Staff Report

The recommendation in the staff report represents the opinion of the writer and it is not binding on the Commissioner. The report is evidence and has no greater weight than any other evidence that the Commissioner will hear and consider.

S42A report on Application – APP-20233188
Southland District Council

Compiled by Stephen West, Principal Consents Officer at Environment Southland

Applicant:	Southland District Council
Application Number:	APP-20233188
Location:	3 Gap Road West, Winton
Activities for Consent:	To discharge an average of 1,300 m^3/day of treated wastewater from the Winton Wastewater Treatment Plant into the Winton Stream.
Notification:	The application was publicly notified on 18 July 2023 and no submissions were received.

1 Recommendation

1.1 I recommend that the application be approved, subject to conditions.

1.2 My reasons are:

(a) Policy 26A of the proposed Water and Land Plan is to recognise and provide for upgrading of regionally significant infrastructure, in a way that avoids, where practicable, or otherwise remedies or mitigates adverse effects on the environment. Policy 13(2) of the proposed plan is also important, as it is to 'manage' discharges to enable the achievement of Policy 15B, which requires water quality improvement. In my view that means that, the proposal is not contrary to the objectives and policies of the proposed plan, at least when viewed towards the transition to land discharge. Therefore, while I acknowledge that the general direction of policy is to improve water quality, I consider that the proposal satisfies the test in s104D and can be approved.

(b) Case law identified by the applicant, in particular paragraphs 89 and 90 of *Horowhenua District Council [2015] NZEnvC 45*, suggests that the discharge can be regarded as temporary, and that exceptional circumstances exist for the purposes of s107. The exceptional circumstances being that the discharge is existing and, because it provides for the Winton community, cannot be shut off without causing significant hardship, so the discharge must continue until the land discharge option is available. Therefore, under s107(2), the proposal can be approved.

(c) The applicant has acknowledged that the continued discharge to the Winton Stream has adverse effects that are more than minor, and perhaps significant. However, as the applicant has previously pointed out in a separate application, the Environment Court's decision on *SKP Incorporated v Auckland Council [2018] NZEnvC 81* points to taking a wider, more holistic view of the wastewater operation. I don't consider that this view overcomes the effects on the Winton Stream for the proposed 5-year period, but in terms of Objective 6 and Policy 26A of the proposed plan, the shift to land discharge will avoid, or otherwise largely mitigate, adverse effects when viewed over a longer period. Nor is the future land discharge fanciful; the applicant has already gone through the selection of options, carried out field investigations and has made funding available for the upgrades[1].

(d) The application was publicly notified, including the direct service of notice on Public Health South, Te Ao Marama Inc., Te Rūnanga o Ngāi Tahu, Department of Conservation, and Fish & Game NZ, but no submissions were received. That indicates a degree of acceptance of the short-term consent in order to transition to the longer-term solution. I have discussed this with a representative of one of the above groups who pointed to the consultation and the applicant's commitment to the land discharge option as key factors in their decision not to submit on the current application.

1.3 It is far from ideal for the applicant to need a short-term consent to 'bridge' between the existing permit and the future land discharge. It would be preferable if the existing permit ended, and the land discharge started. However, that is not the situation presented for

[1] Sections1.2.2.1 and 6.5 of the application.

consideration in this instance. The applicant had been preparing for an upgrade at the end of the existing consent, but requires more time for implementation.

1.4 I would not be recommending approval for this application if it was not associated with a planned transition to land discharge, and progress, including funding, had not been made towards that upgrade. The discharge into Winton Stream is a non-complying activity and has adverse effects on water quality and most likely on cultural and spiritual values. I don't believe that Policy 26A would provide sufficient scope for approval if the intent was just to continue with the existing activity, as there would be no change in effects over the longer term. As such, the discharge would have more than minor adverse effects, and be contrary to the policies of the regional plans. The discharge would have also failed to meet the requirements of Section 107.

1.5 As discussed above, while I regard Policy 26A as a key provision in this instance, it needs to be viewed in combination with the objectives and other policies, and with the planned transition to land discharge. Policy 13(2) of the proposed plan is also important, as it requires that discharges be managed to 'enable the achievement' of Policy 15B, which is for water quality improvement in degraded water bodies. That said, there will be no improvement over the requested duration. If the application can only be considered over that period, then the decision will hinge on Policy 26A alone. But, if the transition to land discharge beyond the consent period is taken into account, then Policies 26A and 13(2) provide scope for the proposal to be consistent with, or at least not contrary to, Objective 6 and Policy 15B of the proposed plan. On the other hand, if that is not a correct application of Policy 26A, the question arises as to what circumstance Policy 26A is applicable, or would provide meaningful direction, as similar situations would apply to a bridge and policies around riverbed effects.

1.6 My recommendation is somewhat tentative and pragmatic. There is certainly scope to decline the application on the grounds of effects during the proposed consent period. That may signal to the applicant and others that such short-term applications for continuance of a situation with adverse effects are unacceptable and inappropriate. However doing so in this instance is unlikely to shorten the period of discharge into Winton Stream, and may even prolong it, as the applicant would have to put resources into appealing the decision, or defending against enforcement for an unauthorised discharge, rather than transitioning to the land discharge option.

2. The Application

2.1 The proposed activities

2.1.1 Southland District Council has applied for resource consent to discharge an average of 1,300 m^3/day of treated wastewater from the Winton Wastewater Treatment Plant into the Winton Stream.

2.1.2 The wastewater is screened, then treated in an oxidation pond, passes through a constructed wetland cell, and is then discharged into Winton Stream via a diffuser pipe.

The following are from Figures 5 and 7 of the application:

Winton WWTP (yellow outline) and Winton Stream (blue line)

Wetland cell drainage point

2.1.3 The point of discharge into the Winton Stream is about 320 metres south of the intersection of Winton-Lorneville Highway and Gap Road, and is about 1 km south of Winton Township.

2.1.4 This is an existing discharge. Southland District Council is seeking a 5-year consent to continue the activity in the interim period while investigations, consenting and construction is undertaken to upgrade and convert the existing Wastewater Treatment Plant to a land-based disposal system.

2.2 Description of the affected environment

2.2.1 The discharge is into the Winton Stream, which is a tributary of the Ōreti River. The point of discharge into the Winton Stream is about 1 km south of Winton Township.

2.2.2 Winton township had a population of 2,250 people in the 2013 census, and the applicant's projection is that it will have about 2,465 people by the end of the requested consent period. The areas of the township serviced by the wastewater system consist of residential, commercial and industrial areas.

2.2.3 The Winton Stream flows from the Hokonui Hills near Dipton in a roughly southerly direction until it joins the Ōreti River, roughly 6 km downstream of the applicant's discharge. It flows through developed farmland and passes to the east of Winton Township.

2.2.4 The waters of Winton Stream at the discharge point are classed as Lowland Hardbed waters under the Regional Water Plan for Southland and the proposed Southland Water & Land Plan. As such, the waters of the stream are subject to water quality standards that apply after reasonable mixing.

2.2.5 Flow in the stream was monitored at Thomson Crossing, about 2.4 km downstream of the discharge point from 1974 to 1986. Winton Stream has a mean flow of 1,560 litres per second. The median flow is 717 litres per second and the Q95 flow (the flow exceeded 95% of the time) is 121 litres per second.

2.2.6 There are two state of the environment monitoring sites on the Winton Stream: the Benmore-Otapiri Road site, about 22 km upstream of the discharge, and the Lochiel site, about 4.7 km downstream. The following information is from the Land Air Water Aotearoa website pages for the two sites:
https://www.lawa.org.nz/explore-data/southland-region/river-quality/Ōreti-river/winton-stream-at-benmore-otapiri-road/

https://www.lawa.org.nz/explore-data/southland-region/river-quality/Ōreti-river/winton-stream-at-lochiel/

2.2.6.1 The Benmore Otapiri Road site is an ecological monitoring site. The MCI (Macroinvertebrate[2] Community Index) score, QMCI (Quantitative Macroinvertebrate Community Index) score, ASPM (Macroinvertebrate Average Score per Metric) are all in Attribute Band C[3]. The taxonomic richness score[4] is 24 and the Percent EPT[5] richness score is 32.

2.2.6.2 The Lochiel site is both a water quality and an ecological monitoring site. The MCI (Macroinvertebrate Community Index) score and QMCI (Quantitative Macroinvertebrate Community Index) score are in in Attribute Band D[6]. The ASPM (Macroinvertebrate Average Score per Metric) is in Attribute Band C. The taxonomic richness score is 24 and the Percent EPT[7] richness score is 23.

2.2.6.3 Water quality at the Lochiel site:

(a) The 5-year median value for E-Coli is 800 n/100ml and is in Attribute Band E under the National Policy Statement for Freshwater Management. That means that for more than 30% of the time there is greater than 5% risk of infection to a swimmer.

(b) The 5-year median result for Ammoniacal Nitrogen is 0.129 mg/l and is in Attribute Band C under the NPSFM, which is the 80% species protection level. In this band, ammoniacal nitrogen starts impacting regularly on the 20% most sensitive species (reduced survival of most sensitive species). The LAWA site indicates that the site is below the national bottom line for ammoniacal nitrogen.

(c) The 5-year median result for Nitrate Nitrogen is 1.5 mg/l and is in Attribute Band C under the NPSFM. In this band nitrate nitrogen has growth effects

[2] Macroinvertebrates = small animals without a backbone that can be seen without the use of a microscope or magnifying glass, and live part or all of their lives in rivers and lakes.

[3] Attribute Band C for MCI and QMCI: Macroinvertebrate community indicative of moderate organic pollution or nutrient enrichment. There is a mix of taxa sensitive and insensitive to organic pollution/nutrient enrichment.
Attribute Band C for APSM: Macroinvertebrate communities have moderate-to-severe loss of ecological integrity.

[4] Taxa richness is considered a very coarse indicator of stream health. In general, high taxa richness is considered good, although mildly impacted (nutrient-enriched) rivers can have higher taxa richness than pristine streams and rivers.

[5] EPT stands for Ephemeroptera (mayfly), Plecoptera (stonefly) and Trichoptera (caddisfly) are macroinvertebrates that are sensitive to water pollution. A high percentage of EPT taxa indicates good stream health. However, in some New Zealand streams there are naturally few mayflies, stoneflies, or caddis flies present.

[6] Attribute Band D for MCI and QMCI: Macroinvertebrate community indicative of severe organic pollution or nutrient enrichment. Communities are largely composed of taxa insensitive to inorganic pollution/nutrient enrichment.

on up to 20% of species (mainly sensitive species such as fish), but no acute effects. The LAWA site indicates that the site is below the national bottom line for nitrate nitrogen.

(d) The 5-year median result for Dissolved Reactive Phosphorus is 0.054 mg/l and is in Attribute Band D under the NPSFM. In this band, ecological communities are impacted by substantial DRP elevation above natural reference conditions. In combination with other conditions favouring eutrophication, DRP enrichment drives excessive primary production and significant changes in macroinvertebrate and fish communities, as taxa sensitive to hypoxia are lost.

2.2.7 As noted in the application, the Winton Stream is modified, particularly by channelization and straightening. It supports brown trout and indigenous fish populations. However, the stream is generally shallow and narrow, with poor public access, so is unlikely to be suitable for kayaking and is unlikely to be used regularly for angling or swimming. I note that the application was publicly notified, and that no submissions were made at all, even regarding these activities.

2.2.8 Appendix C of the application includes a biological monitoring report by 4Sight Consulting from March 2022, which noted that the river was bordered by rank grass and willows. The 4Sight Consulting report referred to the gravel bed of the stream, with fine sediment amongst the larger material. Cover levels of algal mats and films, and filamentous algae were low. Upstream of the discharge the stream had an MCI score of 82, and a QMCI score of 3.1, indicative of poor to fair quality conditions.

2.2.9 The area surrounding the Winton Stream at the point of discharge, and from there down to the confluence with the Ōreti River, is largely developed farmland with scattered dwellings. It is also classed as flood-prone.

2.2.10 As stated above, the Winton Stream flows into the Ōreti River about 6 km downstream of the discharge. The Ōreti River:

2.2.10.1 Is one of the four main rivers that cross the Southland Plains. For comparison, the Ōreti River has a Q95 flow at Wallacetown of 7,279 litres per second, about 60 times the equivalent flow of the Winton Stream.

2.2.10.2 Is a statutory acknowledgement area under Schedule 50 of the Ngāi Tahu Claims Settlement Act, which means that the Crown has acknowledged Ngāi Tahu's cultural, spiritual, historic and traditional association with the Ōreti River. Table 3[8] of Te Tangi a Tauira notes that the Ōreti River was a major transportation route historically, and that the kai resources of the river supported travellers along it, such as waterfowl, eels and inanga.

2.2.10.3 Is subject to a Water Conservation Order that recognises that the river has the following outstanding characteristics, features and values: habitat for brown trout,

[8] https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/about-us/plans-and-strategies/regional-plans/iwi-management-plan/documents/Te%20Tangi%20a%20Tauira%20-%20The%20Cry%20of%20the%20People.pdf

angling amenity, habitat for black-billed gulls, and significance in accordance with tikanga Māori.

2.2.10.4 Is a source of water for two large takes about 12.8 km and 17.8 km downstream of the confluence with the Winton Stream (about 18.8 km and 23.8 km downstream of the discharge). This first is a registered human drinking water supply take for Invercargill City, and the second is a water supply take for the Alliance Group Limited's Lorneville meat works. The water from both of these supplies is treated before use.

2.2.11 There are state of the environment water quality monitoring sites on the Ōreti River at Lumsden (59 km upstream of the Winton Stream confluence) and at Wallacetown (17.5 km downstream of the Winton Stream confluence).

2.2.11.1 Water quality at the Lumsden site:

(a) The 5-year median value for E-Coli is 40 n/100ml and is in Attribute Band B under the National Policy Statement for Freshwater Management. That means that for at least half the time there is less than 0.1% risk of infection to a swimmer, and the average risk of infection is than 1%.

(b) The 5-year median result for Ammoniacal Nitrogen is 0.005 mg/l and is in Attribute Band A under the NPSFM, which is the 99% species protection level. In this band, ammoniacal nitrogen has no observed effect on aquatic species.

(c) The 5-year median result for Nitrate Nitrogen is 0.7 mg/l and is in Attribute Band A under the NPSFM, indicating a high conservation value system. Unlikely to be effects even on sensitive species.

(d) The 5-year median result for Dissolved Reactive Phosphorus is 0.002 mg/l and is in Attribute Band A under the NPSFM. In this band, ecological communities and ecosystem processes are similar to those of natural reference conditions. No adverse effects attributable to dissolved reactive phosphorus (DRP) enrichment are expected.

(e) In terms of ecological monitoring, the MCI was Attribute Band B[9], the QMCI was attribute Band A[10] and the ASPM was Attribute Ban A[11]. The taxonomic richness score is 13 and the Percent EPT richness score is 55.

2.2.11.2 Water quality at the Wallacetown site:

(a) The 5-year median value for E-Coli is 150 n/100ml and is in Attribute Band D under the National Policy Statement for Freshwater Management. That

[9] Macroinvertebrate community indicative of mild organic pollution or nutrient enrichment. Largely composed of taxa sensitive to organic pollution/nutrient enrichment

[10] Macroinvertebrate community indicative of pristine conditions with almost no organic pollution or nutrient enrichment.

[11] Macroinvertebrate communities have high ecological integrity, similar to that expected in reference conditions.

means that for 20-30% of the time there is greater than 5% risk of infection to a swimmer, and the average risk of infection is more than 3%.

(b) The 5-year median result for Ammoniacal Nitrogen is 0.005 mg/l and is in Attribute Band A under the NPSFM, which is the 99% species protection level. In this band, ammoniacal nitrogen has no observed effect on aquatic species.

(c) The 5-year median result for Nitrate Nitrogen is 1.08 mg/l and is in Attribute Band B under the NPSFM. In this band nitrate nitrogen has some growth effects on up to 5% of species.

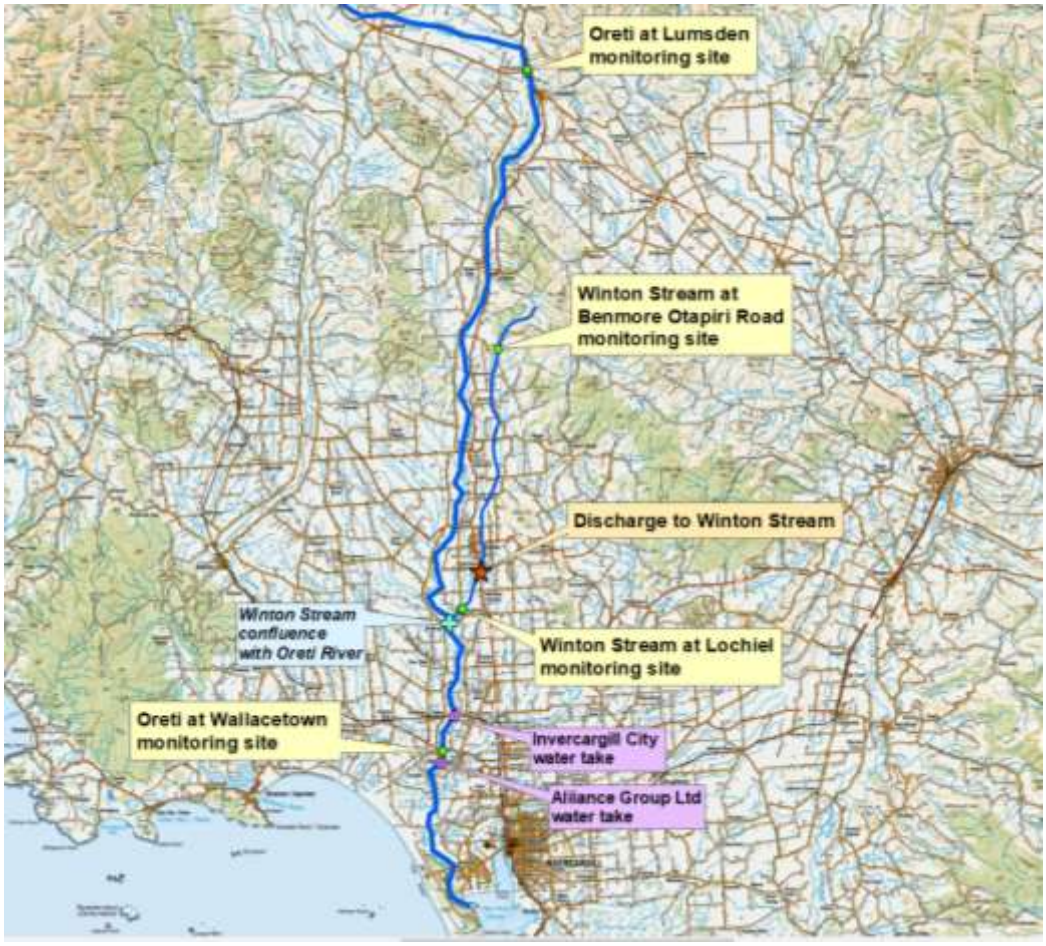
(d) The 5-year median result for Dissolved Reactive Phosphorus is 0.005 mg/l and is in Attribute Band A under the NPSFM. In this band, ecological communities and ecosystem processes are similar to those of natural reference conditions. No adverse effects attributable to dissolved reactive phosphorus (DRP) enrichment are expected.

(e) In terms of ecological monitoring, the MCI was Attribute Band C[12], the QMCI was attribute Band B[13] and the ASPM was Attribute Band B[14]. The taxonomic richness score is 21 and the Percent EPT richness score is 41.

[12] Macroinvertebrate community indicative of moderate organic pollution or nutrient enrichment. There is a mix of taxa sensitive and insensitive to organic pollution/nutrient enrichment.

[13] Macroinvertebrate community indicative of mild organic pollution or nutrient enrichment. Largely composed of taxa sensitive to organic pollution/nutrient enrichment.

[14] Macroinvertebrate communities have mild-to moderate loss of ecological integrity.



2.2.12 At the bottom of the catchment, about 40 km downstream of the Winton Stream confluence, the Ōreti River flows into New River Estuary. The lower areas of the river are popular for boating activities and angling. The Environment Southland website describes the estuary as being a large 'tidal lagoon' of about 4,100 ha, and notes that "nuisance blooms of macroalgae (Ulva and Gracilaria), failure to meet faecal bacterial guidelines in regard to swimming and gathering shellfish, and sedimentation problems are common within the estuary." It is also "vulnerable to issues of eutrophication and sedimentation"[15].

2.2.13 Section 5.1 of the application notes that there has been a wastewater system for Winton township since 1962. The existing resource consent for the treated wastewater to the stream expires on 8 December 2023. As such, the discharge is part of the existing environment until that date.

2.3 Planning framework

2.3.1 The proposal is a **non-complying activity** under Rule 33A(b) of the proposed Southland Water and Land Plan.

[15] Source: https://www.es.govt.nz/environment/water/estuaries/estuaries-in-the-oreti

Rule 33A (a) The discharge of effluent or bio-solids from a community sewerage scheme into water in a river, lake, artificial watercourse, modified watercourse or natural wetland where the Appendix E – Receiving Water Quality Standards are met and the discharge does not reduce the water quality below those standards at the downstream edge of the reasonable mixing zone discretionary activity;

(b) The discharge of effluent or bio-solids from a community sewerage scheme into water in a river, lake, artificial watercourse, modified watercourse or natural wetland where Rule 33A(a) is not met the discharge is a **non-complying activity**.

2.3.2 When considering a **non-complying activity**, the commissioner may only, in accordance with Section 104D, grant a resource consent for the activity if they are satisfied that:

(a) the adverse effects of the activity are minor, or

(b) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan.

2.3.3 If the application passes these "gateway" tests in Section 104D, under Section 104B the commissioner may grant or refuse consent for the non-complying activity, and if they grant the application, may impose conditions under Section 108 of the RMA.

2.3.4 The Resource Management Act (RMA) was amended with the enactment of the Natural and Built Environment Act (NBE Act). The application was lodged prior to commencement of the NBE Act on 23 August 2023, and it continues to be processed under the Resource Management Act.

2.4 Notification and written approvals

2.4.1 The applicant requested that the application be publicly notified.

2.4.2 The application was publicly notified on 18 July 2023.

2.4.3 Notice was directly served on:

- Public Health South,
- Te Ao Marama Inc.,
- Te Rūnanga o Ngāi Tahu,
- Department of Conservation,
- Fish & Game NZ,
- Invercargill City Council,
- Alliance Group Limited,
- Taumata Arowai, and
- the landowners adjacent to the discharge.

2.4.41 No submissions were received.

2.5 Effects on the environment

2.5.1 Section 5.5 of the application states that "*overall, the potential effects from the treated discharge into the Winton Stream results in significant adverse effects on the receiving environment that are more than minor*."

2.5.2 The key effects to consider are effects on:

- Positive effects
- Cultural and spiritual values
- Water quality
- Ecological values of the Winton Stream
- Water supplies
- Public health risk
- Amenity values

Positive effects

2.5.3 Section 5.1 of the application discusses positive effects and community benefits, noting that the urban Winton community is reliant on the wastewater system to function and maintain public health standards. The application also notes that without the wastewater system, there would be significant adverse effects on the wellbeing of the community and on their health and safety.

2.5.4 Section 5.1 of the application also raises one of the key matters to be determined, which is whether to consider this application in terms of the overall proposal, which is to continue the existing discharge for a short period, so that it can be transitioned to a land discharge.

Effects on cultural and spiritual values

2.5.5 I would have considered that adverse effects on cultural values and spiritual values were more than minor, as I understood the discharge of human wastes to water to be offensive.

2.5.6 I note the following comment in Section 3.5.2 (Wastewater Disposal) in Te Tangi a Tauira:

> *"Our bottom line is to avoid discharge of wastewater (e.g. sewage and stormwater) to water; as such activities have adverse effects on cultural values such as mauri, wairua, mahinga kai and wāhi tapu. Our preference is for wastewater to be treated to remove contaminants, and then discharged to land via wetlands and riparian areas, to allow Papatūānuku to provide a natural filter for waste. Where this is not practical or feasible, and discharge to water is proposed, then adverse effects must be mitigated through treatment to a very high standard and robust monitoring programs. Ngāi Tahu ki Murihiku will always look for the most culturally, environmentally, socially and economically appropriate option for a particular site."*

2.5.7 The following policies from Te Tangi a Tauira appear to be relevant to consideration of effects on cultural and spiritual values with regard to this application:

Policy 3.5.3.6 Avoid the use of water as a receiving environment for the direct, or point source, discharge of contaminants. Even if the discharge is treated and

therefore considered "clean", it may still be culturally unacceptable. Generally, all discharge must first be to land.

Policy 3.5.2.7 Assess waste disposal proposals on a case-by-case basis, with a focus on local circumstances and finding local solutions.

Policy 3.5.2.8 Wastewater disposal options that propose the direct discharge of treated or untreated effluent to water need to be assessed by the kaitiaki rūnanga on a case by case, individual waterway, basis. The appropriateness of any proposal will depend on the nature of the proposal, and what waterway is involved. Individual waterways possess their individual mauri and values, and kaitiaki rūnanga are in the best position to assess the potential impacts of a proposal on such values.

Policy 3.5.2.12 Encourage the establishment of wetland areas, where practical, to improve discharge to land activities, through allowing Papatūānuku the opportunity to filter and clean any impurities

2.5.8 In this case the applicant had been consulting with Te Ao Marama Inc. prior to lodging the application (as evidenced by Appendix D).

2.5.9 Both Te Ao Marama Inc. and Te Runanga o Ngai Tahu were notified directly about the application, but did not make submissions. That, in itself, is not proof that they consider that adverse effects from the discharge to water are minor, but it may indicate that their focus is on the change to the longer-term discharge to land.

2.5.10 Overall, I believe that the discharge will probably have adverse effects on cultural and spiritual values, but that the effects are likely to be mitigated to some extent by the wetland treatment, by the applicant's consultation with Murihiku tangata whenua, as represented by Te Ao Marama Inc., and by the plan to shift to land disposal within 5 years. I note that the applicant considers that the adverse effects on tangata whenua values are minor in the context of these factors, and also that, as stated above, Te Ao Marama Inc. and Te Runanga o Ngai Tahu did not make submissions on the application.

Water quality effects

2.5.11 Section 3.1.1.2 of the application provides information on the wastewater flows. The average daily flow is estimated to be 1,102,000 litres per day, although that will be affected by stormwater infiltration during wet weather. The average dry weather flow (ADWF) is currently 750,000 litres per day, and is projected to be about 822,000 litres per day by 2028. That is about 8.6 to 9.5 litres per second. At low flows in the Winton Stream, when the flow is Q95 or less, there will be about 15-fold dilution for existing flows, and 14-fold dilution for flows in 2028. That assumes approximately even rates of discharge, and the dilution factor will fall as streamflow falls lower than Q95.

2.5.12 The oxidation pond treatment system is mainly designed to reduce the organic load, suspended solids and pathogens of the wastewater discharge. By removing solids, the system also reduces the discharge of phosphorus. The wetland component of the system was added to mitigate adverse effects on cultural and spiritual values, but was also anticipated to further mitigate the water chemistry of the discharge by plant uptake of nutrients, reduced pathogens due to exposure to sunlight/ultraviolet light and by filtration.

2.5.13 The quality of the discharge is shown in Section 3.1.3.2 of the application. The following table from the application summarises the treated discharge quality for July 2012 to November 2022:

Parameter	Unit	Jul 2012 – Nov 2022 data	
		Mean	95%ile
BOD_5	mg/L	27	55
TSS	mg/L	50	147
DRP	mg/L	2.2	3.5
TP	mg/L	3.7	5.3
AmmN	mg/L	17	27
TN	mg/L	25	37
E. Coli	MPN/100mL	17,507	82,800

2.5.14 The applicant carried out additional sampling in preparation for this application, which is shown in the graphs in Section 3.1.3.2 in the application. In general, the quality of the wastewater has been consistent, but the applicant identified elevated spikes in the Biochemical Oxygen Demand (BOD_5), suspended solids and E. Coli concentrations.

2.5.15 Water quality has been monitored in Winton Stream, 5 metres upstream and 100 metres downstream of the discharge, during the current consent period. The results indicate:

Suspended Solids

2.5.15.1 The discharge has no more than minor effect on suspended solids concentrations in Winton Stream. The monitoring shows little difference between upstream and downstream concentrations of suspended solids.

2.5.15.2 Suspended solids can be important with regard to the colour and clarity of the stream, which affects amenity values, natural character values, the ability of trout to see prey items, and potentially interstitial space for macroinvertebrates on the streambed (i.e. clogging of space between the gravel, reducing habitat).

Ammoniacal Nitrogen

2.5.15.3 Section 2.4.2.2 states that "*there is an obvious pattern of elevated concentrations of ammoniacal-N downstream of the discharge relative to upstream; suggesting the that the discharge is a contributor to the instream ammoniacal-N load*." The applicant then clarifies that the elevated concentrations only occur during low flow events (less than 310 l/sec streamflow), which generally occur during the December-May period. There have also been exceedances of water quality limits for ammoniacal-N, but those have been rectified by improved mixing following installation of a diffuser at the outfall.

2.5.15.4 Ammoniacal nitrogen concentrations can be toxic to aquatic life. The water quality standards for ammoniacal-N in the regional plans are linked to the pH of the water, and are designed to provide protection for 95% of species.

2.5.15.5 The applicant noted that ammoniacal-N from the discharge also contributed to elevated Total Nitrogen concentrations downstream during low-flow periods.

Nitrate Nitrogen

2.5.15.6 Section 2.4.2.3 of the application noted that there was little difference between upstream and downstream concentrations of nitrate nitrogen, indicating that the discharge was not a significant contributor to nitrate-N concentrations in the stream.

2.5.15.7 In the aquatic environment elevated nitrate-N concentrations can have adverse effects on the growth of species, such as trout.

Dissolved Reactive Phosphorus (DRP)

2.5.15.8 Section 2.4.2.5 of the application states that "*there is an obvious pattern of elevated concentrations of DRP downstream of the discharge relative to upstream suggesting the current discharge is a contributor to the instream DRP load. Peak concentrations have occurred during low flow summer periods suggesting the discharge is significantly affecting the instream water quality at these times."*

2.5.15.9 Dissolved Reactive Phosphorus is plant-available phosphorus in the water column and can contribute to nuisance weed growth and algal blooms. Phosphorus is typically the limiting nutrient for plant growth in lowland waterways.

2.5.15.10 Total Phosphorus shows a similar pattern as DRP of increased concentrations downstream, particularly during low-flow periods. Total Phosphorus includes both dissolved reactive phosphorus, and phosphorus attached to sediments that may settle on the riverbed.

E. Coli

2.5.15.11 Section 2.4.2.7 of the application notes that E. Coli counts are similar upstream and downstream of the discharge. The application notes that this "*suggests the discharge is not contributing to the instream E. Coli levels.*"

2.5.15.12 E. Coli is an indicator organism used to determine health risk associated with the presence of disease-causing gut organisms. An indicator organism is used due to the difficulty of detecting and measuring disease-causing organisms. The indicator organism is not necessarily a disease-causing organism itself, but provides a practical method of determining the risk of disease.

Dissolved Oxygen

2.5.15.13 Monitoring shows little difference in dissolved oxygen concentrations in the stream above and below the discharge.

2.5.15.14 Dissolved oxygen is crucial for fish and other aquatic organisms. It can be depleted by the breakdown of organic material, so a high BOD (biological or biochemical oxygen demand) load can cause reduce oxygen concentrations.

Temperature

2.5.15.15 Water temperature is similar upstream and downstream of the discharge. Temperature is important in the aquatic environment because it affects other water chemistry, particularly the oxygen holding capacity of water. In this case, the similar upstream and downstream figures are unsurprising, as the nature of the treatment system would typically allow heat to dissipate from the wastewater before it was discharged.

2.5.15.16 Temperature and pH are relevant to water quality standards but, even when a discharge is not expected to vary those factors, they are often included in monitoring regimes because they are simple tests and can help with interpretation of other results.

2.5.15.17 Section 6.7 of the application notes that, during low flows, the discharge "*results in a conspicuous change in the colour of visual clarity*" of the stream. This is likely to have been mitigated by the use of the diffuser. It is not uncommon for algae to grow in oxidation ponds and wetlands, resulting in a green, turbid discharge, especially during summer low flows.

Ecological effects

2.5.16 Appendix C of the application is a report by 4Sight Consulting Ltd on a March 2022 biological survey of macroinvertebrates and periphyton[16] in the Winton Stream upstream and downstream of the wastewater discharge. The report concluded that the discharge was "*adversely affecting aspects of the biological communities of Winton Stream*". The survey determined that conditions for biological communities were poor upstream and downstream, and that the discharge may have a minor effect on periphyton communities, and has some effect on the benthic invertebrate communities, in Winton Stream.

Effects on Water Supplies

2.5.17 As discussed earlier, there is a registered human drinking water supply take for Invercargill City (the sole water source for the Invercargill reticulated water supply), and a large take for a meat works operation, from the Oreti River about 18.8 km and 23.8 km downstream of the discharge into Winton Stream. At that distance, and allowing for the dilution in the Oreti River, and because those takes are treated for the existing variable water quality in the river, the discharge is unlikely to have a measurable effect on water quality at the intakes in my opinion. This is discussed in Section 5.2.5 of the application. That said, in the event of a spill at the Winton WWTP, it would be appropriate to notify the operators of those water takes.

[16] Periphyton = material, generally algae, that forms filaments or sheets and can cover sediments, plants and other objects in a river or stream.

Public health risk

2.5.18 The applicant's monitoring has shown that there are elevated concentrations of E. Coli upstream of the discharge, and that the discharge has only minor effect on E. Coli concentrations in Winton Stream. There is a health risk associated with contact with the waters of the stream, or from consuming mahinga kai collected from it, but that risk is present upstream of the discharge. A sign near the outfall serves to warn the public of the presence of the wastewater discharge.

Amenity values

2.5.19 Due to the modified nature of the Winton Stream, and the limited public access to it, the discharge should have only minor adverse effects on amenity values in my opinion. However, at low flows the discharge can cause a conspicuous change in the colour or clarity of the stream. The awareness of the discharge, and a visible effect on the watercolour and clarity, may adversely affect the amenity of the stream.

Commentary on consideration of effects on the environment

2.5.20 Section 3 of the Resource Management Act defines effect as follows:

> In this Act, unless the context otherwise requires, the term **effect** includes—
>
> (a) any positive or adverse effect; and
>
> (b) any temporary or permanent effect; and
>
> (c) any past, present, or future effect; and
>
> (d) any cumulative effect which arises over time or in combination with other effects—
>
> regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
>
> (e) any potential effect of high probability; and
>
> (f) any potential effect of low probability, which has a high potential impact.

2.5.21 The point is that temporary effects are still effects. The applicant is not shying away from the adverse effects on the environment being more than minor for the proposed consent duration.

2.5.22 This issue has arisen previously with a similar proposal at Te Anau, where the applicant pointed to the Environment Court's decision on *SKP Incorporated v Auckland Council [2018] NZEnvC 81* in which the court noted:

> [Para. 49] *As will be seen from our later analysis of effects on the environment, there are some which individually can be described as more than minor, for instance in connection with visual amenity from certain properties, but the law is that the evaluation under this provision is to be undertaken on a "holistic basis, looking over the entire application and a range of effects", not individual effects.*
>
> [Para. 50] *The evaluation under subsection 1 (b) is again, not an approach focussed on each relevant provision, but rather something more of a holistic approach. As has been observed in many other decisions, it is usually found that there are sets of objectives and policies running either way, and it is only if there is an important set to which the*

application is contrary, that the consent authority might conclude that this gateway is not passed.

2.5.23 While the application is for a specific resource consent, for a specific duration, it is in the context of this being an existing discharge that is transitioning to a land discharge, as discussed in Section 1.2.2 of the application. I consider that weight needs to be given to that overall view of the activity.

3. Assessment of the Proposal

3.1 Statutory Considerations

3.1.1 Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) of the Resource Management Act, 1991, states:

(1) When considering an application for a resource consent and any submission received, the consent authority must, subject to Part 2 and Section 77M, have regard to:

(a) any actual and potential effects on the environment of allowing the activity; and

(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

(b) any relevant provisions of:

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement

(v) a regional or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

3.1.2 All considerations under s104(1) are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. Section 5 states the purpose of the RMA and Sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved.

3.1.3 Section 104(2A) states:

When considering an application affected by section 124[or 165ZH(1)(c)], the consent authority must have regard to the value of the investment of the existing consent holder.

3.1.4 In terms of the value of investment in the existing wastewater treatment and discharge system, it will have been significant for the community when built. As an indication, Appendix B of the application, "Winton Sewage Treatment and Disposal Plant – Resource consent condition 15 Report, August 2001", provides discussion on treatment option costs at that time. The current system (other than the more recent diffuser) has been in place for some time and

has been maintained by the applicant, so it will have a capital value. However, any discounting or depreciation that took into account the useful life of the asset is likely to have largely or greatly diminished that value.

3.1.5 Section 104(2D) states:

> *When considering a resource consent application that relates to a wastewater network, as defined in section 5 of the Water Services Act 2021, a consent authority—*
>
> *(a) must not grant the consent contrary to a wastewater environmental performance standard made under section 138 of that Act; and*
>
> *(b) must include, as a condition of granting the consent, requirements that are no less restrictive than is necessary to give effect to the wastewater environmental performance standard*

3.1.6 I am not aware of any wastewater performance standard under s138 of the Water Services Act that would prevent grant of the current application. Section 6.3.1 of the application states that Taumata Arowai has not yet commenced its oversight role for wastewater, and that there are no current wastewater performance standards to be considered in deciding this application.

3.2 Part 2 of the Resource Management Act 1991

3.2.1 All considerations under Section 104 are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation.

3.2.2 The purpose of the Resource Management Act, as specified in Section 5 of the Act, is *to promote the sustainable management of natural and physical resources*. It states that:

> *In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:*
>
> *(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;*
> *(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
> *(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

3.2.3 Section 6 of the Act specifies matters of national importance, which must be recognised and provided for by those exercising functions and powers under the Act, in achieving the purpose of the Act. The matters listed in Section 6 of the Act include the following:

Section 6(a) *The preservation of the natural character of the coastal environment, wetlands and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.*

Section 6(b)	*The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.*
Section 6(c)	*The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
Section 6(d)	*The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.*
Section 6(e)	*The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
Section 6(f)	*The protection of historic heritage from inappropriate subdivision, use, and development.*
Section 6(g)	*The protection of recognised customary activities.*
Section 6(h)	*The management of significant risks from natural hazards.*

3.2.4 Other matters that the commissioner must have particular regard for in achieving the purpose of the Act are listed in Section 7, as follows:

Section 7(a)	*Kaitiakitanga,*
Section 7(aa)	*The ethic of stewardship.*
Section 7(b)	*The efficient use and development of natural and physical resources.*
Section 7(ba)	*The efficiency of the end use of energy*
Section 7(c)	*The maintenance and enhancement of amenity values.*
Section 7(d)	*Intrinsic values of ecosystems.*
Section 7(e)	[*Repealed]*
Section 7(f)	*The maintenance and enhancement of the quality of the environment.*
Section 7(g)	*Any finite characteristics of natural and physical resources.*
Section 7(h)	*The protection of the habitat of trout and salmon.*
Section 7(i)	*The effects of climate change*
Section 7(j)	*The benefits derived from the use and development of renewable energy.*

3.2.5 Section 8 of the Act states:

> *In achieving the purpose of the Act, all persons exercising functions and power under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi.*

Comment

3.2.6 As discussed above, considerations under s104 are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation.

3.2.7 Section 5 states the purpose of the RMA, which is to promote the sustainable management of natural and physical resources. The following is paragraph 151 of the Supreme Court's decision in *Environmental Defence Soc Inc. v The New Zealand King Salmon Co Ltd [2014] NZSC 38, [2014] 1 NZLR 593:*

> *"Section 5 was not intended to be an operative provision, in the sense that it is not a section under which particular planning decisions are made; rather, it sets out the RMA's overall objective. Reflecting the open-textured nature of pt. 2, Parliament has provided for a hierarchy of planning documents the purpose of which is to flesh out the principles in s 5 and the remainder of pt. 2 in a manner that is increasingly detailed both as to content and location. It is these documents that provide the basis for decision-making, even though pt. 2 remains relevant. It does not follow from the statutory scheme that because pt. 2 is open-textured, all or some of the planning documents that sit under it must be interpreted as being open-textured."*

3.2.8 As stated in that decision, Section s6, 7 and 8 provide further context and guidance to the factors found in s5(2) (a) (b) and (c).

3.2.9 Section 6 lists matters of national importance that must be recognised and provided for. Of those, Section 6(e), the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is most directly relevant to the consideration of the application. Sections 6(a) and 6(d) are also relevant, although the natural character could be said to be reduced by modifications to the stream, and the discharge appears to have little effect on public access to the stream.

3.2.10 With regard to Section 7, a number of provisions need to be given particular regard, including
Section 7(a), kaitiakitanga
Section 7(aa), the ethic of stewardship.
Section 7(d), the intrinsic value of ecosystems
Section 7(f), the maintenance and enhancement of the quality of the environment,
Section 7(h), the protection of the habitat of trout and salmon.

3.2.11 In terms of the Section 7 matters, the applicant has consulted with Te Ao Marama Inc., particularly in terms of finding a longer-term method of wastewater disposal for Winton Township. The discharge will have adverse effects over the requested consent period on the habitat of trout in the stream, the ecosystem of Winton Stream, and the quality of the environment. However, the proposal does not conflict with Section 7 when these effects are viewed in terms of this being an existing discharge and the applicant's longer-term proposal to transition to land discharge of the wastewater.

3.2.12 With regard to Section 8, I understand that the applicant consulted with Te Ao Marama Inc., which represents the Murihiku rūnanga, and that Te Ao Marama Inc. did not make a submission on the application. That said, I still consider that consideration of Te Tangi a Tauira is appropriate for the purposes of Sections 6(e) and 7(a).

3.3 Actual and potential effects (Section 104(1)(a))

3.3.1 The actual and potential effects of the proposed activities were considered earlier in this report.

3.4 Relevant provisions of National Environmental Standards and other regulations (Section 104(1)(b)(i) and (ii))

3.4.1 In terms of the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007, there is a registered human drinking water supply abstraction from the Oreti River at Branxholme, about 18.8 km downstream of the applicant's discharge.

3.4.2 The applicant's discharge has existing since the 1960s, and the water supply drawn at Branxholme is treated for existing contaminant levels. Therefore, it is unlikely that during normal operation the proposed discharge will contravene Regulation 7 of the NES for Sources of Human Drinking Water.

3.4.3 However, it is appropriate that, if the consent is granted, a condition is included in accordance with Regulation 12 of the NES for Human Drinking Water requiring notification of Invercargill City Council (as operator of the Branxholme water take) in the event of a spill of partly treated or untreated wastewater that could adversely affect downstream water quality.

3.5 Relevant provisions of national policy statements (Section 104(1)(b)(iii))

National Policy Statement for Freshwater Management 2020

3.5.1 The relevant national policy statement is the National Policy Statement for Freshwater Management 2020 (NPSFM). The following provisions are of relevance to the application:

Te Mana o te Wai *(1) Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.*

(2) Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.

Te Mana o te Wai encompasses the following six principles:

(a) Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater

(b) *Kaitiakitanga: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations*
(c) *Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others*
(d) *Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future*
(e) *Stewardship: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations*
(f) *Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.*

There is a hierarchy of obligations in Te Mana o te Wai that prioritises:
(a) *first, the health and well-being of water bodies and freshwater ecosystems*
(b) *second, the health needs of people (such as drinking water)*
(c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

Objective — *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
(a) *first, the health and well-being of water bodies and freshwater ecosystems*
(b) *second, the health needs of people (such as drinking water)*
(c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

Policy 1 — *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

Policy 2 — *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*

Policy 3 — *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

Policy 7 — *The loss of river extent and values is avoided to the extent practicable.*

Policy 8 — *The significant values of outstanding water bodies are protected.*

Policy 9 — *The habitats of indigenous freshwater species are protected.*

Policy 10 — *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*

Policy 12 — *The national target (as set out in Appendix 3) for water quality improvement is achieved.*

Policy 15 *Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*

The NPSFM 2020 also inserts the following policy into the regional plans:

The loss of river extent and values is avoided, unless the council is satisfied:
(a) That there is a functional need for the activity in that location; and
(b) The effects of the activity are managed by applying the effects management hierarchy.

The NPSFM 2020 also requires that any such application not be granted unless:
(a) the council is satisfied that the applicant has demonstrated how each step in the effects management hierarchy will be applied to any loss of extent or values of the river (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity; and
(b) any consent granted is subject to conditions that apply the effects management hierarchy.

Loss of value, in relation to a natural inland wetland or river, means the wetland or river is less able to provide for the following existing or potential values:
(a) …… or
(b) any of the following, whether or not they are identified under the NOF process:
  (i) ecosystem health
  (ii) indigenous biodiversity
  (iii) hydrological functioning
  (iv) Māori freshwater values
  (v) amenity values

The effects management hierarchy requires that:
(a) adverse effects are avoided where practicable; and
(b) where adverse effects cannot be avoided, they are minimised where practicable; and
(c) where adverse effects cannot be minimised, they are remedied where practicable; and
(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and
(e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and
(f) if aquatic compensation is not appropriate, the activity itself is avoided

Comment

3.5.2 Regarding Te Mana o te Wai, I consider that the proposal and its effects should be viewed in the context of the wider scheme, which will convert the system to land disposal of the wastewater within 5 years. Therefore, while the existing discharge to the Winton Stream does have some adverse effects on water quality and instream ecology, as shown by the periphyton and macroinvertebrate monitoring, the application is part of the transition to a system that will avoid those effects.

3.5.3 I note that the discharge both provides for and potentially impacts on the second priority of Te Mana o te Wai, which is the health needs of people. The effects on a registered drinking water supply take further down in the catchment have already been discussed. There is

potential for a localised health risk near the outfall, but it is an unlikely location for swimming due to limited access, and I consider that the risk can be addressed by signage. On the other side of the equation, the system removes sewage from the vicinity of dwellings, reducing the potential health risk that would arise if the township was reliant on individual on-site sewage systems.

3.5.4 The current proposal can be viewed as a stage in the development of the wastewater system. The discharge to the stream is existing and, in practical terms, cannot be changed to land discharge immediately. In the context of the longer-term operation, I consider that the short-term discharge will not be inconsistent with Policies 1, 8, 9 and 10 of the NPSFM 2020.

3.5.5 Regarding Policy 12, the national targets for primary contact are for 2030 and 2040. The proposed short-term consent and the discharge to the river will have ceased by 2028. Therefore, proposal is not inconsistent with Policy 12.

3.5.6 Policy 15 is generally supportive of the application.

3.6 Relevant provisions of the New Zealand Coastal Policy Statement (Section 104(1)(b)(iv))

3.6.1 Not applicable.

3.7 Relevant provisions of the Southland Regional Policy Statement 2017 (Section 104(1)(b)(v))

3.7.1 The Regional Policy Statement 2017 became operative on 9 October 2017.

3.7.2 The following objectives and policies in the Regional Policy Statement are of particular relevance to this application. In some cases below, the policies have been abbreviated to exclude clauses that are not relevant to the application[17].

Objective TW.3 Mauri and wairua are sustained or improved where degraded, and mahinga kai and customary resources are healthy, abundant and accessible to tangata whenua.

Policy TW.1 Consult with, and enhance tangata whenua involvement in local authority resource management decision-making processes, in a manner that is consistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

Policy TW.3 Take iwi management plans into account within local authority resource management decision-making processes.

Policy TW.4 When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:

(a) recognises and provides for:

(i) traditional Māori uses and practices relating to natural resources (e.g. mātaitai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);

[17] Full versions of the policies can be viewed at: https://www.es.govt.nz/Document%20Library/Plans,%20policies%20and%20strategies/Regional%20policy%20statement/Southland%20Regional%20Policy%20Statement%202017.pdf

(ii) the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;
(iii) mahinga kai and access to areas of natural resources used for customary purposes;
(iv) mauri and wairua of natural resources;
(v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;
(vi) Māori environmental health and cultural wellbeing.

(b) recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.

Objective WQUAL.1 Water quality in the region:
(a) safeguards the life-supporting capacity of water and related ecosystems;
(b) safeguards the health of people and communities;
(c) is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;
(d) is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.

Policy WQUAL.1
(a) …. ; and
(b) Manage discharges and land use activities to maintain or improve water quality to ensure freshwater objectives in freshwater management units are met.

Policy WQUAL.2 Maintain or improve water quality, having particular regard to the following contaminants:
(a) nitrogen;
(b) phosphorus;
(c) sediment;
(d) microbiological contaminants.

Policy WQUAL.7 Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.

Policy WQUAL.8 Prefer discharges of contaminants to land over discharges of contaminants to water, where:
(a) a discharge to land is practicable;
(b) the adverse effects associated with a discharge to land are less than a discharge to water.

Policy WQUAL.9 Avoid the direct discharge of sewage, wastewater, industrial and trade waste and agricultural effluent to water unless these discharges have undergone treatment.

Policy WQUAL.11 Avoid, as far as practicable, remedy or mitigate the risks that the adverse effects of land use activities and discharges of contaminants have on the sources of community water supplies.

Objective INF.1	Southland's regionally significant, nationally significant and critical infrastructure is secure, operates efficiently, and is appropriately integrated with land use activities and the environment.
Policy INF.1	Recognise the benefits to be derived from, and make provision for, the development, maintenance, upgrade and ongoing operation of regionally significant, nationally significant and critical infrastructure and associated activities.
Policy INF.2	Where practicable, avoid, remedy or mitigate the adverse effects of infrastructure on the environment. In determining the practicability of avoiding, remedying, or mitigating adverse effects on the environment, the following matters should be taken into account: (a) any functional, operational or technical constraints that require the physical infrastructure of regional or national significance to be located or designed in the manner proposed; (b) whether there are any reasonably practical alternative designs or locations; (c) whether good practice approaches in design and construction are being adopted; (d) where appropriate, and such measures are volunteered by a resource user, whether any significant residual adverse effects can be offset or compensated for; and (e) the need to give effect to the NPSET (2008)[18] including that planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.

3.7.3 The Regional Policy Statement includes the following definitions:

Infrastructure includes:

(f) A drainage or sewerage system;

(l) Anything described as a network utility operation in regulations made for the purposes of the definition of "network utility operator" in Section 166 of the Act.

Critical infrastructure

Infrastructure that provides services which, if interrupted, would have a significant effect on the wellbeing and health and safety of people and communities and would require reinstatement, and includes all strategic facilities.

Regionally significant infrastructure

Infrastructure in the region, which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure.

[18] NPSET = National Policy Statement on Electricity Transmission 2008

Comment

3.7.4 With regard to Policies TW.1 and TW.4, I note that the applicant consulted with Te Ao Marama Inc. about the longer term options prior to lodging the application (outlined in Section 1.2.2 of the application).

3.7.5 Te Tangi a Tauira is discussed in Section 6.4.6.3 of the application and in a later section of this report, in accordance with Policy TW.3.

3.7.6 Policies WQUAL.1 and WQUAL.2 seek to maintain or improve water quality, in order to meet objectives for freshwater management. In the short term, the proposal will not improve water quality, but at the end of the consent period, the discharge to the stream will cease as the system switches to discharging the wastewater onto land.

3.7.7 With regard to Policy WQUAL.9, the discharge is into water, but the wastewater is treated prior to discharge.

3.7.8 The sewerage system and discharge are beneficial to the Winton community, so the proposal is supported by Policy WQUAL.7.

3.7.9 In terms of Policies INF.1 and INF.2, I consider that the wastewater system is both critical infrastructure and regionally significant infrastructure. Policy INF.1 does not justify retaining infrastructure that is having adverse effects on the environment, but I consider that Policies INF.1 and INF.2 provide support for looking at the current proposal as only a phase in the wastewater system development (which involves changing to a land discharge system within 5 years). Policy INF.2 recognises a degree of practicability in making changes to the infrastructure. In this case, the discharge to the river cannot be just switched off without considerable community disruption. So providing for a phase while change is made to the method of disposal is consistent with the policy.

3.7.10 The longer-term proposal of discharging the wastewater to land will be consistent with Policy WQUAL.8.

3.8 Relevant provisions of the relevant regional plan objectives, policies and rules (Section 104(1)(b)(vi))

Proposed Southland Water and Land Plan

3.8.1 The Proposed Southland Water and Land Plan (pSWLP) was notified by Environment Southland on 3 June 2016. The Council's decision on the pSWLP was publicly notified on 4 April 2018.

3.8.2 Appeals on the proposed plan have been considered in the Environment Court, and a series of interim decisions and decisions have been released by the Court. As a result, some provisions are now to be treated as operative and have superseded the corresponding Regional Water Plan provisions. For the purposes of this application, Rule 33A, and the objectives and policies listed below may be regarded as operative.

3.8.3. The proposed Southland Water and Land Plan contains the following provisions of relevance to the application. In some cases, I have abbreviated the policies, but where I have omitted a section, I have stated the topic of the section in a footnote. The purpose of the abbreviations

is to remove clauses that are unrelated to the proposal, and would otherwise reduce focus from the sections that are relevant.

Interpretation Statement:
All persons exercising functions and powers under this Plan and all persons who use, develop or protect resources to which this Plan applies shall recognise that:

(i) Objectives 1 and 2 are fundamental to this plan, providing an overarching statement on the management of water and land, and all objectives are to be read together and considered in that context; and
(ii) the plan embodies ki uta ki tai and upholds Te Mana o Te Wai and they are at the forefront of all discussions and decisions about water and land.
(iii) The Policies in this plan must be interpreted and applied in a manner that implements the Objectives.

Objective 1	*Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.*
Objective 2	*The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).*
Objective 3	*Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.*
Objective 4	*Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.*
Objective 6	*Water quality in each freshwater body, coastal lagoon and estuary will be:* *(a) Maintained where the water quality is not degraded; and* *(b) Improved where the water quality is degraded by human activities.*
Objective 14	*The range and diversity of indigenous ecosystems and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.*
Objective 18	*All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.*
Policy 1	*Enable papatipu rūnanga to effectively undertake their kaitiaki (guardian/steward) responsibilities in freshwater and land management through the Southland Regional Council:* *1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni (landscape features of special*

importance or value), nohoanga, mātaitai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;

2. *identifying Ngāi Tahu interests in freshwater and associated ecosystems in Murihiku (includes the Southland Region); and*
3. *reflecting Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Murihiku (includes the Southland Region), consistent with the Charter of Understanding.*

Policy 2

Any assessment of an activity covered by this Plan must:

1. *take into account any relevant iwi management plan; and*
2. *assess water quality and quantity, taking into account Ngāi Tahu indicators of health.*

Policy 13

1. *Recognise that the use and development of Southland's land and water resources enables people and communities to provide for their social, economic and cultural wellbeing.*
2. *Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C*.

Policy 14

Prefer discharges of contaminants to land over discharges of contaminants to water, unless adverse effects associated with a discharge to land are greater than a discharge to water. Particular regard shall be given to any adverse effects on cultural values associated with a discharge to water.

Policy 15A

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by:

1. *avoiding where reasonably practicable or otherwise minimising any adverse effects, including residual adverse effects, of discharges so that those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges).*

Policy 15B

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, water quality will be:

1. *…….*[19]

1a. *…….*[20]

2. *improved, by requiring any application for the replacement of an expiring discharge permit …..*[21]*, to demonstrate how adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated so that water quality will be*

[19] Policy 15B(1) applies to new discharges to water

[20] Policy 15B(1a) applies to new discharges to land.

[21] The following phrases were omitted as they were not relevant to the proposal: "*seeking a discharge permit for an existing but previously unconsented discharge, or seeking a different discharge permit for an existing activity, including a variation under ss 127-129 RMA which do not involve a new discharge*"

improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

Policy 17A

1. *Avoid where reasonably practicable, or otherwise minimise, any adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, community sewerage schemes by:*
   - *(a) designing, operating and maintaining community sewerage schemes in accordance with recognised industry standards;*
   - *(b) implementing measures to reduce the frequency and volume of wet weather overflows from community sewerage schemes; and*
   - *(c) ensuring community sewerage schemes are operated and maintained to minimise dry weather overflows occurring.*
2. *…*[22]

Policy 26A

Recognise and provide for the sustainable and effective development, operation, maintenance and upgrading of regionally and nationally significant infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

Policy 40

When determining the term of a resource consent consideration will be given, but not limited, to:

1. *granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration and frequency of adverse effects from the activity or the capacity of the resource;*
2. *relevant tangata whenua values and Ngāi Tahu indicators of health;*
3. *the duration sought by the applicant and reasons for the duration sought;*
4. *the permanence and economic life of any capital investment;*
5. *the desirability of applying a common expiry date for water permits that allocate water from the same resource or land use and discharges that may affect the quality of the same resource;*
6. *the applicant's compliance with the conditions of any previous resource consent, and the applicant's adoption, particularly voluntarily, of good management practices; and*
7. *the timing of development of FMU sections of this Plan, and whether granting a shorter or longer duration will better enable implementation of the revised frameworks established in those sections.*

Policy 41

Consider the risk of adverse environmental effects occurring and their likely magnitude when determining requirements for auditing and supply of monitoring information on resource consents.

[22] Policy 17A(2) concerns domestic wastewater.

Definitions:

Critical infrastructure:

Means infrastructure that provides services, which, if interrupted, would have a significant effect on the wellbeing and health and safety of people and communities and would require reinstatement, and includes all strategic facilities.

Ngāi Tahu indicators of health:

A tool for Papatipu Rūnanga to facilitate monitoring and provide long-term data that can be used to assess land, water and taonga species health over time.

Regionally significant infrastructure:

Means infrastructure in the region, which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure.

Comment

3.8.4 Policy 26A is potentially a crucial policy for the determination of this application. The requested consent is part of a longer-term proposal to convert to a land discharge system, so a policy that recognises and provides for upgrading of regionally significant infrastructure means that the application is arguably not clearly contrary to the policies of the proposed plan. Therefore there is scope for the commissioner to determine that the application satisfies s104D(1)(b)(iii) of the Resource Management Act.

3.8.5 I also consider that Policy 26A alters how the other objectives and policies have to be considered. On the face of it the proposal conflicts with Objective 6 and Policy 15B, as it will not improve degraded water quality in Winton Stream in the immediate future. But if those provisions area considered alongside Policy 26A, which is to recognise and provide for regionally significant infrastructure, then the improvement in water quality is to occur while providing for upgrade to the infrastructure. As that upgrade cannot occur immediately, a water quality improvement over time would no longer be inconsistent with Objective 6 and Policy 15B.

3.8.6 Policy 13(2) is to 'manage' discharges to 'enable the achievement of Policies 15A and 15B. An upgrade over time is not inconsistent with that provision. That said, declining the application would have the appearance, at least on paper, of managing the discharge to achieve Policy 15B. However that pathway is unlikely to achieve any actual or faster improvement in the water quality or ecology of Winton Stream.

3.8.7 Policy 17A is specific to community wastewater system discharges, and requires that the system be operated in accordance with industry standards, and by avoiding overflows, in order to avoid, or otherwise minimise, adverse effects on water quality. Section 3.3 of the application confirms that the system is operated in accordance with industry standards.

3.8.8 Regarding Objective 4 and Policy 1, the applicant consulted with Te Ao Marama Inc. prior to the application, particularly with regard to the longer-term wastewater discharge options. Te Ao Marama Inc. and Te Rūnanga o Ngāi Tahu were also identified as affected parties and sent

direct notice of the application, although they did not make a submission. A statutory acknowledgement notice had earlier been sent to Te Rūnanga o Ngāi Tahu.

3.8.9 Policy 2 requires that the iwi management plan, Te Tangi a Tauira, be taken into account. The plan is discussed later in this report. Indicators of health are listed in Section 3.5.11 of Te Tangi a Tauira, and include water quality, whether it is safe to eat fish and gather plants, and whether it is safe to drink water.

3.8.10 Policy 40 lists factors to be taken into account with regard to consent duration, but does not limit consideration to those factors. In this case, the applicant has sought a five-year consent period, and provided information about the timeframes for the stages to develop the land discharge. Having considered Policy 40, I don't believe that the factors listed warrant a shorter duration. In terms of factor 7, the timing of FMU (Freshwater Management Unit) sections of the plan, the Progressive Implementation Programme states that new limits will be operative by the end of 2025, but it would not be unreasonable to expect changes to existing activities to occur over the years following.

3.9 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))

Te Tangi a Tauira

3.9.1 Te Tangi a Tauira is relevant and reasonably necessary to the determination of this application. Consideration of this plan is supported by Policy TW.3 of the Regional Policy Statement 2012 and by Policy 1A of the Regional Water Plan. The relevant provisions are:

General Water Policy

Policy 3.5.10.1 *The role of Ngāi Tahu ki Murihiku as kaitiaki of freshwater must be given effect to in freshwater policy, planning and management.*

Policy 3.5.10.3 *Protect and enhance the mauri, or life supporting capacity, of freshwater resources throughout Murihiku.*

Wastewater Disposal

Policy 3.5.2.6 *Avoid the use of water as a receiving environment for the direct, or point source, discharge of contaminants. Even if the discharge is treated and therefore considered "clean", it may still be culturally unacceptable. Generally, all discharge must first be to land.*

Policy 3.5.2.7 *Assess waste disposal proposals on a case-by-case basis, with a focus on local circumstances and finding local solutions.*

Policy 3.5.2.8 *Wastewater disposal options that propose the direct discharge of treated or untreated effluent to water need to be assessed by the kaitiaki rūnanga on a case by case, individual waterway, basis. The appropriateness of any proposal will depend on the nature of the proposal, and what waterway is involved. Individual waterways possess their individual mauri and*

values, and kaitiaki rūnanga are in the best position to assess the potential impacts of a proposal on such values.

Policy 3.5.2.15 *Any discharge activity must include a robust monitoring programme that includes regular monitoring of the discharge and the potential effects on the receiving environment. Monitoring can confirm system performance, and identify and remedy any system failures.*

Policy 3.5.2.18 *Recommend a duration not exceeding 25 years, for discharge consents relating to wastewater disposal, with an assumption that upon expiry (if not before), the quality of the system will be improved as technological improvements become available. In some instances, a lesser term may be appropriate, with a condition requiring the system is upgraded within a specified time period.*

Discharge to Water

Policy 3.5.12.3 *Consider any proposed discharge activity in terms of the nature of the discharge, and the sensitivity of the receiving environment.*

Policy 3.5.12.4 *When existing rights to discharge to water come up for renewal, they must be considered in terms of alternative discharge options.*

Policy 3.5.12.5 *When assessing the alternatives to discharge to water, a range of values, including environmental, cultural and social, must be considered in addition to economic values.*

Policy 3.5.12.6 *Encourage the establishment of wetland areas, where practical, as an alternative to the direct discharge to water. Discharge to a wetland area allows Papatūānuku the opportunity to filter and clean any impurities.*

Stream Health Indicators

Policy 2(2) of the Proposed Southland Water and Land Plan refers to Ngāi Tahu indicators of health for water quality and water quantity. Section 3.5.11 of Te Tangi a Tauira contains the following:

Indicators used by tangata whenua to assess stream health:

- *Shape of the river*
- *Sediment in the water*
- *Water quality in the catchment*
- *Flow characteristics*
- *Flow variations*
- *Flood flows*
- *Sound of flow*
- *Movement of water*
- *Fish are safe to eat*
- *Uses of the river*
- *Safe to gather plants*

- *Indigenous vs. exotic species*
- *Natural river mouth environment*
- *Water quality*
- *Abundance and diversity of species*
- *Natural and extent of riparian vegetation*
- *Use of river margin*
- *Temperature*
- *Catchment land use*
- *Riverbank condition*
- *Water is safe to drink*
- *Clarity of the water*
- *Is the name of the river an indicator?*

Comment

3.9.2 Te Tangi a Tauira is an iwi management plan and was not developed under the same processes as a regional plan.

3.9.3 With regard to Policy 3.5.10.1, the applicant had consulted with Te Ao Marama Inc., particularly about the longer-term wastewater discharge proposals, and both Te Ao Marama Inc. and Te Rūnanga o Ngāi Tahu were identified as affected parties and were directly sent notice of the application.

3.9.4 The existing discharge is likely to be adversely affecting the mauri[23] of the Winton Stream, and will do so until the wastewater can be discharged to land. The proposal can only be considered consistent with Policy 3.5.10.3 when considered in the wider scope of the planned switch to land discharge. That is also the case for Policy 3.5.2.6.

3.9.5 Taking into account the alternative of discharge to land is consistent with Policy 3.5.12.4 and 3.5.12.5.

3.9.6 Policy 3.5.12.6 refers to the use of wetlands. I note that a constructed wetland is part of the existing treatment system.

3.9.7 A number of the indicators of stream health for water quality would indicate that the Winton Stream is adversely impacted by the applicant's discharge and by the effects of discharges and land use elsewhere in the catchment, in particular:

- Water quality in the catchment – SOE monitoring at Lochiel indicates degraded water quality.
- Shape of the river – incised and straightened
- Safe to gather plants – E. coli levels suggest that it is not.
- Water quality – acknowledged as adversely affected by the applicant
- Catchment land use – largely developed agricultural land and urban run-off
- Water is safe to drink – E. coli levels suggest that it is not.
- Clarity of the water – affected by the discharge

[23] Page 27 of Te Tangi a Tauira describes mauri as the life principal in all objects, animate and inanimate. And the presence of mauri entrusts people to appreciate and respect that resource.

3.10 Section 104D Consideration of Non-complying Activities

3.10.1 Section 104D of the Resource Management Act applies to the consideration of non-complying activities, and states as follows:

> *(1) Despite any decision made **[[**for the purpose of notification**]] [[**in relation to adverse effects**]]**, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
>
> *(a) the adverse effects of the activity on the environment (other than any effect to which **[[**section 104(3)(a)(ii)**]]** applies) will be minor; or*
>
> *(b) the application is for an activity that will not be contrary to the objectives and policies of—*
>
> *(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
>
> *(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
>
> *(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
>
> *(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.**]***

Comment

3.10.2 The effect of s104D is to limit the scope for an application to be approved. Even if an application passes the s104D tests, it must still be assessed under s104 and can be refused on grounds arising from that section.

3.10.3 As a non-complying activity the application can only be approved if the consent authority is satisfied that either the adverse effects on the environment are minor, or that the proposal is not contrary to the objectives and policies of the operative and proposed regional plans. Contrary means "opposed in nature, different or opposed to". The Environment Court has noted that "an absence of support does not equate to the activity being contrary"[24].

3.10.4 As discussed earlier, the application states that the discharge into the Winton Stream results in "*significant adverse effects on the receiving environment that are more than minor*." That appears to close off the pathway under s104D(1)(a).

3.10.5 In terms of s104D(1)(b), the direction of policies under the proposed Water and Land Plan seek to enhance degraded water quality, such as occurs in the Winton Stream. However, the proposal is not necessarily contrary to the policies of the proposed plan due to Policy 26A.

3.10.6 Policy 26A is linked to avoiding, or otherwise mitigating, adverse effects on the environment. As I have discussed earlier, I consider that the proposal and its effects should be viewed in the context of the wider scheme, which will convert the system to land disposal of the wastewater within 5 years. The discharge to the stream is existing and, in practical terms, cannot be changed to discharge onto or into land immediately. However, the planned change to land discharge will avoid or mitigate adverse effects on Winton Stream when considered beyond the immediate 5-year period. On that timescale, I consider that the proposal will be provided for by Policy 26A.

[24] Paragraph 35, Wilson v Whangarei DC EnvC W020/07

3.11 Consideration of activities affecting drinking water supply source water (Section 104G)

3.11.1 Section 104G of the Resource Management is as follows:

> *When considering an application for a resource consent, the consent authority must have regard to—*
>
> *(a) the actual or potential effect of the proposed activity on the source of a drinking water supply that is registered under section 55 of the Water Services Act 2021; and*
>
> *(b) any risks that the proposed activity may pose to the source of a drinking water supply that are identified in a source water risk management plan prepared in accordance with the requirements of the Water Services Act 2021.*

3.11.2 This may seem like repetition of the Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007; however, the regulations only apply to water takes and discharges of contaminants. S104G applies more broadly, allowing effects on drinking water supplies to be considered for other activities.

3.11.3 As discussed earlier, the applicant's discharge has existing since the 1960s, and the water supply drawn at Branxholme is treated for existing contaminant levels. Therefore, it is unlikely that during normal operation the proposed discharge will affect the Invercargill City water supply take.

3.11.4 I am not aware of a source water risk management plan for Invercargill City's Branxholme water take.

3.12 Section 105 matters relevant to discharge permits

3.12.1 Section 105 of the Resource Management Act is as follows:

> *(1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, 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.*
>
> *(2) …..*

3.12.2 The nature of the discharge and the sensitivity of the receiving environment have been discussed in the application and are outlined above.

3.12.3 Section 1.2.2 of the application discusses the options considered for wastewater treatment and disposal. The applicant has decided on land discharge after consultation with affected parties.

3.12.4 However, Section 6.5 of the application states that there are no alternatives to a short-term continuance of the existing treatment and discharge to the Winton Stream.

3.13 Section 107 restriction on grant of certain discharge permits

3.13.1 Except under specific circumstances, Section 107(1) of the Resource Management Act states that a discharge permit cannot be granted for the discharge of a contaminant into water:

"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."

3.13.2 The exceptions to the restriction provided under s107(2) are that the consent can be granted if the Consent Authority 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."

3.13.3 Of the effects listed in s107(1), Section 6.7 of the application identifies that the discharge may give rise to a conspicuous change in the colour or clarity of the stream after reasonable mixing during low flow periods.

3.13.3 Section 6.8 of the application discusses caselaw, in particular, paragraphs 89 and 90 of *Horowhenua District Council [2015] NZEnvC 45*, that suggests that both the discharge can be regarded as temporary, and that exceptional circumstances exist for the purposes of s107. The exceptional circumstance being that there was no practicable alternative to the continued discharge until the alternative discharge to land can be implemented.

3.13.4 I consider that, in the circumstances, exceptions under s107(2) exist, and that it is consistent with the purpose of the Resource Management Act to approve the application, particularly bearing in mind Policy 26A of the proposed Water & Land Plan.

4. Conclusion

4.1 Overall view

4.1.1 In my opinion, by a narrow margin, the application should be approved.

4.1.2 The discharge into Winton Stream is a non-complying activity and, when considered by itself, has more than minor adverse effects. That is acknowledged in the application. By itself, the discharge is also inconsistent with, and likely contrary to, the policies of the regional plans.

4.1.3 However I consider that the correct approach is to take a wider view of the wastewater system, including the transition to land discharge. In that context, and having regard to Policies 13(2) and 26A of the proposed Water & Land Plan, I don't consider that the proposal is contrary to the plan provisions.

4.1.4 I also recognise that there needs to be a degree of pragmatism in this case. Wastewater from Winton Township is currently being treated and discharged into the stream, and that cannot realistically be immediately shut off immediately without significant adverse effects on the Winton community. Realistically, it will take time to develop the consents and infrastructure for the land discharge.

4.1.5 I would not be recommending approval for this application if it was not associated with a planned shift to land discharge. I don't consider that Policies 13(2) and 26A would provide sufficient scope for approval if the intent was just to continue with the existing activity, as there would be no change in effects over the longer term.

4.1.6 As mentioned earlier, I have not sought a cultural impact assessment. Firstly, I believe that to be the applicant's responsibility, particularly in an instance where they want a consent for an activity of this nature. Also, as mentioned earlier in this report, it was my understanding that, despite the wetland treatment, the discharge into the stream was likely to be contrary to the policies of Te Tangi a Tauira, and adversely impact on cultural and spiritual values. However, by carrying out consultation, and committing to land discharge, there appears to be a degree of acceptance from Murihiku tangata whenua, or at least not direct opposition, to the short-term discharge to the stream.

4.4 Conditions

4.4.1 Section 7 of the application lists proposed conditions. With minor amendments, I support the proposed conditions. My suggested conditions are included with the appendices.

4.4.2 The application was for a 5-year consent period. I have taken into account Policy 40 of the proposed Water and Land Plan, and that the term requested aligns with the plans to shift the discharge. I don't believe that there are strong reasons to apply a shorter duration. Ideally, the discharge to the river will cease as soon as possible because of the adverse effects that it causes, but the 5-year term does not seem unreasonable for the steps required to convert the system to land discharge.

4.4.3 I note that the existing resource consent expires on 8 December 2023. Therefore, I recommend that the new consent expire on 8 December 2028.

5. Information about this report

5.1 Status and purpose of this report

5.1.1 This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the determination of the application made by Southland District Council to discharge treated wastewater into Winton Stream. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the commissioner to consider the report.

5.1.2 The purpose of the report is to assist the commissioner in making a decision on the application.

5.2 About the author

5.2.1 My name is Stephen West. I am a Principal Consents Officer employed by the Southland Regional Council. I have been employed by the Council as a consents officer since 1993. Prior to that, I worked as a technician in the Hydrology section of the Southland Catchment Board and Southland Regional Council.

5.2.2 I hold the qualifications of New Zealand Certificate of Engineering (Civil) and Bachelor of Arts (Geography and Environmental Studies) degree.

5.2.3 I have been involved with the application since it was lodged and received by Council.

5.3 Information relied on in preparation of this report

5.3.1 In preparation of this report I have had regard to the following documents:

- resource consent application;
- Resource Management Act 1991;
- The National Policy Statement for Freshwater Management 2020;
- Regional Policy Statement 2017;
- Proposed Southland Water and Land Plan;
- Te Tangi a Tauria (Iwi Management Plan) 2008;
- Environment Southland's Progressive Implementation Programme for implementation of the National Policy Statement for Freshwater Management.

Stephen West
Principal Consents Officer

Reviewed and Approved for release
Lacey Bragg
Consents Manager

Attached: Discharge Permit AUTH-20233188

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