

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for resource consent (APP-123534, APP-123548, APP-123526, APP-123550, APP-123535 and APP-123536) from the Regional Assets Section of the Hawke's Bay Regional Council to extract gravel within river channels and berms and coastal margins

**STATEMENT OF EVIDENCE OF SIMON DONALD BENDALL
ON BEHALF OF THE REGIONAL ASSETS SECTION OF THE
HAWKE'S BAY REGIONAL COUNCIL**

INTRODUCTION

1. My name is Simon Donald Bendall. I hold a Bachelor of Resource and Environmental Planning with Honours from Massey University.
2. I have 17 years' experience as a planner, with the last ten working as a consultant. I am a director and principal planner at Traverse Environmental Limited, which I formed following previous roles as a director and consultant planner with Environmental Management Services Limited and later Mitchell Daysh Limited.
3. Prior to my consulting roles, I was employed as a planner / senior planner by the Taupō District Council where I worked in reserves planning and environmental policy development, and later as a senior advisor by the Provincial Government of British Columbia, Canada.
4. I have been involved in statutory and non-statutory planning processes for a broad range of projects including natural hazards planning, resource consents processes, iwi environmental management plans, freshwater policy and others.
5. I am a member of the:
 - New Zealand Planning Institute (Associate)
 - Resource Management Law Association
 - New Zealand Coastal Society
 - Arbitrators and Mediators Institute of New Zealand
6. I confirm that my evidence is within my area of expertise except where I state that I am relying upon the specified evidence of another person, and that I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.
7. I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code and I agree to follow it when presenting evidence to the Hearing.

SUMMARY OF EVIDENCE

8. The Regional Assets Section of the Hawke's Bay Regional Council ("Applicant") seeks restricted discretionary activity resource consents for the extraction of riverbed gravel for flood control purposes from the Tukituki catchment, Ngaruroro and Tūtaekurī Rivers.

9. The resource consents are sought as part of implementing the Hawke's Bay Riverbed Gravel Management Plan 2017¹.
10. The extraction of riverbed gravel for flood control purposes already occurs in the Tukituki catchment, Ngaruroro and Tūtaekurī Rivers, under annual resource consents issued directly to individual commercial gravel extractors.
11. If granted, the Applications will, in my view, facilitate an improved management regime for riverbed gravel extraction by enabling the Applicant to issue authorisations to individual gravel extractors to operate under consents it holds, establishing a single accountable consent-holder, and providing a more integrated and comprehensive management approach.
12. The Assessment of Environmental Effects undertaken for the resource consent applications conclude that, with appropriate conditions, the proposal will result in positive effects and that the actual and potential effects on the environment are likely to be no more than minor.
13. The Applications were publicly notified in February 2019. Eight submissions were received, six in support and two neutral. Six of the submitters wished to be heard in support of their submission.
14. Subsequent discussions between the Applicant, submitters and the Consent Authority, including pre-hearing meetings, resulted in an updated set of proposed conditions, a draft memorandum of understanding, and in four of the six submitters who wished to be heard confirming that the matters raised in their submissions had been addressed.
15. The key outstanding matter that I have not been able to address in my evidence are the cultural values and impacts of concern that have been outlined in letter to the Applicant from Te Taiwhenua o Heretaunga dated 24 March 2021. A site visit is proposed for 9 November 2021 at which it is hoped these matters can be resolved.

SCOPE OF EVIDENCE

16. My evidence:
 - Provides a brief summary of the background to the applications;
 - Discusses submissions received following public notification of the applications;
 - Summarises pre-hearing engagement with submitters;
 - Discusses outstanding matters raised in submissions and identified in the s42A Officer's Report prepared by Mr Sven Exeter for the Consent Authority ("s42A Report");

¹ Hawke's Bay Riverbed Gravel Management Plan 2017, HBRC Publication No. 4949.

- Discusses the site visit scheduled for 9 November 2021;
- Discusses the revised conditions of consent provided in the s42A Report;
- Considers and responds to the analysis provided in the s42A Report;
- Summarises the statutory framework relevant to the proposal, including identifying changes to that framework since the applications were lodged; and
- Provides additional planning analysis where I consider this is required to inform an assessment of the proposal.

BACKGROUND AND ROLE

17. I was originally engaged by the Applicant circa 2016 to assist with the development of the Hawke's Bay Riverbed Gravel Management Plan ("GMP"). The GMP provides the basis for the resource consent applications that are the subject of this hearing.
18. The GMP is the culmination of a wide range of technical studies and information developed since a 2010 report prepared by Tonkin & Taylor for the Applicant that reviewed the management of riverbed gravel in Hawke's Bay. This report recommended 13 issues requiring further work, the final step being the development of a GMP.
19. The GMP was developed with the purpose *"to sustainably manage gravel extraction from rivers for flood protection purposes, and to ensure community safety while allowing for economic development without compromising cultural, social and environmental outcomes and values associated with the region's freshwater resources."*
20. The GMP was prepared under the Local Government Act (2002) Special Consultative Process and was released for public submission in April 2017. Following the public notification process the GMP was adopted by the Hawke's Bay Regional Council in September 2017.
21. The GMP established the concept of "Authorisation Zones" within which the Applicant would hold resource consents for gravel extraction and would issue authorisations to commercial gravel extractors to operate within those zones.
22. The authorisation process is intended to provide improved management of gravel extraction for flood control purposes, replacing the existing practice of issuing short duration (annual) resource consents directly to extractors (which is the practice that remains in place today). I refer to the evidence of Mr Chris Dolley for a discussion on the Applicant's rationale for this approach and the improvements proposed to the management regime for riverbed gravel extraction for flood control purposes.

23. In October 2017, the Applicant lodged the resource consent applications that are the subject of this hearing (“Applications”) to implement the approach established by the GMP. The Applications were prepared for the Applicant by Mitchell Daysh Limited (where I worked at that time). I did not prepare the applications or accompanying Assessment of Environmental Effects but acted in a review capacity.
24. In the years following lodgement, I have assumed the role of planner for the Applicant and have assisted through the Applicant’s engagement with submitters and in pre-hearing and now, this hearing processes.

SUMMARY OF THE PROPOSAL

25. I have reviewed the ‘Summary of Proposal’ provided at 1.2 of the s42A Report and consider that this section appropriately and accurately summarises the proposal for which resource consents are being sought.
26. A matter that I believe should be clarified is the extent to which the Application proposes activities within the Coastal Environment.
27. The description of the project area for the Applications include:
- Ngaruroro River – “...from the coast to map reference NZTM 1892902.293 east, 5615066.873 north (approximately 6.4 km west of the intersection of Matapiro and Whanawhana Roads).”
 - Tukituki River – “...from the coast upstream to map reference NZTM 1875983 east, 5581489 north (approximately 107 km from the coast towards the end of Tukituki Road).”
28. For the avoidance of doubt, the coastal extent of gravel extraction activities proposed by the Applications includes the Coastal Environment as defined and mapped in the Regional Coastal Environment Plan (“RCEP”) but excludes any activities within the Coastal Marine Area or within any area identified in the RCEP as Coastal Hazard Zone 1.
29. Activities in these excluded areas carry additional regulatory considerations (including resource consent implications) which are not part of the Applications.

SUBMISSIONS

30. The s42A Report provides a summary of the submissions at section 1.4.

31. A further development since the s42A Report was drafted is that Winstone Aggregates have withdrawn their request to be heard and advise that they will not be providing evidence to the hearing (confirmed by email dated 3 November 2021).
32. The s42A Report also includes Table 12-1, which provides a summary of submission points and the Applicant's response to each. This table was originally prepared by me with the Applicant, ahead of engaging with submitters on conditions development. Its purpose was to provide a preliminary response to matters raised in submissions for further discussion with submitters.
33. The s42A Report adds a further column to the table (Reporting Officer Comment). I agree with the commentary provided. I note that the Officer has requested that the Applicant confirm that the Ngaruroro River consent application areas are outside of the Taruarau catchment. I refer to the evidence of Mr Chris Dolley, in which he confirms that this is the case.

PRE-HEARING ENGAGEMENT WITH SUBMITTERS

34. I have reviewed the 'Commentary on process to date and timeline' provided at 1.3 of the s42A Report and agree with the information provided. I also make the following additional comments.
35. Given the geographic scale of the proposal and the potential for adverse effects from riverbed gravel extraction, it was perhaps unusual that a low number of submissions were received following public notification of the Applications in February 2019, and that none of those submissions were in opposition.
36. I consider that this outcome was at least in part due to the work undertaken by the Applicant in the seven or so years leading up to the Applications being made, including the public process undertaken around the GMP.
37. The lack of opposition through submissions suggested that an agreed outcome between the Applicant, submitters and the Consent Authority should be able to be achieved without the need for a hearing. This is still my view.
38. The Applicant and submitters invested significant time into that approach. While this resulted in delays to the progression of the consent, and potentially to the implementation of the proposed improved management approach for riverbed gravel extraction, the engagement:
 - a) Resulted in the development of revised proposed conditions (as provided with the s42A Report) that, compared with the original set of proposed conditions proffered by the Applicant:
 - Clarifies and improves notification requirements to key parties prior to new gravel exaction operations commencing;

- Provides greater assurance that road bridges and associated structures will be protected from gravel extraction activities;
 - Clarifies and improves to the way Kaitiaki Liaison Groups would be formed, operate, and inform gravel extraction activities;
 - Improves management of actual and potential cultural effects; and
 - Reduces the term of consent sought (from 25 years to 20 years) to better align with the expectations of mana whenua.
- b) Achieved agreement with four of the six submitters who wished to be heard (First Gas Limited, Hawke’s Bay Fish & Game Council, Waka Kotahi NZ Transport Agency and Winstone Aggregates), that the matters raised in their respective submissions had been resolved by the revised proposed conditions.
- c) Did not achieve resolution of the matters raised by the two remaining submitters, Te Taiwhenua o Heretaunga (“TTOH”) and Ngāti Kahungunu Iwi Incorporated (“NKII”), which I discuss further under the heading ‘Outstanding Matters’ below.
- d) Resulted in the development of a draft Memorandum of Understanding (“MoU”) that provided a means to capture the outcome of direct discussions between TTOH, NKII and the Applicant including steps to avoid, remedy or mitigate effects of concern to TTOH and NKII.
39. To elaborate briefly on the purpose of the MoU, while it does provide the basis for a number of conditions proffered by the Applicant, one of its key functions is to agree matters between TTOH, NKII and the Applicant that cannot be imposed as conditions of resource consent.
40. It is established in caselaw² that conditions of resource consent must be enforceable, and this requires (among other matters) that they are exclusively between the consent holder and the Consent Authority and do not rely on compliance or agreement of third parties.
41. Some of the matters in the MoU require, by their very nature, agreement with TTOH and NKII, and could not be drafted as enforceable conditions of resource consent.
42. I consider the MoU to be a pragmatic way for TTOH, NKII and the Applicant to develop an agreed position between them on the Applications, taking into account the constraints of the Resource Management Act 1991 (“RMA”).
43. As a side agreement, I do not consider it necessary or practical for the Consent Authority to take into account the content of the MoU, however if agreed by the parties, it would provide a

² See for example Mackay v North Shore CC W146/95, Campbell v Southland DC W114/94 and Dart River Safaris Ltd v Kemp [2000] NZRMA 440.

mechanism for TTOH and NKII to confirm that the matters raised in their submissions have been satisfactorily resolved.

44. Further development of the MoU and revised proposed conditions stalled with the 24 March 2021 letter from TTOH discussed in and appended to the s42A Report, which I discuss further below.

OUTSTANDING MATTERS

45. The outstanding matters for the Applications in my view are:
- a) Cultural values and impacts of concern to TTOH and NKII, as outlined in the letter of 24 March from TTOH; and
 - b) Additional planning analysis required to assess the Applications, including to satisfy changes in the statutory planning framework that have taken legal effect since the Applications were lodged and notified.
46. The 24 March letter lists actual and potential effects of concern to TTOH as being:
- Sediment release from the gravels and effects downstream, particularly following rainfall events/freshes
 - Effects on natural groundwater recharge zones
 - Loss of in-stream habitat through decrease in braided areas
 - Smothering of macro-invertebrate habitat and inanga spawning habitat
 - Disruption to the seasonal migration and spawning of indigenous fish and trout
 - Interference with the natural character and hydrology of the rivers
 - Disruption to and adverse effects on tikanga Māori values and cultural practices, and
 - Downstream effects on the rivers and estuaries including Waitangi Estuary which is a kohanga ika.
47. The technical reports and evidence of Dr Robin Holmes and Dr Adam Forbes and associated proposed conditions of resource consent respond to some of these matters. I note these matters in the following sections of my evidence.
48. I also note the evidence of Mr Chris Dolley discusses the extent to which gravel extraction activity has occurred in the areas of concern identified in the TTOH letter.
49. It is clear to me that a site visit is a necessary next step to explore those matters and determine how the conditions and/or MoU could be modified in response.

50. I have reviewed the discussion under 'So where are we at now?' at 1.3.1 of the s42A Report and agree with the analysis provided.

SITE VISIT

51. TTOH and NKII have requested a site visit to discuss the issues outlined in the 24 March letter and have advised in subsequent discussion that this was required before any further work on the MoU and draft conditions could take place. I agree that clarity is needed for the parties to reach an understanding and develop solutions.
52. As advised in the s42A Report, a site visit has been scheduled for 9 November 2021. At the time of writing this evidence, the relevant parties have confirmed their attendance.
53. I am optimistic that the site visit will facilitate further discussion and provide an opportunity for the attendees to clarify issues and agree solutions between them.
54. It is therefore possible that the site visit will result in further suggested amendments to the conditions of consent included with the s42A Report and/or revisions to the draft MoU.
55. If this was to occur, the Hearings Committee will be advised as soon as possible. I expect that an agreed statement between site visit attendees will also be prepared and provided to the Hearings Committee to confirm outcomes reached.

CONDITIONS OF CONSENT

56. The Applicant has developed a suite of proposed conditions to manage the actual and potential adverse effects on the environment from the activities proposed by the Applications.
57. Through subsequent engagement with submitters, a number of amendments have been developed, agreed, and incorporated into those proposed conditions. Additional changes have also been inserted directly by the Consent Authority. The changes made to the conditions through this process are shown as tracked changes in the version of conditions included as Appendix 4 to the s42A Report.
58. I note that the evidence of Dr Holmes and Mr Beya provides commentary on the conditions that, in my view, should be reflected in further revisions.
59. As noted above, further changes to the proposed conditions are also possible as a result of discussion between parties at the site visit on 9 November 2021.
60. Lastly, in my evidence below (at paragraph 131), I set out a further condition of consent proffered by the Applicant to manage potential effects on natural wetlands.

61. To reduce complexity and iteration, I propose to produce a revised set of proposed conditions following the site visit on 9 November, that responds to and incorporates the matters above.
62. Unless discussions with submitters are still ongoing at that point, I propose to provide the revised set of conditions to submitters and the Hearings Panel ahead of the date agreed for the pre-circulation of evidence by submitters, which I understand to be 1 December 2021.

ACTUAL OR POTENTIAL EFFECTS OF PROPOSED ACTIVITIES

Mana Whenua and Cultural Values

63. I note the statement at 2.3 of the s42A Report regarding the scale of effects on mana whenua and cultural values from the proposed activity.
64. I hope to be in a better position to comment on the extent of effects and the suitability of proposed consent conditions in mitigating these effects following the site visit on 9 November 2021.

Aquatic Ecology

65. I refer to and rely on the evidence of Dr Robin Holmes for a discussion on the actual and potential effects on aquatic ecology.
66. I note that Dr Holmes discusses some of the matters raised in the TTOH letter of 24 March including the potential for effects from elevated fine sediment levels and potential impacts on fish, fish habitat and migration.

Avian Ecology

67. I refer to and rely on the evidence of Dr Adam Forbes for a discussion on the actual and potential effects on river birds.

Coastal Erosion and Natural Hazards

68. I refer to and rely on the evidence of Mr Jose Beya for a discussion on the actual and potential effects on coastal erosion and natural hazards.

Overall Assessment

69. In my view, the Applications present an improved management regime for an activity that is already occurring under short-duration resource consents issued on an annual basis directly to commercial operators. The activity is required to provide for flood risk mitigation.
70. I agree with the summary provided in Section 2 of the s42A Report that there are significant positive benefits associated with the proposal.

71. With reference to the controls proposed through the revised conditions of consent and the commentary provided by Dr Holmes, Dr Forbes and Mr Beya, I agree with the conclusions reached in the s42A Report that the actual and potential effects on the environment are likely to be no more than minor. Where there are uncertainties (such as the potential impacts on freshwater ecology discussed by Dr Holmes), I consider that there are appropriate conditions proposed in response.
72. As noted, the site visit on 9 November remains as a key step in confirming unresolved matters with submitters.

STATUTORY PLANNING FRAMEWORK

73. As noted under the heading 'Outstanding Matters' above, I consider that additional planning analysis is required to assess the Applications, including to address changes in the statutory planning framework that have taken legal effect since the Applications were lodged and notified.
74. The s42A Report provides some of this analysis and identifies further aspects for the Applicant to respond to.
75. I provide this analysis in two parts:
- a) Additional analysis against the planning framework as it existed at the time of the Applications and is still relevant, addressed in this section of my evidence; and
 - b) Analysis to address changes in the statutory planning framework that have taken legal effect since the Applications were lodged and notified, addressed under 'Statutory Planning Framework – New Matters' below.
76. The s42A Report provides an analysis of relevant aspects of the statutory framework as it existed at the time of the Applications and refers to the analysis provided in the Applications.
77. I agree with the assessment in the s42A Report that the Applications provide a comprehensive assessment of the relevant objectives and policies of:
- The Regional Policy Statement
 - Regional Resource Management Plan
 - Regional Coastal Environment Plan
78. I have not provided further analysis of these documents in my evidence as a result.
79. The s42A Report provides an assessment of the New Zealand Coastal Policy Statement ("NZPCPS"). I am comfortable with that assessment.

80. I agree with the assessment in the s42A Report that the Applications and proposed conditions appropriately respond to the requirements of the National Environmental Standards for Sources of Human Drinking Water 2007.
81. I agree with the assessment in the s42A Report that the Applications do not propose activities within the Coastal Marina Area and therefore no further consideration under the Marine and Coastal Area (Takutai Moana) Act 2011 is required.
82. In addition to the analysis provided in the Applications and in the s42A Report, I consider that the following matters require further discussion:
- The activity status of the applications
 - Iwi Management Plans
83. I discuss each in the following sections.

Activity Status

84. The Applications seek consent for a restricted discretionary activity under the Hawke's Bay Regional Resource Management Plan ("RRMP") and the Regional Coastal Environment Plan ("RCEP").
85. Gravel extraction as proposed by the Applicant outside of the Coastal Environment is a restricted discretionary activity under Rule 73 of the RRMP.
86. The RRMP restricts the matters over which discretion is restricted under Rule 74 as follows:
- a. *Location of extraction sites and stockpile areas.*
 - b. *Volume of gravel extracted.*
 - c. *Rate of removal of gravel.*
 - d. *Period of extraction.*
 - e. *End use of the gravel.*
 - f. *Dust management.*
 - g. *Other matters set out in Policy 53.*
 - h. *Financial contributions.*
 - i. *Duration of consent.*
 - j. *Review of consent conditions.*
 - k. *Compliance*

87. The 'Other matters' in Policy 53 can be summarised as:
- Restoration of the extraction site on completion of the activity repair to any damage caused to any banks, access roads, fences, gates, or other structures
 - Continuation of fish passage
 - Avoidance of:
 - any contaminants from machinery use entering water bodies and increases in sediment discharge or water turbidity (particularly during fish spawning)
 - adverse effects on flood control assets or river protection works
 - activities that would cause flood control measures or river protection works
 - offensive or objectionable dust discharge
 - The end uses of gravel
 - Location and effects on downstream water takes/users
 - Ecology of the river
 - Ability of natural processes to return to a state of equilibrium following extractive activity
88. Gravel extraction as proposed by the Applicant within the Coastal Environment is a restricted discretionary activity under Rule 61 of the RCEP.
89. RCEP restricts the matters over which discretion is restricted under Rule 74 as follows:
- a. *Location of extraction sites & stockpile areas*
 - b. *Volume of gravel extracted*
 - c. *Rate of removal of gravel*
 - d. *Period of extraction*
 - e. *End use of the gravel*
 - f. *Dust management*
 - g. *Compliance with the HBRC Code of Practice for River Control and Drainage Works*
 - h. *Matters in Chapter 26.2*
90. Matters in Chapter 26.2 relate to the following:
- Financial contributions
 - Bonds and covenants

- Works or services to ensure the protection, restoration, or enhancement of any natural or physical resource, including (but not limited to) planting or replanting, earthworks, or any other works or services necessary to ensure the avoidance, remediation or mitigation of adverse environmental effects
- Administrative charges and monitoring
- Information requirements
- Monitoring requirements including investigations, inspections or other specified tests.

91. Section 104C of the RMA provides that, when considering an application for a resource consent for a restricted discretionary activity, a Consent Authority must consider only those matters over which it has restricted the exercise of its discretion in its plan or proposed plan.
92. Guidance from caselaw³ provides that a decision maker must also take account of Section 104 and Part 2, the objectives and policies of the relevant plan and relevant national policy statements, but only so far as they relate to matters over which discretion is restricted.
93. With this guidance in mind, some of the assessments made in the s42A Report and in my evidence, are very broad, and arguably go beyond what is required for a restricted discretionary activity assessment. This analysis is still useful in my view as context, and to assist with considering the outstanding matters identified above.

Iwi Management Plans

94. The Applications did not include an assessment of iwi management plans.
95. The s42A Report does identify relevant plans and provides an assessment of the proposal against each. While not strictly in accordance with restricted discretionary activity assessment I agree this is helpful analysis given the outstanding matters discussed above.
96. Overall, I agree with the assessment outlined in the s42A Report that the proposal, including the revised proposed conditions, is consistent with the intent of these plans.
97. I note however the outstanding matters with respect the letter from TTOH, and the role of the site visit to provide further clarity and the opportunity for the parties to reach an agreed position.

STATUTORY PLANNING FRAMEWORK – NEW MATTERS

98. A number of changes in the statutory planning framework have taken legal effect since the Applications were lodged and notified.

³ *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37

99. The changes of potential relevance to the Applications are:
- Statutory acknowledgement through Treaty of Waitangi/Te Tiriti o Waitangi settlement outcomes
 - Plan Change 7 – Outstanding Water Bodies
 - Plan Change 9 – Tūtaekurī, Ahuriri, Ngaruroro and Karamū (TANK)
 - National Policy Statement for Freshwater Management 2020
 - National Environmental Standards for Freshwater 2020
100. I discuss each in the following sections.

Statutory Acknowledgements

101. The statutory acknowledgement of relevance to the Applications was determined through the Heretaunga Tamatea Claims Settlement in 2018, after the Applications were made. I understand from the s42A Report that the statutory acknowledgement was confirmed in the RRMP after the submissions period closed.
102. The Applicant has written to Heretaunga Tamatea Settlement Trust regarding the Applications. To my knowledge there has not been a response.
103. The recommendations made at the end of section 9 of the s42A Report are a practical way forward in my view:
- *“Following any agreed HBRC and Heretaunga Tamatea Settlement Trust process for dealing with retrospective consent matters*
 - *Sending the consent applications to the trustees of the Heretaunga Tamatea Settlement Trust for comment*
 - *Including Heretaunga Tamatea Settlement Trust into the Māori / kaitiaki liaison Group consent conditions as shown in the submissions response table in Section 112 below”*

Plan Change 7 – Outstanding Water Bodies

104. As noted in 3.2.2 of the s42A Report, Plan Change 7 (“PC7”) proposes to incorporate outstanding water bodies in the region into the RRMP.
105. Activities are proposed by the Applications on the Tukituki and Tūtaekurī Rivers in areas identified as Outstanding Water Bodies (OWB 14 and OWB 15 respectively).
106. No activities are proposed by the Applications on the Ngaruroro River upstream of the Whanawhana cableway (OWB 9).

107. As noted in the s42A Report, PC7 is currently under appeal to the Environment Court. Three appeals have been lodged, which are wide ranging in nature.
108. I note for context that the 'summary of values' report accompanying PC7 for the Tukituki River acknowledges throughout the report that the river is "...significantly modified in parts for flood control works". The 'summary of values' report accompanying PC7 for the Tūtaekurī River acknowledges the Tūtaekurī River Ecological Management and Enhancement Plan and the role of this plan in managing "...flood control activities".
109. I agree with the assessment in the s42A Report that the proposal is consistent with the relevant provisions of the decisions version of PC7.

Plan Change 9 – Tūtaekurī, Ahuriri, Ngaruroro and Karamū (TANK)

110. As noted in 3.2.1 of the s42A Report, Plan Change 9 ("PC9") to the RRMP proposes to include new rules to manage water quality and quantity for the Tūtaekurī, Ahuriri, Ngaruroro and Karamū (TANK) catchments.
111. PC9 was notified in May 2020 with hearings conducted in May - September 2021. Decisions on the Plan Change are yet to be notified.
112. I agree with the assessment in the s42A Report that the proposal is not contrary to the notified version of PC9.

National Policy Statement for Freshwater Management 2020

113. As identified in Section 5 of the s42A Report, the current version of the National Policy Statement for Freshwater Management ("NPSFM") came into effect in September 2020.
114. Te Mana o te Wai is identified as the fundamental concept of the NPSFM 2020. It is a concept that refers to the *"fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. The concept of Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment and the community."* Te Mana o te Wai applies to all aspects of freshwater management.
115. The NPSFM 2020 also introduces, through the single objective, a hierarchy of obligations to direct the way that natural and physical resources are managed. The objective introduces the following priority:
- *"First, the health and well-being of water bodies and freshwater ecosystems,*
 - *Second, the health needs of people (such as drinking water)*

- *Third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future."*

116. A series of 15 policies is included to achieve the objective together with a series of requisite policies to be inserted directly to regional planning documents.

117. I concur with the statement made by the reporting officer that the proposed activities are not contrary to the NPSFM 2020.

National Environmental Standards for Freshwater 2020

118. As identified in Section 7 of the s42A Report, the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("NESF") came into effect September 2020 and require further analysis to inform an assessment of the Applications.

119. The NESF includes regulations that, among other things, control activities with the potential to adversely affect natural wetlands. Of particular relevance to this application are the regulations which relate to "Maintenance and operation of specified infrastructure and other infrastructure".

120. The definition of specified infrastructure is provided through the NPSFM 2020 and includes "...any public flood control, flood protection or drainage works carried out:

(i) *by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or*

(ii) *for the purpose of drainage by drainage districts under the Land Drainage Act 1908"*

121. The activities proposed by the Applications meet the above definition in my view.

122. Regulations 46 and 47 of the NESF provide for permitted and restricted discretionary activities for maintenance and operation associated with specified infrastructure. These regulations limit earthworks within a natural wetland or within a 10m setback from a natural wetland.

123. Regulation 52 also relates to wetlands and requires a non-complying activity resource consent for earthworks within a 100m setback of a natural wetland if the earthworks result, or are likely to result in "the complete or partial drainage of all or part of a natural wetland".

124. HBRC is in the process of confirming an inventory of wetlands⁴. This work was initiated by HBRC in recognition of the previously limited understanding of the extent and state of wetlands in the region. The work has included aerial surveys, geospatial analysis of aerial photos and imagery, wetland classification and digital mapping of wetland extent.

⁴ Hawke's Bay wetland inventory, February 2020 – Hawke's Bay Regional Council Publication No. 5450

125. The inventory work is currently being peer reviewed to confirm wetland classifications, but I understand it is unlikely to change the location of wetlands identified through the process to date.
126. While the peer review work is ongoing, it is reasonable and precautionary to assume that each wetland identified in the inventory meets the definition of a 'natural wetland' for the purposes of the NPSFM 2020. It is also possible that there are other sites that are not mapped in the inventory that meet this definition.
127. I note for completeness that the Ministry for the Environment is proposing amendments to the definitions of 'natural wetland' in the NPSFM 2020. Consultation on those amendments closed on 27 October 2021. I am not aware of any defined dates for when amendments may take effect, but note that any changes will need to be accommodated by the approach to managing potential effects on wetlands under this proposal.
128. The Applicant has prepared a series of maps and an accompanying table based on the wetland inventory, which I provide as **Appendix 1** to my evidence. These maps have been developed to identify wetlands that are within 100m of the active river channel, and therefore that have the potential to trigger consenting requirements under the NESF if gravel extraction were to occur in those areas.
129. The mapping exercise has identified that there are 43 wetlands (based on the wetland inventory) located within 100m of rivers where gravel extraction could occur under the proposal.
130. It would be a significant undertaking to determine whether or not gravel extraction as proposed by the Applications could trigger consenting requirements under Regulation 47 (restricted discretionary activity) or Regulation 52 (non-complying activity) for each of the 43 wetlands that have been identified through this process, and for any other sites that meet the (current) NPSFM 2020 definition but are not identified by the inventory.
131. Instead, the Applicant has agreed to proffer the following condition of consent:
- No extraction activity under this consent shall take place within 100m of any wetland that meets the definition of a natural wetland under the current version of the National Policy Statement for Freshwater Management.*
132. This condition would ensure that there are no additional consent requirements under the NESF for the activities proposed. It will also ensure that the proposal is not contrary to Policy 66A of the RRMP which requires that *"the loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted"*. This is a matter raised at page 14 of the s42A Report.

133. The new proposed condition will be incorporated into the revised conditions set proposed to be provided to the Hearings Committee following the site visit on 9 November 2021, as discussed in paragraph 62 above.

CONCLUSIONS

134. The Applicant seeks discretionary activity resource consents for the extraction of riverbed gravel for flood control purposes from the Tukituki catchment, Ngaruroro and Tūtaekurī Rivers.

135. The Applications are made as part of implementing the Hawke's Bay Riverbed Gravel Management Plan.

136. If granted, the Applications will, in my view, facilitate an improved management regime for riverbed gravel extraction; an activity that is already taking place under annual resource consents issued directly to gravel extractors.

137. With reference to the evidence prepared by Dr Robin Holmes, Dr Adam Forbes and Mr Jose Beya, and the proposed conditions of resource consent, I agree with the conclusions reached in the s42A Report that the actual and potential effects on the environment are likely to be no more than minor.

138. The key outstanding matter that I have not been able to address in my evidence are the cultural values and impacts of concern to TTOH and NKII, as outlined in the letter of 24 March from TTOH, which are to be the subject of discussion at the site visit on 9 November 2021.

139. With resolution to those matters, which I hope will occur as a result of the site visit, there is no reason, in my opinion, why consents should not be granted subject to appropriate conditions.



Simon Bendall
5 November 2021

Appendix 1: Wetland Inventory

Wetlands identified within the Hawke's Bay Wetland Inventory, February 2020 as being 100m from the river channel of the Tukituki, Waipawa, Makaretu, Ngaruroro, Tukipo Rivers or the Mangaonuku Stream

Wetland ID	Catchment	Sub-catchment	Wetland Classification	Area (m ²)
2124	Tukituki	Makaretu	shallow water	14,287
2146	Tukituki	Makaretu	swamp	881
2147	Tukituki	Makaretu	marsh	16,345
2148	Tukituki	Makaretu	marsh	2,226
2187	Tukituki	Tukipo	shallow water	12,598
2205	Tukituki	Waipawa	swamp	1,816
2239	Tukituki	Waipawa	swamp	2,698
2241	Tukituki	Waipawa	swamp	6,026
2246	Tukituki	Upper Tukituki	marsh	4,320
2309	Tukituki	Waipawa	swamp	3,128
2311	Tukituki	Waipawa	swamp	21,255
2335	Tukituki	Mangaonuku	shallow water	51,374
2425	Tukituki	Lower Tukituki Corridor	saltmarsh	11,393
2426	Tukituki	Lower Tukituki Corridor	shallow water	3,356
2466	Tukituki	Makaretu	marsh	72,023
2779	Ngaruroro	Ngaruroro Corridor	marsh	249,590
2780	Ngaruroro	Ngaruroro Corridor	marsh	4,783
2822	Ngaruroro	Ngaruroro Corridor	swamp	2,326
3480	Karamu	Muddy Creek	saltmarsh	5,939
3481	Karamu	Karamu-Clive Corridor	saltmarsh	29,322
4996	Tutaekuri	Tutaekuri Corridor	marsh	39,317
5083	Ngaruroro	Ngaruroro Corridor	swamp	2,634
5102	Ngaruroro	Ngaruroro Corridor	marsh	20,339
5887	Coastal/Marine	Taipo	saltmarsh	14,357
6809	Ngaruroro	Ngaruroro Corridor	swamp	11,494
6948	Tukituki	Upper Tukituki Corridor	marsh	2,346
7060	Tukituki	Lower Tukituki Corridor	marsh	178,892
7097	Tukituki	Lower Tukituki Corridor	marsh	32,270
7244	Karamu	Karamu-Clive Corridor	marsh	116,745
7245	Karamu	Karamu-Clive Corridor	marsh	18,631
7386	Tukituki	Lower Tukituki Corridor	marsh	35,241
7592	Tukituki	Lower Tukituki Corridor	marsh	15,561
7595	Tukituki	Lower Tukituki Corridor	shallow water	26,369
7611	Tukituki	Lower Tukituki Corridor	marsh	12,342
7912	Tukituki	Papanui	marsh	108,979
7914	Tukituki	Lower Tukituki Corridor	marsh	19,645
8044	Tukituki	Lower Tukituki Corridor	marsh	23,048
8482	Tukituki	Lower Tukituki Corridor	marsh	65,810
8517	Tukituki	Lower Tukituki Corridor	marsh	2,809

Wetland ID	Catchment	Sub-catchment	Wetland Classification	Area (m ²)
8524	Tukituki	Lower Tukituki Corridor	marsh	5,450
8546	Tukituki	Lower Tukituki Corridor	marsh	9,907