

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

An application for proposed change to conditions of resource consents DW-2016-107113-01 and WS-2016-107114-01, being water take and discharge of water from the Waipaoa River to the Makauri Aquifer through an injection bore for a Managed Aquifer Recharge Trial.

This application is **GRANTED**. The reasons are set out below.

Application number(s):	DW-2018-107113-02 / WS-2018-107114-02
Site address(es):	<u>Water Take</u> : Waipaoa River, 614 Bushmere Road, Gisborne <u>Bore (injection)</u> : Kaiaponi Farms Ltd Property, 555 Matawai Road, Gisborne
Applicant:	Gisborne District Council
Hearing commenced:	Friday 3 August 2018, 8.30am
Hearing panel:	Mark Farnsworth
Appearances:	<u>For the Applicant:</u> Lois Easton Harriet Roil <u>For Rongawhakaata Iwi Trust (submitter):</u> Staci Hare Murray Palmer <u>For the Council as Consent Authority</u> Alan Matheson <u>Hearings Administrator</u> Caroline Wilkinson
Hearing adjourned	3 August 2018
Commissioner' site visit	Thursday 2 August
Hearing Closed:	6 August 2018

Introduction

1. This decision is made on behalf of the Gisborne District Council (“**the Council**”) by Independent Hearing Commissioner Mark Farnsworth, appointed and acting under delegated authority under section 34A of the Resource Management Act 1991 (“**the RMA**”).
2. This decision contains the findings from my deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. This application was limitedly notified to the one identified affected party¹ the Rongowhakaata Iwi Trust (Rongowhakaata), and a submission was received from them.

Summary of proposal and activity status

4. Gisborne District Council is seeking to extend the Managed Aquifer Recharge Trial by continuing the trial over the balance 2 years that is provided for in the existing resource consents. A period of 5 years was provided for in the resource consents. The initial trial was able to be completed in around 1 year.
5. The fundamental trial parameters of what is planned remain the same (e.g. location of injection point, rate of abstraction and injection) except that it is now proposed that the volume of water taken be increased from a total of 140,000m³ to 378,000m³ per year for 2 years.
6. The management and recording of the system will be refined to provide better information results. Also, new locations for, purpose-built monitoring bores have been identified and separate resource consent applications have been made for these bores, and if approved, they will form part of the Gisborne District Councils groundwater monitoring network.
7. The information already obtained from the Phase 1 trial showed that the recharge of the Makauri Aquifer is a realistic option to assist in the replenishment of the Makauri Aquifer. However, the trial was not conclusive with respect to the viability of a larger aquifer replenishment scheme due to the short duration of the trial, the low volume of water injected and the location of the monitoring wells not being in the best position to record the results of the trial. It is proposed that the trial continue with increased volumes of water. Water will still be sourced from the Waipaoa River.
8. The Section 42A Report provides² an analysis of why the proposal requires resource consent.

Background

- Resource consents were granted on 16 November 2016 (with a single set of conditions applying) to the three resource consent applications as follows:
 - a) Under section 9(2)(a) of the RMA and Rule 5.2.4 of the Proposed Gisborne Regional Freshwater Plan (PGRFWP) to undertake a restricted discretionary activity being to

¹ Section 42A Report at [22]

² *ibid* at pp6

- install up to three bores, take water for the purposes of pump testing and the associated discharge of drilling fluids and water to land; and
- b) Under section 14(2) of the RMA and Rule 4.1.7 of the PGRFWP to undertake a restricted discretionary activity being to take and use water from the Waipaoa River as a 'B' block allocation; and
 - c) Under section 15(1)(a) of the RMA and Rule 5.2.8 of the PGRFWP to undertake a discretionary activity being to discharge water to water via injection.
- The activities were bundled and overall considered as discretionary activity status.
9. This resource consent application is being applied for under s127(3) of the RMA and will be assessed as if the application were for a **discretionary** activity.
10. The Section 42A Report³ sets out the changes sought:
- Conditions 19 and 21 of Surface Water Take Consent WS-2016-107114-00; and
 - Condition 29 of Discharge Water to Land and Water to Water via Injection Consent DW-2016-107113-00.
11. The Section 42A Report⁴ notes that:
- The s127(3) change of condition application was supported by a legal opinion⁵ prepared by Buddle Findlay, which confirmed the change of condition application was the legally appropriate; and
 - Section 127(3) of the RMA provides that sections 88 to 121 of the RMA apply with all necessary modifications to refer to 'change of condition' and effects of the change' respectively instead of 'resource consent' and 'the activity'.

Relevant statutory provisions considered

12. In accordance with section 104 of the RMA, I have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections: 104, 104B, 105 and 107.

Relevant standards, policy statements and plan provisions considered

13. In accordance with section 104(1)(b)(i)-(vi) of the RMA, regard has been taken of the relevant policy statements and plan provisions of the following documents:
- The Resource Management Act 1991;
 - The Resource Management (Measurement and Reporting of Water Takes Regulations) 2010;
 - The National Policy Statement for Freshwater Management 2014;
 - Tairāwhiti Resource Management Plan (including the Regional Policy Statement); and
 - Proposed Gisborne Regional Freshwater Plan (Decisions Version).
14. I also considered the following other matters to be relevant and reasonably necessary to the application in accordance with section 104(1)(c) of the RMA:

³ Section 42A Report pp6-7

⁴ ibid

⁵ Application pp 34 – 44

- Australian Guidelines for Water Recycling – Managed Aquifer Recharge Document No 24 (July 2009); and
- Hapu/Iwi Management Plan of Nga Ariki Kaiputahi.

Rongawhataaka Submission

15. Rongowhakaata's Submission addressed the following issues⁶:

- The application should be processed as a new application rather than a change of condition application;
- The consent authority did not consider those persons who 'may be affected by the change' in determining limited rather than full public notification;
- Effects of the water take from the Waipaoa River with respect to river flows, fish migration and sediment deposition;
- Effects of the discharge to the Makauri Aquifer with respect to chemical reactions within the water and the process to unclog the injection points;
- Sustainability of aquifer injection within the context of the overallocation of water within the area; and
- Suitability of the cultural monitoring undertaken by Maumahara Consultancy Services limited and the use of the 'Mauri Compass', and addition cultural impact assessment required.

Summary of evidence heard

16. The following information was pre-circulated:

- The applicant's Application;
- A Buddle Findlay Legal Opinion dated 16 February 2018;
- A Peer Review of the Gisborne Managed Aquifer Recharge Cultural Impact Assessment;
- MAR Monitoring commentary;
- Results of 2017 Injection Trail
- The Section 42A Report;
- Technical comment on the applicant's information; and
- Rongowhakaata's written submission.

All of the pre-circulated material was taken as read.

17. The Council's Section 42A Report prepared by Alan Matheson, a consultant Planner. The report provided a consideration of all the pre-circulated material referenced above at paragraph 16 and provided a recommendation on the proposal.

18. The evidence presented at the hearing responded to the issues and concerns identified in Alan Matheson's Section 42A Report, the application itself, and Rongowhakaata's submission.

19. The evidence presented by the applicant at the hearing is summarised below.

⁶ Ibid pp7

For the Applicant

20. The Council's application⁷ had been prepared by Mark Joblin. The application provided an assessment of the proposal including the requirements of the Phase 2 trial; an assessment of effects; and a validation of why the proposal should be assessed via s127.

21. In summary:

- The application should be assessed⁸ via s127 because the key parameters of the trial will not be altered, therefore in substance this is not a new consent application and the effects of the trial have not changed from those originally consented.
- An assessment of the application against the relevant provisions of the applying statutory documents.
- Water quality – recording that there are no effects on water quality that have not already been considered in the original hearing.
- Effects on other water users.
- Effects on groundwater and flows.
- Monitoring
- The consultation undertaken.

22. Ms Lois Easton, the Environmental and Science Manager for GDC provided a written statement of evidence. She addressed the following matters at the hearing:

- An overview of the MAR Trial⁹.
- An outline of the Council's approach to Cultural Liaison and Assessment during the Phase 1 Trial. Two iwi groups hold mana whenua over the Waipaoa River and the land above the Makauri Aquifer – Rongowhakaata and Te Aitanga a Mahaki¹⁰.
- A cultural assessment where it was recorded that the applicant is willing to continue to work with Rongowhakaata and other iwi interests as well as the range of stakeholders that have already played a significant role in the Phase 1 trial¹¹.
- The technical aspects of the trial are the same as those which were in place for the Phase 1¹².
- The consent conditions¹³.
- In the submission from Rongowhakaata Iwi Trust the issue of the B Block allocation and its impact on the Waipaoa River was raised this is beyond the MAR Trial¹⁴.
- An assessment of the value of Infrastructure Assets and Consent Hearing Cost from Phase 1 Trial¹⁵.

23. Ms Easton stressed that the application is for a trial and that any long-term allocation of water for injection would require a new consent.

⁷ Co-ordinated by Mark Joblin

⁸ Application at [3.0]

⁹ Lois Easton EiC at [8-13]

¹⁰ ibid at [14-21]

¹¹ ibid at [22 - 23]

¹² ibid at [24-25]

¹³ ibid at [26]

¹⁴ ibid at [27- 30]

¹⁵ ibid at [31- 33]

24. Ms Harriet Roil, a Water Quality Science Officer at the GDC provided a written brief of expert evidence which addressed the following:
- Water quality monitoring¹⁶.
 - The Aquatic Ecosystem Health in the Waipaoa River (Macroinvertebrates and fish)¹⁷.
 - The hydrology of the Waipaoa River recoding that the variation to the current consent differs in that rather than the water take being during a certain period, the trial will be undertaken anytime that the flow is >4000l/s¹⁸.
 - A consideration of the potential ecological impacts of the MAR Phase 2 Trial noting that the ecological values of the Waipaoa River are degraded, with MCI scores in the lowland sites being in the 'Poor' category. The impact of the proposed consent variation for the Managed Aquifer Recharge Trial on the ecology of the Waipaoa River will be insignificant. The removal of up to 22l/s will not have a significant effect on flushing flows, fish life cycles, and habitat for freshwater species¹⁹.

Rongowhakaata's Submission

25. Ms Staci Hare presented an overview of Rongowhakaata's concerns, highlighting, and emphasising, their deep cultural opposition and that no conditions of consent applied by Council can remedy or mitigate the cultural impacts.
26. Ms Hare also commented on Rongowhakaata interactions with Council noting the need for the establishment of their own formal relationship with council.
27. Murray Palmer, an independent natural resources and environmental management consultant employed by Rongowhakaata iwi provided a brief of written evidence. In speaking to his evidence at the hearing Mr Palmer noted²⁰ that Rongowhakaata iwi are committed to sustainable economic development and their aspirations are for economic well-being requiring them to future proof any proposed development, as their responsibilities for the natural resources in their rohe (tribal area) upon which their economic, social and cultural well-being are built are intergenerational.
28. Mr Palmers' experience working with iwi, hapu and marae on a range of wastewater treatment project proposals, has led him to respect the caution embodied in the cultural tenet around the mixing of differing waters. It has been incumbent on Rongowhakaata as kaitiaki to oppose the MAR project as it currently stands due to:
- The fundamental cultural tenet relating to the mixing of waters;
 - Identifying the gaps in the information provided by the applicant (e.g. around the impacts of climate change, river aggradation and decreasing low flows, effects of a range of potential but as yet unidentified contaminants from the discharge waters; and
 - Considering the potential costs to both Rongowhakaata whanau and the wider community.

¹⁶ Harriet Roil EIC at [7-8]

¹⁷ ibid at [9-15]

¹⁸ ibid at [16-17]

¹⁹ Harriet Roil EIC at [18-22]

²⁰ Murray Palmer EIC at pp 1-5

29. Mr Palmer was of the view²¹ that the changes to consent application constitute a new proposal due to the extent of the proposal and the change in the potential nature of effects which are in summary:
- Effects of dry season B flow water takes on the mauri, ecological, and mahinga kai (food gathering places and practices) values of the Waipaoa River and associated shallow groundwater and wetland systems;
 - Potential effects on other users of these resources;
 - Conflation of the purpose of sustainable management into avoidance of adverse commercial impacts.
30. The restriction to wet 'out of season' flows was a key condition in Rongowhakaata's ultimate decision to agree to the initial trial progressing. The current application involves a significant change to this, and he believed creates a significant new context for the proposed activity. He opined that the proposed water-take for MAR, if conducted during the irrigation season, must be seen as a component of a substantive 2000L/sec B Flow allocation.
31. Mr Palmer also expressed the concern on the interconnectedness of the Waipaoa River, local wetlands and the shallow aquifers, and lack of evidence to show that these surface and ground waters will not be adversely affected by further irrigation season water. The Consent application predominantly from an irrigator's perspective and there is a lack of evidence to support balanced economic gain for community

Council's Section 42A Report

32. The section 42A Report (prepared by Alan Matheson) provided:
- A description of the proposal.
 - A summary of the planning framework which applies and a statutory consideration
 - Comment on the mediation that was undertaken
 - An assessment of environmental effects (both positive and negative).
 - Comment on the conditions and mitigation methods.
33. The Section 42 Report provided the following concluding comments²²:
- "I recognise that the proposed Phase 2 Makauri Aquifer trial has some aspects that conflict with cultural values held by Rongowhakaata Iwi Trust. However, I consider that as other adverse effects (such as groundwater quality) can be effectively avoided, remedied or mitigated and that the monitoring results will provide more information to inform the consideration of the proposed substantive project, that on balance the application can be granted subject to conditions."*
34. Mr Alan Matheson, in speaking to the Section 42A Report, and responding to matters raised by Rongowhakaata, endorsed his closing remarks and opined that his recommendation had not changed. He also noted:
- In response to the First Direction of the Hearing Panel he pointed out that the decision maker did not have recourse to Section 124 of RMA; it does not apply; and
 - The permitted baseline does not apply to this proposal.

²¹ ibid pp 6 - 11

²² Section 42A Report at [77]

Applicant's Right of Reply

35. Ms Easton stressed the following points:

- In terms of impacts on the river the issue is about flow not the total volume of the take;
- When the flow is over 4000l/s the limiting factor is sediment;
- The Phase 2 Trial will include virus studies – happy to work with Rongiwakaata on this;
- It is a very highly modified hydrological system. The drainage of the Turanga flats is a likely contributor to the loss of recharge area; and
- The trial is intended to understand the environmental effects of MAR.

Principal issues in contention

36. All of the issues raised in Rongowhakaata's submission were in contention namely:

- Strong cultural opposition to the application;
- The application should be processed as a new application and be subjected to a full public notification;
- The adverse effects of the water take from the Waipaoa River with respect to: river flows, fish migration and sediment deposition;
- The potential adverse impacts of the discharge on the Makauri Aquifer with respect to chemical reactions within the water and the process to unclog the injection points; and
- Sustainability of aquifer injection within the context of the overallocation of water within the area.

S127 Application or a New Consent?

37. The initial question which needs to be addressed is:

- *Should this application be considered as new consent application rather than a s127 change of conditions?*

To answer this question, I have carefully considered: the application; the Buddle Findlay Legal Opinion²³ of 16 February 2018 and Rongowhakaata's submission.

33. The Legal Opinion²⁴, notes two clear propositions:

- applications to change conditions can properly be considered and determined under section 127, as long as the changes proposed would not more properly be considered a new application; and
- in determining whether an application to change conditions would more properly be considered a new consent application, the consent authority should focus in particular on whether the changed conditions would have materially different adverse effects to the originally consented activity.

34. Mark Joblin, in the Application opined that he considered that the proposed variation meets the requirements of s127 because:

- Only three consent conditions require to be varied;

²³ Application material pp 34 – 44

²⁴ Buddle Findlay Legal Opinion at [22]

- The other fundamental parameters of the trial (including location, infrastructure, flow rates and monitoring and reporting) will not be altered by the changes proposed to the conditions.
- The effects of extending the trial, in terms of the total volume of taken and injected water, have been examined and it is considered that the proposed changes in conditions will not result in any substantial increase in the potential adverse effects.
- All submitters have been considered, particularly in regard to how they may be affected by the proposed changes.
- The proposed changes do not change the key activity consented, being the injection of an unchanged rate but increased volume of Waipaoa River water into the Makauri Aquifer.

35. Mr Joblin's opinion was based on the Buddle Finlay Legal Opinion which also provided the interpretation²⁵ that the proposed changes to the conditions can properly be sought under section 127:

- by reference to the key parameters of the originally consented activity; and
- focussing on the difference between the effects of the originally consented activity and the effects of the activity with the conditions changed as proposed by GDC

36. The legal opinion notes that in terms of the parameters of the consented activity, the change to conditions sought by GDC would alter only:

- the total volume of water that may be abstracted and injected over the five-year term of the consent; and
- the duration of the injection season.

37. The following key parameters would not change:

- the abstraction and injection would still be for the purposes of the Recharge Trial;
- the five-year term of consent;
- the location of the abstraction and injection of water, and the infrastructure used to carry out the abstraction and injection - in other words, the methodology for the trial;
- the restriction on abstraction so that it may only occur when flow is greater than 4,000 litres per second - noting that this is an important practical check on the injection season;
- the maximum daily amount of water to be abstracted (1,901m³);
- the maximum instantaneous rate of abstraction and injection (22 litres per second); and
- the detailed trial monitoring and reporting requirements.

38. Ms Easton stressed two points: this a continuation of the trial and that key trial parameters would not change.

39. When questioned Mr Palmer noted that he had not specifically addressed the legal opinion because of their total opposition to the take. Rongawhakaata submitted that the application should be considered as a new application and publicly notified because their fundamental cultural opposition, and how their iwi and hapu rights in the water bodies in their rohe are provided for in the MAR Project. Both matters were addressed in the Phase 1 hearing.

40. M Palmer also noted²⁶ that the changes to the consent application constituted a new proposal due to the large increase in the volume of water to be taken - 140,000m³ to 378,000m³ per year for a 2-year period and the potential to change nature of any adverse effects. Ms Easton in her evidence had noted that the impacts of the proposal were about flows rather than volumes. Extraction would take place when flows are over 4000l/s While Mr Palmer's concerns over total extraction during low periods is justified the trial has been designed to ensure that this does not occur gained the understanding that Mr Palmer's evidence was looking forward and addressing Rongowhakaata's concerns associated with an application for a long-term, take of water for injection rather than a trial water take. Had the increase in volumes requested been part of a long-term application, then public notification may have been warranted.

41. I am satisfied that the proposal can be considered via section 127 for three reasons:

- This proposal is for the continuation of a short-term trial;
- Key trial parameters (other abstraction volumes) will not be changed; and
- The potential effects are the same (addressed further below).

Statutory Assessment

RMA Section 104(1)(b)

42. The statutory documents that I need to consider under RMA Section 104(1)(b) are set out in points 13 & 14 above. Section 7 of the application provides an assessment of the proposal against the relevant statutory documents. This analysis was not challenged by Rongowhakaata. The analysis found that the applications are considered to be consistent with the relevant objectives and policies of the relevant, applying statutory documents. I have adopted that analysis for the purpose of this decision and do not intend to copy it here.

RMA Section 104(1)(a)

43. RMA section 104(1)(a) required an assessment of any actual or potential effects of allowing the activity. Section 8 of the application provides that assessment. I have also found above (point 41) that this proposal can be considered via section 127. In making that finding I could reply on, and adopt, the findings of the Stage One hearing for the purpose of this decision as the actual and potential effects are the same and are not altered by this proposal as I am satisfied that the applicant provided an adequate validation that effects are the same by:

- The expert evidence provided by Ms Easton and Ms Roil;
- The monitoring results of the Phase 1 Trial; and
- The peer review that was undertaken.

However, given Rongowhakaata's submission points I have checked the Stage One hearing findings by a consideration of the following:

Potential Impact on the Waipaoa River

44. The potential impact of the water-take on the values of Waipaoa River was raised by Mr Palmer, he expressed the view that there was a lack of evidence that the new proposed take at any time of year will protect key in-stream ecological processes and habitats.

²⁶ Palmer EIC at [20]

45. Ms Roil's expert evidence addressed this issue and she concluded²⁷:

"The MAR trial involves the use of up to 22l/s of water at the Kaiaponi site when the Waipaoa River is greater than 4000l/s for a total volume of 378,000l/s.

The impact of the proposed consent variation for the Managed Aquifer Recharge Trial on the ecology of the Waipaoa River will be insignificant. The removal of up to 22l/s will not have a significant effect on flushing flows, fish life cycles, and habitat for freshwater species. The water take will not decrease habitat area, spawning potential or water quality in the lowland area of the Waipaoa River. The ecological and physico-chemical water quality issues in the Waipaoa River stem from land use and catchment geology."

46. Ms Roil recommended order to absolutely minimise any effect of the take on the river the trial is not conducted when the water level has been or is only just at the 4000l/s level for a prolonged period of time, the most ideal times to be taking the water for the trial is when the water level is well above the 4000l/s to guarantee the very least impacts.

47. It is very evident that Mr Palmer' ecological concerns relate to periods when the river is in flow states below the 4000l/s threshold; in low flow states his concerns would be justified. The trial is now designed to only take water when there is a flow greater than 4000l/s. Mr Palmer' concerns have largely been addressed by the water-take regime that is to be adopted.

48. I find that the proposed take will have minimal impact on the in-stream ecological values of the Waipaoa River.

Water Quality

49. The application at 8.1 notes that there are no effects on water quality that have not already been considered in the original consent application and the processing of those consents. The pilot trial did not identify any adverse effects from the injection trial and concluded that the potential effects are unchanged from those considered in the original consent application.

50. While Rongawhakaata's submission did raise water quality issues, I did not receive information that raised new issues of concern that have not been addressed.

Environmental effects on the Water Quality of the Makauri Aquifer

51. In looking at the environmental impact of the Phase 1 Pilot Trial, no adverse effects²⁸ on the Makauri Aquifer were identified.

Clogging & E.coli

52. Section 8.6 of the applicant's AEE records that no clogging of the injection points and the wider aquifer were observed and that the presence of E.coli was detected, but returned to a non-detectable level once the Phase 1 trial was finished. Monitoring and management of injection water is proposed to be continued for the Phase 2 extended trial, including retaining conditions relating to limiting water turbidity and E.coli concentrations of injected water. This should address, in part, the concerns over E.coli raised by Mr Palmer.

²⁷ Roil EiC at [19-20]

²⁸ Application at [8.6]

Cultural Impacts

53. The fundamental cultural concerns of Rongowhakaata were addressed at the Stage One hearing and restated at this Stage Two hearing. The Section 42a Report appropriately records²⁹ that:

“The submission from the Rongowhakaata Iwi Trust does not resile from its position of opposition to the Phase 2 trial (refer to paragraphs 6 – 9 of its submission). Furthermore, the Rongowhakaata Iwi Trust do not support the cultural impact assessment prepared by Maumahara Consultancy Services Ltd nor the use of the Mauri Compass method”.

54. Ms Hare and Mr Palmer were both unequivocal in their strong cultural opposition to the proposal. When questioned Ms Hare did acknowledge that the water in the Waiparoa River does recharge the Makauri Aquifer. The main point of differences is that the recharge water is subject to natural filtration and it takes ‘some time’ for the recharge water to actually enter the aquifer. There is a need to take a precautionary approach when addressing natural processes. I do not disagree. My site inspection demonstrated that water extracted for injection is subjected to filtration which surely goes some way to meeting Rongowhakaata’s concerns in a modern way.

55. Ms Easton confirmed that the Council is willing to continue to work with Rongowhakaata. The Council is prepared to commission a further cultural impact assessment in collaboration with Rongowhakaata and include the employment of Rongowhakaata experts on these matters. Ms Easton also noted:

- The Council is committed to a collaborative approach with Rongowhakaata Iwi Trust going forward through the Phase 2 trial process; and
- The Council would like to work with Rongowhakaata to co-develop our understanding around the Makauri Aquifer hydrology and surface – groundwater interactions.

56. I find that I am not in a position to bring forward a different finding than that noted in the Stage one hearing. I do not discount the views of Rongowhakaata and their concerns over potential cultural effects but this is a trial of limited duration the results of which could be significant for the district, including members of the Rongowhakaata iwi.

Positive Effects

57. The Section 42A Report³⁰ sets out the positive effects of the proposal including the gathering of additional information to inform the potential suitability and sustainability of the recharge injection method as one of the means to restore the Makauri aquifer. I also concur that the positive effects of the proposed Phase 2 trial provide some weight in favour of the application being granted.

Other RMA Considerations – sections 105 & 107

58. Section 105 directs that regard must be given to the nature of the discharge and the sensitivity of the receiving environment to adverse effects. Section 107 provides for restrictions on

²⁹ Section 42A Report at [63-64]

³⁰ Ibid at [66-67]

granting certain consents. The original application considered the requirements of both sections 105 & 107 noting that the Phase 1 proposal adequately met the requirements of both section 105 & 107. No information was placed before me that would cause me to alter those findings.

Subject to Part 2

59. The provisions of sections 104 and 104B RMA are all 'subject to Part 2' of the RMA, however, the need to visit Part 2 of the RMA or make an overall broad judgement is now subject to case law pursuant to the High Court direction in *RJ Davidson*³¹. The Section 42A Report records that reference to Part 2 of the RMA has not been undertaken because:
- the matters listed in Part 2 which are of relevance to this application have been given adequate regard within the statutory planning documents; and
 - the provisions of the statutory planning documents are valid, have complete coverage and are certain, and as such give substance to the principles of Part 2
60. The Court of Appeal has handed down its decision³² on the RJ Davidson appeal providing the following direction³³:
- Notwithstanding *King Salmon*, RMA decision makers should usually consider Part 2 when making decisions on resource consents (that is the implication of the words "subject to Part 2" in section 104).
 - Where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it "would not add anything to the evaluative exercise". It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2.
61. In the absence of information to the contrary I have accepted that the relevant plan provisions give effect to Part 2 and that recourse to Part 2 would not add to my evaluation.

Decision

62. In exercising my delegation under section 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 105 and 107 I have determined that the resource consents for a change of conditions of consent should be granted.

Term

63. The term of the Phase 2 trial shall be for approximately 2 Years

Reasons for the decision

64. Under section 104(1)(a) of the RMA, the actual and potential adverse effects of the proposal remain the same as for the Phase 1 Trial and that by continuing to comply with the conditions of consent they can be avoided, remedied or mitigated.

³¹ *RJ Davidson Family Trust v Marlborough District Council* (2017) NZHC 52

³² *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

³³ Buddle Findlay Insight August 21, 2018

65. Undersection 104(1)(b) the proposal is not inconsistent with applying objectives and policies of the relevant statutory documents.

66. The proposal will have tangible information benefits.

67. The Council is committed to working with Rongawhakaata going forward; and Conditions 46 & 47 have been added to address the commissioning of a cultural impact assessment and monitoring.

Conditions

68. The changed conditions are attached as Attachment 1 to this decision. The changes have been highlighted.

A handwritten signature in black ink, appearing to read 'Mark Farnsworth', with a stylized flourish at the end.

Mark C Farnsworth MNZM

22 August 2018