

BEFORE THE HAWKE'S BAY REGIONAL COUNCIL

APP-126684

UNDER

The Resource Management Act 1991 ("**RMA**"
or "**the Act**")

IN THE MATTER

of a resource consent application to the
HAWKE'S BAY REGIONAL COUNCIL for
various resource consents for the operation,
upgrading and maintenance of the
Ravensdown Napier Works Fertiliser Plant
and the establishment and maintenance of a
Wetland Restoration Project.

**STATEMENT OF EVIDENCE BY MASON DARYL JACKSON ON BEHALF
OF RAVENSDOWN LIMITED**

16 November 2022

1. INTRODUCTION

1.1 My full name is Mason Daryl Jackson. I am of Ngāti Kahungunu and Ngāti Porou descent.

Ko Takitimu te waka

Ko Hikurangi te maunga

Ko Tukituki te awa

Ko Ngāti Kahungunu ko Ngāti Porou ōku iwi

Ko Matahiwi te marae

Tihei mouri ora!

1.2 I am an Associate with Mitchell Daysh Limited, an environmental consulting practice with offices in six locations around New Zealand. Mitchell Daysh Limited was formed through the merger of Mitchell Partnerships Limited, and Environmental Management Services Limited. Previously I was the Consents and Compliance Manager for Mercury NZ (formerly Mighty River Power).

1.3 I have been employed by Mitchell Daysh since October 2019 and am based in Hamilton, although I work on projects in many regions around New Zealand.

1.4 I hold a Bachelor of Science (Earth Science), Master of Science (Hons) and Post Graduate Diploma in Environmental Management, all from the University of Waikato.

1.5 My previous experience includes over 25 years of environmental management experience in New Zealand, focused in the dairy manufacturing, energy and regulatory sectors. I have been involved in, and led, multi-disciplinary teams on a number of large consenting projects. In my previous role I was also responsible for the implementation and monitoring of large and complex resource consents for Mercury's various Waikato

hydroelectric power scheme sites, geothermal power station sites and wind farms.

2. CODE OF CONDUCT

- 2.1 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.
- 2.2 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.
- 2.3 I understand and accept that it is my overriding duty to assist the Hearing Panel in matters that are within my expertise as a planner. I understand my role is to assist impartially on the relevant matters within my area of expertise and that I am not an advocate for the party that has engaged me.

3. BACKGROUND

- 3.1 Mitchell Daysh Limited was engaged by Ravensdown Limited (“Ravensdown”) in November 2019 to provide strategic resource management and consultation advice as a part of the Core Project Team for the application for new and replacement water and discharge permits, and land use consents required for the operation, upgrading and ongoing maintenance of the Ravensdown Napier Works Fertiliser Plant (“**Napier Works**”).
- 3.2 My colleague Philip McKay and I were tasked by the Core Project Team in September 2021 to prepare a Planning Assessment for the Napier Works re-consenting proposal. A copy of this planning assessment was included in the AEE at Appendix A9.
- 3.3 Since the preparation of the Planning Assessment, and the lodgement of the re-consenting application for the Napier Works, the Decision Report on the Proposed Plan Change 9 (“**TANK**”) has been notified, and 15 appeals have

been lodged. In general, the relief being sought by appellants is wide ranging, varied and with little consistency across the appellant group.

- 3.4 As summarised by Mr Daysh, the suggested conditions of consent have been accepted and agreed with by the author of the s42a Officers Report with some minor changes. The s42a Officers Report also recommended a 35-year consent duration for the air, land and water discharges and for the water take.
- 3.5 Mr Daysh also sets out the collaborative process the Applicant facilitated with mana whenua, and in particular, the collaborative drafting and finalisation of the “Mana Whenua Recognition and Participation” conditions of consent.
- 3.6 One of the submitters, Ngati Kahungunu Iwi Inc (“**NKII**”), confirmed their opposition to a consent duration of 35 years via email from Mr Shade Smith (4 November 2022). No reasons for this opposition were provided by NKII. I note that the submission on the applications from NKII (18 Feb 2022) also opposed a 35 year duration of consent as NKII considered that the then proposed consent conditions (November 2021 version) did not give effect to Te Mana o Te Wai.
- 3.7 Royal Forest and Bird Protection Society of New Zealand Inc (“**Forest and Bird**”) also provided feedback to the HBRC (email to Mr Sven Exeter 2 November 2022) and requested that the suggested changes / amendments to consent conditions noted in section 15.1 of the HBRC s42A Officers Report were made to strengthen the proposed conditions. This included the addition of an overarching Te Mana o Te Wai consent condition. In doing this, Forest and Bird confirmed that they “would be more confident in the outcome and would be happy to cede our right to be heard at a hearing”. These proposed condition changes are addressed in the evidence of Mr Daysh.

4. SCOPE OF EVIDENCE

- 4.1 My evidence responds to the Commissioners’ Fourth Minute request for an assessment of the application (as now advanced on the basis of the Revised

Conditions) in the context of the most centrally relevant provisions of the planning instruments. More specifically, my evidence sets out, at a high level, the key considerations of the application against the following provisions:

- (a) New Zealand Coastal Policy Statement 2010 (“**NZCPS**”);
- (b) National Policy Statement for Freshwater Management (2020) (“**NPS-FM**”);
- (c) Regional Policy Statement (“**RPS**”); and
- (d) Regional Resource Management Plan (“**RRMP**”), including as amended through Change 9 (TANK), and as a supplement to the assessment of the statutory instruments in the s42A Officers Report.

4.2 My evidence relies on and should be read in conjunction with that of Mr Daysh, which relates to the proposed conditions, should consents be granted.

5. NEW ZEALAND COASTAL POLICY STATEMENT 2010

5.1 Section 6.5 of the Planning Assessment considers the application against key policies of the NZCPS. In my opinion, this assessment is still valid and does not require any alteration. Notwithstanding, I reiterate the following aspects I consider particularly relevant given the current context:

- (a) Policy 2 of the NZCPS specifically requires kaitiakitanga to be taken into account in relation to the coastal environment, including provision for the exercise of kaitiakitanga by Tangata Whenua, and providing opportunities for direct involvement of Tangata Whenua in decision making.
- (b) In my opinion, Ravensdown’s reconsenting proposal fully achieves Policy 2 because of the following:
 - i) The development of the proposal incorporated a highly considered options analysis and assessment process that

involved input and direction from tangata whenua and which resulted in the primary water discharge environment being land;

- ii) The involvement of tangata whenua as a partner in the HARP; and
- iii) The inclusion of the Mana Whenua Recognition and Participation consent conditions that provide the opportunity for mana whenua to assist Ravensdown in the implementation of a number of aspects of the consent.

6. NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT (2020)

- 6.1 Section 6.6 of the Planning Assessment considers the application against key policies of the NPS-FM. Again, it is my opinion that this assessment is still valid and does not require any alteration. However, I do think it is appropriate to expand on the considerations in respect of Policy 1, which states:

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

- 6.2 The "fundamental concept" behind the NPS-FM is Te Mana o te Wai, which is defined and explained in the NPS-FM as follows:

1.3 Fundamental concept – Te Mana o te Wai

Concept

- (1) Te Mana o te Wai 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. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.
- (2) Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.

Framework

- (3) Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.

- (4) The 6 principles are:
- (a) *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater
 - (b) *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations
 - (c) *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others
 - (d) *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future
 - (e) *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations
 - (f) *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.
- (5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

.....

3.2 Te Mana o te Wai

- (1) Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region.
- (2) Every regional council must give effect to Te Mana o te Wai, and in doing so must:
- (a) actively involve tangata whenua in freshwater management (including decision-making processes), as required by clause 3.4; and
 - (b) engage with communities and tangata whenua to identify long-term visions, environmental outcomes, and other elements of the NOF; and
 - (c) apply the hierarchy of obligations, as set out in clause 1.3(5):
 - (i) when developing long-term visions under clause 3.3; and
 - (ii) when implementing the NOF under subpart 2; and
 - (iii) when developing objectives, policies, methods, and criteria for any purpose under subpart 3 relating to natural inland wetlands,

rivers, fish passage, primary contact sites, and water allocation;
and

- (d) enable the application of a diversity of systems of values and knowledge, such as mātauranga Māori, to the management of freshwater; and
 - (e) adopt an integrated approach, ki uta ki tai, to the management of freshwater (see clause 3.5).
- (3) Every regional council must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to Te Mana o te Wai.
- (4) In addition to subclauses (1) to (3), Te Mana o te Wai must inform the interpretation of:
- (a) this National Policy Statement; and
 - (b) the provisions required by this National Policy Statement to be included in regional policy statements and regional and district plans.

6.3 I interpret Policy 1 to require meaningful, forward-looking engagement with mana whenua and stakeholders generally, specifically when developing regional policy statements and regional plans. Furthermore, until that process has evolved further, I consider that the RRMP remains as the predominant planning document, noting also that providing for "cultural well-being" is third in priority to the health and well-being of water bodies, and freshwater ecosystems and the health needs of people, are equal in priority to the ability of people and communities to provide for their social, economic, and cultural well-being.

6.4 In terms of the 6 principles that Te Mana o te Wai encompasses, I note the following:

Mana Whakahaere

6.5 The RMA determines decision-making roles for individual resource consent applications, and it is outside the ability of consent applicants to determine this. However, the conditions that Mr Daysh presents in his evidence envisages extensive, and meaningful mana whenua involvement in decisions being made with respect to implementation of the consents and, in turn, mana whenua involvement in protecting and sustaining the health

and well-being of, and their relationship with, freshwater. In particular, the intended establishment of the Awapuni Reference Komiti and associated Terms of Reference will provide for extensive, and meaningful mana whenua involvement in, and influence of, freshwater health outcomes associated with Ravensdown's site activities. The Awapuni Reference Komiti is conditioned to participate throughout the life of the resource consents.

Kaitiakitanga

- 6.6 The proposed conditions require ongoing mana whenua consultation, establishment of a Awapuni Reference Komiti, and provide for cultural and mātauranga monitoring. When combined with the more traditional western science-based limits and monitoring, the proposed conditions are intended to assist in recognising the kaitiaki role of mana whenua. In particular, I note that suggested General Condition 28, which sets out the required Terms of Reference for the Awapuni Reference Komiti, includes provisions for mātauranga Maori monitoring and other kaitiaki matters. I also note that General Condition 30, which confirms the objectives, functions and responsibilities of the Awapuni Reference Komiti, includes the development of effective measures that recognise and implement the recommendations of various documents including "Cultural Values Reports". In my experience, I have not come across consent conditions that provide this degree of opportunity for mana whenua to exercise kaitiakitanga.

Manaakitanga

- 6.7 I cannot comment on the process by which mana whenua would show respect, generosity, and care for freshwater and for others through the consents sought. However (as noted above), the resource consent conditions proposed provide the opportunity for mana whenua involvement in the future site operations and framing up processes to enable care and respect to be shown for freshwater resources. In particular, the proposed Awapuni Reference Komiti and mātauranga and cultural monitoring would, in my opinion, provide a tangible means by which mana whenua can demonstrate care and respect for freshwater resources potentially affected

by the Napier Works. I also note that manaakitanga is a mandatory requirement of the Terms of Reference for the Awapuni Reference Komiti¹.

- 6.8 Finally, I have read the evidence of Andrew Torrens and have noted his comments about the benefits Ravensdown has already received as a result of the generosity of mana whenua in sharing their time, and more particularly their knowledge and tikanga, with Ravensdown wider governance and management personnel.

Governance

- 6.9 Again, the RMA itself determines governance structures for those with authority for making decisions about freshwater. However, in my opinion, the proposed conditions of consent provides for an extremely meaningful role for mana whenua in implementing the new consents for the Napier Works which, in the context of Governance, includes mana whenua involvement in decisions being made via the Awapuni Reference Komiti. An example of this is provided in General Condition 30 (b) which confirms that one of the responsibilities the Awapuni Reference Komiti is to assist Ravensdown to “champion” wider opportunities for habitat abundance enhancement.

Stewardship

- 6.10 The consent conditions being proffered demonstrate a commitment by Ravensdown to managing the future Napier Works in a way that will likely achieve positive gains for the surrounding natural environment and in a way that is sustainable. This is a key aspect of Ravensdown’s vision for their site - one which will be key to their future success and one which, in my opinion, is clearly demonstrated through the various commitments they make as part of the conditions of consent that they are happy to comply with.

¹ General Condition 28

Care and respect

- 6.11 Various elements of the Napier Works improvements proposed by Ravensdown, particularly those that avoid or mitigate their future impacts on water, and their commitment to HARP, show care and respect towards these resources. The proposed conditions also demonstrate a commitment to managing their site in a way that cares for local water resources.
- 6.12 Overall, I consider that the process by which Ravensdown has formulated the proposed future operation of the Napier Works (for example, the establishment of the Technical Focus Group and HARP) and the robust conditions of consent proposed, particularly those relating to Mana Whenua Recognition and Participation, are clear demonstrations of “giving effect to Te Mana o Te Wai”. I also consider that the Mana Whenua Recognition and Participation conditions of consent being proposed reflect what is now the order of things and should be held up as exemplars in this respect.

7. REGIONAL POLICY STATEMENT

- 7.1 Section 6.9.1 of the Planning Assessment considers Ravensdown’s application against key policies of the RPS. In my opinion, this assessment is still valid and does not require any alteration. Notwithstanding, I reiterate the following key aspects:

- (a) OBJ LW 1 of section 3.1A of the RPS (Integrated Land Use and Freshwater Management) seeks to ensure fresh water and the effects of land use and development are managed in an integrated and sustainable manner. I consider that the activities proposed by Ravensdown align with this objective, particularly in terms of their proposed focus on source protection management plans and discharge mode diversification that recognises the benefits of land-based treatment (wetlands and crop irrigation) to achieve an overall lesser impact on the environment when managed appropriately.

- (b) With respect to The Waitangi Estuary, as noted in the Streamlined Environment Ltd report²:
- i) There is no evidence to indicate that the existing discharge is having more than a minor effect on ecological values beyond the mixing zone;
 - ii) Significant improvement in water quality is predicted following the introduction of treatment devices in conjunction with the overall discharge management strategy; and
 - iii) The improvement in water quality is likely to have a positive effect on the existing low ecological values and in my opinion seems very likely to lead to an increase in hauora within the Estuary environment.
- (c) Objectives, and related policies regarding surface water resources³, are of particular relevance to the values of the Tūtaekurī River and Waitangi Estuary. In this regard, Ravensdown's proposal is highly consistent with the desired management outcome of these important resources. That is, the commitment to improve the quality and reduce the quantity of future discharges to these freshwater bodies is consistent with the desire to enhance overall surface water quality to achieve ecological, cultural, and recreational benefits.
- (d) Section 3.14 of the RPS seeks to ensure tikanga Māori values and traditions are recognised,⁴ Māori are meaningfully consulted,⁵ and waahi tapu, tauranga waka⁶ and traditional food gathering practices, places and resources are protected.⁷ I consider that the manner in which Ravensdown has developed its proposal, and the proposal itself, respectively reflect the processes and outcomes these objectives strive for. In this regard, I note that the applicant embarked

² Phillips, N., De Luca, S., Stewart, M. (2021) Ravensdown Napier discharge consent - Assessment of Estuarine Ecological Effects. Report RVD2101, Streamlined Environmental, Hamilton, 62 pp.

³ Section 3.10 of the RPS

⁴ Objective 34

⁵ Objective 35

⁶ Objective 36

⁷ Objective 37

on an early, inclusive and transparent consultation process with mana whenua that allowed meaningful input and influence of the final discharge strategy promoted for the site's future. In my view, this process in itself was respectful to tikanga Māori and will result in an outcome that minimises adverse impacts on the mauri of local natural resources. In addition, traditional food gathering practices, places and resources will be protected and enhanced through the applicant's HARP initiative.

8. REGIONAL RESOURCE MANAGEMENT PLAN ("RRMP"), AS AMENDED THROUGH CHANGE 9 (DECISIONS VERSION - TANK)

- 8.1 Section 6.9.2 of the Planning Assessment considers Ravensdown's application against key policies of the RRMP and the TANK plan as notified with HBRC's recommended tracked changes. In my opinion, this assessment is still largely valid and does not require any significant alteration. However, on the basis that the Decisions Report on the TANK plan change was notified after Ravensdown lodging its consenting application, I consider it appropriate to identify any key changes to the TANK plan as they relate to this proposal and revisit any planning analysis as relevant.
- 8.2 Firstly, given that there are 15 appeals made in opposition to parts of TANK, or TANK in its entirety, and given they cover a wide range of matters that pull in a variety of different directions, means that the provisions of TANK cannot be considered settled, and that the Decisions Version of TANK may be different from what eventually becomes operative. This is particularly true in respect of any TANK provisions subject to specific points of appeal.
- 8.3 Secondly, I agree with the author of the s42A Officers Report that the proposed conditions of consent discussed by Mr Daysh will, for the reasons already described above in my evidence, largely address NKII's TANK appeal points considered relevant to Ravensdown's application.
- 8.4 Thirdly, I also agree with the s42A Officers Report author's assessment of the differences between decisions version of TANK as compared to the

versions of TANK considered in the Planning Assessment⁸. Importantly, I think it is worth highlighting that Schedule 26 of TANK, which sets out the TANK targets and values for NPS-FM attributes for the Tūtaekurī River and the Waitangi Estuary, has remained virtually unchanged⁹. I note that Appendix 3 of NKII's appeal confirms that they generally support the decisions version of Schedule 26 and they set out relatively minor suggested wording changes. I acknowledge that the scope of some appeals cover TANK in its entirety, therefore, it may be possible that Schedule 26 may yet be changed in more significant ways, however, I am not aware of any appeals that specifically oppose Schedule 26. On this basis, I consider future changes to it are unlikely.

- 8.5 One other key difference is the addition of new POL TANK 1 in Section 5.10.2 Policies: Surface Water and Groundwater Quality Management. This states:

Freshwater management in the Tūtaekurī, Ahuriri, Ngaruroro and Karamū catchments will be achieved by the Council, tangata whenua and the urban and rural community working together in a way that:

- a) recognises tangata whenua as kaitiaki and other resource users as stewards and the responsibilities they each have in freshwater management*
- b) recognises the importance of monitoring, resource investigations and the use of mātauranga Māori to inform decision making and limit setting for sustainable management*
- c) ensures good land and water management practices are followed and where necessary, mitigation or restoration measures adopted*
- d) supports good decision making by resource users.*

⁸ Section 3.2.1 of the s42A Officers Report

⁹ Changes are limited to very minor edits made to some column headings in Tables 26.1.1a (Tūtaekurī Catchment) and 26.5.2 (Waitangi Estuary), and some additional typo corrections and outcome wording descriptions in Table 26.1.1a (Tūtaekurī Catchment).

- 8.6 In my view, the addition of this Policy strengthens the recognition of the role of tangata whenua in freshwater management. For the reasons already stated above in my evidence, I consider the granting of resource consents to Ravensdown subject to the proposed conditions will achieve this policy.
- 8.7 Although a number of other changes have been made to TANK objectives and policies, these are largely editorial and, in my view, when looked at in the round, have not changed the main thrusts of what TANK seeks to achieve in respect of freshwater management. Accordingly, I consider that these other changes do not alter the key TANK conclusions set out in the Planning Assessment and the application remains consistent with relevant objectives and policies contained in the Decisions Version of this plan.

9. CONCLUSION

- 9.1 The proposed general conditions of consent addressing Mana Whenua Recognition and Participation reflect a modern day and mature approach to giving effect to Te Mana o Te Wai as part of implementing resource consents for large scale activities.
- 9.2 After having regard to the most centrally relevant provisions contained in the suite of statutory documents pertaining to the site, including the recent Decisions Version of TANK, I conclude that the applicant's proposal, inclusive of the proposed conditions of consent, will ensure the future Napier Works aligns closely with, and overall, achieves these provisions.

Mason Jackson

16 November 2022