

Before Independent Commissioners appointed by the West Coast Regional Council

In the matter of the Resource Management Act 1991 (**the Act**)

And

In the matter of an application for resource consent under sections 88 and 127 of the Act

And

In the matter of Discharge to land consent (RC-2024-0122) and variation of resource consent (RC2021-0097-V10) to enable the exercise of the discharge consent where that could lead to the discharge of contaminants off-site at Taylorville Resource Park, Taylorville.

Legal Submissions on behalf Of Taylorville Resource Park Limited

Dated: 3 September 2025

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May it please the panel:

Introduction

1. Taylorville Resource Park Limited (TRPL or Taylorville) operates a landfill at Coal Track Road, Taylorville, legally described as Lot 2 DP 584105 (the site). The operation, as described in its application for a temporary discharge consent, is consented by the West Coast Regional Council (WCRC).
2. One aspect of the landfill operation that TRPL's consent does not deal with fully is the handling of leachate. This is on the basis that the original consent application had indicated that contamination of stormwater from the waste was not considered an issue. In hindsight, and in light of the nature of the waste stream that was consented – originally and subsequently by way of variations to TRPL's resource consent – this was an oversight that this application seeks to partially rectify.
3. How the situation 'on-the-ground' developed to get us to now, is detailed in the evidence for TRPL by Ellen Taylor. Suffice to say for the purpose of these submissions, the shortcomings that have become evident in the current resource consent are to be comprehensively rectified under a new replacement resource consent for the site. The application for that consent has been lodged (with both the WCRC and the Grey District Council (GDC) – a party to this application), along with a request that it be publicly notified.
4. That course (which, it is acknowledged, may have been the outcome for that process in any event) was chosen because other issues at the site, that are separate to this temporary application, have arisen and have resulted in what TRPL considers has been a politicisation of the dealings between TRPL, the local councils, and the community. It is not our intention, nor the task of this hearing, to attempt to resolve those issues by way of this consent process.

Context

5. This application is for a specific solution to address an issue that started to become a matter of urgency in 2024. Specifically, the danger, by virtue of the inability to release any water stored in the retention pond¹ because of detectable (but, TRPL says, not significant) levels of

¹ See layout of the pond in attachment A to the evidence in chief of Ellen Taylor.

contamination in that leachate water. The existing concern is that the detention ponds overtop in high rainfall conditions – not unknown on the West Coast – and not only lead to an unintended release of water but also a potential reduction in the pond's structural integrity.

6. Without belabouring the point, it is important to be clear about what the proposal is, and what it is not. It seeks consent, on a temporary basis to discharge leachate water that has already been treated to remove some contaminants and reduce the levels of others. It seeks to resolve an issue being faced by an existing consented activity. It has been assessed by suitably qualified persons and been conservatively modelled with the findings that the potential for off-site adverse effects is minimal to negligible.
7. The proposal is not seeking consent to expand the activity, to alter the waste acceptance criteria, or install a permanent discharge that can then be used, without further scrutiny, in terms of long-term operations.
8. That is important because there appears to be a lot of noise being made that, in the context of this proposal may be of limited, if any, relevance. That is not to say that the issues raised will not be relevant in a different context, in particular the future, comprehensive application for the site. But, in the context of this application, some of the issues raised are dealt with briefly, below and in the evidence.
9. On effects, TRPL says that the proposal will have no odour effects. It will not affect the slope stability of the site. And, and it will not, in the view of TRPLs experts, have adverse off-site effects on the local waterways and their ecology or, most importantly, the GDC community water supply.
10. This last point is of course the subject of evidence and is key in determining whether the proposal will be granted. It does raise the issue of whether the proposal creates any undue risks. That issue and TRPLs response to minimising risk, will also be critical in determining the proposal, which provides a temporary solution to an important existing issue.

The premise

11. If not already reasonably clear, it is recorded that the underlying premise of this proposal is as follows: That this temporary discharge, subject to conditions, will have minimal (if any) off-site effects. Even if some contaminants do make it off-site. Any such contaminants will be in such

small concentrations as to have no demonstrable adverse impacts, certainly none that threaten ecological values or the water supply.

Summary of these submissions

12. This proposal is unashamedly a stop-gap. It is an environmentally measured response to an existing issue that requires an interim solution, in order to ensure that a potentially significant adverse event (the overtopping and loss of integrity in the detention pond) will not occur.
13. The proposal relates to an existing, consented, activity.
14. In summary, based on the evidence provided these submissions, it can be concluded that:
 - 14.1. The treatment process that already occurs within the closed water circuit on-site means that the water being discharged contains a low level of contaminants relative to ambient levels², but still contains contaminants:
 - 14.2. The discharge itself will be controlled and monitored to ensure it does not exceed the capacity of the land to absorb the discharge or create an overland flow:
 - 14.3. The discharge of this water as proposed will mean the likelihood that any contaminant loads of concern will remain an any discharge off-site is low to negligible:
 - 14.4. That being the case, there will be no adverse off-site effects on waterways and their ecology, or on groundwater:
 - 14.5. The proposed monitoring and mitigation conditions should provide confidence that accuracy of the statements above will be tracked and be subject to confirmation:
 - 14.6. Despite speculations otherwise, there is no evidence of a hydraulic connection or flow path that will be impacted by the proposed discharge, or would allow contaminants from the site to reach the GDC water treatment plant, or more importantly, the intake bores that are the source of the water:
and

² It is understood this will require some further testing under the discharge management plan prior to formal commencement of the discharge to confirm additional parameter and the presence of otherwise of other contaminants.

- 14.7. In these circumstances this temporary proposal presents minimal risk and can be granted.

Contents

15. The submissions that follow will cover:
 - 15.1. The identification of the legal issues arising:
 - 15.2. Responses to matters raised in submissions as preliminary issues:
 - 15.3. The decision-making framework:
 - 15.4. Responses to remaining legal issues identified:
 - 15.5. The evidence:
 - 15.6. Mana whenua issues:
 - 15.7. Part 2 of the Act: and
 - 15.8. Conclusions

Legal issues

16. The following legal issues have been raised in submissions or are otherwise relevant to this proposal:
 - 16.1. The status of the application to change consent condition 11. Can section 127 apply?; and
 - 16.2. Should the application have been deferred under section 91?: (together, the preliminary issues)
 - 16.3. What constitutes “the environment” for the purpose of this application?:
 - 16.4. The sufficiency of information provided for the discharge consent application (section 104(6)):
 - 16.5. Section 105 and section 107 considerations:
 - 16.6. The legal significance of effects that are of low probability but high potential impact – that is, the approach to risk under the RMA:

- 16.7. Consideration of the drinking water standards and related standards, policies, and plans:
- 16.8. The requirement to describe alternative discharge methods:
- 16.9. The potential for this proposal to set a precedent:
- 16.10. The relevance of the proposed discharge duration and the conditions of consent: and
- 16.11. The requirement to consider Part 2 of the RMA?

Matters raised in submissions as preliminary issues

- 17. The submissions by GDC and Ngāti Waewae raise two issues that the submitters suggest should have required a delay in this application being heard.
- 18. Specifically, the submitters say that:
 - 18.1. The application to vary existing consent condition 11 is beyond scope and should be a 'new' application; and
 - 18.2. This proposal should be delayed until it can be heard with the comprehensive application that TRPL has made for the future development and continued use of the site as a landfill.
- 19. In response TRPL says:

Re: the change to condition 11

- 19.1. The application to change condition 11 is not beyond the scope of the power under the RMA to change a condition of consent: section 127. It does not seek to expand or alter the activity itself (i.e. landfilling and the disposal of demolition waste) but simply to enable an effective response to an issue arising as a consequence of the exercise of the existing consent.
- 19.2. The proposed change is itself contingent on there being a further consent in place that confirms that any proposed discharge is acceptable. Therefore, when considering the original condition and whether there is proper justification to depart from it, there is no danger that the original purpose of the condition will be ignored: it becomes a factor in the new, required, discharge application. It is also recognised that the

need to obtain additional consents as part of a change, is not a reason for not determining it under section 127³.

- 19.3. Section 127 of the RMA enables a consent holder to apply to the consent authority to change (or cancel) a condition of consent, provided that a consent holder may not apply to change a condition on the duration of the consent.
- 19.4. The change is processed as if it is a discretionary resource consent, with the focus being the proposed change.
- 19.5. For the change application to be inappropriate and instead require a new application it must materially alter the underlying activity⁴. Here the underlying activity remains unchanged. While the previous consent decisions (including changes) did not deal effectively with leachate, the generation of that leachate is plainly a consequence of the exercise of that consent.
- 19.6. The discharge (which *is* the new application) may therefore also be considered consequential but can only be entertained if accompanied by the proposed change.
- 19.7. As noted, there should be no reduction in confidence regarding off-site effects because (a) the discharge still requires consent and (b) the further controls in section 105 and 107 (and elsewhere), must also be considered and provided for as part of that consent.

Re: deferring the discharge application pending the comprehensive application

- 19.8. A consent holder may apply to change or cancel conditions, or may seek new consents, in respect of the same site or activity, the question then being how the new application affects the existing consent⁵.
- 19.9. The application for a temporary discharge to land is a new consent that will augment the existing consent. It is temporary in nature and was sought to attend to an existing issue.

³ *Body Corporate 970101 v Auckland CC* (2000) 6ELRNZ 183; [2000] NZRMA 202 (CHC), upheld at (CA)

⁴ *Ibid*

⁵ *Sutton v Moule* [1992] 2 NZRMA 41

- 19.10. Fundamentally, section 91 provides for the deferral of a consent application where other consents “will also be required in respect of the proposal”. The only other relevant consent is the existing landfill consent (the subject of the change application). No other consents are *required* to enable the discharge.
- 19.11. The comprehensive consent will also be required to deal with leachate disposal, which may or may not include a further consent to discharge to land. That application is likely to benefit from the information that the monitoring and maintenance of this the temporary discharge will deliver. But that does not mean that understanding the nature of the temporary discharge consent requires deferral pending the subsequent application, which includes the longer term operation and possible expansion of the operation.
20. Accordingly, TRPL says that there is no bar to considering the change to condition 11 under section 127, or any need to defer this application under section 91.

Decision making framework

21. Consent for the discharge is required under section 15, which provides (relevantly):

15 Discharge of contaminants into environment

(1) No person may discharge any—

(a) contaminant or water into water; or

(b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or

...

(d) contaminant from any industrial or trade premises onto or into land—

unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

...

(2A) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a regional rule unless the discharge—

...

(b) is expressly allowed by a resource consent; or

...

...

22. Both the change and temporary discharge require consent as discretionary activities to be considered under section 104. That requires (subject to Part 2) having regard to the actual and potential effects on the environment of allowing the activity⁶, and any relevant standards, regulations, policies and plans⁷. Decision makers are also able to consider other relevant matters⁸.
23. In order, to carry out the required consideration under section 104, “the environment” that will be affected must be understood. This is discussed further below. [para 28 et seq]
24. As discretionary resource consents, under section 104B the application may be granted or declined and, if granted, may be subject to conditions.
25. Section 104 also includes instances where a consent authority shall not grant consent or may decide not to grant consent. The consent authority must not grant consent if (relevantly) to do so would be contrary to section 107⁹, or any regulations¹⁰. While an application for consent may be declined where a consent authority considers it has insufficient information to determine the application¹¹. These matters are also touched on below. [paras 42 et seq (s.107) and 34 et seq (information sufficiency)]
26. Section 104G requires that regard must also be given to any actual or potential effect of the activity on a registered source of drinking water¹², and the risks posed by the proposed activity to the water source identified in a water source risk management plan prepared in accordance with the requirements of the Water Services Act 2021 (WSA)¹³. The Grey District Water Safety Plan 2024 (**water safety plan**), is discussed below in relation to this requirement. [para 55 et seq]

⁶ Section 104(1)(a).

⁷ Section 104(1)(b)

⁸ Section 104(1)(c) – the section 42A report suggests the Havelock North Enquiry is such an other matter. However the finding essentially mirror the precautionary approach already mandated under the RMA. This is not to question that jeopardising a drinking water supply would be a serious matter, but as TRPL argues that this is not the case here.

⁹ Section 104(3)(c)(i).

¹⁰ Section 104(3)(c)(iii).

¹¹ Section 104(6).

¹² Section 104G(a).

¹³ Section 104G(b).

27. Section 105 is relevant to any discharge permit application and has been considered in respect of the proposed temporary discharge. It requires that regard be given to:
- 27.1. The nature of the discharge and the sensitivity of the receiving environment to adverse effects:
 - 27.2. The reasons for the proposed choice of discharge method: and
 - 27.3. Possible alternative methods of discharge, including discharge into any other receiving environment.

Section 105 is also discussed further below. [para 36 et seq]

Responses to remaining legal issues identified

What constitutes “the environment” for the purpose of this application?

28. The environment, for the purpose of this application includes: the site, the waterways adjacent to the site, including Noname Creek, the roadside drains the Grey River Tributary and the Grey River itself. It also includes the groundwater bearing gravels that underlie the site and that might be affected by being hydraulically connected to those gravels
29. It also includes the GDC water treatment plant and abstraction bores by virtue of proximity and the requirement under section 104G to consider the potential risks posed by the TRPL site outlined in the water safety plan. However, while accepting that it should consider the GDC water supply infrastructure, TRPL questions whether the site is ‘upstream’ of the abstraction bores. The definition of upstream in the NES-SHDW is:

upstream, in relation to an abstraction point, means—

(a) in the case of surface water (other than a lake), upstream of the abstraction point:

(b) in the case of groundwater, up-gradient of the abstraction point:

The GDC abstraction bores take surface water, considering the volumes taken, any groundwater, is minimal if measurable. The water safety plan seems to confirm this where it shows that volumes in the river and in the bores, chart almost identically¹⁴. Even if there was a hydraulic connection to the site, which TRPL’s experts conclude there is not, the potential for contaminated groundwater to present a risk seems

¹⁴ Drinking water Safety Plan 2024, Figure A.2, page 60.

negligible. Just as the suggestion that the abstraction is *from* groundwater seems unlikely.

30. The environment may also include adjacent land, at least, to the extent they could potentially be impacted by the discharge.
31. The environment also includes the existing resource consents held by TRPL in respect of its activities at the site, including the waste *in situ* or permitted to be discharged by those consents.
32. While the environment could include unimplemented consents¹⁵, TRPL is not aware of any near the site. It does not include unconsented proposals for future non-permitted land uses, such as proposals to subdivide rural land that requires consent.

The sufficiency of information provided for the discharge consent application (section 104(6)).

33. TRPL's position is that sufficient information has been provided as part of the application, in responses to submissions and in evidence for this hearing to enable the panel to reach a determination on this application.
34. It is accepted that such a determination will almost inevitably include conditions requiring further steps be taken as conditions precedent to commencing the discharge. That would primarily be associated with the implementation of aspects of the proposed discharge management plan that should be in place prior to commencement of the discharge itself (if not the consent), and including conditions requiring additional steps or mitigation measures depending on the outcomes of those required further steps.
35. This is the outcome that appears to have been reached, or at least considered feasible, as part of the hydrology/environmental joint witness statement.

Section 105 and section 107 considerations.

Section 105

36. Section 105 provides (relevantly):

105 Matters relevant to certain applications

¹⁵ As indicated by the *Hawthorn Estates* line of authorities.

- (1) If an application is for a discharge permit... to do something that would contravene section 15..., the consent authority must, in addition to the matters in section 104(1), have regard to—
- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (b) the applicant's reasons for the proposed choice; and
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

...

37. These matters are considered in the application and in the applicant's evidence. The requirement for the panel is to have regard to these matters, as with section 104.
38. The nature of the discharge is described in Mr Griffiths evidence¹⁶. It is made up of treated leachate collected in the retention pond and contains a number of contaminants most of which are below health, ecological or pre-existing ambient levels. Two exceptions: ammoniacal and arsenic are considered potentially harmful so were the subject of further modelling. That modelling indicated¹⁷ maximum concentrations at the downgradient boundary well below the risk screening values for health or ecological effects.
39. There is clearly a degree of sensitivity in the receiving environment. It consists of waterways that are considered of moderate ecological value and, of course the GDC water treatment plant. While there is considered to be no hydraulic connection to that plant (or the abstraction bores that supply it), it must be considered, as a highly sensitive receiver.
40. The reasons for the temporary discharge are plain to see. The ponds are close to full and without an opportunity to discharge some of the contents, they could overtop which would present a threat to infrastructure both on and off-site
41. There is a discussion of possible alternative methods of discharge that TRPL has investigated in the evidence of Ms Taylor¹⁸, Mr Griffiths¹⁹ and Mr Cook²⁰.

¹⁶ Evidence in chief R M Griffiths, at paragraph 36.

¹⁷ Evidence in chief R M Griffiths, at paragraph 44.

¹⁸ Evidence in chief of E Taylor, at paragraph 44.

¹⁹ Evidence in chief R M Griffiths, at paragraph 67.

²⁰ Evidence in chief of KP Cook, at paragraph 9.21.

Section 107

42. Section 107 provides (relevantly):

107 Restriction on grant of certain discharge permits

- (1) Except as provided in subsection (2) or (2A), a consent authority shall not grant a discharge permit... to do something that would otherwise contravene section 15... allowing—
- (a) the discharge of a contaminant or water into water; or
 - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
- ...—
- if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:
- (c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
 - (d) any conspicuous change in the colour or visual clarity:
 - (e) any emission of objectionable odour:
 - (f) the rendering of fresh water unsuitable for consumption by farm animals:
 - (g) any significant adverse effects on aquatic life.
- (2) A consent authority may grant a discharge permit... to do something that would otherwise contravene section 15... that may allow any of the effects described in subsection (1) if it is satisfied—
- (a) that exceptional circumstances justify the granting of the permit; or
 - (b) that the discharge is of a temporary nature; or
 - (c) that the discharge is associated with necessary maintenance work—
- and that it is consistent with the purpose of this Act to do so.
- (2A) A consent authority may grant a discharge permit... to do something that would otherwise contravene section 15... that may allow the effects described in subsection (1)(g) if the consent authority—
- (a) is satisfied that, at the time of granting, there are already effects described in subsection (1)(g) in the receiving waters; and
 - (b) imposes conditions on the permit; and
 - (c) is satisfied that those conditions will contribute to a reduction of the effects described in subsection (1)(g) over the duration of the permit.
- (3) In addition to any other conditions imposed under this Act, a discharge permit... may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

43. Section 107 has been subject to recent amendments, none of which is relevant to this application.

44. The application and the information supporting it conclude that any water daylighting will contain minimal contaminant loads able to impact water bodies. The evidence also indicates that the waterways in question (Noname Creek and the Grey River tributary) have moderate ecological values that do need to be safeguarded, and which, on the basis of the treatment that is taking place, the filtering and dilution that occurs as the discharge migrates through the land, and according to the modelling that has been carried out, they will be.
45. On this basis, the proposal will not:
- 45.1. Lead to the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
 - 45.2. Produce any conspicuous change in the colour or visual clarity:
 - 45.3. Result in any omission of objectionable odour:
 - 45.4. the rendering of fresh water unsuitable for consumption by farm animals: and
 - 45.5. any significant adverse effects on aquatic life.
46. It could also be said that even if any of these effects might, in some way, be created, the circumstances surrounding this application, and the temporary nature of the discharge may still mean it could be acceptable. Though, to be clear, TRPL does not rely on those exceptions under section 107.
47. The purpose of section 107 is to ensure that discharges will not significantly affect water bodies and the ecology of those water bodies. It is consistent with the freshwater management processes that have been put in place under the National Policy Statement for Freshwater and the National Environment Standards for Freshwater Management. However, it tends to act as a safety net rather than as an identical requirement.

The approach to risk under the RMA.

48. Under section 3 of the RMA the definition of effect includes: any potential effect of low probability which has a high potential impact.
49. However, the existence of such an effect does not:
- 49.1. Mean that the effect will occur; or

49.2. Mean that the activity must be avoided.

50. The question is whether, as a matter of judgement²¹, based in the evidence that is available regarding the extent of the risk, and with a consideration of any safeguards including conditions that can reduce that risk, there is a likelihood that the effect can be avoided, mitigated or remedied sufficiently to enable the discharge to be acceptable.
51. It also needs to be remembered that the RMA is not a “no risk” statute²², precaution or the pursuit of a precautionary approach is hard-wired into the consenting considerations²³ under sections 104, 105 and 107. They are also augmented by the ability to impose, or volunteer, conditions (sections 108 and 108AA) that can provide further safeguards, as well as processes to monitor the progress and results of the proposal.
52. The opposing submissions in this case are, to a large extent, based on the idea that there is scientific uncertainty in respect of effects, in which case the consent should be declined. TRPL says that there is, in fact limited actual uncertainty, given the investigations that have been carried out and the understanding that now exists of the geology and hydrology at the site. Whether the hypotheses that suggest uncertainty in this case are sufficient to credibly establish the potential effect, is a key question²⁴. Again, is not question the importance of the water supply, but rather is aimed at testing the quantification of the risk.

Consideration of the drinking water standards, NPS-SHDW, NPS-FW & NES-FM and other regs, including addressing s104G matters.

53. The evidence of Mr Cook contains his consideration of these national standards, policies and other regulations²⁵, along with a consideration of regional policies and plans²⁶.
54. TRPL acknowledges and has recognised that there is, to some degree, an inherent risk in being located in the vicinity of the GDC water treatment plant. It also says has provided for that fact, as noted above.
55. The extent of the risk is indicated in the GDC water safety plan that was developed under the Water Services Act 2021. That plan which engages

²¹ *Francks v Canterbury Regional Council* [2005] ELHNZ 70, CIV-2003-485-1131, 15 February 2005, Pankhurst J (decision refusing leave for 2nd appeal)

²² *Shirley Primary School v Christchurch CC* [1999] NZRMA 66 (EnvC)

²³ *Ibid*

²⁴ *McIntyre v Christchurch CC* (1995) 2ELRNZ 84; [1996] NZRMA 289 (PT)

²⁵ Evidence in chief of K P Cook, at part 6.

²⁶ Evidence in chief of K P Cook, at part .7

section 104G, identifies the TRPL activity as a medium risk on account of the potential for leachate to enter the groundwater, the intakes and the water supply.

56. It is noted that the Water Services Act 2021 has been the subject of amendment under the Local Government (Water Services) Act 2025 that received Royal assent on 26 August 2025. The new Act is not understood to have any immediate impact that would have a bearing on the consideration of this application, or affect the role of the water safety plan.
57. Mr Cook does not refer to specifically refer to the contents of the water safety plan as TRPL was not aware of its existence²⁷ until it was provided with the GDC evidence.
58. The water safety plan indicates that, while it is considered that there is a potential that the site is a risk to the “small catchment to the north” of the abstraction bores, confirming the extent will require investigations, including modelling. TRPL has been carrying out such investigations to inform its proposal. It has found that the risk is limited. While it is accepted that further investigations will assist in providing further confirmation and increased confidence. Such work can occur both as part of the discharge management plan and to inform TRPLs comprehensive application.
59. Mr Cook and Mr Durand confirm, in the planning joint witness statement, their agreement that the NPS-SHDW applies, and that while Regulation 7 of the NPS-SHDW acts as a threshold, their view is that it is not engaged. That is support by the expert evidence and modelling which indicate that the discharge is not “likely to” mean that any abstracted water no longer meets health quality criteria. Whether the question of the site being upstream also featured is not stated.
60. The planners also agree that an approach that involves conditions that can be applied effectively to avoid, remedy or mitigate adverse effects is available under clause 1.6 of the NPS-FW that relates to engaging with the best available information.
61. This does raise the issue, generally, of the extent to which conditions can be applied to enable an activity to proceed when an issue is identified

²⁷ It was not able to be located by internet searches or searches of the GDC website.

that requires an additional step prior to the consent being able to be given full effect.

Use of conditions where further information needed

62. There is no issue in principle with the adoption of a condition requiring a certain state of affairs to exist – here some additional information on contaminants present in the leachate water - before the consent can proceed, provided it is correctly framed²⁸. For example, it cannot be framed in such a way that the consent does not exist until the condition is confirmed²⁹. In other words, it is the consent itself that mandates the state of affairs and the steps to be taken to ensure it is met.
63. In the context of this case, a condition can be imposed that requires additional baseline information, provided, as the planners agreed, that the fulfilling the condition can be achieved in a manner that does not negate or nullify the grant of consent³⁰. For example, if testing was required for PFAS in the retained water and, if it was identified, a management technique that can be employed has already been specified (such as, for example, filtering at the point of discharge), then the condition would be valid.
64. Alternatively, if a consent applicant volunteers a condition that has a contingent element, that is a choice they can make. Just as, in the different context of a subdivision application in *Estate Homes*³¹, the Supreme Court indicated that conditions that can be imposed, such as financial contributions, were a “cost of consent”. That being the case, the consent holder must determine whether they are prepared to comply with the conditions to take advantage of the grant of consent.
65. This approach is consistent with the notion that resource consents are enabling, not mandatory. And, by analogy, the same approach could be applied to either an imposed or volunteered condition. Though it is perhaps a clearer proposition if the condition is volunteered.

The requirement to describe alternative methods of discharge.

66. Alternatives, in the context of this application are considered under both section 105(c) and Clause 6(1)(d) of Schedule 4 to the Act.

²⁸ *Westfield (NZ) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254 (HC).

²⁹ *D-G of Conservation v Marlborough District Council* [2004] 3NZLR 127, (2005) 11ELRNZ 15 (HC)

³⁰ *Lyttelton Port Co Ltd v Canterbury RC EnvC* C008/01

³¹ *Waitakere City Council v Estate Homes Ltd* [2007] 2NZLR 149; (2007) 13ELRNZ 33; [2007] NZRMA 137 (SC) at Paragraph [53].

67. An important aspect of the consideration of alternatives, in this case, is the fact that there are limits to the extent of alternatives as the site already exists at the place the activity takes place. Any alternative therefore must exist within that place.
68. The alternatives described in this case (as noted above) have included:
- 68.1. A discharge to land over a broader area of pasture:
 - 68.2. A discharge to a constructed wetland: and
 - 68.3. Using tankers to truck the leachate off site.
69. It is understood that the alternative discharges to land were discouraged by the WCRC, while the trucking of leachate off-site to an approved location was ruled out as impractical.
70. It was considered impractical because, firstly, the local wastewater treatment plant was unable to accept the volume of leachate involved. And secondly, the cost and impracticality of trucking the leachate to the nearest approved location (understood to be in Christchurch) were prohibitive. In respect of the cost, to the extent that is relevant, to transport 300m³ of water would cost in excess of \$850,000.00.
71. In addition to the limitation as to the extent of available alternatives, it is also worth noting, in the face of the suggestion that possible alternatives were insufficiently investigated, that as with the requirement to assess alternatives under clause 6(1)(a) of Schedule 4, what is required is a "description" of alternatives. Meanwhile the assessment required is that regard be given to the descriptions of alternatives.

The potential for this proposal to set a precedent.

72. Precedent under the RMA, rather than requiring a strict and mandatory acceptance, employs the principle that "like should be treated alike"³². It also recognises that a precedent only becomes an issue in environmental terms where it reinforces a bad decision (in fact, authority suggest that a bad decision need not be followed³³). TRPL say that precedent is not an issue in this case.
73. In reality, the principle of being consistent is a quality that is generally expected. And if the outcome is a decision that does not result in adverse effects, then any precedent created is worthwhile, if it can be replicated.

³² *Dye v Auckland RC* [2002] 1 NZLR 337; (2001) 7ELRNZ 209; [2001] NZRMA 513 (CA)

³³ *Feron v Central Otago DC* EnvC C075/09

- 74. Regardless, here there are features of this application that mean it is unlikely to create a precedent. The temporary nature of the activity applied for is one such feature. As is the fact that it is a discharge that is to be applied to an existing activity.
- 75. These factual aspects reinforce that precedent should not concern the panel.
- 76. However, rather than relying on a decision to grant this consent as a precedent, if consent were granted and the activity fully fulfilled the expectations as to the absence of adverse effects, that fact could be employed in a new application in the future.
- 77. There should also be no plan integrity issues as the application has been considered in accordance with the relevant plan provisions.

The relevance of the proposed discharge duration and consent conditions.

- 78. As noted under the comments above on section 107, the temporary nature of an application for a discharge consent may be a relevant consideration. In general, the potential for adverse effects may be reduced by a restriction to the timing of the activity. TRPL says that this is the case here.
- 79. And as already discussed above it is trite to observe that conditions of consent that may

The evidence

- 80. Proceeding from the underlying premise noted above, the applicants evidence supports that subject to appropriate conditions, the discharge will either fulfil the premise, or can be limited or further mitigated if monitoring suggests otherwise.
- 81. Ms Taylor's evidence provides background but also seeks to dispel any concerns that TRPL cannot be relied on to keep its promises. The point is that despite some difficult experiences TRPL has committed to maintaining high standards at the site. It has sought reputable professional assistance to design new processes going forward, and in in the preparation of this application. It is also prepared to invest in new technologies and will continue to implement improvements with management of the site. This is likely to include further investment in water treatment.

82. Ms Drummond's evidence relies to a large degree on that of the hydrological and hydrogeological experts. Given their conclusions on the likely state of any water from the discharge that does daylight, her conclusions are that there will be no adverse effects on instream ecology.
83. Mr Broughton will confirm that granting consent to this temporary discharge will not have any adverse effects on the slope stability of the site, or the infrastructure that has been created
84. Mr Berry's evidence supports the contention that there is no hydraulic connection between the site and the GDC water abstraction catchment. He reminds us, in respect of the question of the mudstones quality as an aquitard that due to the relative difference in densities between the mudstone and the gravel, water will chose a path through gravel over attempting to pass through mudstone.
85. Mr Griffiths, in relation to contaminated land issues has taken a thoroughly pragmatic approach to concerns raised in submissions and the s.42A report and the supporting evidence. He confirms that the modelling outputs are inherently conservative, in some cases, very conservative, yet the conclusion regarding the eventual outcomes of the temporary discharges is that it will not cause adverse effects. Mr Griffiths also outlines the basis for the suite of conditions, including the proposed discharge management plan and the suggestion of some additional testing, with steps to be taken depending on the results.
86. Mr Cook's planning evidence summarises the planning considerations relevant to the application. He also responds to matters raised in the submissions from the parties deemed affected, including matters that he agrees with section 42A report are not 'on' the application³⁴ (to use a term associated with scope and plan changes).
87. The remaining concerns of the submitters, especially as to the extent that they mirror concerns raised in the submission and evidence of the GDC have been addressed throughout TRPL's application, evidence and these submissions.
88. One further comment can be made in respect of the reference in submissions for Adrian van Dorp and Christine June Mehrtens to sentencing decisions including *Manawatu-Wanganui Regional Council v*

³⁴ Section 42A report dated 12 August 2025, at paragraphs 95 – 98.

Dykstra. Suffice to say that these decisions relate to prosecutions, in most cases where raw leachate or untreated leachate has been discharged. In the circumstances of this site, and of the partly treated leachate water that TRPL seeks to discharge, assumptions as to toxicity appear to be misplaced.

Manawhenua issues

89. The site is situated in the takiwā of Ngāti Waewae. As such, TRPL sought to provide representatives of Ngāti Waewae with information relating to the application and conducted a site visit with them. TRPL thanks Ngāti Waewae for its engagement, which it hopes will continue.
90. It is further noted that the majority of the issues raised in the Ngāti Waewae submission also mirrored concerns raised in the GDC submission and evidence. Accordingly, these have also already been addressed.
91. As a further comment it is acknowledged that a key concern of Ngāti Waewae, is that the integrity of the water bodies surrounding the site are, at least, maintained. Returning to the premise of this application set out at paragraph 12 above, it is TRPL wish that fulfilling that premise will equally provide, at least, for the maintenance of those waterbodies.
92. While the concept of *Te Mana o te Wai* is no longer deemed as relevant to consenting decision, TRPL does not seek to diminish *Te Mana o te Wai* by this discharge.

Part 2 of the Act

93. Section 104 considerations are made subject to Part 2. What that means in the aftermath of the *King Salmon* ³⁵ decision, where recourse to Part 2 in planning decisions was prescribed, was determined in the case of *Davidson Family Trust v Marlborough DC* ³⁶.
94. In that case, the Court of Appeal confirmed that the words “subject to” mean what they say. In recourse can, and in some cases must be had to Part 2. However, it was also observed that recourse to Part 2 may add little to the consideration where policies, promulgated to “give effect” to Part 2, are in place. Possibly the key take away was that Part 2 should

³⁵ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 [*King Salmon*].

³⁶ *R J Davidson Family Trust v Marlborough DC* [2018] NZCA 316; [2018] 3 NZLR 283 (CA)

not be used to revive an application that up-to-date plan provisions deemed unacceptable.

95. So, Part 2 can be referred to in appropriate circumstance, such as out-of-date policies or a lack of guidance for the consenting authority in the hierarchy of planning instruments.
96. Given the position that TRPLs application assumes in respect of the modelled absence of adverse effects (subject to conditions), and the fact that the relevant standards, plans, policies and rules do not, in those circumstances, militate against the grant of consent, it is unlikely to be the case that Part 2 would lead to a different outcome.
97. Accordingly, a decision to grant consent is more likely than not to advance the sustainable management purpose of the Act.

Conclusions

98. TRPL requires consent for the discharge of partly treated leachate water to ensure the integrity of the retention pond on the site and avoid an uncontrolled discharge.
99. The assessments, monitoring and modelling that have been carried out indicate that the discharge will not lead to adverse effects off site. It will not threaten the ecology of the surrounding waterways, or the water supplies that provide for the public water treatment plant that is situated to the south south-west of the site.
100. The application is for a temporary discharge and will be subject to a rigorous set of conditions including a discharge management plan that it must be carried out in accordance with.
101. In these circumstances, and in the absence of viable alternative options, that could address the situation that exists, the granting of consent is a logical and practical outcome.

Date: 3 September 2025



A J Schulte
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