Decision released from confidential session

Recommendation from (agenda report)	Date of meeting	Recommendation to (decision-making meeting)	Date of meeting
		Nelson Regional Sewerage Business Unit	26 April 2023

Report Title and number

Rabbit Island Land Disposal System Consent Application Report (R27651)

Documents released

Decision RSBU/2023/010, Report (R27651), attachments (1995708647-27) and (1995708647-29)

Decision

RSBU/2023/010 Resolved

That the Nelson Regional Sewerage Business Unit

1. Receives the report Nelson Regional Sewerage Business Unit Rabbit Island Land Disposal System Consent Application Report (R27651) and its attachments (1995708647-27) and (1995708647-29); and

2. Approves an appeal be lodged against the consent conditions contained in Resource Consents RM200638, RM200639 and RM200640 if resolution is not confirmed prior to the appeal submission deadline.

3. Agrees that Report (R27651), attachments (1995708647-27) and (1995708647-29) and the decision be made publicly available following the successful resolution of the consent conditions, or the lodgement of an appeal.

Nelson City Council
Te Kaunihera o Whakatū

tasman district council | Te Kaunihera o te tai o Aorere

Nelson Regional Sewerage Business Unit

26 April 2023

Report Title:	**Nelson Regional Sewerage Business Unit Rabbit Island Land Disposal System Consent Application Report**
Report Author:	**Nathan Clarke - General Manager Regional Sewerage and Landfill**
Report Number:	**R27651**

1. Purpose of Report

1.1 To consider and approve an appeal in relation to the Nelson Regional Sewerage Business Unit (NRSBU) Biosolids Discharge to Land Consent Decision.

2. Summary

2.1 The NRSBU applied for a renewal of the Biosolids discharge to land consents and other associated consents in August 2020.

2.2 NRSBU has been discharging biosolids to land as a fertiliser for the pine plantation on Moturoa/Rabbit Island since 1996.

2.3 Scientific monitoring and investigations have been undertaken on this system throughout its life and no significant adverse effects have been found scientifically.

2.4 The NRSBU sought a consent term of 35 years. A range of consent conditions were volunteered to support this process.

2.5 On 14 April 2023 NRSBU received the consents and the decision regarding the consents.

2.6 The consents were granted, the consents number are RM200638, RM200639, RM200640, RM200641.

2.7 Several ambiguities were identified between the consent and the consent decision documentation. The consent decision documentation states that consents RM200638, RM200639, RM200640 are granted for 35 years, whereas the actual consent documents for RM200638, RM200639, RM200640 state the consent is for 17 years.

2.8 A meeting was arranged with the NRSBU Chair, and the NRSBU's consent advisors on Wednesday 19 April, where the consent conditions and decision were discussed.

2.9 The consenting advisors have identified a few conditions that are not ideal from a NRSBU perspective, and there is one decision that is potentially not within the authority of the consent commissioners to impose.

2.10 Further advice is being sought over this point.

2.11 The Chair of the NRSBU board requested an extraordinary NRSBU meeting to discuss the consent issues, and to decide whether an appeal should be lodged, and to what extent the NRSBU should appeal.

3. Recommendation

That the Nelson Regional Sewerage Business Unit

1. ***Receives the report Nelson Regional Sewerage Business Unit Rabbit Island Land Disposal System Consent Application Report (R27651) and its attachments (1995708647-27) and (1995708647-29); and***

2. ***Approves an appeal be lodged against the consent conditions contained in Resource Consents RM200638, RM200639 and RM200640 if resolution is not confirmed prior to the appeal submission deadline.***

3. ***Agrees that Report (R27651), attachments (1995708647-27) and (1995708647-29) and the decision be made publicly available following the successful resolution of the consent conditions, or the lodgement of an appeal.***

4. Exclusion of the Public

4.1 This report has been placed in the confidential part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to:

- Section 48(1)(d) That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the local authority to deliberate in private on its decision or

recommendation in any proceedings to which this paragraph applies.

Section 48(2)

Paragraph (d) of subsection (1) applies to -

(a) Any proceedings before a local authority where -

(i) A right of appeal lies to any Court or tribunal against the final decision of the local authority in those proceedings; or

(ii) The local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings; and

c) Any proceedings of a local authority in relation to any application or objection under the Marine Farming Act 1971.

5. Background and Discussion

5.1 The existing discharge permit held by the NRSBU for the application of biosolids to land expired on 8 November 2020.

5.2 NRSBU applied for the consents on 7 August 2020 and the Tasman District Council (TDC) Resource Consents Manager exercised the Council's discretion under section 124 of the RMA to allow the continued operation of the facility under the existing permit until the consent application process is completed, including any appeals.

5.3 NRSBU proposed to continue the activity beyond this date and therefore sought a new discharge permit. NRSBU also sought to ensure all other activities associated with the biosolids application hold the appropriate resource consents under the current planning framework.

5.4 The full suite of resource consents sought from TDC in relation to activities on Moturoa/Rabbit Island are:

- A discharge permit for the application of biosolids to land,
- A discharge permit for the discharge of odour to air as a result of the application of biosolids to land and the operation of the Biosolids Application Facility (BAF),
- A land use consent to operate and maintain the BAF and all other land use activities associated with the application of biosolids to land, and
- A discharge permit for stormwater and washdown at the BAF.

5.5 Comprehensive monitoring of the biosolids discharge over the last 24 years produced a robust database of information and resulted in the environmental effects of the activity being well understood.

5.6 This data and knowledge were considered in detailed specialist assessments prepared by independent experts in support of the applications.

5.7 NRSBU sought a 35-year duration on all resource consents relating to the application of biosolids. This term reflected the positive reuse of resources, limited adverse effects on the environment observed under the existing consents and predicted into the future, and provided certainty and financial security to NRSBU.

5.8 A robust set of monitoring and review conditions were volunteered by NRSBU to manage any new information or environmental effects (including cumulative effects) which might come to light during the term of consents.

5.9 A five-year term is sought on the discharge permit for washdown water and stormwater at the BAF. This provides sufficient time for NRSBU to implement measures to capture and direct those discharges to holding tanks at the Biosolids Application Facility (BAF)

5.10 A hearing was held on 22 August 2022 for the consents and evidence was heard over two days.

5.11 Four submissions were received with two in support and two in opposition. Three submitters indicated that they wished to be heard.

5.12 Commissioners visited the Bell Island wastewater treatment plant and the Moturoa/Rabbit Island biosolids facility on 1 August 2022.

5.13 The hearing was adjourned on 3 August 2022 and following the submission of a final set of proposed conditions by NRSBU the hearing was closed on 24 March 2023

6. Resource Consents Received

6.1 On the evening of 14 April 2023 NRSBU received the resource consent decision and resource consents. All consents were granted.

7. Resource Consent Duration

7.1 On reading the consent and consent decision, ambiguities were identified. The Consent Decision summary is shown below:

1 Summary

[1] Under delegated authority[2] of Tasman District Council, we **GRANT** the following resource consent:

RM200638	Discharge permit to discharge biosolids onto land, for a consent term 35 years;
RM200639	Discharge permit to discharge contaminants from biosolids applications (mainly odour) into air, for as consent term of 35 years;
RM200640	Land use consent (section 9(3)) to operate and maintain the Biosolids Acceptance Facility, together with all land use activities associated with the above application of biosolids onto land for a consent term expiring on 16 March 2040; and
RM200641	Discharge permit to discharge washdown water and stormwater onto and into land from the Biosolids Acceptance Facility, for a consent term of five years.

7.2 The duration condition in the consent documents themselves is shown below.

> **Duration of consents**
>
> 5. The date of expiry of resource consents RM200638, RM200639 and RM200640 is 16 March 2040.
>
> 6. The term of resource consent RM200641 is five years from the commencement date.

7.3 The discrepancy has been questioned and no formal response has been received at this time.

7.4 Due to the appeal timeframe it is unclear whether a response will be available prior to the appeal submission date.

7.5 NRSBU officers are disappointed to not receive a longer consent duration, particularly since no scientific verifiable significant adverse effects are able to be identified after 24 years of undertaking the activity.

7.6 The activity being undertaken includes positive reuse of the nutrients contained within the biosolids. It enhances tree growth within the pine plantation on Moturoa/Rabbit Island resulting in improved economic return to TDC and is a low-cost solution for the NRSBU.

7.7 The principal objections from the submitters was the term of the consent and the cultural significance of Moturoa Rabbit Island.

7.8 It is possible to appeal the consent duration as part of an appeal process.

7.9 The NRSBU advisors have suggested that the likelihood of success for an appeal on the duration of the resource consents is low.

8. Resource Consent Conditions

8.1 NRSBU volunteered a number of conditions for the resource consent in order to support the justification for allowing a long timeframe for the resource consent.

8.2 These conditions have largely been adopted by the commissioners, but additional conditions or amendments to the volunteered conditions have also been imposed.

8.3 There are a few conditions that raise concerns with NRSBU Officers and advisors.

8.4 The principal condition that has the most concern to NRSBU is condition 33, which states that no vehicle or staff member associated with the biosolids application are to enter exclusion zones including forestry roads.

8.5 The excerpt from the consent is shown below.

> 33. The Consent Holder shall ensure no vehicles or staff associated with the biosolids application are to enter wāhi tapu sites defined as an exclusion zone including where forestry roads cross through these areas. Entry may only occur with agreement of iwi representatives through the Annual Hui process detailed in condition 8.

8.6 Advice is being sought as to whether this condition can legally be imposed by the commissioners.

8.7 The map above shows the areas of particular concern for condition 33.

8.8 Condition 33 basically prevents NRSBU staff and NRSBUs Biosolids contractor from travelling to the eastern area of Moturoa/Rabbit Island on existing roads.

8.9 NRSBU propose to liaise with Iwi representatives about condition 33 to see whether they would consider variations of this condition, and/or whether Iwi representatives would approve access through this area for the 17-year period of the resource consent.

8.10 If this cannot be changed then NRSBU would either need to get consent from each Iwi representative, or a new road (or roads) would need to be formed to avoid these exclusion areas.

8.11 The roads on Moturoa/Rabbit Island have been formed for forestry activities. NRSBU uses the roads installed and managed for forestry purposes and liaises with the forestry management company.

9. Options

9.1 It is proposed that the NRSBU liaise with the TDC to identify whether some of the conditions can be changed under a minor correction clause (Section 133a of the of the RMA). This may allow some of the

ambiguities with conditions to be resolved, but it is currently thought that this may not cover condition 33.

9.2 If the minor amendment process or another resolution option cannot be used in the short timeframe available, then there are three options that can be considered by NRSBU in relation to the resource consents. These options are:

- Accept the consent duration and the consent conditions as they are.
- Appeal the conditions of the consent but accept the duration of the consents
- Appeal the consent duration and the condition of the consents.

9.3 The following table summarises the options for the appealing the consents or not.

Option 1: Accept the consent duration and the consent conditions as they are	
Advantages	• No additional cost • No additional work • Clarity on what the conditions are now. • No exacerbation of any cultural concerns.
Risks and Disadvantages	• Consent duration is shorter than desired. • Conditions imposed will likely require the formation of a new access road. • Some conditions may be difficult to implement.
Option 2: Appeal the conditions of the consent but accept the duration of the consents (Recommended Option)	
Advantages	• Likelihood of achieving positive outcome considered reasonably high • Likely to be able to undertake the activities without significant additional disturbance to land on Moturoa / Rabbit Island. • Likely lower cost than appealing the consent duration
Risks and Disadvantages	• May not be successful and receive the decision desired. • Appeal needs to be lodged within 15 Working days of 14 April 2023 • Appeal will incur additional financial costs. • May upset Iwi.
Option 3: Appeal the consent duration and the condition of the consents.	

Advantages	• If successful will to be able to undertake the biosolids activities without significant additional disturbance to land on Moturoa / Rabbit Island. • May receive additional consent term.
Risks and Disadvantages	• Unlikely to achieve positive outcome for duration. • Appeal needs to be lodged within 15 Working days of 14 April 2023 • May need to concede additional conditions to get longer term. • Higher cost • An appeal on duration would go against the submissions from Iwi which may cause relationship issues with Iwi

10. Recommendation

10.1 It is recommended that NRSBU consider liaising with TDC and Iwi to discuss the conditions of the consents.

10.2 If resolution cannot be achieved within the available timeframe for NRSBU to lodge an appeal, it is recommended that NRSBU authorise an appeal of the conditions of the consent, but do not appeal the duration of the consent.

10.3 NRSBU recommend NRSBU prepare appeal documentation on the assumption that the conditions will not be able to be varied within the required timeframe.

10.4 It is therefore considered that NRBSU should adopt Option 2 outlined above.

11. Conclusion and Next Steps

11.1 NRSBU has received a Resource Consents for the Discharge of Biosolids to Moturoa/Rabbit Island for a duration of 17 years.

11.2 NRSBU will liaise with TDC and Iwi and identify whether the conditions can be varied under Section 133a, or approval from Iwi can be given for the 17-year period of the Biosolids Discharge consent.

11.3 Subject to approval of Option 2 by the NRSBU Board if the conditions cannot be varied, or Iwi approval cannot be gained within the timeframe required to lodge an appeal, then NRSBU will lodge an appeal.

11.4 NRSBU propose to instruct the NRSBU consent advisors to prepare appeal documentation in anticipation of an appeal.

11.5 It is proposed that this appeal is only submitted if resolution cannot otherwise be achieved on the conditions.

Important considerations for decision making

Fit with Purpose of Local Government

The NRSBU is a joint committee constituted pursuant to the provisions of Schedule 7 to the Local Government Act 2002 and contributes to the four Local Government well-beings of social, economic, environmental, and cultural.

Consistency with Community Outcomes and Council Policy

Our infrastructure is efficient, cost effective and meets current and future needs.

Risk

This report allows the NRSBU board to consider the risks to NRSBU from the conditions associated with the new resource consent, and to agree on the actions proposed to resolve these risks.

Financial impact

This report has minor financial impacts to NCC but does have a small impact on annual budgets. The subject is strategic and not achieving appropriate outcomes could result in additional costs to council.

Degree of significance and level of engagement

The NRSBU is a Joint Committee of the two Councils and its activities are included in the Long-term Plans and Annual Plans of each Council. Consultation is undertaken by both Councils in the preparation and adoption of these plans

Climate Impact

The NRSBU is a Joint Committee of the two Councils and its activities are included in the Long-term Plans and Annual Plans of each Council. Consultation is undertaken by both Councils in the preparation and adoption of these plans. Climate mitigation and adaptation actions are included in the capital works programme in the NRSBU Business Plan

Inclusion of Māori in the decision-making process

No engagement with Māori has been undertaken in preparing this report but iwi have representation on the Board.

Delegations

The Councils are agreed that the responsibility for all management and administrative matters associated with the NRSBU operation shall be with the Board, and in particular the Board shall without the need to seek any further authority from the Councils:

Enter into all contract necessary for the operations and management of the Business Unit in accordance with approved Budgets and the intent of the Business Plan.

Authorise all payments necessary for the operations and management of the business unit within the approve budgets and the intent of the Business Plan

Do all other things, other than those things explicitly prohibited by this MOU or relevant statutes, that are necessary to achieve the objectives as stated in the strategic Plan, Asset Management Plan or Business Plan approved by the councils.

Powers to Recommend to Councils:

Any other matters under the areas of responsibility of the Business Unit and detailed in the Memorandum of Understanding

All recommendations to Council will be subject to adoption of an equivalent resolution by the other Council, unless it is a matter specific to one Council only.

Attachments

Attachment 1: 1995708647-27 Resource Consent RM200638, RM200639, RM200640, RM200641 Consent Documents

Attachment 2: 1995708647-29 Resource Consent RM200638, RM200639, RM200640, RM200641 Commissioners Decision

Attachment A

RESOURCE CONSENT

Resource consent numbers

RM200638 RM200639 RM200640 RM200641

Under sections 104 and 104B of the Resource Management Act 1991 (the Act), Tasman District Council (the Council) grants resource consent to:

Nelson Regional Sewerage Business Unit

(the Consent Holder)

Activities authorised

RM200638	Discharge permit to discharge biosolids onto land
RM200639	Discharge permit to discharge contaminants into air from application of biosolids to land
RM200640	Land Use Consent to operate and maintain the Biosolids Application Facility (**BAF**), and associated activities for the application of biosolids to land
RM200641	Discharge permit to discharge washdown water and stormwater to land from the BAF

Location

Site address	Moturoa / Rabbit Island
Legal description	Pt Island 5 Rabbit Waimea East District

CONDITIONS

Under sections 108 and 108AA of the Act, this resource consent is issued subject to the following conditions:

General

1. The Consent Holder shall ensure that the activities authorised by these consents are undertaken in general accordance with the information provided with the application entitled "Moturoa / Rabbit Island Biosolids Reconsenting" prepared by Tonkin + Taylor dated August 2020. In the event there is any conflict between this application and any conditions of these consents, the conditions shall prevail.

2. The Consent Holder shall ensure all persons with responsibilities under these resource consents are provided a copy of the resource consents, and the Biosolids Management Plan in condition 15, and made aware of their responsibilities under

these documents. For the avoidance of doubt those persons shall include the Moturoa / Rabbit Island forestry operator and the biosolids application contractor and the Operations and Maintenance contractor for the Bell Island Wastewater Treatment Plant.

3. In the conditions of these consents, "Biosolids Guidelines" means the Guidelines for the Safe Application of Biosolids to Land in New Zealand (August 2003), published by the New Zealand Water & Wastes Association (or subsequent version).

4. Land use consent RM200640 is personal to the consent holder rather than attaching to the land.

Duration of consents

5. The date of expiry of resource consents RM200638, RM200639 and RM200640 is 16 March 2040.

6. The term of resource consent RM200641 is five years from the commencement date.

Review

7. The Council may, in accordance with section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions of these consents annually between 1 November and 1 December for any of the following purposes:

   (a) To deal with any adverse effect on the environment arising from the exercise of these consents which was not foreseen at the time the application was considered and which is appropriate to deal with at the time of review; or

   (b) To require the Consent Holder to adopt the best practicable option to remove or reduce any adverse effect on the environment resulting from the exercise of these consents.

   (c) To deal with any adverse effect on the environment arising from issues identified in:

   (d) An Annual Report prepared under condition 9; or

   (e) A Monitoring and Technology Review Report prepared under condition 11.

   (f) To deal with the effects resulting from climate change and sea level rise.

   (g) To implement applicable wastewater environmental performance standards made under section 138 of the Water Services Act 2021, including any prescribed implementation timeframe.

Advice note:

The Council may, in accordance with section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions of these consents:

(a) To enable standards set by a new rule(s) in any regional plan that has been made operative since the granting of these consents to be met;

(b) When relevant national environmental standards have been made; or

(c) If the information made available to the consent authority by the Consent Holder for the purposes of the application contained inaccuracies which materially influenced the decision on the application and the effects of the exercise of the consent(s) are such that it is necessary to apply more appropriate conditions.

Annual Hui

8. During the month of November each year, the Consent Holder shall arrange a hui for Te Tau Ihu iwi. For the avoidance of doubt this hui may be combined with any hui required under the resource consents for the Bell Island Wastewater Treatment Plant.

Purpose

(a) The purpose of the hui shall include but is not limited to the following:

(i) The Consent Holder recognising the role of tangata whenua as kaitiaki and seeking to understand ongoing cultural considerations in relation to the activities subject to these consents;

(ii) The Consent Holder providing an opportunity for Te Tau Ihu iwi to view the activities subject to these consents including an opportunity to assess sites of cultural significance and confirm that identified archaeological sites are adequately protected;

(iii) Iwi Representatives to identify or raise cultural matters of concern in relation to the activity for the purpose of informing the Consent Holder and for parties to identify and agree action(s) for resolution including any direct offsets and/or compensation; and

(iv) The Consent Holder seeking input from Te Tau Ihu iwi into potential works or measures that could be undertaken on Moturoa / Rabbit Island to maintain the natural character and ecological values of Moturoa / Rabbit Island and protect the Mauri of the Waimea Inlet insofar as it relates to the activities subject to these consents.

Process and records

(b) Notification of the hui shall be at least four weeks before the hui date via

(i) the Consent Holder's website and

(ii) by email or mailed notice to each Iwi Representative.

(c) Minutes of the annual hui shall be documented and will identify issues discussed at the hui and any actions agreed.

(i) The minutes will be distributed to all parties in attendance and the Council's Team Leader - Compliance and Investigation, no more than three weeks after the date of the hui.

(ii) Representatives in attendance at the hui shall be given at least three weeks from distribution of the hui minutes to confirm minutes are an accurate record and may identify inaccuracies to be addressed in minutes.

(iii) Confirmation of the distributed minutes or any inaccuracies identified by the parties shall be recorded by the Consent Holder, and if no response is received from any Iwi Representatives within the three-week period following distribution, the minutes circulated are to be considered accurate.

Advice note:

The notification requirements in this condition will be complied with if the Consent Holder gives four weeks of notice to each iwi representative in accordance with contact details maintained by Tasman District Council.

Annual Report

9. The Consent Holder shall submit an Annual Report and provide it to the Council's Team Leader - Compliance and Investigation by 31 October of each year. The Report shall cover the period from 1 July to 30 June and include, but not necessarily be limited to, the following:

(a) Collation, analysis, and interpretation of the monitoring results required by the conditions of these consents. This assessment shall include an analysis of the past five years' monitoring data and identification of any trends in the results;

(b) Summary of any non-compliances with the conditions of these consents and any the adequacy and scope of such monitoring and any actions arising;

(c) A summary of complaints, if any, received by the Consent Holder and any measures taken in response to those complaints;

(d) Details of the date of the hui as required by condition 8 above, numbers in attendance, and a summary of issues discussed and any actions arising,

including confirmation of the minutes or any inaccuracies identified in the minutes by the parties; and

(e) The record of results from all odour monitoring patrols undertaken in accordance with condition 35 over the previous year.

10. On request of the Council's Team Leader - Compliance and Investigation, the Consent Holder shall provide copies of any raw monitoring data or records required by any conditions of these consents. This information shall be provided within 10 working days of the request.

Six-Yearly Monitoring and Technology Review Report

11. The Consent Holder shall submit a Monitoring and Technology Review Report (**MTRR**) to the Council's Team Leader - Compliance and Investigation by 1 March 2028 and thereafter at six-yearly intervals throughout the term of these consents.

For the avoidance of doubt this report may be combined with the MTRR required under the resource consents for the Bell Island Wastewater Treatment Plant.

The MTRR shall be prepared by a suitably qualified and experienced person(s) and shall include the following:

(a) Forecast of biosolids quality and quantity throughout the remainder of the consent term as a result of potential future changes to wastewater inputs and/or the wastewater treatment process at the Bell Island Wastewater Treatment Plant;

(b) An assessment of the implications of climate change (reasonably foreseeable within the term of these consents) on the activities authorised by these resource consents including any future actions which may be required to avoid, remedy or mitigate any adverse effects of those activities which arise due to climate change, including:

(i) A climate change adaption plan and to implement measures which anticipate and adapt to climate change before it causes adverse environment impacts, through the establishment of trigger points for preventative action; and

(ii) A review of the 50 metre buffer and in the event that the progress of sea level rise causes the 50 metre buffer width to be reasonably foreseen to be inadequate to prevent contaminants and nutrients reaching coastal waters in those places, especially with regard to occasional high tide storms, the width of the coastal buffer shall be increased in specific places, within three months after each six yearly review, in consultation with the Council's Team Leader - Compliance and Investigation.

(c) An assessment of the ability of the activities subject to these consents to continue complying with the conditions of these consents for the remainder of the consent term, particularly in relation to:

(i) The assessment in (a) and (b) above;

(ii) Monitoring or other relevant data gathered under these resource consents;

(iii) Any reported non-compliance with consent conditions in the prior reporting period;

(d) An assessment of the activities subject to these consents against:

(i) The Biosolids Guidelines including any subsequent update;

(ii) Any applicable wastewater environmental performance standards made under section 138 of the Water Services Act 2021, including any prescribed implementation timeframe.

(e) A summary of significant technological changes and advances in relation to biosolids production, treatment, application and end use that could be of relevance to the activities authorised by these consents; and

(f) A general assessment of whether any newly available technology options or combination of options identified through (e) above is likely to represent the Best Practicable Option (BPO) to minimise the potential and actual adverse effects of biosolids application on Moturoa / Rabbit Island.

12. The Consent Holder shall make available to the public via its website any Monitoring and Technology Review Report produced under condition 11.

13. The Consent Holder shall consider the assessment completed in condition 11(f) and advise the Consent Authority whether it intends to adopt any options or incorporate such technologies as BPO.

14. The equipment required by these consents shall be maintained in a good and sound condition, and any repairs that are necessary shall be made as soon as reasonably practicable.

Biosolids Management Plan

15. A Biosolids Management Plan shall be prepared within three months of the commencement of this consent, and maintained and reviewed annually and include details of:

(a) Roles, responsibilities, and training requirements of organisations and staff responsible for the activities subject to these consents, including the chain of command;

(b) Procedures to be followed to ensure all relevant conditions under these consents are fully complied with, including independent sections to address:

(i) Biosolids application limits;

(ii) Exclusion zones and buffer areas;

(iii) Odour management and minimisation, including:

- A detailed description of the biosolid storage and application activities that may give rise to odour emissions, including identification of odour sources (as a result of normal and abnormal operations) discussion of the individual processes, equipment or plant elements and their function;
- Management procedures relevant to odour control, including equipment maintenance and operation to minimise odour; and procedures for transport and application of biosolids;
- On-site odour monitoring requirements and odour patrol surveys in accordance with condition 35;
- Contingency measures to deal with plant malfunctions and maintenance requirements including redundancy and spares held on site for critical parts; and
- An odour complaints response procedure, including actions on receipt of complaints and associated reporting requirements.

(iv) Health and safety of the biosolids application contractor and the general public accessing Moturoa / Rabbit Island;

(v) Monitoring required under these resource consents; and

(vi) Complaints.

(c) How records will be kept including time of application, weather conditions, quantities applied, location of application, any other operational parameters;

(d) Areas to be used for biosolids application in the following year;

(e) Incident and accident response procedures, including in relation to equipment failures and accidental spillage of biosolids; and

(f) Methodology for annual review of the plan.

16. A copy of the Biosolids Management Plan in condition 15 shall be made available to the Council's Team Leader - Compliance and Investigation upon request.

Complaints and notifications

17. The Consent Holder shall maintain a Complaints Register for the purpose of recording and dealing with any complaints that are received by the Consent Holder in relation to the exercise of these resource consents.

    All complaints received by the Consent Holder in relation to the activities authorised by these consents shall be logged immediately in the Complaints Register. The Complaints Register shall record:

    (a) The date, time, location, duration, and nature of the alleged event / incident;

    (b) Name, phone number and address of the complainant unless the complainant wishes to remain anonymous;

    (c) Any remedial action taken by the Consent Holder in response to the complaint and when it was undertaken;

    (d) The possible cause of the relevant event / incident that led to the complaint;

    (e) The weather conditions at the time of the relevant event / incident including estimates of wind direction, wind strength, temperature and cloud cover; and

    (f) The date and name of the person making the entry.

18. Details of any complaints received that may indicate non-compliance with the conditions of these consents shall be provided to the Council's Team Leader - Compliance and Investigation by the next working day following receipt of the complaint by the Consent Holder.

Biosolids volume and quality

19. The daily volume of biosolids transferred between the Bell Island Wastewater Treatment Plant and Moturoa / Rabbit Island shall be recorded.

    (a) For this purpose a flowmeter of an accuracy to within ± 5% shall be maintained between the pumps at the Bell Island Wastewater Treatment Plant and the Biosolids Application Facility on Moturoa / Rabbit Island.

    (b) This flow meter shall be calibrated every five years by an appropriately qualified and experienced person and calibration shall be supplied to the Council's Team Leader - Compliance and Investigation.

20. Material being processed to biosolids shall be held at 50°C or higher for a minimum duration as determined by the following equation:

Minimum duration = 50,070,000 / 10^(0.14t) where t is temperature in °C and is greater than 50°C

A continuous record of the temperature of material being processed to biosolids shall be made and recorded for the duration of the consent and plotted on a continuous record to enable compliance to be readily visible.

Product verification

21. Upon commencement of these consents, the Consent Holder shall take no less than seven grab samples of biosolids per month which shall be analysed for *E. coli*, Campylobacter, Salmonella and enteric viruses.

    Once there are no more than three non-compliances against the limits specified in the Biosolid Guidelines for any three-month period, sampling may proceed to that specified in condition 22.

    During this sampling period, the Consent Holder shall demonstrate that the temperature in the second tank of each operating Autothermal Thermophilic Aerobic Digestion (**ATAD**) train was maintained at or above 55°C for at least four hours between sludge fill and withdrawal events.

Routine sampling

22. At no less than weekly intervals a grab sample of biosolids shall be analysed for *E. coli* and volatile solids vector attraction reduction.

23. Vector attraction reduction (**VAR**) shall be demonstrated using one of the methods identified in the Biosolids Guidelines. If a sample fails to meet the Biosolids Guidelines requirements for E. coli, and VAR then:

    (a) The Consent Holder shall increase sampling to no less than 7 samples per month over a three-month period and samples shall be analysed for *E. coli*, Campylobacter, Salmonella, enteric viruses and helminth ova; and

    (b) If there are more than three non-complying samples in the three-month period, the Consent Holder shall notify the Council's Team Leader - Compliance and Investigation in writing within five working days of gaining the lab results of the fourth sample. Written notification shall include the actions the Consent Holder will undertake to ensure the Biosolids Guidelines requirements for E. coli and VAR are met as soon as reasonably practicable.

    (c) Increased sampling shall continue until lab results demonstrate no more than three non-compliances in any three-month period against the limits specified in the Biosolids Guidelines. Compliance with helminth ova inactivation requirements is to be confirmed by demonstrating that, during the sampling period, the temperature in the second tank of each operating ATAD train was maintained at or above 55°C for at least four hours between sludge fill and withdrawal events.

24. All grab samples required in conditions 21, 22 and 23 shall be taken directly from the treatment processing unit.

25. At three-monthly intervals the biosolids shall be measured, on a milligrams per kilogram (mg / kg) dry weight basis, for the following metals / metalloids:

- arsenic,
- cadmium,
- chromium,
- copper,
- lead,
- mercury,
- nickel, and
- zinc.

If the concentrations exceed the 'Grade b' maximum concentration limits in the Biosolids Guidelines:

(a) the Consent Holder shall increase sampling to weekly to demonstrate that the biosolids contaminant grade is appropriate for application onto land; and

(b) if there are more than six consecutive weekly samples that exceed Grade b limits, the Consent Holder shall notify the Council's Team Leader - Compliance and Investigation in writing within five working days of gaining the laboratory results of the seventh sample. Written notification shall include the laboratory results and identify actions the Consent Holder will undertake to ensure Grade b maximum concentration limits in the Biosolids Guidelines are met as soon as reasonably practicable.

26. Increased sampling shall continue until laboratory results demonstrate there are four consecutive samples below the Grade b maximum concentration limits in the Biosolids Guidelines. Each year, a composite sample shall be monitored for the following organic compounds:

- Total polychlorinated biphenyls (PCBs);
- nonyl phenol and ethoxylates (NP/NPE);
- phthalate (DEHP);
- linear alkydbenzene sulphonates (LAS);
- Tonalide and
- Galaxolid.

Biosolids application limits

27. Biosolids shall be applied at an average depth of no greater than 40 millimetres (**mm**) per application.

Advice note:

40 mm per application is equal to 40 litre per square metre (l/m2)

28. Biosolids shall not be applied:

    (a) within 24 hours of a 10 mm rainfall event occurring in a 24-hour period; or

    (b) if a rainfall event of more than 50 mm is forecast within 24 hours by a recognised meteorological forecasting service.

29. Biosolids application to any given forestry block shall be limited to the following:

    (a) During the time period from the last prior-to-harvest biosolid application to 12 years after replanting, biosolids shall be discharged at an average rate of no more than 150 kilograms of nitrogen per hectare per year, calculated using a three-year rolling average, and no single discharge shall exceed 450 kilograms nitrogen per hectare per application year;

    (b) During the time period from 12 years following replanting to the last prior-to-harvest biosolid application, biosolids shall be discharged at an average rate of no more than 100 kilograms of nitrogen per hectare per year, calculated using a three-year rolling average, and no single discharge shall exceed 300 kilograms nitrogen per hectare per application year; and

    (c) No more than one application of biosolids shall occur to any given forestry block during the period following harvest and prior to replanting.

Exclusion zones and buffer areas

30. No biosolids shall be applied at any time in the exclusion zones shown on the approved Plan A of consents RM200638 and others, dated 14 April 2023.

31. No biosolids shall be applied in the following buffer areas:

    (a) Around the entire coastal edge of Moturoa / Rabbit Island with a buffer area of 50 metres inland from mean high water springs;

    (b) From the outer edge of the plantation forest with an inward buffer area of 15 metres;

    (c) Around the perimeter of the "Rabbit Island Old Domain" area shown on the approved Plan A of consents 200638 and others, dated 14 April 2023, with a buffer area of:

        (i) 30 metres during the months of April to October inclusive; and

        (ii) 100 metres in the months of November to March inclusive.

32. The Consent Holder shall ensure there is no spray drift beyond the property boundary.

33. The Consent Holder shall ensure no vehicles or staff associated with the biosolids application are to enter wāhi tapu sites defined as an exclusion zone including where forestry roads cross through these areas. Entry may only occur with agreement of iwi representatives through the Annual Hui process detailed in condition 8.

Odour

34. There shall be no discharges into air from the biosolids application activity or the BAF that results in an adverse effect that is offensive or objectionable beyond the line of mean high water springs around the perimeter of Moturoa / Rabbit Island, and the public reserve on the front of Moturoa or in the "Rabbit Island Old Domain" area shown on the approved Plan A of consents 200638 and others, dated 14 April 2023.

Advice note:

Non-compliance with condition 34 shall be determined by a suitably qualified person having regard to the Frequency, Intensity, Duration, Offensiveness and Location (i.e. the **FIDOL** factors) of the odour discharge and any previous validated odour complaints relating to the same site and the same activity.

35. The Consent Holder shall appoint a suitable independent person to the role of odour patroller and shall comply with the following odour patrol protocol:

(a) The odour patroller shall visit Moturoa / Rabbit Island at least once per month and record observations of odour at locations around the perimeter of the Island and on the shoreline of Best Island facing Moturoa / Rabbit Island and at any other position(s) that may be impacted by odour that could have an adverse effect beyond the line of mean high water springs around the perimeter of Moturoa / Rabbit Island;

(b) The odour patroller shall also undertake a visit to Moturoa / Rabbit Island in response to any odour complaint in circumstances where the initial investigation by the Consent Holder indicates that the reported odour event may have been caused by the biosolids application activity on Moturoa / Rabbit Island;

(c) Odour patrols shall record the locations at which odour observations are made and the numerical scale of the offensive or objectionable nature of the odour which the odour patroller adopts to record the observations, and whether or not biosolids were being applied at the time of the patrol;

(d) Where practicable, the odour patroller shall record locations where biosolid is being applied in relation to the observation locations;

(e) The Consent Holder shall inform the biosolids application contractor of the outcomes of the odour patrol and any necessary interventions or inputs

shall be made to the application location or method to mitigate the odours observed;

(f) In addition to the monthly odour patrols, the odour patroller may, at their discretion, visit Moturoa / Rabbit Island at any time to make observations of odour; this may, but will not necessarily be, in response to complaints received;

(g) The Consent Holder shall provide the contact details of the odour patroller to the Council's Team Leader - Compliance and Investigation. If this odour patroller changes the contact details shall be updated with Council's Team Leader - Compliance and Investigation; and

(h) The record of results from all odour monitoring patrols shall be retained and provided to the Council on request.

Advice note:

Where practicable the odour patroller under these consents shall be the same as the odour patroller engaged under the consents for the Bell Island Wastewater Treatment Plant

Groundwater

36. The eleven existing shallow piezometers on Moturoa / Rabbit Island, as shown on the approved Plan B of consents 200638 and others, dated 14 April 2023, shall be maintained and monitored as follows:

(a) At three-month intervals groundwater levels shall be measured and recorded at all eleven piezometers;

(b) At three-month intervals representative samples shall be taken from all eleven piezometers for pH, conductivity, nitrate-nitrogen, ammonium-nitrogen, phosphorus and chloride;

(c) At three-month intervals representative samples shall be taken from at least two piezometers for faecal indicator bacteria; and

(d) Each year a representative sample shall be taken from all eleven piezometers, filtered and analysed for the following heavy metals / metalloids: arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, aluminium.

Soil

37. At a minimum of three-year intervals, two soil samples shall be undertaken within the topsoil (0 to 20 centimetres) and subsoil (20 to 40 centimetres) layers every 10 hectares in areas where biosolids have been applied. Samples from each soil layer shall be combined to form a composite sample. At each sample location, the GPS coordinates shall be recorded.

(a) Each composite sample shall be measured for pH, organic matter, total nitrogen, available phosphorous, potassium, calcium, magnesium, sodium and the following metals / metalloids: arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc;

(b) Each composite sample shall not exceed the heavy metal maximum soil concentration limits in Table 1 below:

Heavy metals	Maximum Soil Concentrations (mg/kg dry weight)
Arsenic (As)	20
Cadmium (Cd)	1
Chromium (Cr)	600
Copper (cu)	100
Lead (Pb)	300
Mercury (Hg)	1
Nickel (Ni)	60
Zinc (Zn)	300

Table 1: Maximum heavy metal concentrations in soil

(c) If a composite soil sample undertaken in accordance with the above subclauses exceeds the heavy metal maximum soil concentration limits within Table 1, then the Consent Holder shall:

(i) Prepare a report to investigate whether the exceedance(s) was as a result of natural influences, one off event, or in whole or part associated with the activities authorised by these consents;

(ii) Comment on whether the exceedance measured is likely to continue;

(iii) Recommend whether any further action needs to be taken by the Consent Holder, including, but not limited to, setting environmental trigger limits, or suspending biosolid application on the relevant forestry block until soil samples achieve compliance with Table 1 above; and

(iv) A copy of this report shall be provided to the Council's Team Leader - Compliance and Investigation within five working days of the report being finalised.

Advice note:

For each 10-hectare area there shall be two composite samples. One composite sample for each of the topsoil and subsoil layers.

Coastal

38. Every six years transect surveys along the foreshore shall be undertaken. The survey is to include sediment profile descriptions, sediment nutrient assessment, habitat classification, and benthic micro and macro algal cover. The transect

locations shall at minimum include the locations shown on the approved Plan B of consents 200638 and others, dated 14 April 2023. In the event a transect location becomes unviable (for example, following erosion), this may be substituted with another equivalent transect location as deemed by a suitably qualified person.

39. Visual checks along the Moturoa / Rabbit Island foreshore within Waimea Inlet shall be undertaken by a suitably qualified person at three-year intervals for the duration of this consent.

    (a) Visual checks shall include, at minimum, the transect locations referred to in condition 38 and photographic records taken at each check;

    (b) Should any visual check indicate any adverse effects on the foreshore, further analysis and tests are to be undertaken at the discretion of the Council's Team Leader - Compliance and Investigation; and

    (c) Four weeks prior to undertaking the visual check, the Consent Holder shall extend an invitation to Te Tau Ihu iwi to attend and observe the visual checks being undertaken.

Advice note:

The notification requirements in this condition will be complied with if the Consent Holder gives four weeks' notice to each iwi representative in accordance with contact details maintained by Tasman District Council.

Biosolids Application Facility

40. Within three years of commencement of these consents, all stormwater and washdown water at the BAF shall be captured and discharged into the BAF holding tanks.

41. Within two years of the commencement of these consents, the BAF holding tanks shall be enclosed and a biofilter(s) installed to treat and minimise any odour emissions.

42. Within one year of the commencement of these consents the manual valves that direct biosolids to the appropriate holding tank at the BAF shall be upgraded to an automated system.

43. In the event that any upgrade or maintenance work at the BAF leads to the discovery of archaeological material:

    (a) The Consent Holder shall immediately:

        (i) Cease earthmoving operations in the affected area and mark off the affected area;

        (ii) Advise the Tasman District Council of the disturbance; and

        (iii) Advise Heritage New Zealand Pouhere Taonga of the disturbance.

(b) If the archaeological material is determined to be Koiwi Tangata (human bones) or taonga (treasured artefacts) by Heritage New Zealand Pouhere Taonga, the Consent Holder shall immediately advise the office of the appropriate rūnanga (office contact information can be obtained from the Tasman District Council) of the discovery;

(c) If the archaeological material is determined to be Koiwi Tangata (human bones) by Heritage New Zealand Pouhere Taonga, the Consent Holder shall immediately advise the New Zealand Police of the disturbance; and

(d) Work may recommence if Heritage New Zealand Pouhere Taonga Trust (following consultation with rūnanga if the site is of Māori origin) provides a statement in writing to the Tasman District Council, Attention: Regional Leader - Monitoring and Compliance that appropriate action has been undertaken in relation to the archaeological material discovered. The Tasman District Council shall advise the Consent Holder on written receipt from Heritage New Zealand Pouhere Taonga that work can recommence.

Advice note:

This may be in addition to any agreements that are in place between the Consent Holder and the Papatipu Rūnanga. (Cultural Site Accidental Discovery Protocol).

Under the Heritage New Zealand Pouhere Taonga Act 2014 an archaeological site is defined as any place associated with pre-1900 human activity, where there is material evidence relating to the history of New Zealand. For sites solely of Māori origin, this evidence may be in the form of accumulations of shell, bone, charcoal, burnt stones, etc. In later sites, artefacts such as bottles or broken glass, ceramics, metals, etc. may be found or evidence of old foundations, wells, drains, tailings, races or other structures. Human remains / Koiwi may date to any historic period.

It is unlawful for any person to destroy, damage, or modify the whole or any part of an archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga. This is the case regardless of the legal status of the land on which the site is located, whether the activity is permitted under the District or Regional Plan or whether a resource or building consent has been granted. The Heritage New Zealand Pouhere Taonga Act 2014 provides for substantial penalties for unauthorised damage or destruction.

ADVICE NOTES

1. This resource consent only authorises the activity described. Any matters or activities not referred to in this consent or covered by the conditions must either:

(a) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP) or relevant national environmental standard;

(b) be allowed by the Resource Management Act 1991; or

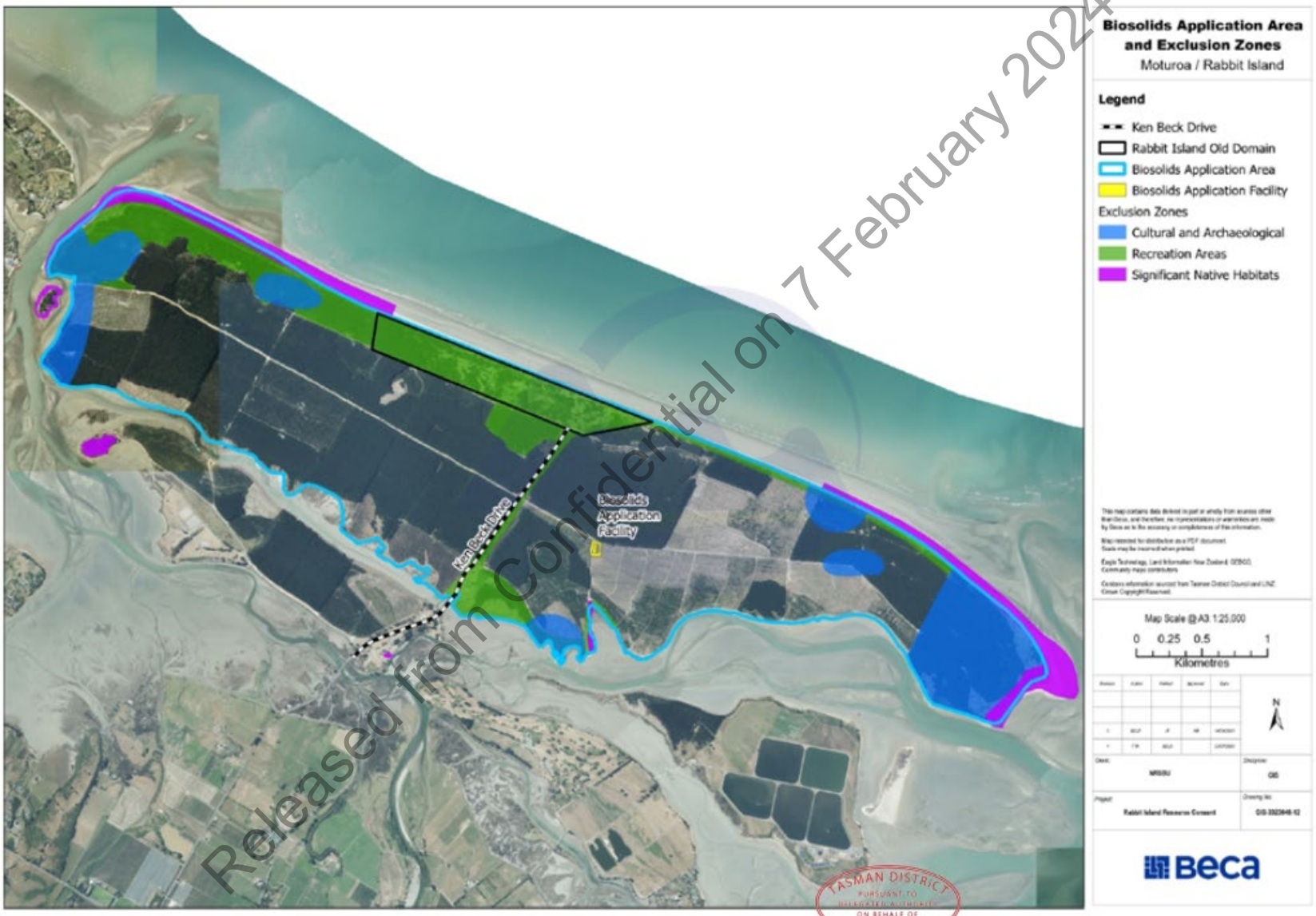
(c) be authorised by a separate resource consent.

2. Section 125 of the Resource Management Act 1991 states that a consent shall lapse where it is not given effect to within five years of its granting.

3. Access by the Council or its officers to the land subject to this resource consent is reserved under section 332 of the Resource Management Act 1991.

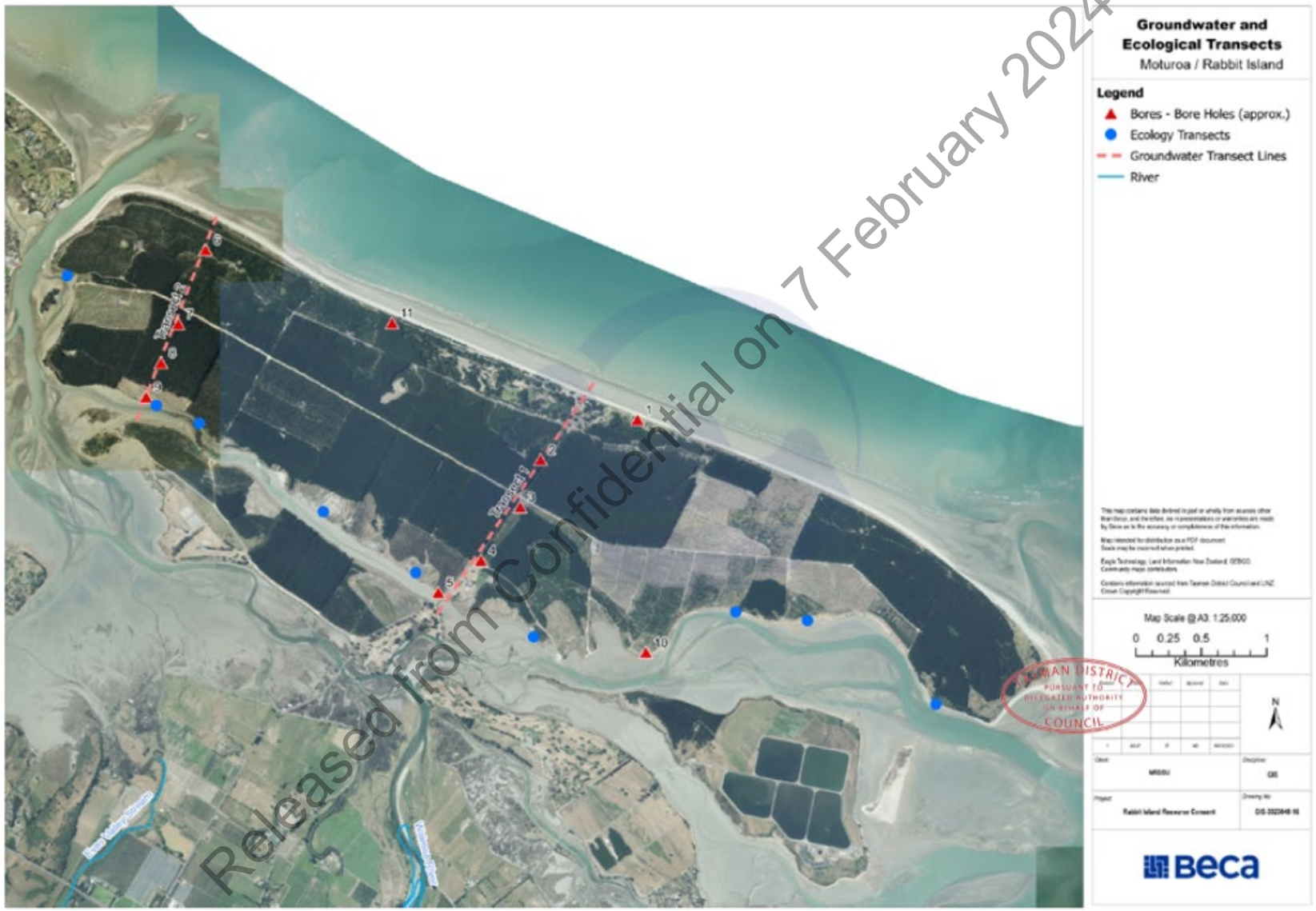
4. Section 36 of the Resource Management Act 1991 provides for the Council to charge Consent Holders for the undertaking of functions related to the administration, monitoring and supervision of resource consents; as well as charges relating to the review of consent conditions.

RM200638 and ors Plan A



Resource consents RM200638, RM200639, RM200640, RM200641, granted 14 April 2023

RM200638 and ors Plan B



Resource consents RM200638, RM200639, RM200640, RM200641, granted 14 April 2023.

RESOURCE CONSENT DECISION

Decision of the Hearing Commissioners

Hearing held in the Council Chambers at the Tasman District Council offices, 189 Queen Street, Richmond on 2-3 August 2022
Hearing closed on 24 March 2023.

This is the report and decision of independent Hearing Commissioners Ms Sharon McGarry (Chair) and Mr Reginald Proffit. We were appointed[1] by the Tasman District Council (**TDC** or 'the Council') to hear and determine an application lodged by the Nelson Regional Sewerage Business Unit (**NRSBU** or 'the Applicant') for resource consents associated with the operation of the Rabbit Island Biosolids Acceptance Facility (**BAF**) and biosolids disposal operation. The application, made in accordance with the Resource Management Act 1991 (**RMA** or 'the Act'), was lodged with the Council on 7 August 2020.

Attendances

Applicant	Ms Katherine Forward (Counsel, Duncan Cotterill) Mr Nathan Clarke (General Manager, NRSBU) Dr Jiaming Xue (Senior Scientist Scion) Mr Chris Purchas (Consultant, Tonkin & Taylor Ltd) Dr Paul Gillespie (Aquatic Microbial Ecologist, Cawthron) Dr Nicholas Berry (Wastewater Engineer, Beca) Dr Jeremy Bennett (Senior Groundwater Scientist, Tonkin & Taylor Limited) Mr Chris Bender (Air Quality Consultant, Pattle Delamore Partners Limited) Dr Neale Hudson (Environmental Chemist, NIWA) Mr Daniel Murray (Consultant Planner, Tonkin & Taylor Ltd)
Submitters	Te Ātiawa Manawhenua Ki Te Tau Ihu Trust ('Te Ātiawa') - Ms Sylvie Filipo (Kaitiakitanga Planner) - Mr Daren Horne (Kaitiaki and Cultural Adviser) Te Runanga o Ngāti Rārua ('Ngāti Rārua') - Aneika Young
Reporting Officer	Leif Pigott (Team Leader - Natural Resources, TDC) Mr Alastair Jewell (Hearing Facilitator and Principal Planner, TDC)

[1] Delegated functions and powers under section 34A of the RMA

1 Summary

[1] Under delegated authority[2] of Tasman District Council, we **GRANT** the following resource consent:

RM200638	Discharge permit to discharge biosolids onto land, for a consent term 35 years;
RM200639	Discharge permit to discharge contaminants from biosolids applications (mainly odour) into air, for as consent term of 35 years;
RM200640	Land use consent (section 9(3)) to operate and maintain the Biosolids Acceptance Facility, together with all land use activities associated with the above application of biosolids onto land for a consent term expiring on 16 March 2040; and
RM200641	Discharge permit to discharge washdown water and stormwater onto and into land from the Biosolids Acceptance Facility, for a consent term of five years.

2 Procedural matters

[2] The hearing of these applications commenced at 9.00 am on 2 August 2022. Evidence was heard over two days and the hearing was adjourned at 12 pm on 3 August 2022. The hearing was held in the Council Chambers at Tasman District Council, Richmond.

[3] We undertook a site visit on the afternoon of Monday 1 August 2022 to Bell Island to the Waste Water Treatment Plant and ponds, Best Island and Moturoa / Rabbit Island to get a general overview of the area. We returned to Moturoa / Rabbit Island on the afternoon of Wednesday 3 August 2022 to view the BAF and observe the irrigation of biosolid material onto land within the plantation forest. We were accompanied by Mr Brad Nixon, Operation Manager for NRSBU. Mr Nixon showed us areas where wāhi tapu sites are located and marked. We noted that one of the demarcated wāhi tapu sites had a road running through the middle of the site and that on one side of the road the trees within the identified site had been felled.

[4] Prior to the hearing, a report was produced pursuant to section 42A of the RMA ('s42A Report') by Tasman District Council's (TDC or the Council) Reporting Officer, Mr Leif Pigott (Team Leader - Natural Resources Consents, TDC).

[5] The s42A Report provided an analysis of the matters requiring consideration under the Resource Management Act 1991 (RMA) and recommended the application should be granted subject to conditions for a duration of 35 years, except for RM200641 where a five-year consent term was sought. Appended to the s42A Report was a draft set of conditions for consideration.

[6] The s42A Report and the Applicant's evidence was pre-circulated prior to the hearing in accordance with section 103B of the RMA. This enabled application documentation,

2 Under section 34A of the RMA

submissions, s42A Report and pre-circulated evidence to be pre-read and we directed that it be 'taken as read' during the hearing3.

[7] The Hearing was adjourned on 3 August 2022, to enable the provision of a revised set of proposed consent conditions to be provided to the Council's Reporting Officer for review and for the Applicant to provide a written right of reply and final set of proposed conditions.

[8] A revised set of consent conditions proposed by the Applicant was provided to the Council on 16 September 2022. The Applicant subsequently requested suspension of the processing of the application to enable time for further discussions regarding the proposed conditions with the Reporting Officer.

[9] A written right of reply and final set of proposed consent conditions on behalf of the Applicant was received on 20 March 2023.

[10] The hearing was closed on 24 March 2023.

[11] We acknowledge all the parties' willingness to respond to our questions. We consider the approach taken has greatly assisted us in fully understanding the issues, technical evidence presented and evaluating proposed consent conditions. We thank all the parties for their contributions in this regard. We thank Mr Alastair Jewell, the TDC's Hearings Facilitator, for the assistance that he provided throughout the hearing process and those parties who attended the hearing and presented evidence.

[12] Section 113(3) of the RMA states:

> *A decision prepared under subsection (1) may, -*
>
> *(a) instead of repeating material, cross-refer to all or a part of -*
>
> *(i) the assessment of environmental effects provided by the Applicant concerned:*
>
> *(ii) any report prepared under section 41C, 42A, or 92; or*
>
> *(b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.*

[13] In the interests of brevity and economy, we make use of section 113 of the RMA and focus our assessment of the application on the principal matters in contention.

3 The proposed activities

[14] The NRSBU is jointly owned by Nelson City Council and Tasman District Council to operate the wastewater treatment system for wastewater from Tahunanui, Stoke, Richmond, Mapua, Brightwater and Wakefield at the Bell Island Wastewater Treatment Plant (**WWTP**). The WWTP has been operating since 1984 and has been subject to several upgrades over the years. Resource consents for the continued operation of the WWTP were granted by a

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

panel of independent Commissioners (including Commissioner McGarry) in February 2020 for a term of 20 years, expiring on 16 March 2040.

[15] The NRSBU has applied biosolids from the Bell Island WWTP to the plantation forests on Moturoa / Rabbit Island under existing resource consents granted under the RMA for the past 24 years. Over this time environmental monitoring has been undertaken to assess the effects of the application of biosolids on the receiving environment and on the growth rate of the trees.

[16] The application is for new consents to replace the existing consents held for the operation of the BAF and the irrigation of biosolids material onto land. The s42A Report included the following table which summarises the existing consents held:

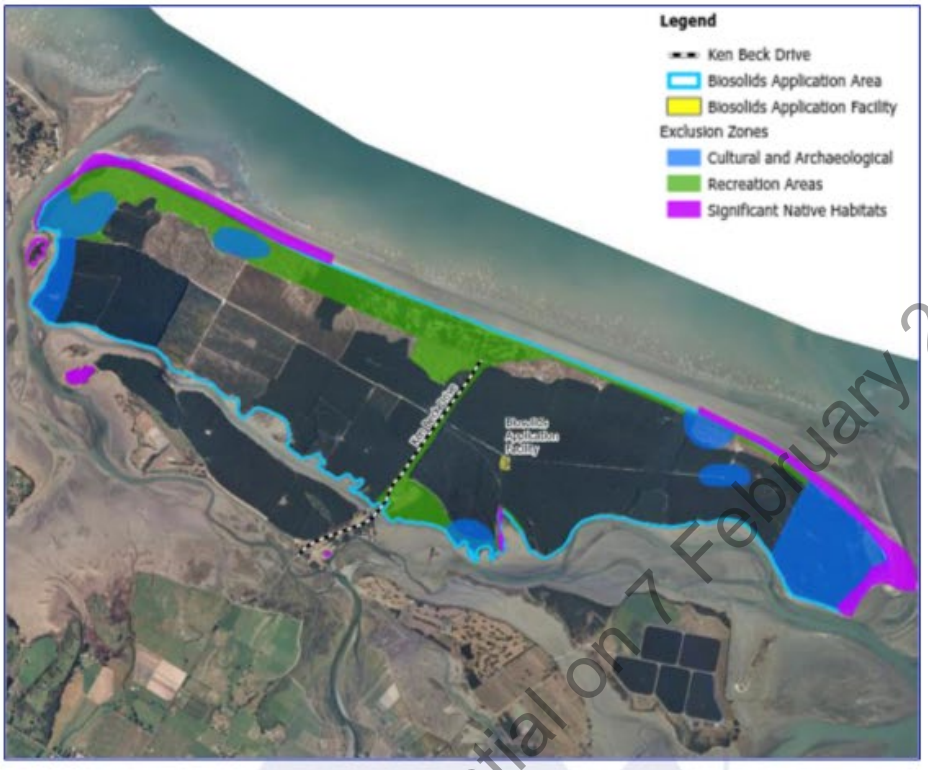
Activity	Resource consent type	Reference	Granted	Expires
Application of biosolids to land at Moturoa/Rabbit Island	Discharge permit	NN940379V3	17 October 1995	8 November 2020
Operation and maintenance of the Biosolids Application Facility and all other land use activities associated with the application of biosolids to land at Moturoa/Rabbit Island	Land use consent	RM940534	17 October 1995	n/a (unlimited duration)
Occupy the coastal marine area with an underground pipeline from Bell Island WWTP to the BAF.	Coastal permit	RM050862	14 October 2005	14 October 2040

[17] Discharge permit NN940379V3 held by the NRSBU expired on 10 October 2020. The TDC's Resource Consents Manager exercised the Council's discretion under section 124 of the RMA to allow the continued operation of the BAF and irrigation activities under the expired permit until this consent application process is completed, including any appeals.

[18] The biosolids are diluted with water at a ratio of approximately 1:24 (approximately 4 percent biosolids to 96 percent water) and are pumped from the WWTP via an underground pipeline across the Waimea Inlet to holding tanks at the BAF on Moturoa / Rabbit Island. The biosolids are applied to land under plantation forestry on Moturoa / Rabbit Island using tankers and travelling irrigators. The application of biosolids provides beneficial nutrients to the existing forestry operation and enhances tree growth rates. The forestry operation is managed by PF Olsen Limited on behalf of the TDC as landowner.

[19] The Applicant has volunteered exclusions zones and buffer areas where no biosolids will be applied, as shown in Figure 1 below:

Figure 1: Biosolids application area and exclusion zones (source Applicant AEE, figure 4.1).



[20] The biosolids application exclusion zones are fixed and recognise land used for recreational purposes (including the entire domain area), significant native habitats, and identified archaeological and cultural sites.

[21] The proposed buffer areas have the potential to change according to the circumstances and are proposed as follows:

a. 50 metres from mean high water springs, to limit any adverse effects on the coastal marine area and recreation users;

b. 15 metres from areas where the public has unrestricted access (such areas may change from time to-time due to forestry operations);

c. For areas bordering the Domain (i.e. the Recreation Reserve area located just behind the front beach on Moturoa / Rabbit Island):

- 30 metres during the months of April to October inclusive, and
- 100 metres in the months of November to March inclusive.

[22] The nature of the proposed activities was described in the application documents and the assessment of environmental effects (**AEE**)[4].

[23] The application also included the following documents:

a. Appendix B – Existing resource consents
b. Appendix C – Plan of the biosolids application area and zones
c. Appendix D – '*Biosolids Process Alternatives Assessment*' 30 July 2020. Prepared by Beca Limited
d. Appendix E – 'Moturoa / Rabbit Island Biosolids Application Alternatives Assessment' July 2020. Prepared by Tonkin & Taylor Ltd
e. Appendix F – Nelson Regional Sewerage Business Unit Biosolids Management Plan July 2020
f. Appendix G – 'Assessing the impact of land application of biosolids on planted pine forest and soil properties at Moturoa / Rabbit Island' July 2020. Prepared by Scion
g. Appendix H – 'Moturoa / Rabbit Island Biosolids Application: Groundwater Assessment' August 2020. Prepared by Tonkin & Taylor Ltd
h. Appendix I – 'Assessment of the effects on the coastal environment of biosolids application to land on Moturoa / Rabbit Island' Report No. 3500 3 August 2020. Prepared by Cawthron Institute
i. Appendix J – 'Resource Consent Renewal Moturoa / Rabbit Island Biosolids Application to Land - Review of potential impacts on birds' 30 July 2020. Prepared by David S. Melville
j. Appendix K – 'Moturoa / Rabbit, Tasman: Assessment of lizard habitat for application of biosolids to land programme' 28 July 2020. Prepared by Tom Payne, RMA Ecology Ltd
k. Appendix L – 'Environmental Effects of Discharges of Odour to Air From Moturoa / Rabbit Island Biosolids Application to Land.' July 2020. Prepared by Stantec
l. Appendix M – 'Moturoa / Rabbit Island: Application of biosolids to land: Public Health Risks' July 2020. Prepared by NIWA Taihora Nukurangi
m. Appendix N - Objectives and Policies Assessment
n. Appendix O – 'Engagement Strategy – Moturoa / Rabbit Island Biosolids Resource Consent Project.' April 2020. Prepared by Duncan Cotterill
o. Appendix P – Summary of Consultation
p. Appendix Q – Draft volunteered consent conditions; and
q. 'Moturoa / Rabbit Island Biosolid Application Resource Consent Cultural Impact Assessment.' February 2021. Prepared by Aneika Young, Te Aranga Environmental Consultancy

3.1 Description of site

[24] The s42A Report provided an accurate description of the application site based on the application documentation and Council information. We adopt the s42A Report's site description, which should be read in conjunction with this decision.

4 'Moturoa / Rabbit Island Biosolids Reconsenting Assessment of Effects on the Environment' dated August 2020 by Tonkin & Taylor Ltd.

[25] The s42A Report included an outline of the cultural context of Moturoa / Rabbit Island, which should also be read in conjunction with this decision.

[26] The Applicant commissioned a Cultural Impact Assessment which was included with the application.

3.2 Relevant rules and activity status

[27] The s42A Report outlined the relevant rules of the Tasman Resource Management Plan (**TRMP**) and applicable zoning, and overlay areas as follows:

TRMP Zoning	Plantation areas on Moturoa / Rabbit Island are zoned Rural 2 or Conservation
TRMP Areas	The Island is in the Coastal Environment Area and the estuary is in the Waimea Inlet is listed under Schedule 25D with Nationally important ecosystem values
Other notations	The Waimea inlet is a mapped wetland

Activity	Applicable rules	Status
RM200638 Discharge biosolids to land		
Discharge permit.	Rule 36.1.5.2	Discretionary
RM200639 Discharge contaminants from biosolid application (mainly odour) to air		
Discharge of contaminants to air	Rule 36. 3.5.3 or rule 36.3.5.1	Discretionary
RM200640 Land use consent to use and operate Biosolids Acceptance Facility and activities associated with biosolid application in the Rural 2 and Conservation zones		
Land use consent	Rule 17.6.3.5 as an activity in the Rural 2 zone not otherwise permitted under rule 17.6.3.1, nor provided for as a controlled activity (17.6.3.2) nor restricted discretionary activity (17.6.3.4). Rule 17.11.2.1 as an activity in the Conservation Zone not otherwise permitted under rule 17.11.2.1.	Discretionary
RM200641 Discharge of stormwater and washwater to land from the Biosolids Acceptance Facility		
Discharge of contaminants to land	Rule 36.1.5.2. as a discharge to land (other)	Discretionary

[28] The s42A Report noted the application was lodged before the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) and

National Policy Statement for Freshwater Management 2020 (**NPS-FM**) came into effect. The Applicant did not revise the application in light of the changes. The Reporting Officer accepted this approach given the application did not relate to a discharge into water and the effects from the discharge onto land and subsequently into the receiving water were accepted to be low based on the relevant technical reports appended to the application. We note that since the lodgement of the application the provisions of the TRMP have been amended to implement the NPS-FW, under section 55 of the RMA without any First Schedule process.

[29] The s42A Report stated that the activities were 'inextricably linked' and therefore the activities should be 'bundled' and considered overall as a discretionary activity. Ms Forward agreed with this approach.

[30] We accept this approach and consider the applications as a bundle, as a **discretionary activity**.

4 Notification and submissions

[31] The s42A Report provided an outline of the timeframe for processing the application, including periods where processing of the application was suspended under section 91 of the Act.

[32] The application was publicly notified on 14 April 2021 and the submission period closed on 19 May 2021.

[33] Four submissions were received, with two in support of the application and two in opposition. Three submitters indicated they wished to be heard.

[34] The s42A Report accurately summarised the submission and should be read in conjunction with this decision. The key issues relate to positive effects, water quality effects, effects on cultural values and relationships, effects on heritage values, consent conditions, the term of consent, and global warming/sea level rise and the long-term suitability of the location.

[35] We consider this to be an accurate summary of the key issues and concerns raised.

5 Relevant statutory provisions considered

[36] In accordance with section 104 of the RMA, in making this determination we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104, 104B, 105, 107 and 108.

[37] Pursuant to section 104(1), and subject to Part 2 of the Act, which contains the Act's purpose and principles, we must have regard to-

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

(ab) Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will result from 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.

[38] Under section 104(2) of the RMA, when forming an opinion for the purposes of section 104(1)(a) regarding actual and potential effects on the environment, we may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This referred to as consideration of the 'permitted baseline'. There was agreement between the Reporting Officer and the Applicant that there was no permitted baseline relevant to this application. We agree.

[39] Under section 104(2A) of the RMA, we must have regard to the value of the investment of the existing consent holder, as the application was made under section 124 of the RMA (exercising a resource consent while applying for a new consent). We note the Applicant's evidence that the value of the existing investment in the BAF is approximately $2-3 million (including the pipeline from the Bell Island WWTP). We have had regard to this investment in making our determination.

[40] In terms of section 104(3) of the RMA, in considering the application, we must not have regard to any effect on any person who has given written approval to the application. No formal written approvals were provided.

[41] In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant statutory provisions of the following documents:

a. New Zealand Coastal Policy Statement 2010 (**NZCPS**);
b. National Policy Statement for Freshwater Management 2020 (**NPS-FM**);
c. Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**);
d. Tasman Regional Policy Statement (**TRPS**);
e. Nelson Regional Policy Statement (**NRPS**); and
f. TRMP.

[42] We consider the submissions received to be directly relevant to our task of determining the applications, and we have given careful consideration to the matters raised in those submissions in accordance with section 104(1)(c) of the RMA.

[43] We consider the Te Tau Ihu Iwi Statutory Acknowledgement Area, relevant iwi management plans, the existing resource consents held and other non-statutory plans, including the Moturoa / Rabbit Island Reserves Management Plan (**RMP**), Waimea Inlet Management Strategy and Waimea Action Plan are relevant 'other matters' under section 104(1)(c).

[44] In addition, in terms of any discharge permit that contravenes section 15 of the RMA, we are also required to have regard to sections 105 and 107 of the RMA.

[45] In accordance with section 105 of the RMA, when considering section 15 (discharge) matters, 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.*

[46] In terms of section 107 of the RMA, we are prevented from granting consent allowing any discharge into a receiving environment which would, after reasonable mixing, give rise to all or any of the following effects, unless certain exceptions apply[5] -

> *(c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended material:*
> *(d) Any conspicuous change in the colour or visual clarity:*
> *(e) Any emission of objectionable odour:*
> *(f) The rendering of fresh water unsuitable for consumption by farm animals:*
> *(g) Any significant adverse effects on aquatic life.*

[47] Under section 104B, we may grant or refuse the applications, and if granted, we may impose conditions under section 108. We have considered the final conditions proposed provided by the Applicant in its right of reply in assessing the actual and potential environmental effects of the proposal.

[48] Section 108(2)(e) of the RMA allows us to impose conditions of consent that require the best practicable option (**BPO**) to control any adverse effects caused by a discharge. The BPO for the discharge of contaminants (to both air and coastal water), which includes contaminants that give rise to odour, is defined in section 2 of the RMA as:

> *Best practicable option, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to:*
>
> *(a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and*
> *(b) the financial implications, and the effects on the environment, of that option when compared with other options; and*
> *(c) the current state of technical knowledge and the likelihood that the option can be successfully applied.*

[49] Section 108(8) of the RMA restricts the requirement for BPO to being the 'most efficient and effective means of preventing or minimising any actual or likely adverse effect on the environment'.

5 Section 107(2) - The exceptions being: (a) that exceptional circumstances justify the granting of the permit; (b) that the discharge is of a temporary nature; or (c) that the discharge is associated with necessary maintenance work and that it is consistent with the purpose of this Act to do so.

[50] When applying the efficiency and effectiveness test, we acknowledge that we need to consider the efficiency from the Council's and community's perspective, as well as the Applicant's viewpoint. We accept that requiring the implementation of the BPO can still provide flexibility to enable change, provided the effects remain the same or decrease.

[51] The Reporting Officer and the Applicant noted the recent addition of section 104(2D)[5] to the RMA to ensure compliance with the Water Services Act 2021. We accept that there are no relevant standards that apply to the proposed discharges at the time of this decision. We agree it is appropriate to include section 104(2D) to the matters to be addressed in the proposed six-yearly Monitoring and Technology Review Report (**MTRR**) condition.

6 Summary of evidence heard

[52] Copies of all the written material submitted during the consent process are held by the TDC, and a brief record of questions and responses during the hearing was kept by TDC's Hearing Facilitator. In addition, we took our own notes of the verbal statements and verbal evidence presented to us, and any answers to our questions. We refer to relevant elements of the submissions, statements, and evidence in this decision.

6.1 The Applicant

[53] **Ms Katherine Forward**, Counsel with Duncan Cotterill, conducted the Applicant's case, presenting opening legal submissions and calling nine witnesses. Ms Forward outlined background to the NRSBU, the resource consents sought, the statutory framework, effects on the environment, the terms of the consent sought and Part 2 of the Act. She highlighted the biosolids operation is an integral component of the WWTP and a critical piece of strategic infrastructure. She noted environmental monitoring over the duration of the previous consent demonstrates no significant adverse effects on water quality or ecological values of the Waimea Inlet. She highlighted the positive benefits on tree growth from use of the biosolids and economic benefit to TDC ratepayers. She noted the proposed MTRR condition required ongoing assessment of new technologies and review of the BPO to minimise adverse effects. She concluded that based on the evidence provided the application should be granted for a term of 35 years, subject to the conditions proposed. Appended to her submissions was a document outlining the NRSBU's response to the CIA recommendations.

[54] **Mr Nathan Clarke**, General Manager for the NRSBU, provided a written statement of evidence and a summary statement outlining the structure and functions of the NRSBU, implications of the Three Waters reforms, the investment in the WWTP and BAF, future works, an overview of the process, complaint response protocol, access, climate change considerations, the NRSBU 50-year strategic plan, and responses to the s42A Report and submissions. He highlighted the NRSBU was looking to diversify the disposal options over

5 Section 104(2D) *When considering a resource consent application that relates to a wastewater network, as defined in section 5 of the Water Services Act 2021, a consent authority—*
(a) *must not grant the consent contrary to a wastewater environmental performance standard made under section 138 of that Act; and*
(b) *must include, as a condition of granting the consent, requirements that are no less restrictive than is necessary to give effect to the wastewater environmental performance standard.*

time and reduce the reliance on the current biosolids operation. He considered coastal erosion was unlikely to adversely affect the biosolids application areas within the 35-year consent term sought and there were options to mitigate any loss of land area. He noted that not all of the available application area was required at present and confirmed there was sufficient land available for future development and growth. Appended to his evidence was a flow diagram of the current structure of the NRSBU, the Memorandum of Understanding and the NRSBU Business Plan 2022/2023 (Appendix A); Business Improvement Plan (Appendix B); Bell Island Treatment Plant Schematic (Appendix C); and Focus on Community and Environmental Benefits (Appendix D).

[55] **Mr Christopher Purchas**, Consultant for Tonkin & Taylor Ltd, provided a written statement of evidence and summary statement outlining the current production of biosolids, potential biosolids management options, and evaluation of the biosolids management options. He provided Table 0.1 setting out the options assessment summary matrix for biosolids treatment and end use. He concluded the aerobic digestion of wastewater solids to produce a biosolids slurry followed by the application of the slurry to land at Moturoa / Rabbit Island was the preferred and BPO. He stated the alternative options were landfill disposal or application of the dried biosolids elsewhere. He noted a change from the current approach to biosolids disposal would increase costs. He highlighted the changing nature of biosolids management in New Zealand and globally, and the need for ongoing periodic revaluation of end use of options. He concluded the proposed MTRR condition would achieve this.

[56] **Dr Paul Gillespie**, Aquatic Microbial Ecologist for Cawthron Institute provided a written statement of evidence and a summary statement addressing potential adverse intertidal effects, the approach to assessing and monitoring effects, key outputs of historical monitoring, the receiving environment of Waimea Inlet, ecological effects on Waimea Inlet, values of affected species and habitats, effects organic material and nutrients, effects of toxic contaminants, and effects on shellfish quality. He highlighted the large body of monitoring data (both baseline and since biosolid disposal commenced) supporting the application and his conclusion that the effect on the coastal environment would be less than minor. He acknowledged that the discharge of nutrients to the intertidal area had the potential to cause excessive growth of micro and macro algae, and toxic effects on organisms living in the sediment, but that monitoring indicated the risk from adverse cumulative effects was likely to be less than minor and was likely to remain so in the future. He noted that elevated concentrations of heavy metals in cockles in monitoring locations was likely to be from soils in the catchment and not from the biosolids.

[57] **Dr Nicholas Berry**, Technical Director - Wastewater Engineer for Beca, provided a written statement of evidence and a summary statement addressing the current biosolids processes, an assessment of alternatives and comments on the s42A Report. He outlined the estimated increase biosolids over the term of consent sought, Grade Ab biosolids under the New Zealand Biosolids Guidelines 2003 ('**Biosolids Guidelines**'), alternatives to produce Grade Ab biosolids and the significant costs to alternative processes to achieve the same grade of biosolids. He considered the proposed MTRR condition would address any future changes in the volume or composition of the biosolids and reassessment against the Biosolids Guidelines. He noted the proposed New Zealand Biosolids Guidelines

(Draft 2017) and commented on the differences in grading. In response to questions, he had a high level of confidence that estimated increased loads can be treated using the Autothermal Thermophilic Aerobic Digestion (**ATAD**) 'three train' approach for pathogen reduction.

[58] **Dr Jiaming Xue**, Senior Scientist for Scion, provided a written statement of evidence and summary statement addressing the beneficial use of biosolids as fertiliser to improve tree growth and nutrition, and soil fertility and quality; potential risks of land application; updated operational and monitoring results; guidance on biosolids application; and proposed consent conditions. He considered the application of biosolids had not resulted in any significant adverse effects on soil quality and health but has improved tree nutrition and growth. He highlighted the findings of the updated operational 2020-2021 data showing soil pH was maintained above 5, soil fertility was improving over time, and concentrations of heavy metals were slowly accumulating but were generally below the Biosolids Guidelines with the exception of occasional higher levels for arsenic and nickel. He concluded the existing application rates were justified as appropriate and should be retained. He recommended an improved soil monitoring regime to safeguard the receiving environment, as well as maintain the current monitoring regime. He also recommended provision of a pathway for responding to monitoring results over the life of the new consent; and investigation of the impacts of harvesting disturbance and pine tree reestablishment on the provision of benefits and potential risks. In response to questions regarding the sustainability of biosolids application over 35 years with up to a 16% increase in biosolids, Dr Xue stated the cumulative assessments undertaken were 'snap shots' and that time sequences using soil properties and other factors would be required to answer this. However, he did note the heavy metal concentrations in soil were quite low and the accumulation over time was slow.

[59] **Dr Jeremy Bennett**, Senior Groundwater Scientist for Tonkin & Taylor Ltd, provided a written statement of evidence and a summary statement addressing the hydrogeological setting and groundwater conditions; the characterisation of contaminants in the biosolids, treated soils and groundwater; the availability and likely quantity of contaminants released to the receiving environment; and estimates of the potential contaminant loading on the coastal environment. He noted heavy metals from the biosolids were likely to be retained in the forest litter layer; and that nutrient concentrations in groundwater were generally within the expected range with occasional periods of elevated ammoniacal nitrogen or nitrate observed that was likely to be associated with the biosolids application or other wastewater infrastructure. In his summary statement, he provided an update to his assessment based on the provision of additional survey information for the groundwater monitoring wells, which significantly reduced the estimated peak nitrogen concentrations released to the Waimea Inlet. Using a conservative mass balance approach, he estimated the potential quantity of nitrogen to be approximately 21.5 tonnes of nitrogen per year, which represented 4.8% and 1.2% of the reported mean annual cumulative nitrogen for the Waimea Inlet and Tasman Bay catchments respectively. In response to questions, he stated he had a moderate to high level of confidence in the knowledge of the groundwater system; and that observed effects in the groundwater indicated the monitoring programme was effective and monitoring locations were appropriate.

[60] **Mr Christopher Bender**, Air Quality Consultant for Pattle Delamore Partners Limited, provided a written statement of evidence and a summary statement addressing the nature and origin of the sources of odour, sensitivity of the receiving environment to odours, an analysis of odour complaints, odour monitoring undertaken, and an assessment of potential odour effects and odour mitigation methods. He noted the biosolids odour is considered to be offensive in nature and has a negative hedonic tone, but that for the most part was only noticeable within close proximity to the BAF and application areas. He considered the separation from residential areas (500 metres) and application areas was sufficient to protect against adverse odour conditions under normal operations. He noted majority of the odour complaints were associated with the WWTP and occurred in the warmer summer months. He concluded the proposed installation of covers on the biosolids storage tanks and extraction of the air to a biofilter for treatment, in conjunction with an automated system to assist in determining the most appropriate application area in meteorological conditions would provide further odour mitigation.

[61] **Dr Neale Hudson**, Environmental Chemist and Manager – Freshwater and Estuaries for NIWA, provided a written statement of evidence and a summary statement assessing measured pathogen concentrations in treated biosolids, health risk assessment processes, risks to water users, potential health risks associated with inhalation of airborne contaminants and potential health risks from exposure to groundwater. He noted the ATAD process produces biosolids with consistent concentrations of pathogens and faecal bacteria over time. He highlighted full compliance of microbial contaminants with the Biosolids Guidelines, with the exception of *Salmonella* due to insensitivity of the current laboratory test methodology, which can be addressed in future testing. He highlighted the addition of testing *Campylobacter* concentrations. He considered current mitigation measures (using moderate spray pressures, minimising public access to application areas, signage and buffer zones) minimised the exposure of people to airborne pathogens. He concluded concentrations of pathogens in shallow groundwater were likely to be negligible; and the faecal indicator bacteria concentrations on the shoreline were also a negligible risk to recreational water users.

[62] **Mr Daniel Murray**, a Consultant Planner for Tonkin & Taylor Ltd, provided a written statement of evidence and a summary statement including a summary of the activity and the site, and addressing the resource consents required, the planning context, assessment of effects on the environment, submissions, the s42A Report, proposed consent conditions, consent duration and Part 2 of the RMA. He highlighted the observational and monitoring data record that mean the adverse effects were well understood; and the positive effects of continuing the activity. He commented on the Te Ātiawa Iwi Environmental Management Plan (**IEMP**), Waimea Inlet Management Strategy and Waimea Inlet Action Plan. He concluded the application was consistent with the policy framework; and that the adverse effects on the receiving environment could be avoided and mitigated by the proposed conditions of consent. Attached to his evidence were copies of relevant planning provisions (Appendix A), an updated set of proposed consent conditions (Appendix B), and a map showing the 'old domain area'. At the hearing, Mr Murray tabled a further set of revised conditions reflecting changes discussed earlier in the hearing.

6.2 Submitters

[63] **Te Ātiawa Manawhenua Ki Te Tau Ihu Trust** ('Te Ātiawa') was represented at the hearing by Ms Sylvie Filipo, a Kaitiakitanga Planner for Te Ātiawa and Mr Daren Horne, Kaitiaki and Cultural Adviser for Te Ātiawa. Ms Filipo provided a written statement addressing the Statutory Acknowledgement, the existing environment from a cultural perspective, concerns of Te Ātiawa, Te Ao Māori (the Māori World) and the AEE. Mr Horne provided a verbal history of the relationship and significance of Moturoa and Te Tau Ihu to Te Ātiawa.

[64] Ms Filipo stated that Te Ātiawa expects to be a co-manager of its rohe and has not been consulted satisfactorily under the requirements of the RMA as mana moana and mana whenua. She noted most concern related to the duration of consent sought and requested a maximum duration of 15 years. She highlighted the obligations under Te Tiriti o Waitangi and Part 2 of the RMA. She considered the application contributed to cumulative adverse effects on the Waimea Inlet and the degradation of the mauri of the waters of the inlet.

[65] Mr Horne provided oral evidence of the relationship and cultural value of the Waimea Inlet to Te Ātiawa. He emphasised the importance of enabling practices such as kaitiakitanga and manaakitanga; and the significant adverse effect on the mana of his people caused by not being able to practise these due to adverse effects on the mauri of the waters and degradation of the estuary. His overarching focus was on the restoration of the Waimea Inlet as a taonga.

[66] **Te Rūnanga o Ngāti Rārua** ('Ngāti Rārua'), was represented at the hearing by Ms Aneika Young. Ms Young acknowledged she had prepared the CIA when she was working in a previous role and was now representing Ngāti Rārua. She highlighted five hapu which have historical relationships with Moturoa and hold grievances through loss of areas used for harvest and access. She highlighted their inability to undertake cultural practices and loss of the physical and spiritual (metaphysical) connection. She noted that a lack of Statutory Acknowledgement in the case of Ngāti Rārua did not diminish the importance of the associations Ngāti Rārua have with the land. She raised concern for the cultural safety of people going into tapu areas. She considered the application was having a 'major accumulative impact' on their ability to harvest mahinga kai in the surrounding waters. She requested a robust map / plan to record cultural layers on the island as a first step given the cultural sites are not well documented. She noted it was a very western approach to compartmentalise parts of the island and not recognise the overall significance. She highlighted iwi have been opposing these consents for 30 years and it was time the offense was addressed. She considered the whole area to be a 'cultural precinct' and said it was long overdue that iwi had real decision making on Moturoa. She tabled a copy of a page from 'Poipoia Te Ao Tūroa' section 7.3 discharges which outlined Ngāti Rārua's opposition to the discharge of human wastewater, even when treated, on or near ngā wāhi taonga tuku iho or mahinga kai or areas at risk of flooding or inundation.

6.3 Reporting Officer

[67] **Mr Leif Pigott**, Reporting Officer for TDC, spoke to his s42A Report and addressed the key matters raised in the hearing. He highlighted the changing landscape of wastewater management under the Three Waters reform and the need for good long-term planning; and noted the new standards and reporting requirements were still being worked on. He confirmed there had been no further progress on Draft 2017 Biosolids Guidelines and the provided a copy of the guidance on the standards[7]. He noted land affected by previous extremely high storm surges can be identified by dead trees and that these areas won't be replanted. He highlighted the main source of nitrogen in Tasman Bay came from the deep upwelling of freshwater and less than 1% from wastewater. He noted the ATAD process was basically a long, slow cook and that all WWTPs had to deal with sludge. He noted that the ability to treat viruses has changed recently and the MTRR condition would require ongoing review of BPO. He was satisfied air quality effects were reasonably well understood and considered the development of an application to guide irrigation in different wind conditions was very positive. He considered the land application area was large enough to keep away from the reserve in summer. He agreed with the recommendation for more detailed soil monitoring plan. He supported the imposition of an accidental discovery protocol and an iwi monitor for earthworks. He highlighted the enhancement and restoration of Rough Island. He noted the condition requiring an annual hui with iwi needed more detail and reporting. He considered the annual hui shouldn't be a 'tick box exercise' and needed to be maintained going forward by way of more explicit conditions.

[68] Mr Pigott provided further comments on the revised proposed conditions which were attached to the Applicant's right of reply as Appendix A. Mr Pigott recommended inclusion of specific clauses on the section 128 review conditions relating to climate change and sea level rise and the implementation of any applicable wastewater environmental performance standards made under section 138 of the Water Services Act 2021. He recommended some form of Cultural Health Index (**CHI**) monitoring was warranted.

6.4 Applicant's right of reply

[69] Ms Forward provided closing legal submissions for the Applicant, a set of revised conditions with comments from the Reporting Officer (Appendix A), a final set of conditions proposed by the Applicant (Appendix B) and a literature review regarding the effectiveness of the ATAD for Helminth ova inactivation by Mr Berry (Appendix C). Ms Forward submitted the revisions to conditions advanced by the Applicant present a robust monitoring and review framework in which the biosolids would continue to operate and together with the opportunity provided for ongoing engagement with tangata whenua, support the grant of a 35-year term of consent (excluding RM200641).

7 Centre for Integrated Biowaste Research (August 2014) 'Organic Materials Guidelines Contaminants Review'

7 Principal issues in contention

[70] In assessing the applications before us, we have considered the application documentation and AEE, the s42A Report and technical reviews, submissions received, and the evidence provided during and after the hearing. We are required to consider the actual and potential effects of the application on the existing environment, which includes lawful existing activities, permitted activities and any activities authorised by existing resource consents.

[71] We rely on the evidence of Dr Xue regarding the risks of the land application of biosolids and his conclusion that the existing application rates are appropriate. We note his recommendations have been reflected in the revised consent conditions and provide for improve soil monitoring and a pathway to respond to monitoring results overtime. We highlight his findings regarding the relationship between the age of trees and their nitrogen uptake and the need to adjust the application rate according to the pine stand age. We consider the Applicant should seek to include this factor in the development of the automated tool ('app') to assist with selecting land areas and application rates. We also agree further investigation is needed on land disturbance at harvest and mitigation of risks.

[72] We rely on the evidence of Mr Berry that the soil limits in the Biosolids Guidelines are appropriate given the draft 2017 Biosolids Guidelines are still to be finalised. We accept the Applicant's view in reply that codifying the maximum limits for heavy metal concentrations in soil from the current Biosolids Guidelines in the conditions of consent is appropriate.

[73] We adopt the conclusion of the s42A Report that the effects on groundwater quality are likely to be no more than minor based on groundwater monitoring data. We note the recent additional survey of the bore locations and well casing elevations (by topographical survey) improve the understanding of the groundwater levels and flow paths on Moturoa / Rabbit Island. We are satisfied that with the continuation of groundwater monitoring any significant adverse effects on groundwater quality over time will be avoided. We accept there will not be any adverse effects on drinking water supplies given the location of the discharge and the direction of groundwater flow, and importantly the absence of any water takes on the island for potable supply.

[74] We acknowledge the revised horizontal hydraulic gradient based on the recent survey data has resulted in revised estimated potential peak nitrogen concentrations at the coastal margins and nitrogen concentrations in the Waimea Inlet. We accept the evidence of Mr Bennett and Dr Gillespie that the monitoring undertaken provides a comprehensive data set and that the location of the monitoring sites are representative given the knowledge of groundwater flows. We rely on the evidence of Dr Gillespie that there is no evidence that the biosolids operation on Moturoa / Rabbit Island has had any adverse effects on the ecology of the intertidal and subtidal receiving environment of Waimea Inlet; and that any cumulative nutrient and contaminant enrichment of the intertidal sediments is likely to be less than minor. This is important given the Waimea Inlet is listed in Schedule 25D of the TRMP, as an area with nationally significant ecosystem values and

that it includes habitat of importance to threatened and endangered indigenous flora and fauna.

[75] We note the odour assessment prepared by Mr Heveldt and the evidence of Mr Bender regarding recommended mitigation measures and the preparation and implementation of an Odour Management Plan. We are satisfied that the revised proposed conditions reflect these recommendations and matters raised during the hearing. We adopt the conclusion of the s42A Report that any odour effects from the BAF and application biosolids onto land will be minor and acceptable with the imposition of conditions.

[76] On the basis of the evidence of Dr Hudson, we find that any effect from the biosolids operation on human health will be less than minor with the imposition of conditions proposed. We accept Dr Hudson's view that the buffer zones proposed are adequate given the multiple layers of protection provided through the treatment process. We note that in reply the Applicant confirmed that the sensitivity constraints relating to laboratory testing of *Salmonella* and *Campylobacter* concentrations raised in Dr Hudson's evidence have been resolved. We also note the literature review undertaken by Mr Berry relating to compliance limits for Helminth ova supports the view that the retention time and temperature range in the second ATAD tank exceeds standard inactivation requirements. We accept the view of Mr Berry and Dr Hudson that a time / temperature requirement is appropriate.

[77] We have had regard to the effects of climate change and sea level rise, and the long-term suitability of the application site for biosolids application. We rely on the evidence of Mr Clarke that the operation does not currently utilise the full area of land available and can adapt to sea level rise through a volunteered condition that no biosolids will be applied within 50 metres of mean high water springs. Mr Clarke also confirmed that any areas affected by previous storm surges are not within the biosolids applications area. We accept the evidence of Mr Murray that ongoing monitoring has been designed to identify any changes in groundwater trends and any accumulation of contaminants in soil; and that an amendment to proposed condition 9 (of his evidence) recognises future actions may be required to avoid, remedy or mitigate any adverse effects which may arise due to climate change and sea level rise. We accept there is some additional capacity in terms of the current land area available for biosolids application and to adapt to climate changes effects. We address this issue further in relation to consent term below.

[78] Based on the evidence, we consider the principal issues in contention relate to effects on cultural values and relationships and the term of consent. We address the later issue at the end of this decision.

8 Main findings on the principal issues in contention

8.1 Effects on cultural values and relationships

[79] The submissions from Te Ātiawa outlined their mana whenua / mana moana status over the lands and waters of the Waimea – Te Ātiawa Rohe. The submission canvased the

statutory framework relevant to issues and concerns raised. Te Ātiawa's submission stated - '*…the infrastructure and related discharge of biosolids have effects on natural processes by contributing to the cumulative effects of contaminants in the inlet.*[8]. The submission raised issue with the term of consent sought.

[80] Ms Filipo highlighted the IEMP and its relevance to all Te Tau Ihu iwi. She noted Te Ātiawa seek net enduring restorative outcomes to address current environmental degradation of Moturoa and the Waimea Inlet.

[81] Mr Horne detailed Te Ātiawa occupation and use of Moturoa and importance to Te Ātiawa. He stated Moturoa is the most sacred place in the Waimea Inlet to Te Ātiawa as a place of war and as a burial site.

[82] In response to questions, Mr Horne expanded on the relationship of Te Ātiawa with Moturoa including the historical association as a key strong hold and strategic position for various iwi over time. He considered the whole island to be tapu and raised concerns that the plantation forestry operations had resulted in the disturbance to urupā. He wanted the island to be restored with native vegetation given its significance. He considered the 35-year consent term sought was insulting and did not acknowledge the significance of Moturoa to Te Ātiawa. He expressed his frustration and dissatisfaction with process of engagement under the existing consent and in having to deal with three different parties (PFS Olsen, TDC and NRSBU), as well as other iwi. He felt their concerns were not understood or addressed.

[83] Mr Horne could not define specific locations of urupā. He conveyed that the whole island must be considered an urupā until more detailed investigations are undertaken. As such, he wanted extension of the current exclusion zones and better cultural mapping to be undertaken. He considered the level of adverse effect on Te Ātiawa's mana from not protecting urupā in their role as kaitiaki was 'highly significant'. He stated that the disturbance and violation of tapu areas had serious consequences for people's health and well-being. He noted Te Ātiawa were struggling with capacity to effectively participate in resource management matters and could see benefit in having the WWTP and BAF consents considered together in one process in the future.

[84] Mr Horne outlined his understanding of what CHI monitoring would entail and the development of a model with Professor Dean Walker. He noted the primary position of Te Ātiawa was for the consent to be declined.

[85] The submission from Ngāti Rārua acknowledged the work of the Applicant to undertake a Cultural Impact Assessment (CIA) which had involved the contribution of Ngāti Rārua. The submission supported adoption of the CIA recommendations as part of the conditions for the consent if granted. The submission clearly stated the traditional and cultural association, and relationship of Ngāti Rārua with the Waimea catchment, including the coastal waters and islands.

8 Te Ātiawa submission, para 1.1

[86] Ms Young acknowledged and supported the points raised by Te Ātiawa. In so doing, she recognised the different lived relationships of Ngāti Rārua and Te Ātiawa. She noted the differences did not diminish or contradict the expressed relationships but recognised the differing lived experiences over successive occupation of the area.

[87] Ms Young highlighted their inability to undertake cultural practices and loss of the physical and spiritual (metaphysical) connection. She raised concern for the cultural safety of people going into tapu areas. She considered the application in combination with the WWTP discharge to water was having a 'major accumulative impact' on their ability to harvest mahinga kai in the surrounding waters. She requested a robust map / plan to record cultural layers on the island as a first step given the cultural sites are not well documented. She noted it was a very western approach to compartmentalise parts of the island and not recognise its overall significance. She highlighted iwi have been opposing these consents for over 30 years and it was time the offense was addressed. She considered the whole area to be a 'cultural precinct' and said it was long overdue that iwi had real decision making on Moturoa. She tabled a copy of a page from 'Poipoia Te Ao Turoa' section 7.3 discharges, which outlined Ngāti Rārua's opposition to the discharge of human wastewater, even when treated, on or near ngā wāhi taonga tuku iho or mahinga kai or areas at risk of flooding or inundation. She confirmed the primary position of Ngāti Rārua was for the consent to be declined.

[88] Ms Forward submitted the Applicant had undertaken extensive consultation in accordance with Policy 2 of the RMP and had commissioned the CIA. She noted Te Tau Ihu Iwi's participation in the development of the 2016 version of the RMP and the sites of archaeological and cultural significance identified through this process, which align with the current exclusion zones and buffer area setbacks. She noted the NRSBU's formal response to the CIA in November 2021 and the difficulties in adopting some of the recommendations due to requiring commitment from third parties and actions outside of the scope of this application.

[89] Ms Forward highlighted the proposed condition requiring the inclusion of the biosolids operation at the annual hui with Te Tau Ihu iwi. She submitted the outcome of this condition would be '*... direct future offsets / compensation that may be taken into account.*' In response to questions, Ms Forward agreed that any outcome would be at the Applicant's discretion but that the ongoing work on the 50-year strategic plan was a step in the right direction. She considered the annual hui was an opportunity for iwi to provide more information on specific areas / sites which could be protected in the future. She highlighted the BMP requires annual review of the exclusion zones and buffer areas.

[90] Ms Forward confirmed the Applicant relied on the CIA and the evidence of iwi and noted this needed to be weighed with other evidence in terms of an overall finding that the biosolids operation would not result in significant adverse environmental effects.

[91] Mr Murray acknowledged that Te Tai Ihu iwi consider the entirety of Moturoa / Rabbit Island to be wāhi tapu and their opposition to the activities on cultural and spiritual grounds. He noted it was unclear what cultural or spiritual effects could be monitored given the comprehensive range of environmental parameters proposed, including groundwater, soil quality and coastal ecology. He highlighted the evidence of Mr Horne

that CHI monitoring would be broad and catchment wide and remained of the view such monitoring was not appropriate or possible within the context of this application.

[92] Mr Murray noted the suite of proposed conditions provided opportunities for ongoing involvement from iwi and to assist with future management of cultural effects, including an annual hui, six-yearly MTRR, continued implementation of exclusion zones from significant sites (in accordance with the RMP) and annual review of the BMP. He considered these opportunities to be involved in the management of the coastal environment and to have their interests and concerns (with respect to the WWTP and biosolids operation) recognised and were consistent with the relevant objectives and policies regarding the role of tangata whenua as kaitiaki and the principles of Te Tiriti o Waitangi / Treaty of Waitangi.

[93] The s42A Report outlined the cultural significance of water as taonga to tangata whenua and the significance of Moturoa / Rabbit Island and the Waimea Inlet. It noted the importance of avoiding discharges to land in the vicinity of sensitive areas such as wāhi tapu, archaeological site and urupā. It considered the scope of the application was quite limited and that this made responding to the recommendations of the CIA very challenging given their much wider scope and holistic view of the island. It responded to each of the CIA recommendations and noted some were outside of the scope of the application.

[94] At the hearing, Mr Pigott supported a requirement to undertake CHI monitoring in response to the CIA recommendation. He noted his suggested condition was a 'straw man' and that some level of cultural monitoring should be undertaken even if this was quite small in scope.

[95] In reply, Ms Forward maintained that the annual hui provided a pathway for appropriate mitigations to be introduced in the future and has a '*forward- looking prospectus with the purpose of seeking to understand ongoing cultural considerations; and ensuring iwi have visibility and access to sites of cultural significance so they can confirm that identified archaeological sites are adequately protected.*'[9] She submitted any issues raised at the annual hui would be identified in the Annual Report and assessed by the Council before any review would be initiated to consider relevant factors such as scope of the consent, financial and practical considerations, continuing achievement of the BPO, whether the authorised activity remains viable and potential for any unintended non-compliance issues.

Findings

[96] Mana whenua submitters raise concerns relating to adverse effects on mahinga kai and surrounding environment, as well as localised effects on known and unrecorded sites of cultural significance to Māori within the island itself. Mana whenua seek recognition and protection of their relationship with Moturoa and the Waimea inlet, and of their

9 Closing legal submissions, para 10.

sacred / tapu sites on the island from plantation forestry activities and the discharge of biosolids.

[97] In terms of adverse effects on mahinga kai and surrounding environment from the activities authorised by the consents sought, we accept the view of the Applicant's experts and the Reporting Officer that there is no evidence that substantiates the statements made by mana whenua representatives. There is no evidence that the biosolids operation on Moturoa / Rabbit Island over the last 26 years has had any more than minor adverse effects on the ecology of the intertidal and subtidal receiving environment of Waimea Inlet. We accept the evidence of Dr Gillespie that any cumulative nutrient and contaminant enrichment of the intertidal sediments is likely to be less than minor based on the regular monitoring undertaken. On this basis we find the is no evidence of adverse effects on mahinga kai species or the ecology of the coastal environment from the biosolids operation.

[98] In regard to concerns relating to the application of biosolids in areas prone to coastal inundation and flooding, it is our opinion these can be sufficiently avoided through implementation of exclusion zones along coastal margins and confirmation by the Applicant that areas previously subject to inundation are not within the biosolids application area. We find this will avoid adverse effects on mahinga kai species and coastal ecology.

[99] The importance of Moturoa to Te Ātiawa, Ngāti Rārua and other iwi was well presented and is not contested. The presence of identified wāhi tapu sites is acknowledged by the Applicant and these areas are excluded from the application of biosolids. We accept the annual hui and the development of the 50-year strategic plan for the management of Moturoa / Rabbit Island will provide opportunities for further significant areas to be identified and protected. We find that the revisions made to the review conditions give the Council the ability to require further mitigation if the Applicant does not act on any new cultural information that becomes available.

[100] We appreciate the concerns raised by Mr Horne and Ms Young that lead to the position to declare the whole of Moturoa / Rabbit Island to be a wāhi tapu. Mr Horne was clear in his evidence that where these areas are known or have been identified exclusion zones have been applied and he supported the proposed conditions of the CIA seeking further investigations to be undertaken. This position was corroborated by Ms Young, noting Ngāti Rārua had previously occupied parts of Moturoa / Rabbit Island. On this basis we do not agree that the whole of Moturoa is a wāhi tapu.

[101] The evidence of Mr Horne raised concerns with the current management and ongoing practice occurring within identified wāhi tapu exclusion zones primarily related to forestry operations. He presented photos of wāhi tapu areas in which recent tree felling had occurred. His concerns were corroborated during our site visit where we observed tree felling had occurred within a wāhi tapu exclusion zone, which had been clearly identified by white markers. We observed that an internal access road cut through the middle of another clearly marked wāhi tapu exclusion area. While we acknowledge this consent applies to biosolid application, it is clear that vehicles associated with the application of biosolids would also use this access road. We find appropriate measures should be

employed to ensure all vehicles and personnel associated with biosolids application operation do not enter into, or through wāhi tapu exclusion zones.

[102] The CIA and mana whenua submitters sought conditions to require further investigations be undertaken across the whole of Moturoa / Rabbit Island with the intent to identify any further wāhi tapu locations. This seems to be a practical step in addressing concerns raised by mana whenua in the protection of their wāhi tapu, including those yet to be rediscovered and to provide for the cultural safety of people accessing Moturoa / Rabbit Island. However, we accept this primarily relates to the wider management of Moturoa / Rabbit Island and its use for plantation forestry. We accept that the effects of the current plantation forestry operations on Moturoa / Rabbit Island are outside of the scope of this consent application.

[103] It is clear from the evidence that further refinement of wāhi tapu areas should be undertaken, but we accept the Applicant's view that this should be considered through the annual hui and the 50-year strategic plan for the management of the island.

9 Decision

[104] Pursuant to sections 104B, 105 and 107 of the Act, we **GRANT** the resource consents RM200638, RM200639, RM200640, and RM200641, subject to the conditions in Attachment A of this decision, for the reasons outlined below.

10 Reasons for the decision

10.1 Effects on the environment

[105] On the basis of the evidence before us, we consider the adverse effects on air quality, water quality and cultural values can be avoided, mitigated and remedied by the imposition of appropriate conditions.

10.2 Positive effects

[106] We accept the significant positive effect of the application in enabling the ongoing effective and efficient wastewater treatment and disposal which is very important to the social, economic, cultural wellbeing, and health and safety of the community. We acknowledge the significant benefits to residents, businesses and industry in the area; and the substantial cost savings to both Councils from the joint budget.

[107] In making this determination, we have taken into account these positive effects.

10.3 Relevant planning provisions

[108] The NZCPS is the highest order document with objectives and policies to give effect to the purpose and principles of the RMA. It was agreed that the relevant objectives and policies of the NZCPS should be given the most weight. It is also agreed that the more specific policies should be given more weight than the general policies. In undertaking a fair appraisal of the NZCPS, we have read the objectives and policies both individually and as a whole.

[109] We accept the provisions of the NZCPS have been prepared to give effect to Part 2 of the Act. We acknowledge the RPS and TRMP were prepared before the NZCPS.

[110] The Applicant's assessment of the application against the relevant objectives and policies was included as Appendix N of the application. The analysis concluded the application was 'generally consistent' with the relevant provisions of the NZCPS, RPS and TRMP.

[111] The s42A Report also concluded the application was generally consistent with the policy direction of the NZCPS, RPS and TRMP.

[112] Ms Filipo highlighted Objective 3 of the NZCPS and the requirement to incorporate mātauranga Māori into sustainable management practices. She noted that this objective is further clarified through Policies 6, 13, 14, 21 and 23, where mātauranga Māori and cultural

values should be incorporated into the decision-making process to ensure the purpose of the RMA is achieved.

[113] Mr Murray relied on the Applicant's assessment in Appendix N of the application and agreed with the s42A Report conclusion that the application was consistent with the policy direction; particularly the key objectives of the NZCPS which recognise the social and economic importance of the BAF as strategic asset.

[114] Mr Berry undertook a comprehensive review of alternatives (Appendix D of the application), which was fed into the Applicant's analysis of the BPO, and concluded the application and volunteered conditions represents the BPO. Ms Forward relied on the evidence of Mr Berry to conclude the BAF and the irrigation of biosolids onto land provided a solution that is the BPO for the treatment and disposal of wastewater.

[115] Mr Pigott accepted that, based on the Applicant's evidence, the application represented the BPO for the discharges of biosolids onto land.

[116] We noted NZCPS Policy 23, and section 105 and Schedule 4 of the Act require the Applicant to consider alternative methods of discharge and discharge to alternative receiving environments. We accept the Applicant has undertaken such a consideration and has made a 'reasoned choice', as submitted by Ms Forward.

[117] In considering the nature of the discharge and the sensitivity of the receiving environment, the financial implications of other options, and the current state of technical knowledge, we are satisfied that the application represents BPO. We note the importance of the MTRR condition in requiring reassessment of the BPO within the context of new technologies and ongoing monitoring in the receiving waters over the consent term. We consider the timing and frequency of this review, in conjunction with review of the Bell Island WWTP, is critical in ensuring adverse effects are mitigated and avoided throughout the term of the consent.

[118] In response to questions, Ms Forward confirmed that the wording of the MTRR conditions left determination of the BPO to the consent holder. She considered this was appropriate given the Council could rely on the general review condition. We have taken this into account in determining an appropriate consent duration.

[119] Ms Forward submitted that in relation to the application Objective 6 was key driver of the NZCPS and provides for the existing use subject to protection of the values of the coastal environment.

[120] We note the TRMP provisions relating to the air discharge includes very clear policy direction to avoid, remedy and mitigate adverse effects on the use and enjoyment of other land and on the qualities of the natural and physical environment (Objective 5.1.2), to avoid, remedy and mitigate effects of odours and fumes (Policy 5.1.3.9), to maintain and enhance air quality (Objective 34.1.2), and to ensure adverse effects on the receiving environment are avoided, remedied or mitigated (Policy 34.1.3.1), and to allow or regulate contaminant discharges to air (Policy 34.1.3.2).

[121] We acknowledge the TRMP provisions relating to the wastewater discharges are also very directive requiring maintenance of water quality and enhancement where it has been degraded (Objective 35.1.2), to control the adverse effects of discharges to enable water classification standards to be met (Policy 35.1.3.2), to seek to improve water quality (Policy 35.1.3.3), and to ensure water quality is not degraded (Policy 35.1.3.4).

[122] Overall, we find that in light of the statutory framework, water quality in the receiving waters must, at a minimum, be maintained and where it is degraded it must be improved.

[123] Objective 3 of the NZCPS requires recognition of the role of tangata whenua as kaitiaki and to provide for tangata whenua involvement in management of the coastal environment. We accept the application is consistent with this by recognising the relationship of tangata whenua with identified significant sites on the island and avoiding adverse effects on coastal values and mahinga kai species. We consider the annual hui process will help promote meaningful relationships and interactions and ultimately will lead to incorporating mātauranga Māori into the biosolids operation.

[124] Overall, we find that with the imposition of conditions the application is generally consistent with the objectives and policies of the NZCPS, RPS and TRMP.

10.4 Other matters

[125] The application stated the following iwi management plans are relevant to the application:

a. Ngāti Kuia Pakohe Management Plan 2015;
b. Nga Taonga Tuku Iho Ki Whakatū Management Plan 2004;
c. Ngāti Koata Iwi Management Plan 2002; and
d. Te Tau Ihu Mahi Tuna (Eel Management Plan) 2000.

[126] Ms Forward noted the RMP, Waimea Inlet Management Strategy and the Waimea Action Plan should also be taken into account under section 104(1)(c). She noted the presence of the existing assets and land use in and around the inlet had been recognised in these documents.

[127] Ms Heard referred to the Te Ātiawa Iwi Ki te Tahu Ihu – Iwi Environmental Management Plan (**IEMP**) and the relevant provisions relating to kaitiakitanga, mātauranga Māori, mauri, and mana.

[128] We record we have had regard to these non-statutory plans and the Applicant's compliance history into account in making this determination.

[129] Overall, the iwi managements support the discharge of human effluent onto land and the avoidance of discharges to water and the coastal environment. We find the biosolids operation is consistent with this given the conditions proposed.

[130] Mr Clarke's evidence highlighted the development of the Applicant's 50-year strategic plan to set goals for the future management of infrastructure on Moturoa / Rabbit Island, which sits outside of the scope of the consents sought. Ms Forward submitted this

strategic plan process, in conjunction with the revised conditions, strengthened the opportunities that iwi have to participate in strategic decisions making affecting Moturoa / Rabbit Island. We accept these actions promote further opportunities for tangata whenua to exercise kaitiakitanga.

10.5 Sections 105 and 107

[131] We accept the Applicant has assessed alternative options available at this time. We are cognisant these options are highly dependent on the current location of the Bell Island WWTP. We acknowledge the six yearly MTRR will require the Applicant to continually review management practices and assess available technologies to ensure the BPO is implemented to minimise environmental effects.

[132] We have had regard to the nature of the discharge and the sensitivity of the receiving environment. Overall, we agree with Mr Pigott that the environmental monitoring undertaken under the previous consent supports that view that the receiving environment is not particularly sensitive to the discharge of biosolids under the conditions proposed. We acknowledge the discharge of human waste into water and onto significant sites such as urupā is highly offensive to tangata whenua. We are satisfied that the exclusion zones and the conditions imposed will avoid these highly sensitive areas.

[133] On the basis of the evidence, we find the proposed discharge of biosolids is unlikely to give rise to any of the adverse effects set out in section 107(1)(c)-(g), after reasonable mixing. We accept we are not prevented from granting the consents sought under section 107.

10.6 Part 2 of the Act

[134] Ms Forward submitted there was no need to undertake a separate assessment of the application under Part 2 of the Act in light of the Court of Appeal's decision on *RJ Davidson Family Trust v Marlborough District Council*[10]. Mr Murray agreed given the NZCPS and TRMP were formulated to give effect to the purpose and principles of the Act.

[135] Mr Pigott considered there was no need to undertake a Part 2 assessment given the relevant provisions of the NZCPS, RPS and TRMP.

[136] We accept that the provisions of the NZCPS, RPS and TRMP have been formulated to give effect to the purpose and principles of the Act. We acknowledge that the provisions of the TRMP pre-date NZCPS 2010 and therefore do not necessarily give effect to the provisions of the NZCPS. However, we do not consider reference to Part 2 would add anything to the evaluative exercise we have undertaken under section 104 of the Act.

[137] Overall, we find that granting the consents sought will promote the sustainable management of natural and physical resources, as defined in section 5 of the RMA.

10 [2018] NZCA 316

11 Consent term

[138] A key concern raised by submitters was the 35-year consent term sought. Submitters requested a shorter consent ranging from10 to 15 years.

[139] Ms Filipo and Mr Horne stated that Te Ātiawa consider the consent term sought to be excessive given the unknowns associated with the future, including potential effects of climate change. In response to questions, they considered that if the consents were granted it would be preferrable to have the expiry date align with the expiry of the consents for the WWTP. In response to questions, they acknowledged this would enable Te Ātiawa to address both components together and avoid the need for participating in two separate consent processes.

[140] The submission from the Waimea Inlet Forum Group considered the proposed conditions do not sufficiently manage the adverse effects over the long term, changes to the volume and composition of the biosolids over time nor the effects of climate change. The submission requested that the term of the consents be adjusted to match, or be less than, the consents for the operation of the Bell Island WWTP.

[141] Ms Forward addressed the consent duration in opening submissions and submitted that applicable case law suggested a term of 35 years was appropriate. She cited *PVL Proteins Ltd v Auckland Regional Council*[11] (**PVL**) and the relevant factors in making a decision on the term of consent, including:

a. Requiring the adoption of BPO;
b. Requiring the supply of information relating to the exercise of the consent;
c. Requiring the observance of minimum standards;
d. Reserving power to review the conditions;
e. Uncertainty for an applicant of a short term, and an applicant's need (to protect investment) may indicate a longer term is more appropriate, provided that the outcome is consistent with sustainable management; and
f. Review of conditions may be more effective than a shorter term to ensure conditions do not become outdated, irrelevant or inadequate.

[142] Ms Forward cited *Crest Energy Kaipara Ltd v Northland Regional Council*[12] (**Crest**) where the Court considered the reasoning in PVL that a shorter term should be used where a review of conditions may not be adequate to mitigate effect on the environment. She noted that the Court distinguished Crest, as a significant monitoring programme had been offered as a condition that allowed for a stage-by-stage review of consent conditions. She noted that in Crest the Court took into account the investment and social benefits.

[143] Ms Forward outlined the factors that supported a long- term consent including:

a. The value of the sunk infrastructures and the cost to the community of implementing an alternative system;

11 [2001] NZEnvC A61/2001
12 [2011] NZEnvC 26

b. The importance to public health and well-being;
c. Comprehensive consent conditions;
d. Certainty regarding ongoing land use on Moturoa / Rabbit Island;
e. Low risk of change to the receiving environment; and
f. No uncertainty regarding potential environmental effects and the effectiveness of consent conditions.

[144] Ms Forward acknowledged the biosolids operation is inherently linked to the WWTP remaining in operation at its current location and that if the WWTP is not reconsented or is relocated, it is likely the BAF will become unnecessary. However, she considered it did not follow that the consent term for the biosolids should be the same given additional time that would be needed to construct an alternative WWTP. She submitted it was both sensible and efficient to afford the biosolids operation a lengthier consent term for a transition period.

[145] The s42A Report noted that the following factors may be relevant when contemplating a shorter-term consent:

a. The activity is one which generates fluctuating or variable effects;
b. Depends on human intervention or management for maintaining satisfactory performance;
c. Relies on standards that have altered in the past and may be expected to change in the future.

[146] The s42A Report noted the predicted change in sea level over the term of the consents is 50 centimetres. It acknowledged there is likely to be more significant tidal inundation events and the die-off of low-lying production forest from such events. It considered it is very unlikely saltwater flooding would occur when biosolids were fresh given the long rest time between applications. It noted that the WWTP on Bell Island was at greater risk from the effects of climate change than Moturoa / Rabbit Island. It concluded the activity was a better solution than landfilling biosolids and had significantly lower greenhouse gas emissions and leachate.

[147] Mr Pigott maintained his view that the consents should be granted for 35 years given the current activity was a very good option and the supporting assessment of effects. He highlighted that the biosolid material must go somewhere and that the environmental effects of the activity were lower than disposal to landfill. He considered 35 years was not that long given there will always be a need for a WWTP. However, he acknowledged there would be a benefit to tangata whenua by having the WWTP and biosolid operations consent expiry dates aligned.

[148] We are cognisant the assessment of the BPO for the discharge from the WWTP and the discharge from the BAF is highly dependent on the current location of each component and their proximity to each other. We consider the two components of the wastewater system are inextricably linked and it is good resource management practice to consider these components together in the future. We have also given significant weight to the effectiveness and efficiencies that will be gained through one decision-making process for all parties and the ability to take a holistic approach.

[149] We agree that a consent term of five years is appropriate for RM200641 for the discharge of washwater and stormwater until this can be captured and used at the BAF.

[150] Having considered all of the factors raised and the conclusions reached in our assessment of effects, we consider it is appropriate to align the consent terms of the other consents sought with the expiry of the consents held for the WWTP, with an expiry date of 16 March 2040.

12 Consent conditions

[151] The revised set of conditions provided to the Council following the adjournment by the Applicant addressed a number of matters raised in the hearing. There is a high level of agreement between the Applicant and the Reporting Officer.

[152] Appendix A of the Applicant's right of reply included comments from the Reporting Officer and tracked changes to the revised consent conditions showing the remain points of disagreement.

[153] Mr Pigott remained of the view that the appropriate mechanism to capture potential adverse effects on cultural values is through CHI monitoring even if this was relatively focussed and small scale. He recommended a requirement for CHI monitoring through the inclusion of the conditions (condition 24B) recommended in the s42A Report.

[154] The Applicant considered there were significant challenges to implementing CHI monitoring, particularly in differentiating between effects generated by activities authorised under the consents and other activities, and that such a condition has the potential to result in non-compliance.

[155] In the absence of support for CHI monitoring, the Applicant highlighted condition 38(c) now includes an invitation to iwi to participate in coastal transect monitoring to give visibility to the monitoring and reporting, and to promote the sharing of information in relation to the biosolids application and the monitoring of the coastal environment.

[156] We asked iwi submitters about their experience with CHI monitoring and what this would require. We received limited responses and conclude that further work is needed to understand how this would be developed and implemented, and at what scale e.g. site specific versus a catchment scale monitoring. While we agree with Mr Pigott that some form of CHI monitoring is desirable, no evidence was presented directly denoting effects of biosolid application experienced in the surrounding waters or environment and it is unclear as to the type and or extent of cultural monitoring that would be employed. On this basis, we agree with the Applicant that imposing such an undefined and unknown requirement there would be a high risk of unintended non-compliance.

[157] We note the need for CHI monitoring was raised during consideration of the consents for the Bell Island WWTP and that it was concluded that this should be undertaken on a catchment wide / inlet wide basis. We consider the future renewal of these consents in conjunction with the WWTP (through aligned consent expiry dates) will assist in the future

development and implementation of appropriate CHI monitoring. We consider a holistic view to these consents is critical to incorporating mātauranga Māori in future environmental monitoring. We have given this significant weight in determining the appropriate consent term.

[158] The Applicant maintained the position that section 128 of the RMA is the appropriate mechanism for 'currently unknown' adverse effects and / or identified issues (and any actions) to be dealt with, with a more direct connection to iwi concerns included in the review clause. Ms Forward submitted this addressed 'additional mitigations that may be warranted once new cultural information arises' and put the balancing process in the hands of the Council through a section 128 review. She noted that such a review would only be required if the Applicant did not voluntarily adopt further mitigations in relation to issues raised or new information. Clearly, the Applicant sees the review process is available to address unknown or new sites and cultural connections that are not already subject to exclusion zones. We accept this is appropriate to ensure mitigation can be implemented.

[159] Mr Pigott suggested amendments to the review condition to reference explicit implementation of the wastewater performance standards with section138 of the Water Service Act 2021 and to expand on the consideration of climate change related impacts given these are foreseen. The Applicant did not consider a direct reference was necessary in the review condition given condition 6(c)(ii) and that condition 11 already adequately addressed climate change. We agree with Mr Pigott that his suggested inclusions are warranted given these circumstances are foreseen.

[160] The Applicant highlighted the importance of the MTRR condition to ensure the BPO and the most up to date technology is utilised in the application of biosolids and to respond to climate change and sea level rise.

[161] In terms of section 108(2)(e), we are satisfied that the proposed biosolids operation represented the BPO for preventing and minimising adverse effects on the environment at this point in time. In making this conclusion, we have had regard to the best available scientific and technical information, and the evidence of Mr Purchas and Mr Berry. We accept that the MTRR condition requires the Applicant to reassess the BPO throughout the term of the consent to ensure the management reflects the BPO.

[162] We have determined to make amendments to condition 8 in relation to the annual hui to require the minutes of the hui to be distributed to all parties in attendance and to provide an opportunity for any iwi representatives in attendance to confirm minutes are an accurate record of the issues discussed and the actions agreed, and / or to identify any inaccuracies in the minutes from their perspective. This enables the confirmed minutes and / or any inaccuracies identified by the parties to be recorded and reported. Condition 9(d) has also been amended to reflect this requirement.

[163] We have also included in condition 8 clarification that the purpose of the annual hui is to provide iwi representatives an opportunity to identify or raise cultural matters of concern in relation to the activity for the purpose of informing the Consent Holder and for hui parties to identify and agree action(s) for resolution including any direct offsets and / or

compensation. We consider this strengthens the Applicant's commitment to considering new mitigation measures as new information or understandings are gained over time.

[164] We consider the appropriate timeframe under condition 10 for the provision of any raw data requested by the Council is 10 working days and not one month as proposed by the Applicant.

[165] Mr Pigott recommended the inclusion of two additional clauses to condition 11(b) expanding on the assessment of the implications of climate change required in the six-yearly MTRR given the deletion of his proposed conditions 31A and 31B. The Applicant considered these matters had been adequately addressed. We agree with Mr Pigott's recommendation and consider the additional clauses recommended by Mr Pigott clarify that future actions required include a climate change adaption plan and review of the 50 m coastal exclusion zone following inundation events.

[166] Mr Pigott requested an amendment to condition 32 to ensure no spray drift onto publicly accessible areas. The Applicant did not accept this amendment given the actions prescribed in the BMP to exclude the public from 'active areas' and the extensive network of bike tracks. We accept that the actions prescribed in the BMP are sufficient given the evidence of Dr Hevaldt.

[167] We consider it is appropriate to include new condition 33 prohibiting vehicles and staff associated with the biosolids from using exclusion areas to protect wāhi tapu zones, unless agreement is given by Te Tau Ihu iwi through the annual hui process.

[168] The Applicant has incorporated the proposed upgrades to the wastewater and stormwater at the BAF, the enclosure of the BAF holding tanks and installation of a biofilter, and automation of the valve system in conditions 40 to 42, including timeframes for completion. We consider this provides certainty that these improvements will be completed within a relatively short but feasible timeframe.

[169] We accept the heavy metal concentration limits in the conditions and triggers proposed are based on compliance with the Biosolids Guidelines, with the except of Helminth ova which is to be assessed on a time / temperature basis based on expert advice. We note the Applicant has revised the conditions to include a requirement to undertake further testing to meet the verification standards if routine monitoring parameters fail to meet the prescribed standards.

[170] Heritage New Zealand Pouhere Taonga requested inclusion of a condition requiring preparation of an archaeological assessment. We agree with the Applicant that this is not warranted given the consents sought and evidence given that only minor earthworks are proposed around the BAF. We accept that land disturbance relating to the forestry harvest is outside of the scope of these applications.

[171] The Applicant has included an archaeological condition relating to any earthworks from the upgrade works to the BAF, which was provided to iwi in November 2021 for review. We consider this is appropriate despite little scope for earthworks associated with the upgrades of the BAF.

[172] Overall, we agree with the Applicant and the Reporting Officer that the agreed revised conditions are appropriate, reasonable, practical, and enforceable and serve valid resource management purposes.

[173] We have made some minor editorial changes to simplify readability of the conditions for its users. These included: re-ordering proposed consent conditions 3 to 7 with headings; and changes to the relevant Team Leader title, which the Council advises us has recently changed.

[174] The consent documentation for RM200638, RM200639, RM200640 and RM200641 is included in **Attachment A** of this decision.

Issued 14 April 2023

Sharon McGarry
Independent Hearing Commissioner (Chair)

Reginald Proffit
Independent Hearing Commissioner

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