents, subject to conditions. Our conclusion relies on the agreed position reached by the applicant's planner and the s42A report writer (Mr West) and the uncontested expert evidence provided by the Applicant on water quality effects.

#### **Section 104D RMA**

99. In light of our conclusions as to adverse effects being minor or less than minor, and our view that the proposal is generally consistent with the relevant objectives and policies identified in the s42A report, the proposal passes both limbs of the s104D RMA gateway.

#### **Section 105**

100. In term of our responsibilities under s105, we have had particular regard to the sensitivity of the receiving environment. This is to the ground underneath the ponds and infiltration trench or to the Tokanui River.
101. Alternatives to proposed discharge at this site are disposal elsewhere such as to a nearby forestry block.
102. In the Applicant's view, the discharge will have no more than minor adverse effects on the environment and be beneficial to the landowner.

## Part 2 of the Act

103. All the considerations under s104 we have described are subject to Part 2 of the Act. In accordance with Part 2, we must determine whether the application achieves the purpose of the Act and is consistent with the principles of the “*sustainable management of natural and physical resources*”, as defined in s5.
104. Consideration of an application under s 104 is “subject to Part 2” RMA. The senior Courts have revisited the meaning of “subject to Part 2” in the context of resource consent applications, in light of *King Salmon*.<sup>3</sup>
105. In *Davidson*<sup>4</sup> the Court of Appeal determined that:
- (a) In contrast to plan change processes, RMA decision-makers should usually consider Part 2 when making decisions on resource consents (that is the implication of the words “subject to Part 2” in s 104);
  - (b) where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it “would not add anything to the evaluative exercise”. It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2. In other words, “genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome”;
  - (c) use of conditional language (“may”) suggests a residual discretion to consider Pt 2 RMA, but the point does not need to be resolved for this proposal.
106. No party contested that Pt 2 RMA was generally relevant. There has been a change in planning framework and the pSWLP is subject to appeal, and not yet operative, with a range of appeal points relating to the policy and rule framework. Accordingly, Pt 2 RMA is relevant to the proposal.

## Section 6, 7 and 8

107. Sections 6 and 7 identify matters that must be recognised and provided for, and matters to which particular regard should be had. Section 8 requires that the principles of the Treaty of Waitangi are taken into account. Of relevance are Section 6(e) - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga, Section 7(a) kaitiakitanga, 7(b) the efficient use and development of natural and physical resources, 7(d) the intrinsic values of ecosystems, 7(f) maintenance and enhancement of the quality of the environment, and Section 8.

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<sup>3</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38

<sup>4</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

108. The effect on water quality, which affects the values of ecosystems, the quality of the environment and the relationship of Ngāi Tahu with its ancestral lands, waters and taonga within the catchment, were discussed earlier. The proposal provides for the efficient use of the land resource.
109. The purpose of the Act is to promote the sustainable management of natural and physical resources. Sustainable management involves managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety.
110. However, the Act promotes the use and development of natural resources only while (s5):
- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
  - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment*
111. In light of our findings on effects, we consider that the activity meets the purpose of the Act. It is vital to the health, safety and wellbeing that the community of Tokanui has uninterrupted access to wastewater treatment and disposal. That system should be improved over time, to improve water quality outcomes; and respond to cultural effects identified by kaitiakitanga.

## **Conditions**

103. In light of our decision to grant approval, we can address the topic of consent conditions relatively briefly. The wording of consent conditions was agreed between the Applicant and s42A report writer. The proposed consent conditions included all matters that submitters requested except duration and we have included a condition under s123 setting a duration of 15 years as agreed between the parties during negotiations; we note that the conditions were offered by the Applicant on an Augier basis.
104. We are satisfied that proposed conditions meet relevant tests for validity and preconditions under s108 and s108AA RMA and the wider statutory and planning framework. This includes the reduced consent duration of 15 years. In light of our conclusions on effects, the agreed set of conditions are approved although we have made a few minor changes to correct typographical errors and clarify intent.

## **Conclusion**

105. On the basis of the above assessment of effects on the environment, our evaluation of consistency with the objectives and policies of the relevant planning provisions, and subject to Part 2 of the Act, we are of the view that the purpose and principles of the Act can be best achieved by granting the application, subject to the consent conditions in Annexures 1 and 2 attached.



## Decision

It is the decision of the Southland Regional Council, pursuant to sections 104, 104B, 105, 107, and 108, and subject to Part 2 of the Resource Management Act 1991, to GRANT the application by Southland District Council for resource consent to discharge a maximum annual average of 55m<sup>3</sup>/ day of treated wastewater to land and water, and to use land for construction of an effluent storage facility, for the Tokanui township sewage treatment system at 118 McEwan Street, Tokanui.

## Appeal

The parties are advised that there is a right of appeal to the Environment Court within 15 Working Days of receipt of this decision:

Dated at Christchurch this 5th day of July 2019



**David McLernon**  
Hearings Commissioner (Chair)



**Rob Enright**  
Hearings Commissioner

## Conditions

**Annexure 1 – Discharge Permit AUTH-20181129-01**

**Annexure 2 – Land Use Permit AUTH-20181129-02**