

BEFORE THE HAWKE'S BAY REGIONAL COUNCIL

UNDER The Resource Management Act 1991 (RMA)
IN THE MATTER of an application by **RAVENSDOWN LIMITED**
(Ravensdown) for new and replacement water and
discharge permits for the operation of the Napier Works
and the establishment of a habitat enhancement
project.

DECISION OF HEARINGS PANEL

Dated: 15 December 2022

HEARING RECORD

Application Number	HBRC Reference: APP-126684
	Discharge to Air - AUTH-127374-01 Discharge to land - AUTH-127886-01 Discharge to land - AUTH-127887-01 Discharge to water - AUTH-127375-01 Landuse vegetation clearance - AUTH-127890-01 Water take - AUTH-127885-01 (take and use) Water take - AUTH-127889-01 (dewatering)
Applicants	Ravensdown Limited
Hearing Commenced	29 November 2022
Hearing Panel	<ul style="list-style-type: none"> • Martin Williams (Chairperson) • Hinewai Ormsby • Dr Malcolm Green
Appearances	<p><i>For the Applicants:</i></p> <ul style="list-style-type: none"> • Stephen Christensen (Counsel) • Andrew Torrens • Stephen Daysh • Richard Chilton • Dr Ngaire Phillips • Ian Milner • Mason Jackson <p><i>For the Submitters:</i></p> <ul style="list-style-type: none"> • Shade Smith • Ngaio Tiuka • Aramanu Ropiha • Jenny Mauger • Reynold Ball <p><i>For the Hawke's Bay Regional Council</i></p> <ul style="list-style-type: none"> • Sven Exeter • Dr Shane Kelly • Andrew Curtis • Malcolm Miller (HBRC support) <p><i>Hearings Administrator</i></p> <ul style="list-style-type: none"> • Nadene Savage
Hearing Closed	2 December 2022

Introduction

1. We have been appointed by the Hawke's Bay Regional Council (**HBRC**) as the Hearings Panel to make this decision under delegated authority pursuant to s 34 and s 34A of the Resource Management Act 1991 (**RMA**).¹
2. This decision relates to resource consent applications made by Ravensdown Limited (**Ravensdown**) for what the company refers to as the "Napier Works" project.
3. The Assessment of Environmental Effects (**AEE**) submitted in support of Ravensdown's applications provides the following summary and overview of the activity subject of those applications as follows:²

1.1 BACKGROUND

Ravensdown Limited ("**Ravensdown**") undertakes the manufacture, storage and sale of sulphuric acid and phosphate fertilisers which requires the import of bulk materials and the production of sulphuric acid. The Ravensdown Napier Works ("**Napier Works**" or "**Site**") is the company's largest manufacturing site, located at 200 Waitangi Road, Awatoto, Napier. As New Zealand's largest superphosphate Manufacturing Plant, production of superphosphate typically ranges between 250,000 and 300,000 tonnes per annum, although the Site has the capacity to produce up to 440,000 tonnes per annum in its current configuration.

Ravensdown currently holds a water discharge permit (AUTH-114016-02), an air discharge permit (AUTH-115256-04) and a water take consent (AUTH-116104-03) issued by Hawke's Bay Regional Council ("**HBRC**") associated with the manufacturing activities at the Site. The water and air discharge permits are due to expire on 31 May 2022 and 21 Oct 2022 respectively. In order to continue to operate under these two discharge permits, under section 124 of the Resource Management Act 1991 ("**RMA**") an application to renew the permits must be lodged with the Hawke's Bay Regional Council on or before 30 November 2021 and 21 April 2022.

¹ Commissioner Lou Wickham was also appointed but withdrew from the hearing process for personal reasons.

² Section 1.1, Introduction to the Ravensdown Limited – Napier Works Sustainable Site Project Resource Consent Application and Assessment of Environmental Effects.

In addition to the above discharge permits, Ravensdown is also seeking to replace the water take consent AUTH-116104-03 through this application. While this consent does not expire until 31 May 2027, it is tied to the water treatment and discharge proposal outlined in this application. Therefore, by replacing this consent, the duration of rights will be aligned with the relevant discharge permits required as part of the proposed water treatment and discharge solution for the Site.

4. The specific resource consents sought in that context are as detailed within the application form and at section 1.2 of the s 42A Report prepared for the applications by Mr Sven Exeter (Consultant Planner retained by the Council for the purpose) (**s 42A Report**).
5. In essence, the applications seek new and renewed resource consent permits for the following activities:
 - Discharges to air
 - Discharges to land and water
 - Water take and use
 - Land use (treatment plant construction, wetland restoration) .
6. The discharge to air, land and water permits would provide for those discharges, as associated with the operation and maintenance of the sulphuric acid and fertiliser manufacturing plant at Awatoto (comprising the Napier Works, as referred to in the extract of the AEE set out above).
7. The water take permit sought would provide for the taking of water for the manufacture of sulphuric acid and fertilisers.
8. The water take permit would also sustain the stormwater treatment processes inherent to the Napier Works proposal, including a newly established wetland within the Waitangi Regional Park (as addressed further below).
9. A 35-year term is sought for the discharge to air, land and water and water take consents, for these purposes (**the Principal Consents**) .
10. Furthermore, 'ancillary' resource consents are sought:
 - To take ground water, by dewatering associated with the construction of new stormwater and process water treatment facilities

- For vegetation clearance and soil disturbance in the coastal margin associated with the demolition and replacement of new stormwater and process water treatment facilities, including wetland restoration; and
 - To discharge 'dewatering water' associated with that construction process into land and into the Waitangi Estuary.
11. A 10-year duration is sought for these ancillary resource consents.
 12. As addressed further below, the duration of the Principal Consents is the central issue in contention addressed in this decision.
 13. By way of further context to the applications and that central issue in contention, the following dimensions of the Napier Works proposal are noted, based on information provided in the "preamble" to the AEE.
 14. Firstly, the AEE records that a recently consented variation to Ravensdown's existing air discharge permit (granted in July 2021) enables a reduction in the volume of contaminants released into the environment (as a consequence of the manufacture of sulphuric acid and superphosphate), by combining multiple stacks in the manufacturing operation into one combined higher stack, with a new scrubber system.
 15. Specifically, the so-called "hygiene" and "den" scrubber systems which currently discharge through separate stacks (three in total), will be combined into the one new stack, with a height of 50 m.
 16. This new combined system will enable Ravensdown to operate within a lower fluoride discharge limit and lower ambient fluoride levels, with fluoride being a by-product of the conversion of phosphate rock into superphosphate (through the addition of sulphuric acid).³
 17. In addition to this new combined stack, Ravensdown proposes to replace the existing "Acid Plant Convertor" (**APC**) tower, which is approaching the end of its life cycle.
 18. The APC tower replacement will enable a greater conversion of sulphur dioxide (SO₂) to SO₃, enabling Ravensdown to meet a lower SO₂ emission rate limit.

³ Section 4.5.2 of the AEE.

19. These capital works have an approximate cost of \$30 million. They are scheduled to be completed in 2023.
20. Secondly, in terms of stormwater management, the Napier Works project involves two key stages of capital improvement works, along with the establishment of what is known as the Habitat Abundance Restoration Project (**HARP**).
21. The Stage 1 works (to take place within 18 months of commencement of the consents assuming granted) involve the installation and commissioning of a new clarifier (and associated holding pond), and a bioretention device, which together are expected to “significantly improve” the pre-discharge quality of water from the site.
22. An “adaptive management” approach is inherent to this staging, with the effectiveness of the Stage 1 work to be closely monitored and inform the detailed design of the Stage 2 works. The Stage 2 works would likely include a new settling and discharge pond as well as a constructed wetland within the site.⁴
23. The Stage 2 works are proposed to be implemented within five years of commencement of the consents. The expectation is that following commissioning of the Stage 2 works, the discharge water quality would meet the standards set under Schedule 26 of Change 9 to the Hawke’s Bay Regional Resource Management Plan (**Change 9**).⁵
24. Monitoring at the completion of the Stage 2 works would inform whether the proposed resource consent conditions need to be reviewed in order to implement what the AEE refers to as “Stage 3” works, in order to further improve stormwater management performance and environmental quality outcomes.⁶
25. The HARP project is referred to in the AEE as a restoration project to improve the natural character values of a presently degraded natural wetland area, improve indigenous biodiversity and provide mahinga kai opportunities.
26. The HARP project concept was first raised by Ngāti Parau in the context of pre-application engagement with mana whenua.⁷

⁴ AEE preamble, page 3.

⁵ With decisions on Change 9 having been issued by the Commissioners appointed to determine that plan change in August 2022, albeit now subject to a range of appeals.

⁶ Section 5.7 of the AEE.

⁷ Paragraph 4.3 of Mr Torrens’ evidence, with Ngāti Parau later submitting on the application.

27. It is proposed that the HARP wetland would be established within years one and two following commencement of consents. Prior to that, the discharge would continue (as currently) to what is referred to in the AEE as to the “blind arm” of the Tūtaekurī River, from the existing settling pond and through the Awatoto Drain.
28. From the end of the blind arm of the Tūtaekurī River the discharge then flows eastwards to the Pacific Ocean via the Waitangi Estuary.⁸
29. The capital works associated with Stages 1 and 2 of the stormwater system upgrade and the establishment of the HARP wetland are estimated to be in the order of \$10 million.
30. Finally, by way of introduction, the preamble to the AEE further records that a multicriteria options analysis, completed by a specially constituted stakeholder forum (called the Technical Focus Group or **TFG**) prior to lodging the applications, determined a preference for a *land-based* water discharge.
31. In response to that, it is proposed that the stormwater discharge principally be by way of spray irrigation to a 17.5 ha area of land on the western side of the Napier Works, rather than through the existing discharge point (to the Awatoto Drain).
32. When irrigation is not appropriate (typically in winter months, when soil over the irrigation area tends to be saturated), the discharge would be directed through the HARP wetland (once established) and in turn to the blind arm of the Tūtaekurī River via the Awatoto Drain.
33. This discharge would principally be timed to coincide with high tide to maximise dilution.⁹

Notification and Submissions

34. Ravensdown’s applications were publicly notified on 20 January 2022. 13 submissions were received from the submitters listed in Table 1-2 to the s 42A Report.
35. Of the 13 submissions, 11 were in opposition and one in support.¹⁰

⁸ Page 3 of the preamble to the AEE, page 14 of the AEE.

⁹ Section 5.4.2.3 of the AEE.

¹⁰ With one submission from Mr Fred Sugden being neutral.

Pre-hearing Meeting Process

36. Two pre-hearing meetings were convened by HBRC regarding the applications. Members of the Panel were appointed to chair and otherwise attend those pre-hearing meetings, which took place 23 June and 27 September 2022.
37. For the record, our capacity (as appointed Hearings Panel members) to preside over the pre-hearing meetings was determined under s 99(4) of the RMA, with the agreement of all persons attending both pre-hearing meetings.
38. The first pre-hearing meeting was preceded by expert conferencing between experts retained by Ravensdown, and those appointed to advise the HBRC officers responsible for processing the applications, dealing with two main topic areas:
 - The land and water discharge permits and associated effects; and
 - The air discharge permit and associated effects.
39. As recorded in the second pre-hearing meeting report, all issues raised by submitters and discussed at these pre-hearing meetings were by then substantially resolved (other than consent duration), subject to Ravensdown producing revised consent conditions reflecting the outcome of the second pre-hearing meeting.
40. On 7 October 2022, Ravensdown produced a revised set of consent conditions, including the associated management plans addressed further below (**the Revised Conditions**).
41. Reflecting the agreed outcomes at that second pre-hearing meeting, the Panel made directions for submitters to advise whether they still wished to be heard having regard to the Revised Conditions, along with any specific additional wording changes to the Revised Conditions sought by those submitters.¹¹
42. Following further communications to the Hearings Panel and additional conferencing and discussions between the experts, final directions were made for the exchange of evidence, to be confined to the issue of consent duration.¹²

¹¹ Refer Minute of the Hearings Panel dated 28 October 2022.

¹² Minute of Hearings Panel dated 11 November 2022.

Issue in Contention

43. As signalled above, the sole issue remaining in contention (between the applicant and submitters) at the end of the pre-hearing meetings was that of consent duration for the principal consents for which a 35-year consent duration had been sought, as set out above.
44. That said, and with the Panel being seized of the matter on the basis that at least two parties sought to be heard on the question of duration, it is incumbent on us to determine whether the granting of consent to the applications for the requested duration would meet the statutory tests set out under s 104 and s 105 of the RMA.
45. Simply put, the question of consent duration cannot be considered in isolation.
46. In essence therefore, under s 104(1) of the RMA, the Hearings Panel must, subject to Part 2, have regard to the following matters as relate to duration:
 - (a) Any actual and potential effects on the environment of allowing the activity for the requested consent term; and
 - (ab) Any measure proposed or agreed 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 or may result from allowing the activity; and
 - (b) Any relevant provisions of:
 - (i) a national environmental standard
 - (ii) other regulations
 - (iii) a national policy statement
 - (iv) A New Zealand coastal policy statement
 - (v) A regional policy statement or proposed regional policy statement
 - (vi) A plan or proposed plan; and
 - (c) Any other matter the Panel considers relevant and reasonably necessary to determine the application.

47. Under s 105 of the RMA, the Hearings Panel must have regard (alongside the nature of the discharge and sensitivity of the receiving environment) to any possible alternative method of discharge, including discharge into any other receiving environment.
48. As noted above, the directions which the Panel made after the second pre-hearing meeting required the production of evidence confined to the issue of consent duration.
49. Given the broader considerations nevertheless at play under s 104 and s 105 of the Act in relation to that issue, the Panel had also advised¹³ that we would be assisted at the hearing by:
 - (a) 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;¹⁴ and
 - (b) Attendance at the hearing by the respective experts¹⁵ addressing land, air and water related discharge effects.
50. We record, for the avoidance of doubt, that in the course of our deliberations including on the outstanding issue of duration, we have had regard to:
 - (a) The provisions of all relevant statutory and planning instruments (including the national and regional policy statements and plans as well as standards) traversed in the s 42A Report and in the evidence of Mr Jackson,¹⁶ addressing the most centrally relevant provisions of those planning instruments as requested by the Panel;
 - (b) The AEE; and
 - (c) The Revised Conditions.
51. We also record that during the hearing we tested the respective experts reasonably extensively to ensure that we had a good understanding of the rationale for (and outcomes sought to be achieved by) the Revised

¹³ Through the Minute dated 11 November 2022.

¹⁴ To supplement the assessment of the application relative to those provisions in the s 42A Report and in turn Appendix A9 to the AEE (Ravensdown's planning assessment prepared by Mitchell Daysh).

¹⁵ Being those retained by the Council (for the purpose of the s 42A Report) and Ravensdown respectively.

¹⁶ Planning expert for Ravensdown, as addressed further below.

Conditions, in terms of addressing all actual and potential effects on the environment of granting the applications.

52. We naturally focussed our attention on information (including conditions and relevant planning provisions) related more directly to the issue of consent duration that remained in contention.
53. We note that we were substantially assisted by the answers given by the respective experts on the technical issues (relating to land, air and water discharges as proposed under the applications) at the hearing.
54. The evidence given in that regard, and our findings in relation to it, are as now addressed in the following overview of the hearing itself.

Substantive Hearing – 29 November 2022

55. As noted at the outset of this decision, the hearing took place on 29 November 2022.
56. The parties appearing and their representatives including counsel and expert witnesses are as detailed in section 1 above.
57. In the interests of keeping this decision as concise as possible, this section of the decision provides an overview summary of the information and evidence produced for and generated through the hearing (including in response to questions).
58. Again for the avoidance of doubt, we have had regard to all evidence and information received at the hearing in the course of our deliberations, and in reaching the findings as recorded in this decision.
59. Mr Christensen (counsel for Ravensdown) produced legal submissions focussed on the outstanding issue in contention (consent duration).
60. Key points made by Mr Christensen included:
 - (a) There is no general presumption or rule suggesting that the maximum term provided for under the RMA for discharge permits (35 years) is inappropriate, with case law confirming that an applicant is entitled to as much 'security of term' as is consistent with the purpose of the RMA.
 - (b) Consent holders (as evident in this case) have significant investments in plant and infrastructure, and in the ongoing development and use of technology to manage and reduce effects on the environment. A sufficiently long duration of

consent to provide confidence in making ongoing investment decisions to ensure good environmental performance is required.

- (c) The issue of consent duration needs to be considered in the context of the overall consent package, i.e. with reference to the entire activity and its effects. Where parts of the package are weak (e.g. there is no commitment to implementing good technology, no adoption of contemporary quality standards or no attempts to recognise cultural effects), then a shorter consent may be warranted. The converse also applies.
- (d) Specific factors submitted to be relevant to the issue of duration in this case include:
 - (i) The scale of adverse effects (Mr Christensen submitting there will be no significant adverse effects arising from the applications in this case).
 - (ii) The adoption of best discharge options (in this case to be principally to land, according with the preferences of mana whenua).
 - (iii) The adoption of progressive water quality standards, with the Change 9 (schedule 26 standards) to be met upon completion of the Stage 2 works referred to above, i.e. within six years and “well ahead” of the timeframe otherwise applicable (2040 to meet the Schedule 26 standards under Change 9).
 - (iv) Technology review and continuous improvement (as proposed through the condition structure, as addressed further below in this case).
 - (v) A comprehensive regime for monitoring, reporting and formal review under proposed consent conditions, again as addressed further below.
 - (vi) Assured performance, with there being no reason to suspect that the source control actions¹⁷ and upgrades to the various treatment systems would fail to deliver the expected outcomes.

¹⁷ Referring we understand to the *Ravensdown Napier Works Source Control Management Plan* included with the Revised Conditions, as addressed further below.

- (vii) Agreement with mana whenua, including as to the establishment of the HARP and with continued opportunities for participation and active involvement of mana whenua in the implementation of the consents over the proposed duration.
61. In that latter respect, we record here our understanding that while there have been various “highs and lows”,¹⁸ these consent conditions providing for ongoing mana whenua recognition and participation¹⁹ were substantially agreed by all submitters, including those appearing at the hearing.
62. We set out here in full part of Mr Christensen’s conclusion to the submissions, which we think neatly captures the essence of Ravensdown’s case for a 35-year consent duration:
31. In organising its affairs for the future, the applicant has adopted an approach that will require it to move away from a direct discharge to water in favour of a discharge to land as the preferred receiving environment for the discharge of treated storm and process water. It has adopted the emerging TANK plan water quality standards as compliance limits to be achieved in the short term. It has achieved an important agreement with Mana Whenua submitters on the development of the HARP which will yield a range of positive outcomes for people and the environment. It is committed to continuous improvement and BPO technology reviews, as well as comprehensive monitoring and reporting of the effects of its activities in the receiving environment.
32. It is difficult to imagine what more the applicant could do to demonstrate its commitment to sustainable operations and a genuine interest in being a leader in improving the quality of the local environment with which its activities inevitably interact.
63. After we heard from Mr Christensen, Mr Chilton (air quality expert for Ravensdown) and Mr Curtis (air quality expert advising HBRC) were called to answer questions regarding the conditions of the proposed air discharge permit.
64. Following an extensive set of questions put to those two experts, Mr Daysh made certain observations about issues arising from that series of questions and answers, from his perspective as Project

¹⁸ As Mr Smith for Ngāti Kahungunu Iwi Incorporated put it during the hearing.

¹⁹ In particular, conditions 26-31 of Appendix 1 to the land and water discharge permits.

Manager/Lead Consultant but also as the “conditions expert” responsible for producing the set of Revised Conditions (updated in the form appended to Mr Daysh’s evidence).

65. We then called Dr Phillips (water quality expert/ecologist advising Ravensdown) and Dr Kelly (water quality expert and ecologist advising the HBRC), and again put questions to these respective experts regarding the proposed conditions for the land and water discharge permits.
66. Finally, questions were put to Mr Milner²⁰ regarding the land irrigation discharge dimension of the applications.
67. Noting again that we have had regard to all of the information received through the series of questions put to (and answers given by) these experts (which we found very helpful), we record here the information we consider to be most relevant to our findings on the substantive tests under s 104 and s 105 of the RMA, and the outstanding issue of consent duration in particular:
 - (a) That, having regard to the proposed conditions of the respective discharge consents²¹ and the capital upgrades and improvements to the Napier Works to improve its overall environmental performance, any adverse effects on the environment of the discharges involved (to land, water including coastal waters, and air) would be minor;
 - (b) That, the activities for which consent are sought have effects that would be relatively stable over the proposed consent duration, with known and proven technologies inherent to the mitigation required by consent conditions, as opposed to this being a case involving a new start-up activity with unknown effects, or a case in which effects might change significantly over the consent term;
 - (c) That, for the purpose of assessing effects on the Waitangi Estuary (as minor), a conservative approach has been taken. This includes assuming that all stormwater would be discharged to the Awatoto Drain (including through the HARP wetland once established), even though, as estimated by Mr Milner, 60% of all stormwater would likely be discharged to land over time, and

²⁰ One of the authors of the Ravensdown Stormwater and Process Water Discharge – Land Discharge Effects and Management (November 2021) Report filed with the AEE.

²¹ Being the Revised Conditions in the form appended to Mr Daysh’ evidence for the hearing.

not taking into account the various source control measures proposed under the consent conditions;²²

- (d) That, as an outcome of the second pre-hearing meeting, additional conditions had been included²³ to ensure that the effective functioning of the HARP wetland would be sustained, failing which an effective remedial response would be triggered (including with input from the Awapuni Reference Committee representing mana whenua hapū).²⁴
68. We understand that the water quality discharge limits set under the proposed conditions²⁵ were determined on the basis of meeting the Schedule 26 (Change 9) standards at the Awatoto Drain mixing zone location.
69. Those limits are, as explained by Dr Kelly, concentration-based limits, whereas for the purpose of sustaining effective functioning of the wetland, it is the overall load of nutrient and toxic contaminants that is key, which is addressed in the new conditions referred to in paragraph 68 (d) above.
70. This being the case, we questioned whether the issue of mixing zone location, which was raised by Mr Shade Smith, was material or even helpful.²⁶ The discharge point (where the limits apply) is set further upstream than either the present or future mixing zone location, such that neither concentration nor load limits would need to be adjusted upon future revision of that mixing zone location.
71. We do, however, note that Mr Smith (for Ngāti Kahungunu) advised that his preference was to retain the condition reference to the mixing zone location being adjusted on HARP establishment.
72. It is against this consensus of expert opinion that we reach a number of key findings including on the outstanding issue of consent duration as addressed later in this decision.

²² Refer (for example) condition 13 of the Revised Conditions (Appendix 1 to the Land and Water Discharge Permits) requiring adherence to the *Ravensdown Napier Work Source Control Management Plan* October 2022 or any subsequent revisions to that plan.

²³ Within Appendix 1 to the Land and Water Discharge Permits.

²⁴ Refer conditions 17-19 of Appendix 1.

²⁵ Condition 20 to Appendix 1 of the Land and Water Discharge Permits, Table 1.

²⁶ Having regard to condition 21 of Appendix 1 (of the Revised Conditions) whereby the location of the mixing zone would be adjusted following establishment of the HARP.

73. After questioning the respective experts as just outlined, we then heard from those witnesses whose evidence had been pre-circulated on the outstanding issue of consent duration, namely from:
- (a) **Mr Andrew Torrens**, Works Manager at Ravensdown, who gave an overview of the company's environmental and sustainability goals and how those had guided the approach taken to these applications including to the relationships with key stakeholders, in particular mana whenua hapū.
 - (b) **Mr Mason Jackson**, Associate at Mitchell Daysh, and of Ngāti Kahungunu/Ngāti Porou descent, addressing the centrally relevant provisions of the planning instruments (as noted earlier in this decision).
 - (c) **Mr Daysh**, who gave an overview of the Ravensdown consenting "journey", mana whenua engagement and support, and his expert opinion on the issue of consent duration, relative to involvement and experience with other comparable infrastructure project re consenting processes.
 - (d) **Mr Shade Smith**, Kaitātari matua (Senior Analyst) in the Taio me Ōna Rawa Unit at Ngāti Kahungunu Iwi Incorporated, addressing the issue of consent duration specifically.
 - (e) **Mr Reynold Ball**, Medical Officer of Health at Te Whatu Ora.
74. In addition, we heard from additional witnesses for Ngāti Kahungunu including:
- (a) Mr Ngaio Tiuka
 - (b) Ms Jenny Mauger
 - (c) Ms Aramanu Ropiha.
75. Particular points of relevance to our findings made in the evidence presented at the hearing, including in the pre-circulated evidence (but also surfacing during the course of presentation of the evidence from the witnesses, and in response to questions), are as follows.
76. First, the most centrally relevant planning issue raised by the applications (at least in the context of the land and water discharges) is undeniably the overriding objective of the National Policy Statement for Fresh Water Management (2020) (**NPSFM 2020**), being to *give effect to Te Mana o te Wai*.

77. Mr Jackson and Mr Tiuka appeared to agree that this objective involves an element of both “journey and destination”.
78. Mr Smith and Mr Jackson appeared to be in agreement that, having regard to the proposed conditions of consent, the applications nevertheless do give effect to *Te Mana o te Wai*²⁷ in substantial measure from the outset.
79. Mr Smith noted that there had been a concerted effort by Ravensdown to engage with mana whenua and address concerns previously raised by Ngāti Kahungunu, in terms of better engagement and transparency, and to involve mana whenua in the development of consent conditions.²⁸
80. Mr Jackson outlined how the proposed conditions structure would address the six principles informing what *Te Mana o te Wai* encompasses as set out in the NPSFM.
81. In essence, these conditions provide for the establishment of the Awapuni Reference Committee involving representatives of four hapū, Marae and taiwhenua organisations, with terms of reference linked to specific objectives, functions and responsibilities.
82. Those responsibilities include development of effective measures to implement the recommendations of the Cultural Values reports filed in support of the applications, including as prepared by Ngāti Parau hapū and Aramanu Ropiha.²⁹
83. More broadly, this condition structure alongside the various other proposed conditions of consent would provide for the continued and active participation and involvement of mana whenua hapū in implementation of the consent, and the monitoring and reporting of environmental performance or, as Ms Ropiha put it, securing “accountability” to mana whenua Rangatira.
84. With all of this in place, we find that the overriding *Te Mana o te Wai* objective of the NPSFM 2020 is substantially met by the applications, with the journey of consent implementation ahead giving many opportunities to continue to deliver on that objective.

²⁷ Paragraph 14 of Mr Smith’s evidence, paragraphs 6.1-6.12 of Mr Jackson’s evidence.

²⁸ Paragraph 13 of Mr Smith’s evidence.

²⁹ *Whataangaanga and Surrounds: Cultural Values, Names and Associations, November 2021 and Ravensdown Napier Resource Consent Renewal Cultural Impact Assessment Report*, also dated November 2021.

85. Second, as to the conditions framework generally, Mr Daysh noted (and agreed to questions put) that the conditions structure incorporates various “layers” of feedback and review of environmental performance and outcomes over the consent duration proposed, including:
- (a) Through annual reviews of the *Ravensdown Napier Works Source Control Management Plan*;³⁰
 - (b) As to the stormwater discharges, following completion of the actions set out in the *Ravensdown Napier Works Water Discharge Adaptive Management Plan* at completion of Stage 2, if any water quality parameters are exceeded, a Comprehensive Review would be triggered,³¹ which may in turn trigger a full consent conditions review;³²
 - (c) 10-yearly “technology reviews” for both the air discharge permit and land and water discharge permits, to look at additional options including new best practice technology, and to make recommendations as to whether such new technology or procedures should be applied as a continual improvement measure;³³
 - (d) The potential for a consent conditions review to be triggered in the event that Ravensdown does not adopt any of the recommended measures following the technology reviews;³⁴and
 - (e) Other consent conditions reviews including in response to new regional plan or national environmental standards, and any effects associated with climate change which might arise from the exercise of the consent over time. This might include a scenario whereby sea-level rise affects the functioning of the HARP wetland or the capacity of the land irrigation area to receive stormwater discharges (through an associated rise in the water table).

³⁰ Addressing measures to minimise both air and stormwater discharges within the plant and on the site. Refer condition 27 of the air discharge permit and condition 13 of Appendix 1 to the Land and Water Discharge Permits.

³¹ Condition 25(l) of Appendix 1 to the Land and Water Discharge Permits.

³² Condition 34(e) of Appendix 1 to the Land and Water Discharge Permits.

³³ Condition 57 of the air discharge permit, condition 33 of the Appendix 1 to the Land and Water Discharge Permits.

³⁴ Refer for example condition 34(d) of Appendix 1 to the Land and Water Discharge Permits.

86. For their part, the witnesses for Ngāti Kahungunu (in seeking a shorter consent duration of 20 years) nevertheless gave clear and helpful evidence as to why – despite this overall consent condition structure (which was otherwise supported) – a 20-year rather than 35-year consent duration was important to this submitter.
87. These reasons included that:
- (a) As demonstrated through this very process involving a full consent renewal dealing with all relevant resource consents and associated issues, there is much greater potential for future submitters to influence the overall outcome and achieve a positive and desirable result through a renewal process, as opposed to through a conditions review.
 - (b) That a conditions review might simply address a specific enforcement or compliance problem within the context of a particular discharge permit (to air, land or water), whereas, as pleaded in Ngāti Kahungunu’s submission, it is concerned across all effect domains (air, land and water).
 - (c) That other recently granted stormwater permits in Hawke’s Bay, including for the benefit of Hastings District Council and Napier City Council, have been for a 20-year (or shorter) term, said to be of relevance to the tests in the Regional Coastal and Environment Plan (**RCEP**) set out at section 14 of the s 42A Report.
 - (d) That a 35-year term was too long for any ‘information sharing’ between the people involved in this process (as to their aspirations and objectives for that involvement) and representatives of Ngāti Kahungunu through whatever structure or entity (or personnel) who might be involved in 35 years’ time.
88. There was also a concern made as to the possibility that consent condition reviews under s 128 of the RMA may not be notified and as such Ngāti Kahungunu might not be involved in those processes at all.
89. Mr Ball (for Te Whatu Ora) addressed the importance of the role of the Medical Officer of Health in protecting and promoting public health within the region.
90. Mr Ball considered that the technology review conditions (referred to above) should not be confined to “best practicable option” assessments

but should assess all options, be more robust, and have the potential for other parties to participate in the process.

91. Further, that the onus should be on Ravensdown to adopt the outcomes of technology and continuous-improvement reviews over the duration of consent.
92. Mr Ball also pointed to new World Health Organisation guidelines as to air quality standards, with a concern that these would need to be applied and met, and noted also changes to the resource management legislation which would also set new expectations and requirements including relating to human health and wellbeing over the duration of the consents sought.
93. After we had heard from these witnesses to that effect, Mr Exeter was asked whether the information and evidence given during the course of the hearing caused him to change any of his opinions or recommendations in s 42A Report, including on the issue of consent duration.
94. Mr Exeter advised that he remained of the opinion that a 35-year consent duration was appropriate.
95. In terms of the other stormwater consents raised by Ngāti Kahungunu, Mr Exeter distinguished the circumstances surrounding those applications, and was of the view regardless that none of them was relevant in the context of the RCEP tests (requiring alignment of consent duration where cumulative effects should be considered through a common consent renewal process).³⁵
96. Mr Christensen then made the following key points in reply:
 - (a) Picking up on Mr Daysh's evidence, there are robust and elaborate structures for monitoring, reporting and feedback loops, with opportunities for continuous improvement and conditions reviews, inherent to the overall consent package. As he put it, this is not a "look today, not again for 35 years" scenario.
 - (b) That, to address Mr Ball's concerns, revisions would be considered for the technology review/continuous improvement

³⁵ Refer section 14 of the s 42A Report.

review condition structure including opportunities for participation by other parties.

- (c) As to the point made by Ngāti Kahungunu regarding the sharing of information between current submitters and future participants in 35 years' time, there will be substantial opportunity for 'transfer of knowledge' and flexibility for updating the mana whenua representative structures over time.³⁶
- (d) That, more broadly, the conditions structure provides for an enduring relationship between the Ravensdown Board and Ngāti Kahungunu, iwi and hapū at a Te Rangatira level.

97. Mr Christensen summarised these points in submitting that the overall application could not be further from a "look once look away" proposition, and that Ravensdown is looking at the "gold standard" for ongoing and continued engagement, such that the interests of Ngāti Kahungunu are never lost sight of.

98. As to future involvement across all domains, Mr Christensen noted that the technology reviews are set within *both* the air discharge permit and land and water discharge permit context. Those 10-yearly reviews would therefore coincide in time, with potential for s 128 conditions reviews across all domains in contemporaneous fashion being the result³⁷.

99. Mr Christensen also submitted that the same notification tests apply to a review process as for a new application or consent renewal.

100. As foreshadowed during Mr Christensen's reply (and noted above), on 1 December 2022 Ravensdown produced a final updated set of conditions and management plans (**December Version**), with the principal changes made to the conditions framework being to:

- Confirm within the air discharge permit that conditions 25-30 of Appendix 1 to the land and water discharge permits (dealing with the establishment of the Awapuni Reference Committee) equally apply to the exercise of that discharge permit.
- Require a review of the Air Discharge Management and Monitoring Plan required by condition 57 of the air discharge permit to respond

³⁶ Pointing to proposed conditions 28(c) and(f) of Appendix 1 to the Land and Water Discharge Permits in particular.

³⁷ Ie pursuant to condition 63 (d) of the air discharge permit, and condition 34 (d) of Appendix 1 to the Land and Water Discharge Permits.

to matters raised in (i) the annual report required by section 6 of the Source Control Management Plan, and (ii) the technology review required by condition 59 of that consent.

- Require that within three months of the technology review reports required under the respective consent conditions, that the consent holder invite all submitters to the project to a presentation of (i) that report, (ii) a summary of previous annual reports and (iii) the consent holder's position on any continual improvement measures recommended in the technology review reports.
101. These measures are understood to address the concerns around the need for a holistic approach to reviews, and participation by the existing parties in the relevant processes of review.
102. Various more minor amendments addressing technical issues raised by the Panel during the course of questions to the technical experts were also addressed.

Findings

103. In essence, and having regard to all of the information, submissions and evidence received including during the course of the hearing, we find that:
- (a) All actual and potential effects of allowing the activity subject of Ravensdown's consent applications would be minor (indeed that is the uncontested position of all respective experts); and
 - (b) Granting the resource consents sought would be consistent with the provisions of the relevant planning instruments (national and regional) and in turn serve the sustainable management purpose of the RMA.
104. On the issue of consent duration specifically, we find that a 35-year term is appropriate having regard to the following factors:
- (a) As just recorded, all relevant effects of granting the resource consents on the environment (land, air and water domains) would be minor.
 - (b) We are dealing with known and proven technologies inherent to the conditions of consent, with the conditions framework having been tested during this overall application process through extensive expert peer review, expert conferencing, two pre-

hearing meetings and the hearing process and evidence as just outlined.

- (c) The Napier Works comprise an existing activity with known current effects that are likely to substantially improve as a result of the Source Control Management Plan and the significant capital investments – both planned and being made – to improve environmental performance across all effects domains.
 - (d) Equally, this is an activity involving a relatively stable effects profile over time, rather than an activity where effects could change significantly over the proposed consent duration.³⁸
 - (e) The significant capital commitments being made will ensure that up-to-date compliance standards can be met, including to the point where the Change 9 (Schedule 26) water quality standards will be achieved within six years, rather than by 2040 (timeframe contemplated under Change 9).³⁹
 - (f) There is the use of best available technologies and an extensive range of feedback loops, continuous improvement, and technology and consent conditions reviews all designed to ensure that all relevant effects are kept to the minimum, throughout the consent duration.
105. We accept Mr Christensen’s submissions on the “institutional memory” matter (sharing of information across generations) raised by Ngāti Kahungunu, to the extent relevant to our finding on consent duration.
106. To the point that a full consent renewal process would provide a greater opportunity to secure a positive outcome compared to a conditions review, we again refer back to the points made in reply by Mr Christensen, and further have regard to the following findings of the High Court in *Genesis Power Limited v Manawatu-Wanganui Regional Council*:⁴⁰

[83] Thus, I think the Environment Court understated the powers of the Manawatu Wanganui Regional Council and of the Court upon a review of the consent conditions. *Subject to the restriction on the power to cancel a consent, I think the process does provide for*

³⁸ *Genesis Power Limited v Manawatu-Wanganui Regional Council* [2006] 12 ELRNZ, at [41].

³⁹ *PVL Proteins Limited v Auckland Regional Council* A 061/2001, at [28] and [32]. *Marr v Bay of Plenty Regional Council* (2010) 16 ELRNZ 197, at [223] and [230].

⁴⁰ *Genesis Power* at [83], [88] and [89].

“wholesale review”. To that extent, I accept Genesis’ submission that the Court misconstrued the consent review process.

[88] Genesis referred to the Planning Tribunal’s decision in *Medical Officer of Health v Canterbury Regional Council* [1995] NZRMA 49. There, at 63, the Tribunal held that the consent conditions review process provided:

... a more rigorous and effective mechanism for ensuring that the applicant company does not adversely affect the air quality of the area surrounding its factory and provides a more efficacious procedure than the somewhat blunt instrument suggested by the Medical Officer of Health, that the term of this resource consent be limited to five years to enable these matters to be looked at afresh after that time. We can see no grounds for the appellant’s pessimism concerning the integrity of this process. ...

[89] I agree with the sentiments expressed in that passage. In a situation where adverse effects on the Maori respondents have been identified, but appropriate measures to mitigate them have not, *to limit the resource consents to 10 years is indeed to wield a blunt instrument.*


DETERMINATION APPLICATIONS

1. Applications granted on the basis of the conditions appended to this decision (comprising the December Version ⁴¹).
2. 35-year term approved where sought.

Dated: 15th December 2022



.....
Cr Martin Williams



.....
Cr Hinewai Ormsby



.....
Dr Malcolm Green

⁴¹ Save that condition 21 of Appendix 1 of the Land and Water Discharge Permits relating to the Mixing Zone adjustment is to be reinstated, as preferred by Mr Smith.