

BEFORE COMMISSIONERS APPOINTED BY THE CANTERBURY REGIONAL COUNCIL

UNDER the Resource Management Act 1991

IN THE MATTER Applications CRC201188 for a land use consent to place structures within Coastal Hazard Zones 1 and 2, CRC201190 for a coastal permit to disturb, deposit material, erect and place structures and occupy the Coastal Marine Area and CRC201194 for a coastal permit to discharge contaminants to the Coastal Marine Area by Oceania Dairy Limited.

**EVIDENCE OF KYLIE SUSAN HALL FOR
TE RŪNANGA O AROWHENUA, TE RŪNANGA O WAIHAO, AND
TE RŪNANGA O NGĀI TAHU**

5 June 2020

Chapman Tripp

Solicitor: Rachel Robilliard
(Rachel.Robilliard@chapmantripp.com)

PO Box 2510
CHRISTCHURCH 8442

Tel: (03) 353 1234

INTRODUCTION

1. My full name is Kylie Susan Hall. I hold the degrees of Bachelor of Arts with a double major in Geography and Sociology from the University of Canterbury (2001), a Master of Environmental Policy with honours from Lincoln University (2003), and a graduate diploma in Psychology from the University of Canterbury (2013). I am a full member of the New Zealand Planning Institute (**NZPI**).
2. I am a Principal Planner employed by Aoraki Environmental Consultancy Limited (**AEC**). I have been a Principal Planner with AEC for 16 months. AEC is the mandated legal entity that represents Te Runanga o Arowhenua (**Arowhenua**). AEC has been given the mandate by Te Runanga o Arowhenua to make decisions on environmental matters, including resource consents, private and Council Plan Changes, District Plan reviews, Environment Court cases and the preparation of Cultural Impact Assessment (**CIA**) reports.
3. I have 15 years of professional experience in the planning discipline. Before working at AEC I was employed by Waikato District Council (**WDC**) as a Consents Planner for four years, then as an Intermediate Consultant Planner at Davis Ogilvie and Partners for two years where I prepared resource consent applications for land development projects that involved stormwater and wastewater discharge components. Following this, I was employed by the Department of Conservation Canterbury Consultancy for two years as a Senior Planner where I was responsible for reviewing and commenting on all District and Regional Plan change documents and water strategies for the Canterbury Region on behalf of the Department. Following this, I held Senior Planner positions at Baseline Group Limited and AECOM where I was responsible for preparing resource consent applications for District and Regional Councils as well as processing resource consents on behalf of Timaru District Council (**TDC**), Christchurch City Council (**CCC**) and Environment Canterbury (**ECan**).
4. I have been asked to provide evidence on behalf of Te Rūnanga o Ngāi Tahu, Te Rūnanga o Arowhenua and Te Rūnanga o Waihao (**Waihao**) (collectively referred to as **Ngāi Tahu** in my evidence) in relation to their submissions on the consent applications by Oceania Dairy Limited (**Oceania** or '**the applicant**') related to the placement of an ocean outfall structure within the Coastal Marine Area (**CMA**) and the discharge of contaminants to the CMA.

5. I have prepared and presented evidence in Council hearings, the Environment Court and the High Court on behalf of Councils and private clients covering a number of development projects.
6. In preparing my evidence I have reviewed:
 - (a) The reports and statements of evidence of other experts giving evidence relevant to my area of expertise including:
 - I. The Section 42A Officer Report prepared by Ms Kelly Walker and Deepani Seneviratna on behalf of ECan (**Section 42A Officer's Report**) dated 18 March 2020; and
 - II. The hearing evidence prepared by Ms Sukhi Singh on behalf of Oceania Dairy Limited (**Oceania Dairy Limited Evidence**) dated 28 May 2020.
 - (b) The resource consent application submitted to ECan by Babbage Consultants Limited (**Babbage**) dated 30 August 2019 ('**Oceania Dairy Factory Wastewater Pipeline and Outfall' - Assessment of Effects on the Environment**').
 - (c) The Cultural Impact Assessment (dated 13 March 2019) prepared by Aukaha on behalf of Waihao (**CIA**).
 - (d) The New Zealand Coastal Policy Statement 2010 (**NZCPS**).
 - (e) The Canterbury Regional Policy Statement 2013 (**CRPS**), particularly Chapter 8: The Coastal Environment.
 - (f) The Regional Coastal Environment Plan for Canterbury 2005 (**RCEP**), particularly Chapter 4: Tangata Whenua and the Coastal Environment, Chapter 7: Coastal Water Quality, and Chapter 8: Activities and Occupation in the Coastal Marine Area.
 - (g) The Iwi Management Plan of Kati Huirapa 1992 (**Arowhenua Iwi Management Plan**) and Waitaki Iwi Management Plan 2019 (**Waihao Iwi Management Plan**), which are planning documents recognised by the iwi authority, Te Rūnanga o Ngāi Tahu.

(h) The Te Whakatau Kaupapa Ngāi Tahu Resource Management Strategy for the Canterbury Region, November 1990.

7. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note (updated 1 December 2014) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement are within my area of expertise except where I state that I am relying on information provided by another party. I have not knowingly omitted to consider material facts known to me that might alter or detract from the opinions expressed.
8. I note that whilst I am employed by Aoraki Environmental Consultancy, I am bound by the Code of Conduct and the professional ethics of the New Zealand Planning Institute, and I am required to be impartial and unbiased in my professional opinions expressed.

MY ROLE

9. As a Principal Planner employed by AEC, I have been asked to prepare expert planning evidence on behalf of Arowhenua. As a result of resourcing constraints within the Rūnanga environmental entity Aukaha, I have also been asked to prepare planning evidence that represents the interests Waihao Rūnanga. As a result of the application site falling within the takiwa of both Arowhenua and Waihao, I have been gifted the permission to speak on behalf of both rūnanga at the hearing as the messages directed to ECan and the applicant about cultural values and potential effects are aligned and well known. However, any discussions concerning the wording of conditions of consent must be directed to both rūnanga.
10. As an employee of AEC, I was not party to any consultation process that took part between Oceania, Babbage, Aukaha and Waihao. I cannot therefore contribute to any discussion about the nature and extent of the consultation nor the outcomes of any meetings held. I can only speak to the consultation process between Oceania, Babbage, Arowhenua and AEC.

SCOPE OF EVIDENCE

11. I have been asked by Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Ngāi Tahu to prepare planning evidence in relation to the resource consent applications lodged by Babbage Consultants Limited on behalf of Oceania Dairy

Limited. I have not visited either the Oceania Dairy Limited factory site or the outfall pipeline location. My evidence includes:

- (a) A brief summary of the application
- (b) Details of the key messages from the Ngāi Tahu submissions
- (c) A planning assessment
 - I. Statutory considerations
 - II. Section 104 matters
 - III. Section 107 and 138A matters
 - IV. Part 2 of the RMA
- (d) Conclusions

SUMMARY OF APPLICATION

12. Oceania has made an application to ECan for a suite of resource consents relating to the construction of a 7.5 km pipeline and discharge of treated wastewater from their milk-processing factory located at 50 Cooney's Road, Glenavy, into the Coastal Marine Area. The resource consents sought involve:
 - (a) To undertake earthworks associated with the installation of a wastewater pipeline in the road reserve, from Oceania's milk-processing factory at Glenavy (CRC201187).
 - (b) To take groundwater for the purposes of site dewatering during construction of the pipeline. Dewatering will occur along the wastewater pipeline length from the factory to the ocean outfall structure and at the surge chamber during site construction (CRC201191).
 - (c) To discharge groundwater from site dewatering to land during the construction of the pipeline (CRC201192).
 - (d) To disturb the CMA and construct an ocean outfall in coastal Hazard Zones 1 and 2 using a micro-tunnelling method (CRC201188).
 - (e) To occupy the CMA including an underground pipeline to three diffusers located approximately 300 m offshore (201190).

- (f) To discharge treated factory wastewater, excluding domestic wastewater and stormwater, to the CMA, at a maximum volume of 10,000 cubic metres per day (116L/s). The discharge may result in contaminants entering coastal waters. Contaminants may include non-human pathogenic micro-organisms, nutrients, suspended solids, diluted cleaning products and dissolved salts (CRC201194).
 - (g) The existing wastewater irrigation system will be maintained and used in conjunction with the proposed outfall discharge into the coastal waters.
13. Oceania has requested a consent duration of 10 years for consents relating to construction CRC201187, CRC201188, CRC201191 and CRC201192 and 35 years for occupancy and operation being CRC201190 and CRC201194. The evidence of Ms S Singh and the s42A Report identify that the application has been bundled separately for activities under the Canterbury Land and Water Regional Plan (**LWRP**), which has an overall status of restricted discretionary, and activities under the RCEP, with an overall status of discretionary. I agree with this overall status.
 14. Reading both the resource consent application and the submission by Ngāi Tahu I consider that Ngāi Tahu understands there are two significant reasons behind the need for the additional resource consents and the pipeline project.
 15. The first reason is to allow for the progressive expansion of the factory. At present the factory has a single boiler and a dryer, and on average produces 1,740 m³ of process wastewater per day. The third stage of the expansion includes a second boiler and a dryer. The expansion of the factory will result in higher volumes of wastewater being produced on site (approximately 4,000 m³/day). Page four of the resource consent application explains that at present, the factory produces three wastewater streams:
 - (a) *“Clean wastewater”: condensate and other sources of “clean wastewater” have low concentrations of contaminants. Clean wastewater sources include truck wash, general outside use, and from the evaporation of liquid into milk powder. The Factory has an automatic system to test the conductivity and pH of its clean wastewater before it is disposed to land. Any clean wastewater which has high conductivity, or is acidic or alkali, is diverted to the “factory wastewater” treatment system.*

- (b) *“Factory wastewater”: this is produced by cleaning the factory equipment and comprises a mix of milk residues and cleaning products.*
- (c) *“Domestic wastewater”: this is disposed via a dedicated soakage field on the Factory site, using a drip-line system.*

16. The resource consent application report states the factory currently discharges all wastewater to land via irrigation (except for the domestic wastewater, which is discharged via an approved drip-line system). Oceania has three resource consents (CRC171312, CRC164414 and CRC174198) to discharge (irrigate) all its wastewater (clean and treated) to 404 ha of surrounding farmland.
17. The second reason behind the need for the suite of resource consents and the ocean outfall pipe is to address Oceania’s inability to comply with the conditions of their existing resource consent for wastewater discharge for nine months of the year. Oceania claim that during the winter months, the crop rotation programme leaves the ground bare, and the soils become waterlogged causing wastewater to pond on the land surface creating an odour problem.
18. Oceanica further claim that during the spring and autumn months, there is insufficient freshwater to properly flush the irrigation lines. Without thorough flushing, milk residues in the irrigation lines can stagnate and create odour when sprayed on the fields. This issue appears to be most prevalent in early spring and late autumn as the factory produces less “clean wastewater” (less condensate due to lower incoming milk volumes), and the factory is unable to use water from the Morven-Glenavy Irrigation (MGI) scheme.

Ngāi Tahu Position

19. Te Rūnanga o Waihao, Te Rūnanga o Arowhenua and Te Rūnanga o Ngāi Tahu all oppose the proposed consents sought by Oceania; however, the specific components of the resource consent that cause the most concern, are those relating to the construction of the proposed pipeline and the discharge of the wastewater into the CMA. Therefore, the focus of the remainder of this evidence will fall on these two components rather than the entire proposal.

NGĀI TAHU SUBMISSIONS

20. Ngāi Tahu submitted three submissions in December 2019 in opposition to the proposed ocean outfall pipeline and the discharge of wastewater into the CMA. The three individual submissions are summarised as follows:

Te Rūnanga o Arowhenua

21. The submission prepared by AEC on behalf of Arowhenua states that the resource consent application does not adequately address the concerns of Arowhenua as rangatira and kaitaki for the South Canterbury area. For this reason, Arowhenua oppose the application in its entirety.
22. For Arowhenua, the submission centres on the Ngāi Tahu abhorrence to the discharge of wastewater to natural water regardless of the level of treatment.
23. The submission also discusses that for Arowhenua, there is also the abhorrence of transportation of waste material past Māori meeting houses, cemeteries and sacred Maori land sites. Between the Waitaki River and the Washdyke Lagoon north of Timaru, there are a number of culturally significant sites (burial sites, food gathering sites, settlement sites), waterways and coastal lagoons that are traditional mahinga kai gathering sites, which enabled Arowhenua to feed their families as well as trade with other South Island based tribes.
24. Arowhenua are also concerned that mahinga kai gathering sites have dramatically diminished in more recent times, not through choice or an unwillingness to exercise their traditional customs, but as a necessity. Arowhenua perceive the water quality within the waterways and coastal lagoons has declined to such a point that the fish and plant species that were once plentiful are no longer present or remain in such small numbers that it is no longer sustainable to harvest. Consequently, I consider the statement in the application [at page 30 of the AEE] that *"we are of the understanding that the immediate foreshore area has no particular significance to local iwi as a food source"* (page 30 of application AEE) is fundamentally incorrect.
25. Arowhenua are of the opinion that the resource consent application fails to understand the holistic manner in which Arowhenua interact with the wider ecosystem and environment. As outlined in the submission of Arowhenua, all aspects

of the community interact as a functional unit. The conceptual framework assumes people are an integral part of the ecosystem. The Iwi Management Plan of Kāti Huirapa sets out that Arowhenua see themselves as a part of ecosystems rather than separate from them. To achieve well-being, humans require basic materials, health, good social relations, security, and freedom of choice and action. Many of these basic necessities are provided directly and indirectly by ecosystems. Therefore, for Arowhenua, iwi members not only depend on ecosystems; they influence them directly through land use and management. The strength of this interdependency between humans and ecosystems may be conceptualised as a reciprocal relationship comprising manaaki whenua (caring for the land) and manaaki tangata (caring for people). Whilst this resource consent application is for an individual discharge application, the cumulative effects of activities such as this application could be described as akin to a “death by a thousand cuts”.

26. The Arowhenua submission refers to the resource consent not considering the cumulative effects of having multiple ocean outfall structures within proximity of one another on cultural values and taonga species such as the Hector’s dolphin (tūpoupou, pahu, and popoto) and New Zealand fur seal (kekeno). While the application considers the effects of the discharge after reasonable mixing, the Arowhenua submission raised concerns about the cumulative effect of discharging wastewater directly to the ocean combined with the nitrate and phosphate runoff from agricultural and horticultural practices which have the potential to produce contaminants, bacteria and viruses that are not necessarily mitigated by exposure to sea water. The overall concern of Ngāi Tahu is that contaminants make local seafood unsafe to eat and the water unsafe for human contact.

The submission also highlights that the resource consent application does not address the matter of factory failure and the risk of discharging additional waste products via the outfall in the case of an “emergency”. This scenario has also been avoided in the Officer’s s42A report and Ms Singh’s planning evidence and Arowhenua believe it is a concern that should be addressed. Whilst it is accepted that the applicant does not plan for a catastrophic factory or pipeline failure, failure from natural hazards and structural decay can and do occur. A recent example of this is Napier City Council’s wastewater outfall pipe, which was found in late 2018 to have a leak in a fibreglass joint some 700 m from shore, resulting in wastewater leaking into Hawkes Bay. The

leak continued for two years before the City Council had the funding to repair the pipeline. For Arowhenua, a failure in the pipe or a need to discharge untreated wastewater due to factory failure would cause significant harm to cultural values.

Te Rūnanga o Waihao

27. Waihao considers that there are three main activities which adversely impact mana whenua values; the discharge of wastewater to the ocean; the construction of the pipeline through indigenous skink habitat on shore; and the construction associated disturbance and the occupation of the pipeline offshore. Waihao oppose the application entirely.
28. The discharge of wastewater, and disturbance and occupation of the seabed are approximately 20 km south of the Wainono Lagoon, which is the Waihao Mātaitai area (shown in Appendix 1). The purpose of a Mātaitai is to regulate customary food and resource gathering within the area. There is not enough information in the application to determine if the Mātaitai will be adversely affected by the proposed activities.
29. Furthermore, the submission identifies concerns that part of the pipeline construction will occur within indigenous skink habitat, as described in the application. The survey undertaken for the purpose of the application identified the presence of McCann's Skink (mokomoko), an indigenous (endemic) skink which is not threatened. Six other indigenous skink and gecko species are also found within 50 kilometres of the pipeline construction site; Scree skink, Canterbury spotted skink, Green skink, Southern Grass Skink, Waitaha Gecko and the Southern Alps gecko. While the survey undertaken for the purpose of the application did not identify threatened skinks or geckos in this area, this does not mean that they are absent from the area.
30. The submission also discusses that discharges to water can create poor water quality, which can force whānau to change where they fish, swim, gather and even live. Discharges can degrade the mauri of the water and the safety of mahika kai resources. The discharge of wastewater into the moana, and the disturbance and occupation of the seabed will likely cause avoidance behaviour of ika and other marine species as outlined in the application. The avoidance behaviours will adversely affect the mahika kai resources and taoka in the vicinity. Gathering mahika kai relies on knowing the location of certain species throughout the year.

31. Waihao also considers the information included in the application thus far is insufficient to fully understand the adverse effects on the environment, and therefore on mana whenua values. The lack of information and inability to identify effects is of significant concern. Waihao also believes that the consideration of alternatives for the discharge of treated wastewater should be more detailed and robust.

Te Rūnanga o Ngāi Tahu

32. The purpose of the submission of Te Rūnanga o Ngāi Tahu was to support the individual submissions of Waihao and Runanga.

PLANNING ASSESSMENT

33. Oceania has applied for three land use consents and three coastal permits. I will set out below the relevant statutory considerations.

Statutory Considerations

34. I concur with Ms Singh and the s42A Officer's Report that the Resource Management Act 1991 (**RMA**) and the Regional Coastal Environment Plan for the Canterbury Region (**RCEP**) provide the statutory framework under which the Oceania application needs to be processed.

Resource Management Act 1991 – need for a resource consent

35. Section 12 of the RMA regulates activities to be carried out in the coastal marine area. In summary, under section 12, no person may disturb the seabed or deposit any substance on the seabed in a manner that is likely to have an adverse effect on the seabed unless expressly allowed by a national environmental standard, a rule in a regional coastal plan or a resource consent. Section 12(6) of the RMA states that this section does not apply to anything to which section 15A or section 15B applies.
36. The proposal involves the erection and placement of structures, occupation of the seabed, disturbances to seabed, deposition of material on the seabed and discharge of contaminants to the Coastal Marine Area. These activities are not expressly allowed by a national environmental standard or a rule in a regional plan (Canterbury Regional Coastal Environmental Plan). Therefore, resource consent is required.

37. Section 9(2) of the RMA restricts the use of land where the use would contravene a rule in a regional plan.

“No person may use land in a manner that contravenes a regional rule unless the use-

(a) Is expressly allowed by a resource consent; or

(b) Is an activity allowed by section 20A.

38. The proposal includes the erection and placement of a structure within Coastal Hazard Zones 1 and 2. The activities are not expressly allowed by the plan and therefore a consent is required.

39. I consider that resource consents are required under sections 12 and 15A of the RMA. This is consistent with the analysis in the Officer’s s42A Report (paragraphs 65-69).

The Regional Coastal Environment Plan for the Canterbury Region – Consent activity classification

40. Given that the proposed works are within the coastal marine environment, the RCEP applies. The RCEP covers section 9 (land use activities in the coastal hazard zones), section 12 activities and section 15 (discharges to the CMA).
41. The CMA includes the foreshore, seabed, and the coastal water and airspace above the water between the outer limit of the territorial waters (12 nautical miles) and the line of mean high-water spring tide (MHWS).
42. The application and the s42A Officers Report provide detail on the relevant rules for the application. I agree with Ms Singh and the s42A Officer that the application includes both restricted discretionary activities and discretionary activities.
43. The s42A Officers Ms Singh have both concluded that given the proposed activities under the RCEP are so closely linked that it is appropriate to bundle them as one activity in terms of activity classification. I agree with their reasoning.

Section 104 Matters

44. Section 104 of the RMA sets out the matters to which a consent authority must have regard to when considering an application for a resource consent and any submissions received.

45. In terms of section 104(1), and subject to Part 2 of the Act (which contains the Act's purpose and principles), the Hearings Panel must have regard to-
- (a) *Any actual and potential effects on the environment of allowing the activity;*
 - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
46. In relation to section 104(1)(c), I consider the mātaihai reserves provided for under the Fisheries (South Island Customary Fishing) Regulations 1999, Te Whakatau Kaupapa Ngāi Tahu Resource Management Strategy for the Canterbury Region, November 1990, the Waihao Iwi Management Plan, the Arowhenua Iwi Management Plan and considerations under the Marine and Coastal Area (Takutai Moana) Act 2011 are all relevant and necessary matters to determine the application. These will be discussed later in my evidence under the heading 'Other Matters'.
47. In addition, in accordance with section 104(1)(b) I consider that the provisions of the NZCPS and the CRPS are particularly relevant to this application. I also consider that the National Policy Statement for Freshwater Management 2014 (amended 2017) (**NPSFM**) is relevant under s 104(1)(b), particularly insofar as it relates to the interaction between freshwater and coastal water. In this respect, the proposed National Policy Statement for Freshwater Management 2019 (**proposed NPSFM**) should also be considered relevant under section 104(1)(c).

Section 104(1)(a) – Actual and potential effects on the environment

48. With regard to section 104(1)(a) of the RMA I consider the matters of concern to Ngāi Tahu broadly fall into two overlapping sets of effects:
- (a) *Effects on rangatiratanga and kaitiakitanga; and*
 - (b) *Effects on water quality, taonga species and mahinga kai.*
49. I will use these two headings to summarise what I consider are the key points in terms of the actual and potential effects on Ngāi Tahu advised by the cultural and technical experts under these two categories of effects.

Effects on Rangatiratanga and Kaitiakitanga

50. The Ngāi Tahu Claims Settlement Act (**NTCSA**) 1998 gives legal recognition to the status of Papatipu Rūnanga as manawhenua, kaitiaki, and rangatira of the natural resources within their takiwā boundaries.
51. The evidence of Mr T King advises that Te Rūnanga o Arowhenua and Te Rūnanga o Waihao are the Ngāi Tahu Papatipu Rūnanga representing the hapū Kāti Huirapa, who hold mana whenua and mana moana (customary authority) over the CMA including in the vicinity of the proposed ocean outfall pipeline and diffusers.
52. Section 2 of the RMA states that kaitiakitanga is “the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship”. Mr T King states in his evidence that as kaitiaki, Ngāi Tahu seek to preserve the mauri of the environment they are responsible for.
53. In relation to rangatiratanga, Mr T King advises in paragraph 24 of his evidence that for Kāti Huirapa to exercise their responsibilities as Rangatira and Takata Tiaki there is a need to take a multifaceted approach that includes:
 - (a) *Decision making at all levels with Treaty Partners and those with delegated obligations*
 - (b) *A strong economic base for our people*
 - (c) *Diverse skill sets of matāuranga and western knowledge*
 - (d) *Long term strategic thinking that provides for intergenerational prosperity and resilience*
 - (e) *A shift in the way the environment is managed and regarded to enact Ki Uta Ki Tai – we are part of nature, not its master.*
54. There are mātaihai reserves in Wainono Lagoon and Tuhawaiki, Te Ahi Tarakihi, and Waitarakao (refer to Appendix 1) which provide for the protection of mahinga kai and the marine environment through tikanga-based management of fisheries. The mātaihai reserves are a legal mechanism that assist Ngāi Tahu to sustain customary fishing practices and knowledge.
55. Mātaihai reserves are provided for under the Fisheries (South Island Customary Fishing) Regulations 1999 which were promulgated under Part 9 of the Fisheries Act

1996. The principal purpose or legislative objective of these Mātaitai is to manage, protect and enhance fisheries resources in order to recognise and provide for the customary non-commercial use and management practices of Ngāi Tahu Whānui. The other main purpose is to give further legislative recognition to the special relationship tangata whenua have with the coastline. The mātaītai reserves have been put in place to protect areas of coastline for mahinga kai. It is my understanding from the resource consent application that the currents will flow past the mātaītai reserves. As indicated in Mr T King's evidence, the ability to harvest healthy mahinga kai from the mātaītai reserves and surrounding area is important. The cumulative effects of this pipeline and the other discharges along the coastline mean rūnanga no longer feel it is safe to harvest in these areas.

Effects on water quality, taonga species and mahinga kai

56. It is my understanding from the Ngāi Tahu submissions and the evidence provided by Mr T King that the discharge of wastewater from the pipeline is abhorrent from a Ngāi Tahu perspective. Despite the applicant and Council experts finding the effects to be minor after reasonable mixing, Ngāi Tahu considers the level of information provided does not address the cumulative effects of permitting an additional industrial wastewater discharge into the marine environment. It is this deficiency and a lack of certainty around cumulative effects on cultural values that is of concern to Arowhenua and Waihao.
57. In terms of a potential effect arising within the CMA, I do not consider that the temperature of the discharge into the CMA and the potential this has to cause plankton blooms along the coastline has been sufficiently addressed. The currents along the east coast of the South Island travel north with contaminants discharging in Caroline Bay known to travel as far as Kaikoura. I was advised by Waihao that during a site visit to discharge point that the temperature of the discharge would be close to 40 degrees celsius (ambient) during the summer period by the time it has travelled almost eight kilometres from the factory to the diffusers. Waihao are concerned that this is significantly warmer than the ocean water.
58. I am unsure if the difference in sea temperature and the discharge wastewater temperature will have an adverse effect on taonga species including Hector's dolphins

and fur seals because an assessment of the cumulative effect of the existing and proposed ocean outfalls has not been completed to date.

59. The reason for an assessment of the cumulative effects, is to enable the unknown effects to be directly tied to the setting of trigger levels. If the monitoring locations or trigger levels are incorrect due to the modelling being incorrect, then plankton plumes may not be detected by the monitoring system. The evidence advises that an understanding of the physical environment underpins the understanding of ecological systems. A failure to consider these issues limits the ability to make informed decisions about the application and undermines any assessment of effects on which this knowledge is based.
60. Another significant concern that is of particular note, is that Oceania's prediction that Hector's dolphins and fur seal communities will not be affected is contingent on the modelling and the final design of the pipeline and diffusers. It is my understanding that the ecological monitoring proposed by Oceania can only provide 'assurance', if the timescales of the effect, the response of the ecological communities and the (spatial and temporal) resolution of the monitoring are adequately aligned and no effect is observed. However, based on the current proposal, the effects of this activity on ecological communities might not be detected until some months after the event that caused the change (i.e. after the discharge has commenced) and therefore cannot provide 'assurance' to manawhenua in this regard. Importantly, there is almost no opportunity to take remedial actions (assuming any are available).
61. To summarise, based on the reasons provided, Ngāi Tahu considers that failure to address these issues limits the ability to make informed decisions about the application and undermines any assessment of effects on which this knowledge is based. Consequently, Ngāi Tahu still consider that additional information is required before the actual and potential effects of the proposal on water quality and mahinga kai can be accurately determined. As a result, I am unable to recommend any consent conditions which I consider would address this level of uncertainty to ensure that the effects on water quality and mahinga kai are avoided, remedied or mitigated.

Section 104(1)(b) – Relevant Planning Provisions

62. Unless otherwise indicated the relevant objectives and policies of the NZCPS, RPS and RCEP are set out in the S42A Officers Report. In preparing my evidence I have chosen

to focus on the provisions relevant to the effects discussed in the Ngāi Tahu and cultural evidence i.e. the effects on water quality and mahinga kai and the effects on kaitiakitanga and rangatiratanga.

63. In the following section, I firstly identify the relevant planning provisions, and secondly, I provide an overall evaluation of whether I consider the application is consistent with the referenced policy.

New Zealand Coastal Policy Statement 2010 (NZCPS)

64. The NZCPS establishes national policies to achieve the purpose of the Act in relation to the coastal environment. The NZCPS is a mandatory policy statement under the Act and any regional policy statement or plan must be consistent with its policies. A consent authority, when considering an application for a resource consent and any submissions received, must, subject to Part 2 of the Act, have regard to, amongst other things, to any relevant provisions of this NZCPS.
65. I wish to draw attention to the relevance of Objective 3, Objective 6, Policy 2, Policy 21 and Policy 23.
66. Policy 2 of the NZCPS is titled 'The Treaty of Waitangi, tangata whenua and Māori heritage'. In taking into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) and kaitiakitanga in relation to the coastal environment the following provisions from the Policy are particularly relevant:
- Policy 2(a) which recognises that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment;
 - Policy 2(c) which provides that as far as practicable mātauranga Māori should be incorporated into the consideration of applications for consent;
 - Policy 2(e) which provides that the relevant iwi management plan must be taken into account; and
 - Policy 2(f) which provides opportunities for tangata whenua to exercise kaitiakitanga over waters and fisheries in the coastal environment.
67. With regards to Policy 2, I consider Oceania has not recognised the importance of the CMA and the surrounding offshore areas to tangata whenua. I do not believe that the relevant iwi management plans have been taken onto account nor does the application provide opportunities for tangata whenua to exercise kaitiakitanga. The

Assessment of Environmental Effects prepared by Oceania has not provided an assessment of relevant Iwi Management Plans. The Officer's s42A report also states at paragraph 276 that *"the applicant was waiting for Aukaha to provide an assessment of effects on cultural values and an assessment against relevant Iwi Management Plans"*.

68. In terms of an assessment of relevant Iwi Management Plans, I am unable to ascertain why the applicant's consultant has not completed this. Iwi Management Plans such as the Waitaki Iwi Management Plan 2019 are holistic resource management related documents that identify important issues regarding the use of natural and physical resources in an area. A lack of assessment within the application suggests that the current application does not enable manawhenua to further exercise kaitiakitanga over their mana moana.
69. It may be that Oceania was waiting on the CIA in order to facilitate the assessment necessary. As a writer of CIA reports on behalf of Arowhenua, I would like to emphasise that a CIA is a report documenting Māori cultural values, interests and associations with an area or a resource at a specific moment in time, and the potential impacts of a proposed activity on these. CIAs are a tool to facilitate meaningful and effective participation of Māori in impact assessments and do not replace the need for face to face communication. Whilst it is accepted that the report was delivered late due to resourcing pressures within Aukaha, the messaging within the report is the same as that communicated to the applicant and their consultants verbally.
70. Policy 3 of the NZCPS is titled 'Precautionary approach'. Policy 3(1) relates to adopting a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse. For Ngāi Tahu the discharge of contaminants directly to water is abhorrent so whilst the mitigation of effects has been identified by the applicant and ECan the discharge is seen to have an adverse effect on the values, including mahinga kai, of that part of the coast. When combined with the cumulative effects of the other discharges in the area Ngāi Tahu consider the effects are significant. Consequently, I do not consider that the application is consistent with this policy.
71. Policy 6 relates to coastal development. Of particular relevance is Policy 6(1)(b), which considers the rate at which built development and the associated public infrastructure

should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment. I consider that while the discharge could be seen to meet economic needs by allowing the factory expansion, the cultural values associated with the coastline will be compromised.

72. Policy 6(2)(a) recognises the potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations. As with 6(1)(b) the expansion and subsequent discharge from it may contribute to economic wellbeing but as Mr T King discusses it does not provide for cultural wellbeing.
73. Policy 11 of the NZCPS is titled 'Indigenous biological diversity'. Policy 11(b)(iv) relates to protecting indigenous biodiversity in the coastal environment by avoiding significant adverse effects, and avoiding, remedying or mitigating other adverse effects of activities on habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes. It is noted that both the Reporting Officer and Ms Singh have not provided an analysis of this policy; however, for completeness I will provide a brief assessment. Based on the concerns raised in the Ngāi Tahu evidence, I consider there is too much uncertainty to conclude that the effects on taonga and mahinga kai species in the coastal environment can be avoided, remedied or mitigated.
74. Policy 21 of the NZCPS is titled 'Enhancement of water quality'. Policy 21(c) advises that where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or is restricting existing uses, such as shellfish gathering and cultural activities, priority should be given to improving that quality. This includes tangata whenua identifying areas of coastal waters where they have particular interest, for example in cultural sites, wāhi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.
75. The Ngāi Tahu cultural evidence presented by Mr T King includes outlines the effects of water quality (pollution) on mahinga kai and all aspects of cultural identity in their mana moana. In addition, the Arowhenua submission provides details on their

concerns with the technical information in the current application. Based on the concerns raised in the Ngāi Tahu submission, I consider there is too much uncertainty to conclude that the application will be able to avoid, remedy or mitigate any adverse effects of deteriorated water quality on mahinga kai in the mana moana of Ngāi Tahu. I consequently do not consider that the current application is consistent with this policy.

76. Policy 22 of the NZCPS is titled 'Sedimentation'. Policy 22(1) requires the assessment and monitoring of sedimentation levels and impacts on the coastal environment. With regard to Policy 22, Oceania has identified that the receiving coastal environment is naturally highly turbid, and one of the direct effects of the dredging is to mobilise sediment which in turn will lead to an increased concentration of suspended particulate matter in the water column over a three month construction period. This appears to be at odds with the Officer's s42A report (paragraph 349) where it is stated that the proposal "will not result in a significant increase in sedimentation". Based on the concerns raised in the Ngāi Tahu evidence, I consider there is too much uncertainty to conclude that the current application is able to appropriately assess and monitor any changes in sedimentation levels and any impacts of increased sedimentation on the coastal environment from their activity. I consequently do not consider that the current application is consistent with this policy.
77. Policy 23 of the NZCPS is titled 'Discharge of contaminants'. Policy 23(1) relates to managing discharges to water in the coastal environment by having particular regard to the capacity of the receiving environment to assimilate the contaminants and the ability to minimise adverse effects on the life-supporting capacity of water within a mixing zone. Based on the concerns raised in the submission provided by Ngāi Tahu, I do not consider that the current application is consistent with this policy.

Canterbury Regional Policy Statement 2013 (RPS)

78. The RPS provides an overview of the significant resource management issues facing the Canterbury Region. Its purpose is to set out objectives, policies and methods to resolve those resource management issues and to achieve integrated management of the natural and physical resources of Canterbury. Chapter 5 of the RPS provides provisions in relation to land-use and infrastructure, Chapter 8 provides provisions in

relation to the coastal environment and Chapter 9 provides provisions in relation to ecosystems and indigenous biodiversity.

79. I wish to draw attention to the relevance of Policy 5.3.9, Objective 8.2.4, Objective 8.2.6, Policy 8.3.7, Policy 8.3.9, Policy 9.3.4 and 9.3.6.
80. Policy 5.3.9 of the RPS is titled 'Regionally significant infrastructure'. Policy 5.3.9(3)(b) provides for the expansion of existing infrastructure and development of new infrastructure, while avoiding any adverse effects on significant natural and physical resources and cultural values and where this is not practicable, remedying or mitigating them, and appropriately controlling other adverse effects on the environment.
81. The resource consent application claims in paragraph 355(c) that the proposed pipeline and outfall is regionally significant and is necessary to enable the expansion of the factory, which is of importance to the local community's economic well-being. The CRPS defines regionally significant infrastructure as the following:
 - (a) *Strategic land transport network and arterial roads;*
 - (b) *Timaru Airport;*
 - (c) *Port of Timaru;*
 - (d) *Commercial maritime facilities at Kaikōura;*
 - (e) *Telecommunication facilities;*
 - (f) *National, regional and local renewable electricity generation activities of any scale;*
 - (g) *The electricity transmission network;*
 - (h) *Sewage collection, treatment and disposal networks;*
 - (i) *Community land drainage infrastructure;*
 - (j) *Community potable water systems;*
 - (k) *Established community-scale irrigation and stockwater infrastructure;*
 - (l) *Transport hubs;*
 - (m) *Bulk fuel supply infrastructure including terminals, wharf lines and pipelines;*
and
 - (n) *Electricity distribution network.*
82. I do not consider that an ocean outfall pipeline fits any of the activities listed above; therefore, I do not consider Policy 5.3.9 is relevant to this application.

83. Objective 8.2.4 of the RPS refers to the preservation, protection and enhancement of the coastal environment. The objective seeks to preserve and protect the natural character of the coastal environment from inappropriate use and development, whilst also restoring and enhancing the natural, ecological, cultural, amenity, recreational and historic heritage values of the environment. The proposed ocean pipeline will not preserve and protect the natural character of the coastal environment and Ngāi Tahu believe the activity will not restore or enhance the natural, ecological and cultural values of the surrounding environment. I do not consider the proposed activity is consistent with this objective.
84. Objective 8.2.6 of the RPS is titled 'Protection and improvement of coastal water' and requires the protection of coastal water quality and associated values of the coastal environment, from significant adverse effects of the point and non-point discharge of contaminants; and enhancement of coastal water quality where it has been degraded. Arowhenua and Waihao argue the coastal environment has been degraded due to the number of ocean outfall pipelines along the Canterbury Coast that discharge stormwater and wastewater into the ocean. The construction of yet another ocean pipeline and outfall, regardless of the treatment procedures that will be put in place, does not improve or enhance the coastal water quality. Therefore, I do not believe the proposed activity is consistent with this objective.
85. Policy 8.3.7 of the RPS is titled 'Improve water quality in degraded areas'. The policy relates to improving the quality of Canterbury's coastal waters in areas where degraded water quality has significant adverse effects on natural, cultural, amenity and recreational values. For the reasons I have indicated in my consideration of Policy 21(c) of the NZCPS I do not believe the application will improve water quality. I consequently do not consider that the current application is consistent with this policy.
86. Policy 9.3.4 of the RPS is titled 'Promote ecological enhancement and restoration', This policy relates to promoting the enhancement and restoration of Canterbury's ecosystems and indigenous biodiversity, in appropriate locations, where this will improve the functioning and long term sustainability of these ecosystems. I do not consider that the application promotes and enhances or restores the ecological environment; therefore, the activity is inconsistent with this policy.

87. Policy 9.3.6 of the RPS is titled 'Limitations on the use of biodiversity offsets'. This policy provides a criterion for the use of biodiversity offsets. The criteria includes: (amongst other matters) that the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated; that the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity; there is a strong likelihood that the offsets will be achieved in perpetuity; and where the offset involves the on-going protection of a separate site, it will deliver no net loss, and preferably a net gain for indigenous conservation.
88. I do not consider the preparation of a "*Lizard Management Plan to ensure that any long term impacts on the habitat of each species of indigenous lizards is a positive impact*" (paragraph 61 of Ms Singh's evidence) will ensure there is no net loss of biodiversity. I note that this policy explains that biodiversity offsets are the final step in a hierarchical process in which adverse effects on indigenous biodiversity should firstly be avoided, remedied and mitigated. The application does not provide alternative pipeline locations in which to avoid lizard habitats; therefore, it is uncertain if residual effects can be remedied or mitigated.

Regional Coastal Environment Plan for Canterbury 2005 (RCEP)

89. The purpose of the RCEP is to promote the sustainable management of the natural and physical resources of the CMA and the coastal environment and to promote the integrated management of that environment.
90. I would like to note that the RCEP was made operate by ECan on 30 November 2005. The age of the plan pre-dates the NZCPS 2010; therefore, consideration of the objectives and policies should be assessed foremost as to whether they give effect to the NZCPS. If the regional plan does not give effect to a high order document, it is accepted that the higher order document, which in this case is the NZCPS, should prevail. Regardless, I wish to draw attention to the relevance of Objective 6.1, Policy 6.1, Policy 6.3, Objective 7.1, Policy 7.7., Policy 7.10 Objective 8.1, and Policy 8.3.
91. Objective 6.1 requires that during the processing of resource consent applications ECan ensure activities in the CMA protect, and where appropriate enhance, sites and habitats of high natural, physical, heritage and cultural value. Objective 6.1 specifically states the following areas require protection:

- (c) *within the intertidal or subtidal zone that contain unique, threatened, rare, distinctive or representative marine life or habitats (including coastal wetlands) or are significant habitats of marine species generally;*
 - (e) *areas including adequate buffer zones, that contain locally, regionally, nationally or internationally significant: ecosystems, vegetation, individual species, or habitat types, (for example coastal lakes, wetlands, lagoons, estuaries);*
 - (f) *historic, archaeological, and geo-preservation sites in the coastal marine area; and*
 - (h) *areas identified in consultation with Tāngata whenua including wahi tapu, Urupā, tauranga waka and mahinga kai.*
92. The proposed activity will see the permanent change of the CMA with the construction of a pipeline and the discharge of wastewater. Irrespective of the amount of treatment applied to this wastewater, it will still not restore or enhance the water quality to a state that can support all Ngāi Tahu cultural activities.
93. Mātaitai reserves have been established along the coastline since 1996 (Waihao mātaitai in September 2017 and the the Tuhawaiki, Te Ahi Tarakihi, and Waitarakao mātaitai in June 2019) in an attempt to manage, protect and enhance fisheries resources in order to recognise and provide for the customary non-commercial use and management practices of Ngāi Tahu Whānui. It is my understanding from the resource consent application that the currents will flow past the mātaitai reserves, which will mean rūnanga no longer feel it is safe to harvest in these areas. the application silent on potential effects on local mātaitai from the discharge of wastewater and the Officer's s42A report not addressing the direct impact on Ngāi Tahu's ability to carry out customary food gathering practices, I consider there is too much uncertainty to conclude that the adverse effects of the application on the cultural values of the CMA have been minimised as far as practicable. I consequently do not consider that the current application is consistent with this objective.
94. Policy 6.3 states ECan will "*encourage the restoration or rehabilitation of areas or sites within the coastal environment where this would: assist in maintaining or enhancing the integrity or functioning of sites of high natural, physical or cultural value and Areas of Significant Natural Value; contribute to the preservation of natural character;*

maintain the ecological functioning of the coast; or enhance intrinsic, cultural, heritage or amenity values”.

95. I concur with the Officer’s s42A report and analysis (paragraph 385) that Objective 7.1 of the RCEP is relevant as it seeks to enable present and future generations to gain cultural, social, recreational, economic, health and other benefits from the quality of water in the CMA. For reasons I have discussed in relation to Objective 6.1 above, I do not consider that the application is consistent with this objective.
96. Policy 7.7 seeks to ensure that discharges of water or contaminants into water, or onto or into land in the CMA avoids significant adverse effects on cultural or spiritual values associated with sites, (e.g. areas covered by controls such as Taiāpure or mahinga Mātaitai), of special significance to the tāngata whenua. Mr T King explains in his evidence that the discharge of wastewater into the coastal environment is abhorrent from a Ngāi Tahu perspective, particularly if the wastewater is to pass or come into contact with sites where there was or is customary use. The submission prepared by Arowhenua identifies a number of significant cultural and spiritual sites (including mātaihai reserves) along the Canterbury coastline in which the wastewater will pass due to the direction in which the currents travel along the coast. For Arowhenua and Waihao, wastewater should never make contact with mahinga kai species or sites of special significance, regardless of the concentration level or the size of the mixing zone. For this reason, I do not consider the application to be consistent with this policy.
97. Policy 7.10 requires activities to promote measures that avoid, remedy or mitigate the adverse effects of point and non-point source discharges of contaminants outside the CMA where the discharge can adversely affect the quality of water in the CMA. The applicant states in their resource consent application the need for the ocean outfall is to reduce the quantity of wastewater being irrigated over farmland. Whilst the proposed ocean outfall will increase compliance with existing resource consent conditions, the proposal simply transfers the wastewater from one area to another as opposed to solving the issue. Therefore, the application cannot comply with this policy.
98. Objective 8.1 seeks to maintain a coastal environment that enables people to use the CMA and its resources while avoiding, remedying or mitigating the adverse effects of

that use on the environment, including avoiding, remedying or mitigating adverse effects on:

- (a) *of conflicts between these uses and people's well-being, health, safety and amenity; and*
- (b) *on natural character, and other (natural, ecological, amenity, Tāngata whenua, historic and cultural) values of the coastal environment.*

99. The purpose of this objective is to ensure activities do not impact on the coastal environment and the natural, ecological, amenity, cultural and historical values they hold. For Waihao and Arowhenua, their values recognise and reinforce the absolute importance of water quality in relation to both mahinga kai and hygiene. Water is held in the highest esteem because the mauri of the water determines the welfare of the people reliant on those resources. Consequently, an activity that degrades the quality of the environment also negatively impacts on the spiritual essence of Ngāi Tahu. For this reason, the application does not comply with this objective.

100. Policy 8.3 of the RCEP states that in considering applications for resource consents to undertake activities in the Coastal Marine Area, Environment Canterbury will have regard to:

- (b) *the need to protect characteristics of the coastal environment of special value to Tāngata whenua; and*
- (d) *cumulative effects of such activities on the coastal environment both within and outside the immediate location; and*
- (e) *existing agricultural and other use and development of the adjacent land area, and any adverse effects on that activity.*

101. Policy 8.3 requires ECan to have regard to the values of Ngāi Tahu and the cumulative effects of ocean outfall pipelines and the discharge of wastewater on the coastal environment. The lack of consideration of the cumulative impact of multiple ocean pipelines combined with underperforming District Council wastewater networks is of huge concern to Ngāi Tahu who rely on the CMA and mātaihai reserves for gathering mahinga kai. Due to this gap in assessment, I cannot be sure that ECan can meet the intent of this policy.

102. With the application silent on potential effects on local mātaihai from the discharge of wastewater and the Officer's s42A report not addressing the direct impact on the ability of Ngāi Tahu to carry out customary food gathering practices, I consider there is too much uncertainty to conclude that the adverse effects of the application on the ecological and cultural values of the CMA have been minimised as far as practicable. I consequently do not consider that the current application is consistent with RCEP.

NPSFM and Proposed NPSFM

103. While the NZCPS addresses issues with water quality in the coastal environment, the NPSFM recognises that management of coastal water and fresh water requires an integrated and consistent approach. The NPSFM is therefore relevant to connections between freshwater bodies and coastal water and integrated management of land and freshwater on coastal water. I therefore consider that the NPSFM is a relevant consideration under s 104(1)(b).
104. Objective C1 of the NPSFM is "[t]o improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment." Policy C1 requires every regional council to recognise the interactions Ki Uta Ki Tai between fresh water, land, associated ecosystems and the coastal environment. Mr T King's evidence outlines that Ki Uta Ki Tai has not been assessed or considered by the applicants. Mr T King advises that Ki Uta Ki Tai requires that all of practices should to be done in such a way that protects the sustainability of the environment to provide the resources we need to live our lives. I do not consider that the application is consistent with this policy.
105. The proposed NPSFM is also a relevant consideration as an 'Other Matter' under section 104(1)(c). On 28 May 2020 the Minister for the Environment and Minister for Agriculture announced the release of the action for healthy waterways package. The package includes the proposed NPSFM, which the government has advised will make mahinga kai a compulsory value and place greater emphasis on an ecosystem approach (Ki Uta Ki Tai). For the reasons I have already outlined, I do not consider that the application is consistent with this direction.

Section 104(1)(c) – Other Matters

106. As stated earlier in my evidence, in relation to section 104(1)(c), I consider the Marine and Coastal Area (Takutai Moana) Act 2011, Te Whakatau Kaupapa Ngāi Tahu Resource Management Strategy for the Canterbury Region (1990, mātaihai reserves provided for under the Fisheries (South Island Customary Fishing) Regulations 1999, the Waihao Iwi Management Plan and Arowhenua Iwi Management Plan are all relevant and necessary matters to determine the application.

Marine and Coastal Area (Takutai Moana) Act 2011

107. The purpose of this Act is to establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand; recognise the mana tuku iho exercised in the marine and coastal area by iwi, hapū, and whānau as tangata whenua; provide for the exercise of customary interests in the common marine and coastal area; and acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).
108. Mr T King advises in his cultural evidence that manawhenua considers Oceania's proposal to move a significant portion of the wastewater disposal site offshore simply moves the problem from the land to the CMA, where Ngāi Tahu have an unresolved claim for recognition of Customary Marine Title. The proposed activity has the potential to adversely affect the continuing exercise of mana tuku iho in the marine and coastal area.
109. As a result of the above, I do not consider that the current application is consistent with the Marine and Coastal Area (Takutai Moana) Act 2011.

Te Whakatau Kaupapa Ngāi Tahu Resource Management Strategy for the Canterbury Region, November 1990

110. This document is a statement of Ngāi Tahu beliefs and values which should be taken into account when Water and Soil Conservation Acts are being prepared or changed and new Resource Management Schemes, Regional Policy Statements and Coastal, District and Regional management Plans are being prepared.
111. The purpose of the strategy is to provide case studies that will enable planners in Local Government to make intelligent extrapolations to cover some of the problem areas that are likely to emerge in their work, and so provide guidance until such time as Ngāi

Tahu themselves can progressively expand the present study. Sections 4-12 (water values), 4-16 (wai-mātaiai), 4-21 (mahinga kai) are most relevant to this application.

112. The relevant policies outlined in the strategy describe the traditional values and controls regarding water and how such values and controls are included in the tribe's spiritual beliefs and practices. For Waihao and Arowhenua, the values recognise and reinforce the absolute importance of water quality in relation to both mahinga kai and hygiene. Water is held in the highest esteem because the welfare of the life that it contains determines the welfare of the people reliant on those resources. Consequently, an activity that degrades the quality of the environment also negatively impacts on the spiritual essence of Ngāi Tahu.

Fisheries (South Island Customary Fishing) Regulations 1999

113. Mātaiai reserves are provided under the Fisheries (South Island Customary Fishing) Regulations 1999 which were promulgated under Part 9 of the Fisheries Act 1996. There are Mātaiai reserves in Wainono Lagoon and Tuhawaiki, Te Ahi Tarakihi, and Waitarakao, which provide for the protection of mahinga kai and the marine environment through tikanga-based management of fisheries. The principal purpose or legislative objective of these Mātaiai is to manage, protect and enhance fisheries resources in order to recognise and provide for the customary non-commercial use and management practices of Ngāi Tahu Whānui. The other main purpose is to give further legislative recognition to the special relationship tangata whenua have with the coastline.
114. In reviewing the RCEP, the age of the Plan is a concern for Ngāi Tahu because the issues, objectives, policies and rules set out in Chapters five to nine do not take into account the creation of the Waihao mātaiai in September 2017 or the Tuhawaiki, Te Ahi Tarakihi, and Waitarakao mātaiai in June 2019; consequently, there is a risk that the importance of mātaiai reserves is not recognised and provided for when assessing the actual and potential adverse effects of activities such as that proposed by the applicant.

Section 107 and 138A Matters

115. Section 107 of the RMA relates to restrictions on the granting of certain discharge permits. Section 107(1) sets a number of bottom line standards for a proposed

discharge, which after reasonable mixing, must be met. I agree with the Oceania planning evidence that the bottom lines in section 107(1)(b) and (e) are the most relevant to the Oceania application. In this regard, the Hearing Panel are prevented from granting consent that would allow any discharge of wastewater into a receiving environment which could, after reasonable mixing, give rise to:

- (a) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials,
- (b) Any conspicuous change in the colour or visual clarity,
- (c) any emission of objectionable odour, and/or
- (d) Any significant adverse effects on aquatic life.

116. An assessment against section 107(1) of the RMA is detailed in section 5.4.5 of the AEE and paragraphs 147 to 203 of the Officer's s42A Report. The report discusses the challenges with the site area having not been assigned a classification for water quality under the RCEP. The Officer's s42A report also considers the applicant's proposed method of treatment and the difficulties with monitoring the water quality parameters and the complexities that have to be navigated when deriving conditions of consent.
117. Ms Walker states in paragraph 151 that the proposed conditions of consent put to ECan by the applicant do not include trigger values for pathogens and that there was a desire to have an interim two year monitoring condition, with trigger levels added after that time. Ngāi Tahu have grave concerns with this issue as two years is a long time for contaminants to be discharged into the CMA without appropriate mechanisms in place to alert ECan Monitoring and Enforcement Officers to a concern.
118. Ms Walker also discusses the issues of providing mean values when reporting on the receiving environment in paragraph 152. There is a concern that averaging results for bacteria such as *Campylobacter*, *Listeria* and *Staphylococcus aureus* as well as heavy metals and toxic chemicals may not give a true representation of the concentrations being discharged. The lack of accurate data and an assessment of the cumulative impact of multiple ocean pipelines combined with underperforming District Council wastewater networks is of huge concern to Ngāi Tahu who have a legal and cultural right to use the CMA and mātaihai for gathering mahinga kai. In recent times, Caroline Bay in Timaru has been closed to swimming and customary practices for several

months as a result of one episode whereby wastewater from the District Council reticulated network was discharged into the CMA.

119. Oceania note in their application documentation that 15 chemicals and cleaning products are stored and used on site. It is also acknowledged by Dr Bolton-Richie in paragraph 152(d) of the Officer's s42A report that many of the chemicals are purchased annually and therefore are, stored in large quantities. The list of 15 chemicals are defined by Dr Bolton-Richie as being *"harmful, toxic or very toxic to aquatic life, organisms or fish", and an additional three chemicals of unknown aquatic toxicity"*. The applicant has not provided any information on the likely ecological impact of the chemicals, which means significant adverse effects on aquatic life cannot be ascertained.
120. Based on these concerns, I consider there is too much uncertainty to conclude that the tier three triggers that would be calculated based on the current application, are able to ensure that the bottom line standards listed in section 107(1) of the RMA (after reasonable mixing) will be met.
121. Section 138A of the RMA includes special provisions relating to coastal permits for dumping (and incineration). Under section 138A, without limiting section 104, when considering an application for a coastal permit to do something that would otherwise contravene section 15A(1), the consent authority shall, in having regard to the actual and potential effects of allowing the activity, have regard to-
 - (a) The nature of the discharge of any contaminant;
 - (b) The sensitivity of the receiving environment to adverse effects;
 - (c) The applicant's reasons for the proposed choice; and
 - (d) Any possible alternative methods of disposal including any discharge into any other receiving environment.
122. Based on the reasons outlined in the evidence of the Ngāi Tahu (summarised earlier in my evidence in the assessment of effects section titled 'Effects on water quality and mahinga kai), I consider that failure to address these issues limits the ability to make informed decisions about the application and undermines any assessment of effects on which this knowledge is based. The technical experts have concluded that the actual effects of the application could range from negligible to significant. Based on the concerns raised in the Ngāi Tahu evidence, I consider there is too much

uncertainty to determine what the actual and potential effects of allowing the activity are to comment on the matters listed in section 138A of the RMA.

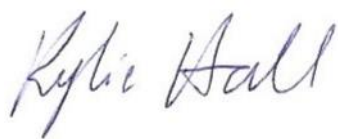
Part 2 of the Act

123. Part 2 of the RMA includes the purpose (section 5 of the RMA) and principles (section 6 to section 8 of the RMA) of the RMA.
124. As previously stated, based on the reasons outlined in the evidence of the Ngāi Tahu technical experts (summarised earlier in my evidence in the assessment of effects section titled 'Physical effects on water quality and mahinga kai'), I consider that failure to address these issues limits the ability to make informed decisions about the application and undermines any assessment of effects on which this knowledge is based. The technical experts have concluded that the actual effects of the application could range from negligible to significant. Based on the concerns raised in the Ngāi Tahu evidence, I consider there is too much uncertainty with the current application to conclude that the matters of national importance under sections 6(c) and 6(e) have been recognised and provided for.
125. I consider that the application in its current form does not sufficiently enable Ngāi Tahu to exercise kaitiakitanga in terms of section 7(a) of the RMA.
126. Section 8 of the RMA requires all persons acting under the RMA to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The treaty principles include Māori retaining rangatiratanga over their resources and taonga.
127. Based on the concerns outlined in the evidence of the Ngāi Tahu and cultural experts, I consider that failure to address these issues limits the ability for Ngāi Tahu to make informed decisions about the application. The technical experts have concluded that the actual effects of the application could range from negligible to significant. For these reasons, I consider there is too much uncertainty with the current application to conclude that Ngāi Tahu will retain their rangatiratanga over their resources and taonga, consequently I do not consider that the current application takes into account section 8 of the RMA.

CONCLUSION

128. I will firstly provide comment on the adequacy of the assessment of environment effects for the application, I will secondly comment on whether the application is generally consistent or inconsistent with the relevant statutory provisions, and thirdly I will provide a recommendation on whether I consider the current consent applications can be granted.
129. For the reasons outlined in the evidence of the Ngāi Tahu, I consider that the issues identified are significant enough to limit the ability of the Hearing Panel to make an informed decision about the effects associated with the current application. I note that Ngāi Tahu have concluded that the actual effects of the application could range from minor to significant.
130. In addition, for the reasons outlined by the Ngāi Tahu cultural expert, I note that Ngāi Tahu has concluded that the proposed pipeline outfall will permanently change the CMA and alter the mana and mauri of the coast in ways that cannot be directly remedied or avoided.
131. As a result of the significant issues raised by Ngāi Tahu regarding the assessment of the physical effects on water quality and mahinga kai, I have consequently considered that there is too much uncertainty for me to conclude that the application is generally consistent with the relevant policies in the NZCPS, RPS and RCEP, NPSFM, other relevant considerations such as the NTCSA and the Waihao and Arowhenua Iwi Management Plans or with various principles in Part 2 of the RMA.
132. Based on the above considerations, in my professional opinion, I do not consider that the granting of the current applications is consistent with the purpose of the RMA and consequently recommend to the Hearing Panel that the applications are declined.

DATE 5 June 2020

A handwritten signature in blue ink, appearing to read 'Kylie Hall', written in a cursive style.

Kylie Hall

Appendix 1 Mātaitai Reserve Location Map

Figure 1: Location of Wainono Lagoon mātaītai



Figure 2: Location of Arowhenua mātaītai.