

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS
GISBORNE DISTRICT COUNCIL
AT GISBORNE**

UNDER the Resource Management Act 1991 ("RMA")

AND IN THE MATTER OF a resource consent application for consents
associated with wastewater overflows

BY **Gisborne District Council – Community
Lifelines**

Applicant

SYNOPSIS OF OPENING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANT

Dated 12 JULY 2021

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INTRODUCTION

1. This Application relates to overflows from critical wastewater infrastructure for the city of Gisborne. The Applicant is the Community Lifelines section of Gisborne District Council (**GDC, Council or Applicant**) who are responsible for maintaining and operating the Gisborne Wastewater System (**GWS**).
2. The GWS is set out in the Application and the evidence of Mr West for the Applicant. It services a population of 32,579 through approximately 15,278 connections. The network consists of 226km of mains, 91 kms of laterals and 40 pump stations, which transport wastewater to the wastewater treatment plant (**WWTP**).
3. The Application¹ and evidence of Mr West explains the ownership components of the GWS. Effectively Council owns and manages 50% of the total wastewater system, which is the public component, and runs from the property boundary. The remaining 50% is owned and managed by private individual landowners and businesses. The private elements predominantly include the wastewater gully traps and the lateral pipes that connect into the public system at the property boundary.
4. I will return to the relevance of the private property element later in these submissions, but at this stage it should be noted that affordability is also an issue for Gisborne. As outlined in the evidence of Mr Wilson, Gisborne scores highly on the deprivation index, and affordability is a key concern for Council. As such, the ability to develop and improve drainage infrastructure needs to be considered alongside other priorities and the need for GDC to manage affordability in the context of infrastructure challenges and Gisborne's comparatively low income levels and high social deprivation scores.
5. The GWS has been designed to carry a component of stormwater in addition to wastewater, due to the inevitability that some stormwater will make its way into the system through inflow and infiltration (**I&I**). The technical evidence for the Applicant confirms that the wastewater network has been designed and sized in accordance with national practice to convey six times average dry weather flow (**ADWF**) without overflowing².
6. It is also standard wastewater design practice to install overflow relief points in the wastewater network to protect public health and important infrastructure

¹ See Figure 5 p12 Application

² Evidence of Neville West at para 18; Evidence of Ian Garside at para 21

components³. This is essentially because the alternative would be uncontrolled overflows, including on private property.

7. The location of the wet weather overflow (**WWO**) points, and their description as either primary, secondary or tertiary overflow points are described in the Application and evidence and shown on Figure 4⁴. As will be described later in these submissions, the primary overflow point at Seymour/Turenne has been the subject of investigation and work by Council for some time, and following submissions on the Application Council has programmed upgrades and alterations to the network to remove Seymour/Turenne as a primary overflow point and replace it with a tertiary overflow (which will be used rarely, if at all)⁵.
8. It is also important to note that WWO are not automatic (as is the case with some councils). Rather they require manual opening and closing. As such, the whole process is actively observed and managed by Council and its contractor. This is described in the evidence of Mr West⁶ and includes monitoring of Metservice, preparation by inspections and network checks, observance of the wet weather protocols that Council has in place; and then a decision by the 4 Waters Infrastructure Manager – Operations and staff taking into account a variety of information; detailed communication plans including notification and signage; and implementation of sampling and monitoring programmes. WWO are only opened when necessary and closed as soon as possible when flows in the network subside.

Wet Weather Overflows

9. The causes of wet weather overflows (**WWO**) are set out in the evidence of Mr West. Essentially WWO occur when large volumes of stormwater makes its way into the wastewater network during heavy rainfall events⁷. There are several entry points for this to occur, which include overtopping into, or entry via cracked and leaking gully traps, illegal connections, leakage (infiltration) into lateral wastewater pipes, and leakage/infiltration into Council's wastewater network.
10. The evidence of Mr West and the Application sets out the history of network improvements that Council has undertaken on the Council owned assets.⁸ Council's

³ Evidence of Neville West at para 19.

⁴ See Table 1 and Figure 4 of evidence of Neville West.

⁵ Refer evidence of Wolf Kanz at para 75-78

⁶ Evidence of Neville West para 46-53.

⁷ Ibid para 25

⁸ Ibid at para 70

focus (through the DrainWise programme) is now on the private property component of the network. The DrainWise programme and its components are set out comprehensively in the Application and the evidence of Mr Kanz. Again, it is important to note the Council does not own and operate the private portion of the network, and the onus is on private property owners to ensure proper connections and to maintain their (private) infrastructure. There is a reliance on legal (compliance and enforcement) processes for inspections and repair of faults, and this inevitability raises issues of affordability, especially for a council such as GDC. To assist with this process, Council has developed the IOPPS strategy which is explained in the evidence of Mr Kanz⁹.

11. The evidence of Mr Kanz clearly sets out the works programme for DrainWise to be implemented over the next 20 years, starting with the priority catchment of Kaiti. His evidence also demonstrates the extent of investigation and remedial work undertaken to date, again particularly in the priority catchment of Kaiti¹⁰. The evidence of Mr Dave Wilson sets out Council's financial commitment to the DrainWise programme through the Long Term Plan (**LTP**) process (which is a public process that people can submit on).

Dry Weather Overflows (DWO)

12. The causes of DWO are also outlined in the evidence of Mr West¹¹. Generally they occur where there is a blockage in the network, mostly associated with a third party putting a foreign object in the wastewater system, or fat build-up or a break in the network. DWO at pump stations are rare, as there is already significant levels of redundancy built into the onsite infrastructure, including real time alarm annunciation and response procedures¹². The last mechanical failure that lead to a DWO was in 2015 at the Steele Road pump station, as the result of human error and further improvements were made as a result¹³.
13. Mr West has provided examples of some of the items associated with blockages in Gisborne, including rags, wet wipes, clothing, various items including utensils, and solidified fat¹⁴. As he also outlined, this is a nation-wide problem as blockages

⁹ Infrastructure Improvements on Private Property Strategy (**IOPPS**) – refer evidence of Wolf Kanz at para 28-33

¹⁰ Evidence of Wolf Kanz at para 44-52

¹¹ Evidence of Neville West para 34

¹² Ibid para 35

¹³ Ibid para 36

¹⁴ Ibid para 37

remain the predominant cause of DWO nationwide and industry efforts are trying to address the causes, such as from wet wipe flushing¹⁵.

14. Council has a multi-faceted approach to addressing the causes of DWO, including¹⁶:
 - 14.1 Pro-active maintenance (e.g. jet-cleaning) and surveillance to reduce the risk of overflows. This addresses matters such as sediment build-up and fat blockages etc;
 - 14.2 Systems controls and duplications built into the design of key elements of the system e.g. multiple control systems and alarms;
 - 14.3 Trade waste compliance to address commercial activities;
 - 14.4 A comprehensive public education campaign as part of the DrainWise programme. This is explained in the evidence of both Mr West¹⁷ and Mr Kanz and addresses the causes of both WWO and DWO in a 5-part series and includes 'Only Flush the 3 P's (Pee, Poo, Paper)' and 'Sinks are Not Rubbish Bins';
 - 14.5 Prompt response and clean-up protocols, which includes response, notification requirements, monitoring/sampling and reporting requirements and contractor training¹⁸. Council's protocols have recently been combined into a stand-alone document to clarify the requirements.

15. Accordingly, in my submission, the Applicant has demonstrated that they have '*adopted all practical and best practice methods to manage the potential risks of dry weather events*' as sought in the s42A Report¹⁹. The evidence of Mr West is comprehensive on this point and addresses all the issues flagged by the Consultant Planner, Mr Whittaker, including that it has regular maintenance and inspection of the network, systems controls and duplications, and contingency measures in place.

16. In addition Council has a high level of transparency regarding overflows. DWO are formally catalogued by Council and have been since 2015/16²⁰. WWO are also formally catalogued; and in accordance with asset reporting requirements and

¹⁵ Ibid para 38

¹⁶ Ibid para 40

¹⁷ Ibid para 39

¹⁸ Ibid para 58-64

¹⁹ Section 42A Report at para 9.18

²⁰ Evidence of Neville West para 59

consistent with national practice, reported over a financial year from 1 July to 30 June.

17. As noted above, Council has committed significant funding and resourcing, through the LTP to enable the DrainWise programme to progress. That work has already commenced, as outlined in the evidence of Mr Kanz; and Council has a scheduled programme of inspection and improvement works that will enable the inflow and infiltration issues to be identified and addressed in a systematic, comprehensive manner.
18. The Applicant has undertaken a programme of consultation with tangata whenua, both through the KIWA Group, as explained in the evidence of Mr Kanz, and through the more formal consent application process. Neither Council, nor tangata whenua, have shied away from the difficult discussions resulting from a consideration of this Application. The KIWA Group has provided their assessment of the cultural effects of WWO, and they have been clear about the chronic issue of tapu, the effect on the mauri of the water, and on tangata whenua. They recognise and support the reductions in overflows which are proposed as a result of this Application, but have clearly indicated that their aim is the elimination of all wastewater overflows. These matters will be addressed further later in my submissions.

The Proposal and Authorisations Sought

19. As noted above, the Applicant seeks resource consents to authorise overflows from the GWS, subject to a range of actions and measures that seek to progressively reduce the overflow frequency, volume and risk and to effectively manage the risk where overflows do occur.
20. As the overflows are already occurring, and in the case of WWO were previously authorised as a permitted activity in the Tairāwhiti Resource Management Plan (**TRMP**) until 1 July 2020, the effects of the activity have been clearly assessed by the Application.
21. As described by the Consultant Planner, Mr Whittaker, the Application provides an extensive amount of technical information. Equally, the s42A Report prepared by Mr Whittaker is thorough, thoughtful and addresses all the key issues associated with this Application.

22. As explained in the evidence of Mr Mayhew, consent is required for both DWO and WWO under the provisions of the TRMP. WWO require a restricted discretionary consent; and DWO are a non-complying activity. Consent has also been sought for both WWO and DWO to the coastal marine area (CMA) as a non-complying activity. However, it should be noted that there are no known discharges of wastewater to the CMA and none are proposed in the future. Accordingly, consent has been sought out of an abundance of caution to cover the extremely unlikely event that an unexpected incident will cause wastewater to flow directly to the CMA. Overall the application is to be assessed as a non-complying activity²¹.

Preliminary Issues

Scope and Augier conditions

23. As is common for a large number of projects as they progress through the consenting process, some amendments have been made to the Application to address concerns raised by submitters.
24. The legal position is clear that changes to a proposal are allowed – provided they remain within the scope of the original application. In this case, the main amendment is the proposal by Council to remove the current primary overflow point at Seymour / Turenne and replace with a tertiary (rarely used) overflow point at this location and at Owen Road. This matter is described further in the evidence of Mr Kanz and Mr Mayhew²².
25. As described in the evidence, the area has been subject of investigation and work for some time, and following concerns expressly raised by submitters regarding the proximity to schools and property owners, Council has undertaken further investigations to assess whether the primary overflow point can be removed.
26. However, it does require further works to be undertaken to the stormwater and wastewater network, and as advised by Mr Kanz those works are currently being designed and budget provision has made in the 2021/22 (current) financial year to construct the necessary changes.

²¹ Application at 1.5 and s42A Report at para [5.10].

²² Evidence of Mr Kanz at 75-78; Evidence of Mr Mayhew at para 4.28-4.29

The law

27. The principles are relatively well settled.²³ While there may be slightly differing formulations, the key considerations are whether the amendments to the Proposal, whether considered individually or collectively:
- 27.1 Give rise to any significant difference in the scale, intensity and character of the altered activities, or the environmental effects of those activities;
 - 27.2 Are fairly and reasonably within the ambit of the original consent applications and do not result in what is in substance a different application;
 - 27.3 Prejudice any informed and reasonable person who is not a party to these proceedings (although the High Court has stated this is a means of applying or answering the test, but is not the test itself²⁴).
28. In this case, the removal of the primary overflow point (when that occurs) will not give rise to any significantly different effects. Instead it will provide the positive effect of removing this primary overflow point from the vicinity of property owners and schools. It is clearly within the scope of the original application and rather than prejudicing any party, it will be beneficial and directly address the concerns raised in submissions. As stated by Mr Mayhew, it is a very positive outcome that will reduce both health risks and potential environmental effects and is a good example of the work proposed under the consent to progressively reduce overflow frequency, volume and adverse effects.
29. Accordingly, conditions have been offered by the Applicant on an *Augier* basis²⁵ (namely conditions 19-21) to reflect the fact that a programme of works, including process changes and physical works will be required to remove the primary overflow point. Once that work is complete, the intention through draft condition 21 is that the overflow locations and their classifications will be amended (which is then reflected through Attachment A2).
30. The additional information provided by one submitter, Mr Gordon Webb, refers to draft condition 19 as 'clumsy' and Mr Webb states that *'the consent for this discharge*

²³ *Re: Waiheke Marinas Limited* [2015] NZEnvC 066.

²⁴ *Atkins v Napier City Council* [2009] NZRMA 429

²⁵ Noting that such conditions continue to be provided for through s108AA(1)(a) RMA; and in accordance with the principle stated in *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219 (QBD)

should be granted with an expiry date of (say) 30 June 2023’. With respect, such a submission appears to misunderstand the Application. Consent continues to be sought by the Applicant to retain this location as a tertiary overflow point (which will be used rarely, if at all) and accordingly ongoing authorisation is required. This is reflected in Attachment A2 which amends the location from a primary to tertiary overflow (once the necessary process changes and physical works have been completed by Council). Accordingly, such a condition as suggested by Mr Webb would both frustrate the consent²⁶ and lead to any tertiary overflows being unauthorised from that date unless an additional consent was sought. In my submission the removal of the primary overflow point from this location is a positive outcome that should be enabled by the Commissioners, rather than seeking to arbitrarily constrain matters in the manner suggested.

Substantive Issues

31. Leaving then the scope issue to one side and focusing on the substantive application, in the remainder of these opening submissions I wish to briefly touch upon the following points or issues raised in the S42A Report or submissions received:

31.1 Statutory responsibilities of Council and funding of the DrainWise;

31.2 Statutory assessment including Part 2 matters;

31.3 Cultural effects;

31.4 Term; and

31.5 Conditions.

²⁶ A condition that has the effect of frustrating a consent is unsatisfactory *Residential Management Ltd v Papatoetoe City* A062/86. Similarly in *Taranaki Regional Council v Willan* W150/96 the Court commented (obiter) that the general law is a condition of consent cannot negate the consent granted. To use the conditions of consent to subsequently negate that consent would be unreasonable and unacceptable in law.

Statutory responsibilities of Council and Funding of DrainWise

32. Regional councils and territorial authorities (acknowledging in this case the Council is a unitary authority) have a variety of stormwater management and wastewater management roles under a number of different pieces of legislation²⁷.
33. In the context of this resource consent application, Council has statutory duties and powers under the LGA, Building Act and the Health Act. In particular, under the LGA 2002 district councils are required to provide water and sanitary services and are responsible for the efficient and effective management of all types of wastes within the district²⁸. In addition, Council has a general duty to improve, promote and protect public health within its district, which includes a power to make bylaws for the protection of public health.
34. Council (again in its territorial authority capacity) also has responsibilities under the Building Act 2004 to ensure that building consent applications make proper provision for the disposal of wastewater. As noted in the IOPPS, enforcement functions in relation to illegal and/or inadequate stormwater and wastewater connections can be the subject of enforcement action under the Building Act provisions.
35. Some submitters²⁹ have queried how DrainWise will be funded, or consider that further funding should be diverted towards the DrainWise programme.
36. In my submission, how DrainWise will be funded and whether sufficient funding has been directed towards the programme, are not matters that require direct consideration by the Commissioners in the context of a resource consent application³⁰, as these are matters which can be submitted upon by members of the public during the separate (and public) LTP process under the LGA. In any event, the evidence of Mr Dave Wilson for the Council is that significant funding has been, and continues to be, directed towards the DrainWise programme through the LTP process. This evidence has been provided to give the Commissioners an indication of the commitment of Council to the DrainWise programme in order to implement the required reductions in overflows over time.

²⁷ Including the Local Government Act, RMA, Building Act and the Health Act; as well in relation to various bylaws including the Gisborne Trade Waste Bylaw 2015

²⁸ Sections 125, 126 and 130 LGA 2002

²⁹ See for example, Josie McClutchie, Rongowhakaata Iwi Trust; Te Aitanga a Mahaki Trust.

³⁰ Noting that a decision that the cost of a public work is appropriate is one to be made by elected members of the council for which they are responsible to the electorate – see *Omokoroa Ratepayers Association Inc v Western Bay of Plenty District Council* A102/04 at [42]

37. However, in my submission the ability of the community to pay for improvements on private property could form a relevant consideration for a resource consent application³¹. This is because a key component of the Application is the progressive reduction in both volumes and frequency of overflows over time, which is primarily to be achieved through the DrainWise programme; and as outlined in the evidence of Mr Kanz works on private property will be required to achieve the intended outcomes of that programme. Accordingly, the issue of an appropriate term of consent cannot, in my submission, be considered in a vacuum. I address the issue of term later in these submissions.
38. I note that Mr Whittaker shares this view and has stated³² “... *there are financial implications which need to be considered given that the costs of the maintenance and remedial works will involve both public (rates) funding and direct costs to individual property owners.*” And at para 9.55 he states “*While I would not normally consider how an Applicant will fund any mitigation methods or works to give effect to a consent, in this case the mitigation and resolution of the overflow discharges will come at a direct cost to the community, both in terms of rate funding and also through direct costs to private landowners for remedial works on their own properties. In my opinion, this is a relevant factor to be taken into account in setting the conditions and it is appropriate to recognise that there is not an unlimited funding source to resolve the overflow discharge issues.*”

Statutory Assessment and Part 2 Matters

Activity Status – Non-complying activities

39. As noted above, the overall activity status for the Application is non-complying. Accordingly, as set out in the evidence of Mr Mayhew and in the s42A Report³³ the gateway test under s104D RMA applies, meaning that you can only grant if you are satisfied that either:

39.1 The adverse effects of the activity on the environment will be minor; or

³¹ See for example *Housing New Zealand v Waitakere City Council* [2001] NZRMA 77 (HC) at [55] where the High Court accepted that contribution to rates is something that the Environment Court ‘could take into account’, although in that decision a failure to take it into account was not fatal to the decision and the Court explicitly noted ‘there is no requirement to consider general rates (either express or implied) under the legislation’.

³² Section 42A Report at para 1.11

³³ *Ibid* at para 14.5

- 39.2 The application is for an activity that will not be *contrary to* the objectives and policies of the relevant plan.
40. As the Court has previously stated, s104D is a threshold or 'high level' test which establishes a jurisdiction to grant consent under s104³⁴. Accordingly, even if one of the 'gateways' are fulfilled, the consent authority still retains a discretion to refuse consent or grant subject to conditions.
41. In relation to first gateway, the Court has held that 'minor' suggests effects that are less than major, and can include effects that are more than simply minute or slight. The test is whether the adverse effects as proposed to be remedied and/or mitigated are more than minor, taken as a whole³⁵. The Court has confirmed that the evaluation must be undertaken on a 'holistic basis, looking over the entire application and range of effects, not individual effects'³⁶. Mr Whittaker concludes at para 14.8 that, subject to appropriate conditions for both DWO and WWO, the adverse effects will be minor.
42. In relation to the second gateway, the relevant plan is the TRMP. The Court has said that whether a particular proposal is consistent with, or contrary to, the objectives and policies is a matter of assessment on a case by case basis³⁷. 'Contrary to' envisages something that is "opposed in nature, different to, or opposite"³⁸. When assessing whether a non-complying activity is 'contrary to' the objectives/policies a broad judgment should be made. Where policies are general and have wide-ranging topics, the question is whether the activity, in principle, is contrary to the objectives/policies. A 'holistic view' is required³⁹. This requires an assessment of the application on a fair appraisal of the objectives and policies as a whole.
43. In this case, the Applicant's position is that, taken as a whole, the proposal is not contrary to the objectives and policies of the TRMP. Rather, the proposal will enable the reduction of the wastewater overflows over time (both in frequency and volume), and the conditions proposed by the Applicant will mitigate adverse effects and provide meaningful engagement with tangata whenua. Accordingly, the view of Mr Mayhew is that the proposal is consistent with, and not contrary to, the objectives and policies of the TRMP. The Consultant Planner, Mr Whittaker, agrees that the

³⁴ *Foster v Rodney District Council* A123/09

³⁵ *Stokes v Christchurch City Council* [1999] NZRMA 409

³⁶ *SKP Inc v Auckland Council* [2018] NZEnvC 81

³⁷ *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323 (CA)

³⁸ *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC)

³⁹ *Clearwater Mussels Ltd v Marlborough District Council* [2016] NZEnvC 21

discharges are not contrary to the objectives and policies of the Tairāwhiti Plan when considered as a whole and taking into account the progressive improvement regime promoted within the Application⁴⁰.

44. As such, the Application meets the gateway test of s104D and can proceed to assessment under s104 RMA.

Section 104 RMA

Statutory Planning Documents and Part 2 Matters

45. Section 104 RMA sets out the matters which the consent authority must 'have regard to' when considering the application. These matters have been set out in full in the Application and in the evidence of Mr Mayhew. It includes 'having regard to' any relevant provisions of a national policy statement, the New Zealand coastal policy statement (NZCPS), any regional policy statement (RPS) or proposed RPS and any plan or proposed plan.
46. Accordingly, both Mr Mayhew for the Applicant, and Mr Whittaker, the Consultant Planner, have undertaken comprehensive planning assessments of the proposal against all the relevant objectives and policies of the statutory planning documents.
47. In relation to the NPS-FM 2020 which came into effect on 3rd September 2020 (i.e. after notification of the Application), the evidence of Mr Mayhew is that Gisborne has yet to implement the NPS-FM 2020 and accordingly how Te Mana o Te Wai applies to Gisborne's waterways has yet to be fully determined through the necessary planning process (including the NOF framework). Notwithstanding that, the Application has been assessed against the objectives and policies of the NPS-FM 2020 and is considered to be consistent with the intent, objectives and policies of the NPS-FM 2020.
48. There is one matter on which I wish to briefly address the Commissioners, which relates to Policy 7 of the NPS-FM and Clause 3.24(1) (which is directed to be inserted directly into the regional plan without using the Schedule 1 process). This matter is referred to at page 36 of the s42A Report. Effectively that was on the basis that there may be further case law guidance on the interpretation of these policies by the time we proceeded to a hearing. However, the case law guidance is relatively

⁴⁰ Section 42A Report at 14.10

limited on this point, and accordingly the Applicant's position remains as set out in Attachment H of the s92 Response dated January 2021.

49. This can be briefly summarised as:

49.1 There is no 'loss of river extent' as a result of the discharges;

49.2 The nature of the discharges, being intermittent and for a short duration, will not result in a permanent and irreversible loss of values (as defined in the NPS-FM 2020 given that values have not yet been defined through the NOF process) but rather a temporary and infrequent reduction in values and have been avoided to the extent practicable for the following reasons:

- (a) The public component of the wastewater network has been progressively upgraded to accommodate six-times dry weather flow – in-line with best national practice;
- (b) the overflow performance of the Gisborne wastewater network is already currently on-par with the better performing councils nationally;
- (c) The proposed programme to address stormwater inflow will substantially reduce overflows, and minimise these as far as practicable;
- (d) The Applicant continues to refine its maintenance, management and response processes; and
- (e) The Applicant has, and continues to, work closely with tangata whenua to better integrate Māori values into the management and enhancement of the wastewater network and areas that are affected by wastewater overflows.

50. In addition, even if there is some loss of values, the Application is also consistent with Clause 3.24(1), because:

50.1 There is a functional need for the activity in this location (subclause (a)); and

50.2 The effects are managed by applying the effects management hierarchy (subclause (b)).

51. 'Functional need' is defined in clause 3.21 of the NPS⁴¹ as 'means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment'. The position of the Applicant is that there is a 'functional need' for the activity in the location, as the wastewater network is essential regional infrastructure – an effective and efficient wastewater network is fundamental and core infrastructure supporting an urban environment by transporting wastewater away from homes, commercial activities and industries and providing for its treatment and disposal. As noted above, it is a lifeline utility specified in CDEMA and also infrastructure providing significant benefits to the Gisborne community, including a critical public health function.
52. The Consultant Planner agrees that there is a functional need for the activity given the nature of the network⁴². He also agrees that the effects are to be managed by applying the effects management hierarchy above, through the progressive reduction proposed by the Applicant. In relation to DWO (based on the Application material) he considers that the Applicant should reduce the risk of these discharges as far as practicable. As noted above, the evidence of Mr West now comprehensively addresses this issue and demonstrates that the Applicant does take all practicable measures to reduce these discharges. In addition, the conditions of consent now require the Consent Holder to manage these discharges to a practicable minimum.

Tairāwhiti Resource Management Plan

53. As noted above, Mr Mayhew has considered all the relevant objectives and policies of the TRMP in his evidence. I wish to comment briefly in relation to one matter which has been raised by several submitters, as it is relevant to the issue of term discussed further later in these submissions. That is referred to in Policy C6.2.2.9 which provides:

Discharges of untreated sewage from the reticulated infrastructure network shall be managed to:

- a) Minimise the frequency of these discharges; and
- b) Achieve performance of an overflow occurrence of no more than 50% probability in any given year;

⁴¹ And adopts the definition taken from the national planning standards

⁴² Page 36 Section 42A Report.

c) Issue discharge permits for no longer than 5 years except where there is evidence from past performance to demonstrate that wastewater overflow events can reliably achieve the performance standard in clause b. above.

54. Section 67 RMA provides the requirements for regional plans, which is effectively that the regional plan must state the objectives for the region, the policies to implement the objectives; and the rules (if any) to implement the policies. In the case of the TRMP the regional objectives are contained within Part B6.2.1 of the TRMP, as outlined and addressed in the evidence of Mr Mayhew⁴³.
55. Case law is clear that a policy is a course of action and can be either flexible or inflexible, broad or narrow⁴⁴. However, while a policy can include a highly specific direction, decision makers applying the policy only need to 'have regard' to it under s104 RMA, and accordingly it is up to the decision-maker to decide how much weight to be afforded to any policy when evaluating the application⁴⁵.
56. In this case, the evidence for the Applicant is that the intent of the policy is met, as the purpose of the Application is to both minimise the frequency of discharges and achieve the performance of no more than 50% probability in any given year. The evidence presented by the Applicant provides the past performance of the network, benchmarks its performance against other councils within New Zealand and provides a significant amount of detail on both the body of work the Applicant has undertaken on its own network; and the progression of investigations and improvements that have been occurring through the DrainWise programme. The evidence also clearly sets out the significant body of work (and programme to achieve that work) to achieve DrainWise, the funding Council already has in place to support the programme, and the further network improvements that have already been identified by Council and will be implemented if the reduction of 85% is not met (i.e. for reductions of 75% or 65%). In addition, the Applicant has provided a comprehensive set of consent conditions which will ensure that progress is regularly measured, evaluated and reported upon to ensure that the targets provided in the policy will be met. It is therefore submitted that the evidence for the Applicant demonstrates that it can reliably achieve the performance standard of the policy and accordingly the intent of the policy is met and a longer consent term can be granted, subject to the conditions put forward by the Applicant.

⁴³ Evidence of Ian Mayhew, Appendix 2 p11-12

⁴⁴ Auckland Regional Council v North Shore City Council [1995] NZRMA 424 (CA),

⁴⁵ Carter Holt Harvey Ltd v Waikato Regional Council [2011] NZEnvC 380

Part 2 Matters

57. Both Mr Mayhew and the Consultant Planner have also assessed the Application against the relevant Part 2 matters. The Court of Appeal has stated that Part 2 remains relevant in respect of resource consent applications⁴⁶, albeit in a slightly different capacity. In any event, assessment of the Application and proposed conditions against Part 2 matters confirms consistency of the Application with those provisions⁴⁷.

Section 107 RMA

58. As noted in the s42A Report at para 14.4, section 107 RMA imposes restrictions on the issue of discharge consents and the nature of conditions which can be imposed. The Consultant Planner agrees that these matters have been addressed by the Applicant and states:

In my opinion these matters have been addressed through the Applicant's AEE and in this report including the technical reviews. In terms of Section 107(2), specific recognition is given to discharges which are of a temporary nature which is directly relevant to the current application.

59. The additional information provided by one submitter, Mr Gordon Webb, appears to query whether such discharges would be 'temporary' in the s107 sense and cites the decision in *Bell*⁴⁸ which he states provides "temporary is not permanent".
60. The Environment Court in *Fonterra* accepted (when discussing s107 RMA) that the normal meaning of the word 'temporary' is '*lasting for only a limited period or not permanent*'.⁴⁹
61. In my submission, the discharges align with that definition and are clearly temporary rather than permanent, given that the discharges themselves are relatively infrequent, and temporary in both duration and volume. As identified in the evidence of Mr Mayhew⁵⁰, DWO are unpredictable and generally small in volume and of short duration, and generally have temporary effects in terms of any conspicuous change

⁴⁶ *R J Davidson v Marlborough District Council* [2018] NZCA 316 at [67], [70]

⁴⁷ Evidence of Ian Mayhew at para 7.127-7.137

⁴⁸ *Bell v Wellington Regional Water Board* (1976) 6 NZTPA 165

⁴⁹ *Fonterra Co-operative v Gillespie* [2013] NZEnvC 250

⁵⁰ Evidence of Ian Mayhew at 7.123

in the colour or visual clarity (if there is a discharge to a waterbody) and emission of objectionable odour.

62. Similarly, as summarised by Mr Mayhew⁵¹, WWO are unlikely to produce conspicuous oil or grease films, scums or foams; however, some floatable or suspended materials may be present in the discharge. As these occur in high rainfall events, when these discharges occur, there would generally be no conspicuous change in the colour or visual clarity, due to the contribution of other discharges (such as sediment run-off) from upstream catchments. As these discharges occur in saline environments at the bottom of catchments, the water is already unsuitable for consumption, irrespective of the wastewater discharge. Further, as indicated in the Application and the evidence of Dr Kelly, effects of WWOs on aquatic life are considered to be minimal.
63. Additionally, as summarised by Mr Mayhew there are exceptional circumstances that justify the granting of the Applications, namely:
- 63.1 The drainage network is essential, lifeline infrastructure and its on-going operation is essential to the health and safety of the Gisborne community;
- 63.2 A programme is in place that seeks to achieve the wet-weather overflow performance target of an overflow occurrence of no more than 50% probability in any given year, consistent with Policy C6.2.2(9) of the TRMP;
- 63.3 Council's current overflow performance is at a level that is on par with the best performing councils nationwide; and further management improvements are proposed.
64. Accordingly, in my submission there is no statutory bar to consenting the application under s107 RMA.

Consultation and Engagement with Tangata Whenua and Cultural Effects of the Proposal

65. Both the Application and the evidence of Mr Kanz⁵² details the extent of consultation undertaken by the Applicant with the tangata whenua. This has included consultation through the KIWA Group, which is described in the evidence of Mr Kanz⁵³. The KIWA Engagement Report was provided with the Application. As noted in the s42A

⁵¹ Ibid at 7.124-7.125

⁵² Evidence of Mr Kanz at [58]-[68]

⁵³ Ibid at [58]

Report, the concerns and position of tangata whenua have been clearly articulated and presented through the KIWA Engagement Group Report and through submissions. As also noted in the s42A Report, significant time and resources have been invested by both the Applicant and iwi and hapū in discussing the issues and preparing the KIWA Report.

66. Again, the cultural concerns and issues articulated by tangata whenua have been well summarised in the s42A Report at paragraph 9.33. It is clear from KIWA Report that the practice of allowing wastewater overflows is unacceptable to tangata whenua, and while the reductions proposed are a 'step in the right direction' tangata whenua will continue to object to overflows and have a desire to work with Council to achieve total elimination of overflows⁵⁴.
67. Again, the s42A Report at paragraph 9.35 sets out the recommendations provided by the KIWA Group for the project⁵⁵, which include meaningful engagement on an ongoing basis, exploring avenues to bring forward the DrainWise programme, providing opportunity for tangata whenua to work alongside Council, monitoring provisions to include cultural elements, review of current public health monitoring procedures and locations, review of management protocols and projects to improve mauri. As outlined in the evidence of Mr Kanz⁵⁶ and Mr Mayhew, the Applicant has incorporated these recommendations into the draft conditions to the extent practicable. Importantly, the Application is proposed on the basis that there will be a reduction in both volume and frequency of overflows over time.
68. As also noted in the evidence of Mr Kanz, involvement by tangata whenua in the KIWA Group was always on the basis that iwi/hapū would be free to submit on the Application once notified⁵⁷. That has occurred, and submissions have been received by Te Poho o Rawiri Marae, Ngati Oneone, Rongowhakaata Iwi Trust, and Te Aitanga a Mahaki Trust.
69. Finally, as noted in the evidence of Mr Kanz, the conclusions and recommendations of the KIWA Group were presented to the Waste Management Committee of GDC (**WMC**)⁵⁸ in September 2020, and the KIWA Group subsequently identified a

⁵⁴ It is noted that there are other cultural concerns and issues described in the KIWA Report (including for example, the effect of wider catchment issues and structure and process issues), and the above summary is not intended to detract from some of those wider concerns expressed by tangata whenua.

⁵⁵ As does Mr Kanz at [63]

⁵⁶ Evidence of Mr Kanz at [67]

⁵⁷ Evidence of Mr Kanz at [61]

⁵⁸ Described in the evidence of Mr Dave Wilson for GDC at paras [33]-[38]

prioritised task list of work to be undertaken by the Group, including a review of WWO notification protocols (with those recommendations having been adopted by the Applicant) and a review of rahui processes in response to WWO (which is ongoing). Mr Kanz also refers to ongoing work by the group regarding the mortuary wastewater, which is almost complete, and the matters to be subsequently actioned including review of the DWO protocols, monitoring and the DrainWise programme.

70. In relation to those matters, the DWO protocols have been updated by the Applicant and will be tabled at the hearing by Mr West. The draft consent conditions tabled by the Applicant provide for the TWRG⁵⁹ to advise on the DWO and WWO management protocols to integrate tikanga aspects such as the placement of rahui and other processes⁶⁰.
71. The draft conditions also provide for the TWRG to advise on the wastewater monitoring, including the proposed Tangata Whenua Cultural Monitoring Plan (**TWCMP**)⁶¹. The proposed TWCMP is to be prepared in conjunction with the TWRG and is to be informed by mātauranga Maori⁶².
72. Finally, it should be noted that the draft conditions make provision for a report from the TWRG to be included as part of the Consent Holder's Annual Report⁶³. The Annual Report is to be provided to the TWRG (and the WMC)⁶⁴, which is to include the matters set out in draft condition 28 including reporting against wastewater levels of service, the results of monitoring, any report received from the TWRG (as mentioned above) and priority works and initiatives planned for the coming 12 months.
73. In addition, there are requirements for the TWRG to meet both and after the release of the Five Year Report⁶⁵ and provision for both the TWRG and WMC to provide input into the Ten Year Review and Reset of Targets, which provides for a review of progress with implementation of the DrainWise programme and other initiatives and the setting of new targets, measures and timeframes for the period from Year 10

⁵⁹ Draft conditions 22-26 provide for the establishment of the TWRG. It should be noted that the conditions (in particular condition 26) have been drafted in a specific manner to recognise that third party compliance is required, and to align with the case law which provides that a condition that is unenforceable (for example, it relies on third party compliance) is invalid. *Mackay v North Shore City Council* W146/95

⁶⁰ Refer draft condition 24(c); Evidence of Mr Mayhew, Appendix 1 p5

⁶¹ Refer draft conditions 9-15 in relation to the TWCMP

⁶² Refer draft conditions 10-11

⁶³ Refer draft condition 24(g)

⁶⁴ Refer draft condition 27

⁶⁵ Refer draft condition 25(a) and 29

onwards⁶⁶. In that respect, it is important to note the evidence of Mr Garside and Mr Kanz regarding both the length of time that wastewater network improvements take to implement, and the need for a sufficient period of time in order to determine whether the intervention has been successful,⁶⁷ and Council's implementation timeline⁶⁸. This is in addition to the added complexity associated with works being required on the private component of the network and wider affordability issues.

Term

74. Section 123 RMA provides for the duration of the consents. The Applicant seeks a 20 year consent term for both WWO and DWO, which is significantly less than that statutory maximum of 35 years for discharge consents.
75. As outlined in the evidence of Mr Dave Wilson⁶⁹ Council understands that some submitters seek a shortened consent term. The Applicant's reasons for seeking a 20 year consent term are set out in the s92 Response and reproduced in the s42A Report at para 9.12.
76. As noted in the s92 response, the Gisborne wastewater network is a fundamental public infrastructure and lifeline utility, with a replacement cost of \$161 million. The Applicant's view is that essential public infrastructure should be subject to long term consents to reflect its essential and enduring function, particularly where (as is the case here) the effects can appropriately be managed through consent conditions.
77. It is also important to recognise that, while not desirable, WWO are an inevitable consequence of having a network that has been developed, extended and refined over a period of more than 100 years, and having dedicated overflow points is a part of network design⁷⁰. Accordingly, they cannot simply be 'eliminated' as suggested by some submitters.
78. Having said that, the network is currently on par with better performing councils nationally⁷¹, and Applicant's approach is to reduce stormwater ingress (and therefore improve overflow performance) over time via the DrainWise programme, which is set out in detail in the evidence of Mr Kanz. That involves a comprehensive programme

⁶⁶ Refer draft conditions 30-31

⁶⁷ Evidence of Ian Garside para 55 and 71

⁶⁸ Evidence of Mr Kanz para 52-53 and Appendix 1

⁶⁹ Evidence of Dave Wilson at para 55

⁷⁰ Evidence of Mr West at [19]

⁷¹ Evidence of Mr West at para 75 and Section 2.6 of the Application.

of work⁷², which will take significant Council time and resources to implement. As set out in the evidence of Mr West and Mr Kanz approximately 50% of the wastewater network is situated on private property, and Council, having largely focused to date on Council owned assets,⁷³ is now focusing on the private property component of the network⁷⁴.

79. Accordingly, as acknowledged in the s42A Report, there are financial implications which will need to be considered in the context of a shorter term, given that the costs of maintenance and remedial works will involve both public (rates) funding and direct costs to individual property owners⁷⁵. As detailed in the evidence of Mr Dave Wilson, affordability (including of rates) is a particular concern and focus of Council⁷⁶.
80. In my submission, using the 'blunt instrument' of a shortened consent term, will not necessarily lead to better outcomes for the community. That point is also reflected in the Consultant Planner's s42A Report at para 1.19 where Mr Whittaker states *"I do not support a consent term to 5 years as requested by tangata whenua and other submitters. In my opinion this will be counterproductive and is unlikely to facilitate positive outcomes over the medium to longer term."*
81. Rather, the appropriate approach to term is, as suggested by Mr Whittaker, to determine the appropriate term and the conditions of consent collectively. As stated by Mr Whittaker at para 9.16 if the conditions establish a robust framework to ensure a progressive and improving environmental, cultural and public health outcomes, with a high degree of transparency and reporting, then a longer term is appropriate. In this case, the draft conditions put forward by the Applicant (as revised and amended following submissions) do exactly that.
82. Such an approach is in accordance with the case law relating to term, which provides that that the decision maker should consider the evidence it has before it, and has previously considered the following matters as being relevant – a recognition of the investment to date and providing security for present and future investment, the relatively rare and transitory environmental effects, whether there are appropriately

⁷² Evidence of Mr Kanz at para 52-53 and Appendix 1

⁷³ Evidence of Mr West at para 70

⁷⁴ Ibid at 74 and detailed in the evidence of Mr Kanz

⁷⁵ Section 42A Report at 1.11

⁷⁶ Evidence of Mr Dave Wilson at para 12

rigorous conditions, and the ability to review the conditions under s128 RMA.⁷⁷ Put simply, the issue of term should not be considered in a vacuum.

83. Again it is important to note that submissions received, including by tangata whenua, relate to the Application as notified. Similarly, the s42A Report was drafted (including the Technical Reviews) on the basis of the conditions provided with the Application, rather than the revised draft attached to the evidence of Mr Mayhew.
84. The Applicant has given careful and thorough consideration to all of the issues arising out of written submissions received and matters raised in the s42A Report, and has made a number of amendments to the draft conditions since notification. These matters are discussed further at paragraphs 95 to 97 below. In my submission, the draft conditions tabled by Mr Mayhew represent that careful and thoughtful approach by the Applicant to provide an appropriately stringent set out of conditions to manage the effects of this activity. As noted by Mr Whittaker (when discussing the Seymour/Turenne overflow)⁷⁸, the Applicant has *“been very responsive to any concerns which have been raised and has demonstrated a genuine commitment to address the issues raised where these can be addressed through practical upgrades works.”* Mr Whittaker also notes in his conclusions at para 16.2(ii) *“A genuine commitment to engagement and consultation has been demonstrated which has helped foster a broad understanding of the challenges and outstanding issues for the wastewater discharges”*.
85. Finally, it is noted that while Mr Whittaker supports the granting of a 20 year consent term for WWO, his recommendation is a 10 year consent term for DWO. The basis for that opinion is set out at paragraphs 9.18-9.19 of the s42A Report and appears to draw a distinction between DWO and WWO on the basis that *‘much of the risk of dry weather overflows can be managed by the Applicant.’* Mr Whittaker also states that the Applicant should demonstrate that it has *‘adopted all practical and best practice methods to manage the potential risks of dry weather events’*.
86. The Applicant has again responded accordingly regarding the causes of DWO, the multi-faceted approach that Council takes to reducing DWO as far as practicable, and the overflow management responsibility and DWO response process. This is set out in detail in the evidence of Mr West.

⁷⁷ *PVL Proteins Ltd v Auckland Regional Council* A061/01

⁷⁸ Section 42A Report at 9.49

87. In summary, although complete elimination of DWO might be desirable, they are virtually impossible to eliminate entirely. The evidence of Mr Garside is that a requirement of eradication of DWO has limited, if no, precedence that he is aware of in New Zealand. As outlined by Mr Garside, (and confirmed by Mr West in relation to the Gisborne context) DWO are often caused by factors outside the control of the Consent Holder. This includes blockages caused by residents flushing inappropriate items; and by power or mechanical failure⁷⁹.
88. The evidence of Mr West is that in Gisborne DWOs generally occur where there is a blockage in the network, mostly associated with third party behaviour, fat build-up or a break in the network. DWOs at pump stations are rare, due to the level of redundancy built into the onsite infrastructure⁸⁰; and the last mechanical failure that lead to a DWO was in 2015 from the Steele Road pump station, with further improvements undertaken as a result⁸¹.
89. In response to the Consultant Planner's comments that the Applicant should demonstrate it has adopted all practical and best practice methods to manage the potential risks of DWO, again these matters are set out in detail in the evidence of Mr West. The multi-faceted approach undertaken by Council to manage these discharges includes⁸²:
- 89.1 Pro-active maintenance (e.g. jet-cleaning) and surveillance; including of critical components and known problem areas to maintenance pipe capacity and conveyance. Council's asset management system is described in detail in Mr West's evidence;
- 89.2 Systems controls and duplication, including within pump stations. It should also be noted that the system itself has been designed and sized in accordance with national practice to carry between 4 and 6 times ADWF without overflowing⁸³.
- 89.3 Trade waste compliance, to ensure commercial activities have grease traps and other facilities in place to manage discharges to the network.

⁷⁹ Evidence of Ian Garside at [62]

⁸⁰ Evidence of Mr West at [34]

⁸¹ Ibid at [36]

⁸² Ibid at [40]

⁸³ Ibid at [18]

- 89.4 A comprehensive public education component which focuses on the causes of blockages from the public, including inappropriate flushing of items and disposal of household fats and other inappropriate material down sinks and drains, that either cause blockage or other damage to the network⁸⁴. As noted by Mr West, blockages remain the predominant cause of DWO nationwide and industry efforts to address issues such as wet-wipe flushing, remain important⁸⁵.
- 89.5 A comprehensive and prompt response and clean-up process. Again, this is set out in detail in the evidence of Mr West⁸⁶, as it forms a critical element of Council's management of DWO and accordingly, of Council's wastewater network management contracts.
90. As such, the Applicant has demonstrated that it has a comprehensive, multi-faceted approach to managing the potential risks of DWO (as far as it is able to do so) and responding to them in a prompt and methodical manner.
91. However, in my submission, it is not appropriate to either limit the consent term of this aspect of overflows or to hold the Consent Holder to an 'elimination strategy' when it is clear that third party behaviour remains a significant source of the causes; and is not within the direct control of the Consent Holder. Rather, the Applicant can, and does, control those elements it can, and provides for ongoing education to the public to 'do their part'. Fundamentally, as outlined by Mr Garside, a complete 'elimination strategy' is simply not achievable given the root causes.
92. Again, in my submission, these matters have been appropriately dealt with through a stringent set of consent conditions which include, amongst other requirements, compliance with operational management plans and protocols (including the DWO Protocol which will be tabled by Mr West). There is also a requirement in the conditions that components of the network have sufficient capacity to cater for peak dry weather flows from the contributing catchment; and a requirement for the Consent Holder to operate in accordance with good management practice, and to monitor and report on levels of service contained in Attachment C. Reporting on overflow events and levels of service is also required as part of the Annual Reporting process, and as part of the substantive five yearly reports. This brings a high level of transparency to the management of DWO.

⁸⁴ Ibid at paragraphs 39-40

⁸⁵ Ibid at para 38

⁸⁶ Ibid at para 40 and Section 3

93. In addition, there are requirements for the TWRG to advise on management protocols relating to DWO to integrate tikanga aspects, such as rahui; as well as providing input into setting priorities for works and associated programmes, assisting in identifying any additional research or investigations necessary, advise in relation to monitoring including preparing the TWCMP in conjunction with the Consent Holder, and providing a report into the annual report process.

Section 128 Review

94. The draft consent conditions tabled by the Applicant make provision of a review of consent conditions under s128 RMA (refer to conditions 32-33). I wish to briefly note several points for the Commissioners:

94.1 A condition in a resource consent cannot make it mandatory for the consent authority to review the operation of the consent. Rather s128(1) RMA authorises a review condition in a discretionary manner only⁸⁷.

94.2 A review condition provides a mechanism that enables the consent authority to ensure that conditions do not become outdated, irrelevant or inadequate; but it is not a mechanism that enables a consent authority to amend existing conditions or impose new conditions to prevent an activity for which resource consent was granted⁸⁸. It should be noted that the Applicant has made provision for several pertinent aspects to provide an opportunity for review of consent conditions if required – this includes where minimum standards of water quality have been made operative and it is appropriate to review to enable them to be met; or whether a regional plan that gives effect to the NPS-FM 2020 becomes operative (to provide for Gisborne’s future implementation of the NOF).

94.3 Given the current level of uncertainty that exists around central government’s proposals for Three Waters reform (including possibly the establishment of larger centralised providers), the Applicant has provided draft condition 32(b)(iv) if required.

94.4 Finally, it is noted that provision for a review clause (as drafted by the Applicant) is a consideration in determining the term of the consent, as it

⁸⁷ *Queenstown Adventure Park (1993) Ltd v Queenstown Lakes District Council* C096/94

⁸⁸ *Medical Officer of Health v Canterbury Regional Council* [1995] NZRMA 49 (PT).

allows the consent authority to consider changing conditions to make them more appropriate in the light of the circumstance triggering review⁸⁹.

Conditions

95. A number of conditions have been proposed by the Applicant, which is necessarily referred to above as they are inextricably linked with the discussion around an appropriate term of consent.
96. However, it is important to note that the Applicant has given careful and thorough consideration to the matters raised in submissions and in the s42A report (and its accompanying technical reports). As noted above, it is important to note that both the submissions and the s42A Report are based on the Application version of the conditions.
97. Those conditions have been amended substantially by the Applicant to address a number of the matters raised by the submitters and/or the Consultant Planner. The revised conditions proposed by the Applicant are attached as Appendix 1 to the evidence of Mr Mayhew and explained further in his evidence⁹⁰. In particular, the conditions have been amended to:
- 97.1 Clarify that the network levels of service from the LTP are not matters of compliance under the Application but are still required to be monitored and reported to enable a holistic assessment of the performance of the wastewater network.
- 97.2 Amendments to the naming of operational maintenance plans and protocols to ensure clarity in scope and consistency; and provision for the revision and updating of these plans (as sought by the s42A Report). Council has also undertaken further work to refine the overflow response protocols to reflect changes agreed with submitters and on advice from its experts. This has included the preparation of a standalone DWO protocol document to clarify matters;

⁸⁹ *PVL Proteins Ltd v Auckland Regional Council* A061/01

⁹⁰ Refer evidence of Ian Mayhew at Section 6.

- 97.3 Strengthening and clarification of the provisions around the TWRG and the TWCMP, and to provide for greater involvement in the operation of the consent, as outlined above;
- 97.4 Specific conditions requiring virus assessments to be undertaken;
- 97.5 A tightening and clarification of the progressive overflow reduction requirements;
- 97.6 Specific conditions regarding the removal of the primary overflow point at Seymour / Turenne (offered on an *Augier* basis);
- 97.7 A widening of the role of the TWRG and clarification of its interaction with the WMC;
- 97.8 Revised and more stringent and expansive annual reporting provisions, including provision for the TWRG to provide an independent report / commentary on cultural matters and the requirement to identify major projects for the upcoming 12 months;
- 97.9 Increased reporting and evaluation processes required at the 5 year report, including full reporting against the wastewater levels of service in Attachment B and the measures in Attachment C; reporting on the implications of the monitoring on future approaches, including whether additional infrastructure or changes to the wastewater network are, or will be, required to achieve the ten-year target and contingency planning should it be considered that an alternative approach is required; and reporting on any emerging wastewater management issues or trends. As outlined in the evidence of Mr Mayhew, the intent of this condition is to undertake a broad assessment of the programme and its achievements, including trends in performance and receiving environment quality. An additional aim of this review is to provide an early indication of whether the programme is achieving its aims or whether contingency planning needs to commence for an alternative approach. This is consistent with the s42A Report recommendations and Mr Garside's evidence;

- 97.10 New conditions which provide comprehensive requirements for a full 10 year review and resetting of the targets at Year 10. This includes requirements for updating of the network model; updated dilution/dispersion modelling; literature review on priority emerging organic contaminants and consequential work streams including setting appropriate priority lists, measuring EOCs and assessing human health risk if appropriate methodology is available; and comprehensive review of the progress of DrainWise implementation and other initiatives with requirements to set new targets, measures and timeframes at Year 10 that accord with all the matters providing (including considering input from the TWRG and WMC) and that demonstrates ongoing improvement. As noted by Mr Mayhew this addition addresses issues raised in submissions and in the s42A Report; and
- 97.11 Revised review provisions, which include additional matters such as the NPS-FM 2020 implementation process (through regional plans becoming operative) and following the transfer of the wastewater management functions of the Consent Holder to another agency if this transfer of functions necessitates a change in consent (i.e. if that occurs as a result of the Three Waters review).
98. As such, the suggested changes to the conditions are substantive and will provide a robust basis for the implementation of the overflows consent. As noted above, the amendments incorporate changes to improve their functionality and clarity and to address matters raised by submitters and in the s42A Report.

Applicant's witnesses

99. The Applicant has provided evidence from eleven witnesses in relation to its Application. The Commissioners have confirmed in advance that they have no questions of the following witnesses, and accordingly their evidence can be taken as read:
- 99.1 Dr Brett Beamsley – General Manager at MetOcean Solutions – Hydrodynamic Modelling; and
- 99.2 Dr Michael Stewart – Director of Streamlined Environmental Ltd and environmental chemistry specialist – Ecology (Emerging Organic Contaminants);

100. The Applicant therefore calls the remaining nine witnesses in relation to the Application, in the following order:

100.1 Mr Dave Wilson – Director of Community Lifelines, GDC;

100.2 Mr Neville West – Water Utilities Manager, GDC and joint project lead for the Application – Overview of Wastewater Network, Issues and Responses;

100.3 Mr Wolfgang Kanz – 4 Waters Strategy Advisor, GDC and joint project lead for the Application – DrainWise Programme and consultation with tangata whenua;

100.4 Mr Ian Garside – Director at ProjectMax Ltd – Wastewater Network Modelling;

100.5 Ms Bridget Bosworth – Senior Hydrologist at GDC – Analysis of Rainfall and Overflow Events;

100.6 Dr Shane Kelly – Managing Director of Coast & Catchment Ltd – Ecology;

100.7 Dr Peter Wilson – Principal Water Quality Scientist at 4Sight Consulting – Water Quality;

100.8 Dr Christopher Dada – Environmental Health Microbiologist at QMRA Data Experts – Quantitative Microbial Risk Assessment;

100.9 Mr Ian Mayhew – Principal Planning and Policy Consultant and Technical Director at 4Sight Consulting – Planning.

Dated 12 July 2021

R C ZAME

Counsel for the Gisborne District Council as Applicant