BEFORE THE HEARING COMMITTEE

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application by Bio Plant Manawatū NZ Limited to the Manawatū-Whanganui Regional Council for application **APP-2020203133.00** for the discharge of contaminants and odour to air from a pyrolysis plant at 247 Kawakawa Road, Feilding

REPORT TO THE COMMISSIONERS

MR MARK ST CLAIR (CHAIR) AND MS JENNY SIMPSON

SUPPLEMENTARY SECTION 42A REPORT OF MRS BRYONY HUIRUA – CONSENTS PLANNER (LEAD) AND PREPARED WITH ASSISTANCE FROM FIONA MORTON – SENIOR CONSENTS PLANNER FOR MANAWATŪ-WHANGANUI REGIONAL COUNCIL

15 February 2023

A. INTRODUCTION

Qualification and Experience

1. My name is Bryony Rebekah Emily Huirua.

2. My experience and qualifications are set out in my 10 June 2022 s42A report.

3. I am employed by the Manawatū-Whanganui Regional Council (MWRC) as a Consents Planner and am providing specialist planning advice on behalf of MWRC in relation to this application.

4. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. My evidence has been prepared in compliance with that code. In particular, unless I state otherwise, the evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

5. Whilst I am the lead author of this supplementary s42A report, it has been prepared in conjunction with Fiona Morton who is contracted to MWRC as a Senior Consents Planner. Ms Morton's experience and qualifications are set out in my 10 June 2022 s42A report.

B. SCOPE OF REPORT

6. The Commissioners' Minute 11 dated 12 December 2022, set out a timeline for further responses from various parties to the further information provided by the Applicant. This included a requirement that:

   "*Council Officers (section 42A planning officer) provide a written response to the feedback to the new technical information from the applicant, the Section 42A technical officers, the further consultation with mana whenua and any matters raised by submitters.*"

7. The evidence sets out my response as requested by the Commissioners, and is divided into three main sections:

   a. Comment on the new technical information provided by the Applicant and s42A evidence of the MWRC technical officers (Mr Curtis, Ms Patterson and Mr Barnett);

   b. An updated policy assessment;

c. An assessment against Part 2 of the Resource Management Act (1991);

d. Comment on matters raised by Submitters.

8. Further, I then provide some overall comments including a conclusion and consequential recommendation.

C. REVIEW OF NEW TECHNICAL INFORMATION

I have reviewed the supplementary evidence provided from the Applicant. In many cases the evidence discusses matters outside my area of expertise and I would defer to the supplementary evidence of the other technical s42A officers. My evidence is limited to the areas relevant to my area of expertise and thus I have only provided comment on the supplementary evidence of Dr Ibrahim, Dr Koh, Dr Kelly and Mr Frentz.

DR IBRAHIM

9. Dr Ibrahim discusses the in-house wastewater treatment plant in Paragraphs 2.16 and 2.17 of his supplementary evidence. I note that in Paragraph 2.17, Dr Ibrahim outlines that all wastewater and leachate are fully treated and there is no resultant discharge to the surrounding land. The Applicant has not applied for a discharge consent for any resultant wastewater or leachates and the application primarily deals with discharges to air. However, as outlined in the supplementary evidence of Mr Curtis and Ms Patterson, there has been no design for the in-house WWTP supplied by the Applicant. Therefore, MWRC's technical experts are unable to comment on any relevant potential effects, such as odour or sources of contamination, and I am unable to provide comment on any potential consenting requirements.

10. Dr Ibrahim has provided additional detail regarding measures to exclude hazardous material from being processed. I have relied on the supplementary evidence of Mr Curtis in this regard. Mr Curtis notes that while the measures described will remove most of the hazardous materials from the waste stream, he has suggested that the metals are screened out prior to crushing to reduce the risk of potential contamination and fires. Improvements like this could be incorporated into conditions, should the Panel be satisfied there is enough information to grant the application.

11. My understanding from Dr Ibrahim's supplementary evidence is that the feedstock may initially contain hazardous material that is subsequently mostly removed prior to pyrolysis. This is

particularly important regarding Policy 3-9 of the One Plan. I note that an updated Policy assessment has not been provided by the Applicant in their supplementary evidence. In terms of Policy 3-9(a), regarding options for the discharge, I note that there are limited options in terms of reduction, reuse and recovery options for the discharge to air. However, in terms of the feedstock for the pyrolysis process, the Applicant maintains that ratios are now reflective of local recycling programmes and food scraps have been excluded in accordance with MDC's waste plan. Based on the information provided, I consider that the application is in accordance with Policy 3-9(a). In respect of Policy 3-9(b), in terms of any hazardous substances present in the discharge and alternatives to those, it is my understanding that if undertaken as stated666 in the supplementary evidence provided by the Applicant, hazardous wastes are mostly excluded in the feedstock. However, based on the conclusions reached by Mr Curtis in terms of hazardous substances present in the resultant discharge, I am currently unable to conclude whether the application is in accordance with Policy 3-9(b).

12. During the hearing, the relevance of the National Policy Statement for Renewable Energy Generation in reference to the feedstock and the quantity of biomass present was raised. Based on the updated predicted feedstock composition by Dr Ibrahim, I consider that as biomass (e.g. wood) is still present, and the exclusion of food waste only represents a small reduction in that biomass, the NPS-REG is relevant to this application.

DR KOH

13. Mr Curtis's supplementary evidence referenced technical errors present in Dr Koh's modelling. I agree with Mr Curtis that, as a result, there is currently not enough information to determine the level of effects of the proposal on air quality.

14. Dr Koh outlines that continuous monitoring can be set up for particulates and flue gases. I note that this is not reflected in proposed consent conditions outlined in the supplementary evidence of Mr Frentz where he has suggested continuous monitoring where practicable.

DR KELLY

15. Mr Curtis notes in his supplementary evidence that as Dr Kelly has based her reports regarding health effects on the modelling of Dr Koh, and as this modelling is currently incorrect and cannot be relied upon, therefore he is unable to endorse the conclusions of Dr Kelly in Paragraph 2.4 of

her evidence. In turn, this also means that I do not have enough information to determine the level of health effects potentially caused by this activity.

16. Dr Kelly discusses potential exposure pathways from a contaminant released into the air. Dr Kelly acknowledges that contaminants can be entrained in waterways or through soil, however notes that the predominant human health pathway to be assessed is direct inhalation of dispersed contaminants. Potential discharges to land are addressed via Rule 15-17. I have already noted that I am unable to determine effects on waterways and if any discharge consents to water are required as outlined in the supplementary evidence of Ms Patterson.

17. My original s42A report noted that it was unclear whether the proposal was consistent with Policy 3-13 of the One Plan in terms of the production of hazardous chemicals that will affect the health of humans. During hearing discussions it was noted that provision of a Human Health Risk Assessment may be able to address this. However, the information provided by the Applicant cannot be relied upon and, therefore, I currently do not have information to determine if the proposal is consistent with Policy 3-13 of the One Plan.

MR FRENTZ

18. Mr Frentz has primarily focused on draft conditions of consent in his supplementary evidence but has not provided an updated Policy assessment. I consider that, due to the volume of revised information included within the Applicant's supplementary evidence, it is important to revisit the original policy analysis undertaken. I have provided an updated Policy assessment below in Section E.

19. Due to the concerns raised by the supplementary evidence from Mr Curtis, Ms Patterson, Mr Barnett and myself regarding the information supplied by the Applicant, and my conclusions below in Section G, I have chosen to focus on high level concerns regarding Mr Frentz's proposed conditions. Should the Commissioners be of a mind to grant consent, I am happy to provide additional comment on more specific matters and work with Mr Frentz on consent conditions. However my recommendation below is that the activity is inconsistent with policies and with uncertain environmental effects.

20. In Paragraph 2.3(d) Mr Frentz outlines several proposed management plans that would be required via conditions. I agree that these management plans would be appropriate for inclusion

in conditions. However, I consider that the management plan "Objectives" would be more appropriate included as an appendix outside of the main condition schedule that can be referred to. I do not consider the management plan objectives to be "SMART" and enforceable conditions in and of themselves.

21. I note that in Ms Patterson's supplementary evidence, she recommends inclusion of a Stormwater Management Plan. Whilst I acknowledge that this would be helpful for the Applicant, the Applicant has confirmed that any stormwater discharge will operate as a Permitted Activity under Rule 14-18 (Discharge of stormwater to surface water and land) of the One Plan. Therefore, I believe the only planning mechanism that would be appropriate in this case is if the Applicant includes the provision of a Stormwater Management Plan as a condition under the *augier principle*[1]. This would also be the case for the proposed baseline monitoring of water quality recommended by Ms Patterson in her evidence.

22. Mr Frentz discusses the inclusion of "Conditions precedent" (Conditions 9-11) in relation to provision of a Cultural Impact Assessment (CIA) and a Cultural Monitoring Plan. Whilst I consider the requirement for a Cultural Monitoring Plan based on the CIA and ongoing discussions with tangata whenua appropriate, I do not agree with Mr Frentz that the CIA should form part of conditions following Grant of Consent rather than at the application stage. The actual and potential effects of an activity need to be outlined in the application stage, to enable decision makers to make informed decisions regarding the application. As stated in Minute 6, current information regarding cultural effects is the position and evidence put forth by Ngā Kaitiaki o Ngāti Kauwhata and Aorangi Marae at the hearing and supplementary evidence provided by Aorangi Marae. A CIA undertaken after a decision by the Commissioners would not be of assistance to the Panel.

23. In the absence of a CIA, I am unable to discuss potential conditions that address potential cultural effects or the specifics of a potential Cultural Monitoring Plan.

24. Mr Frentz concludes that the proposed conditions will ensure that the actual or potential effects of the proposal are less than minor and that consent may be granted for a duration of consent of 21 years. My comments regarding the level of actual or potential effects are below in Section G. Even if I agreed with Mr Frentz in respect of level of effects and potential mitigations, I am still of

[1] Augier v Secretary of State for the Environment (1978) 38 P & CR 219 (QBD)

the view that if the Commissioners were of a mind to grant consent, a term of consent of 21 years is not appropriate. My term recommendation of six years with an expiry date of 1 July 2029 remains as it was in my preliminary s42A report. A recommendation of a longer term was contingent on outstanding information being provided. That information was not presented at the hearing and has not been sufficiently addressed to date. In addition, as the level of effects of the activity are currently not able to be determined as discussed in Paragraph 72 below, I maintain a precautionary approach with respect to a consent term of six years and maintain that there should be ability for an annual review under s128 of the RMA if the Commissioners are of a mind to grant consent.

25. I would also recommend allowing for a "sense check" with the MWRC Consents Monitoring Team before finalisation of conditions to ensure any conditions are enforceable and "SMART (Specific, Measurable, Achievable, Relevant and Time-bound)".

D. SUBMITTER EVIDENCE

I have read all of the supplementary evidence. In many cases the evidence raises similar questions to other submitters, is addressed by the s42A technical officers in their supplementary evidence, or raises issues outside my area of expertise. Whilst I acknowledge all of the submissions and their content, I have only set out in this section comments on unique issues that are relevant to my area of expertise.

Ellen Thompson

26. In Paragraph 1.1 Ms Thompson discusses a requirement to undertake a greenhouse gas assessment in line with recent changes to the Resource Management Act (1991). To avoid repetition, I will address the matter once here although I acknowledge that it has been raised by several other submitters. Section 26 of Schedule 12 of the RMA outlines that where a consent application was lodged prior to the climate change amendments effective date they must be determined as if the climate change amendments had not been enacted. Tthis is different to the requirements under s104 that the plans at the time of determining the application must be considered. The application was lodged in May 2021. The climate change amendments to the RMA occurred on 30 November 2022. As the application was lodged prior to the climate change amendments to the RMA, I consider that a greenhouse gas assessment is not required for this application.

27. In Paragraph 1.2 Ms Thompson talks about a need to undertake sampling of soils and water, particularly for persistent pollutants. As previously discussed, Mr Curtis considers that there is merit in this suggestion. It is noted that Rule 15-17 applies to the air discharge and "any subsequent discharge of contaminants onto land". Therefore, especially considering Mr Barnett's inability to conclude the effects on soil, I consider it appropriate to sample and monitor surrounding soils if consent is granted. The Applicant has not applied for consent to discharge contaminants to water. However, as outlined by Ms Patterson in her supplementary evidence, she is currently unable to determine the level of effect on surrounding waterways or whether consent would be required as a result. I believe it would benefit the Applicant to sample and monitor for this information to ensure consent is sought if required or a Certificate of Compliance is applied for if the Applicant is inclined. This could be included as a condition under the *augier principle*. This may also provide more certainty to the surrounding neighbourhood and iwi/hapū regarding any potential effects on waterways.

Aorangi Marae

28. I acknowledge Ms Taipana's comments regarding Mr Frentz's draft conditions provided in his supplementary evidence. Ms Taipana outlines that the provision of a CIA or involvement with any resulting Cultural Monitoring Plan has not been discussed or agreed to with Aorangi Marae. If Commissioners are not of a mind to decline consent, Ms Taipana has requested the application be put on hold for a period of 16 months in order to become fully informed and make a decision regarding involvement from a cultural perspective. This reinforces my position that provision of a CIA post-decision as a condition of consent does not allow for the full picture of the potential effects of the activity on cultural values to be considered in the application stage. This also presents potential issues for the Cultural Monitoring Plan that relies on input from Tangata Whenua as noted by other submitters such as Ms Murphy.

29. Ms Taipana outlines several concerns regarding the proximity of the pyrolysis plant to Aorangi Marae and Papakāinga and health of local māori. As discussed above and by Mr Curtis, MWRC's view is that the evidence of Dr Kelly cannot currently be relied upon to determine the level of health effects of the proposed activity.

30. Ms Taipana refers to Part 2 of the RMA in their supplementary submission and outlines why they believe is not consistent with Part 2. For completeness, I have undertaken as assessment of the proposal against Part 2 of the RMA below in Section F of this report.

31. I acknowledge that Ms Taipana has requested the Commissioners decline the proposed resource consent. This is discussed in greater detail in Paragraph 72 below.

Lou Wickham

32. Mr Curtis agrees with Mx Wickham that some form of process risk assessment is appropriate, but is correct that process risk in relation to hazardous substances is typically a consideration of the District Council rather than the Regional Council. This is outlined in Policy 3-12 of the One Plan. However, building on Mr Curtis' comments, some form of risk assessment may aid the assessment against Policy 3-13 of the One Plan.

Sue Godbaz

33. In Paragraph 3.7 Ms Godbaz states that the activity is prohibited by the NES-AQ. This is not correct. Mr Curtis has noted that this activity is not considered to be a high temperature incinerator and is therefore not prohibited by the NES-AQ.

Angela Baker

34. I agree with Mr Curtis' comments regarding risk assessments and employee health and that these considerations are outside the realms of the RMA and are dealt with under separate legislation.

David Voss

35. Mr Voss raises several concerns regarding the generation of wastewater from the site. I do not agree that effects on the Manawatū District Council wastewater treatment plant should form part of the Applicant's Assessment of Environmental Effects and I refer back to my original s42A report on that matter.

36. Mr Voss has queried the draft conditions of Mr Frentz and what actions would be triggered if a discharge exceedance was detected. Mr Frentz has suggested several management plans for inclusion with the aim of them being adaptive with considerations for reporting and review. As noted above, if Commissioners are of a mind to grant consent I have noted additional work on conditions should be undertaken, including a "sense check" from the Consents Monitoring Team.

37. Mr Voss has raised concerns regarding odours arising from the taking on and sorting of the material at Manawatū District Council's transfer station. I would like to note that MDC would be responsible for managing odour at their facility and seeking consent if required.

Zero Waste Network

38. Zero Waste Network outlines in Paragraph 3 of their supplementary evidence that the Ministry for the Environment (MfE) has indicated that waste-to-energy projects will not be eligible for funding indicates that MfE does not consider these proposals in line with the waste hierarchy/strategy. I fundamentally disagree with this view. The waste hierarchy is outlined within the Waste Minimisation Act 2008. It was established at the hearing that this proposal sat within the "recovering resources from waste" level under Policy 3-8(d) of the One Plan and my view has not changed.

E. POLICY ASSESSMENT

National Policy Statement for Renewable Energy Generation 2011 (NPS-REG)

39. The relevance of the NPS-REG is discussed above in Paragraph 12. I believe that the NPS-REG is relevant to this application. My assessment of the proposal against the relevant Objectives and Policies in my original s42A report is still relevant and I consider the application to be consistent with the relevant provisions in the NPS-REG.

National Environmental Standards for Air Quality 2011 (NES-AQ)

40. Technical matters of relevance to the NES-AQ are discussed in detail within the supplementary s42A evidence of Mr Curtis. He concluded that, whilst the predicted emission concentrations are likely to meet the relevant standards set out within Schedule 1 of the NES-AQ, due to fundamental errors in Dr Koh's modelling this cannot be confirmed unless a revised model and assessment was provided.

41. It is acknowledged that, as outlined in my original s42A report, Feilding is not considered to be within a polluted airshed. However, due to the uncertainty regarding level of effects on air quality, I currently do not have enough information to conclude whether the proposal is consistent with the relevant provisions of the NES-AQ.

Regional Policy Statement – One Plan Part I (2022)

42. It is of note that between the adjournment of the hearing in July 2022 and writing supplementary evidence, the One Plan has been subject to a plan change. These changes took effect on 14 December 2022 and are primarily minor amendments to comply with new legislation such as that contained within the government's Essential Freshwater package, the National Policy Statement for Urban Development 2020 etc. Amendments include insertion of new Objectives, Policies, one Rule, correction of minor errors and consequential amendments.

43. Section 104 of the RMA states that with regard to the Objectives and Policies, the plans at the time of determining the application must be considered. The amendments to the One Plan in this instance sit outside of the Objectives and Policies relevant to this application. Therefore, I do not consider there to be any new or amended Objectives and Policies that require assessment.

44. I noted at the hearing that, in respect of Policy 2-1, I believe that the Applicant has attempted to engage with iwi but that I did not believe the matters of (i) and (ii) had been adequately addressed by the Applicant. My view since the hearing has not changed. The update provided by the Applicant in December regarding further engagement with tangata whenua noted that no additional formal feedback or CIA had been able to be produced. In addition, the supplementary evidence of Aorangi Marae noted that they had not been contacted by the Applicant regarding the application or provision of a CIA following the adjournment of the hearing. Therefore, I am of the view that, based on the information provided to date, the proposal remains inconsistent with Policy 2-1 and Chapter 2 of the One Plan.

45. Policy 3-9 of One Plan is discussed above in Paragraph 10 above. In conclusion, I consider that the proposal is consistent with Policy 3-9(a) but, based on the evidence of Mr Curtis, I do not currently have enough information to determine if the proposal is consistent with Policy 3-9(b).

46. At the hearing, it was established that Policy 3-13 of the One Plan was a directive policy. Based on the evidence of Mr Curtis, and as I am currently unable to rely on the conclusions of Dr Kelly regarding potential health effects, I remain of the view that I do not currently have enough information to make a recommendation as to whether the proposal is consistent with Policy 3-13.

47. Due to the supplementary information provided by the Applicant and based on the opinion of Mr Curtis in his supplementary evidence, I do not currently have the necessary information to

determine whether the proposal is consistent with the relevant Objectives and Policies of Chapter 7 of the One Plan.

Regional Plan – One Plan Part II

48. Chapter 15 of the One Plan relates to the management and rule framework for discharges to air. For the reasons set out above in relation to Chapter 7, I do not currently have enough information to determine whether the proposal is consistent with Chapter 15.

F. PART 2 ASSESSMENT – PURPOSE AND PRINCIPLES OF THE RESOURCE MANAGEMENT ACT (1991)

49. To assist the Commissioners, I have completed an analysis of the application against the matters of Part 2 of the Act.

Section 6 – Matters of National Importance

50. Section 6 of the Act sets out the matters of national importance which are to be recognised and provided for when considering applications for resource consent. While I have had regard to all of Section 6 matters, my analysis below particularly focuses on Section 6(e).

> *e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*

51. To fully consider Section 6 (e) of the Act I need to be able to identify the nature of the relationship between Māori and the affected lands, water, sites, waahi tapu and other taonga, and the effect of the proposed activity on that relationship.

52. Ngā Kaitiaki o Ngāti Kauwhata and Aorangi Marae Trustees submitted on the application and presented at the hearing. Both parties raised concerns including, but not limited to, lack of consultation, the impact of Waitangi Tribunal Claims (although it is acknowledged that this concern sits outside of the RMA), health concerns for the local marae and papakāinga and cultural concerns. Aorangi Marae specifically noted in their supplementary evidence that they did not consider the proposal to be consistent with Part 2 of the RMA. I acknowledge that the Applicant has attempted to engage with representatives of Ngā Kaitaiki o Ngāti Kauwhata. However, without the provision of a Cultural Impact Assessment, it is most appropriate to rely on the

feedback from Ngā Kaitiaki o Ngāti Kauwhata and Aorangi Marae when assessing the proposal against Section 6(e).

53. I am of the view that Section 6(e) matters have not been recognised nor provided for in the application.

Section 7 – Other Matters

54. Section 7 sets out other matters which when making a decision on an application for resource consent, the decision maker must have had particular regard to. I consider that 7 (a), (aa), (b), (ba), (c), (d), (f), (g) and (j) are relevant to this application.

55. Sections 7(a) and (aa) require the Regional Council to have particular regard to the kaitiakitanga and the ethic of stewardship. Section (b) and (ba) deal with the efficient use and development of natural and physical resources, and the efficiency of the end use of energy. Sections (c), (d), (f) and (g) outline the maintenance and enhancement of amenity values, the intrinsic value of ecosystems, the maintenance and enhancement of the quality of the environment and any finite characteristics of natural and physical resources. Understanding the actual and potential environmental effects of the activity is essential to ensuring that the proposal complies with these sections of the RMA. Section 7 (j) directs Council to have regard to the benefits to be derived from the use and development of renewable energy.

56. No one clause takes precedence over another in Section 7. And while 7(j) requires the benefits of renewable energy to be recognised, it is not to the detriment of the other clauses of Section 7. Paragraph 4.7 of Dr Ibrahim's supplementary evidence outlines that the pyrolysis plant will supply 24.20 MWh of electricity to the electric grid each day. However, Mr Curtis outlines concerns with the energy balance calculated by Dr Ibrahim. In addition, due to the anticipated feedstock for the pyrolysis plant, it would be producing electricity with only some renewable resources. Therefore, I do not consider that it benefits in a significant way to the renewable energy resources of the Manawatū-Whanganui Region.

57. In conclusion, I am of the view that the application is not in accordance with Section 7 of the RMA.

Section 8 – Treaty of Waitangi

58. Section 8 of the Act requires the Consent Authority to take into account the principles of the Treaty of Waitangi. The Court of Appeal[2], in 1987, identified four major principles, which are:

    a. *The Essential Bargain – the exchange of kawanatanga (in Article 1) for the protection of tino rangatiratanga (in Article 2).*

    b. The Principles of Tino Rangatiratanga and Kawanatanga – the guarantee to Iwi and Hapu of full chieftainship or authority over their lands, resources and taonga, and therefore the control and management of tribal resources according to maori cultural preference, as balanced against the Crown's right to make law and govern.

    c. The Principle of Partnership and Good Faith – the shared obligation of both Treaty partners to meet their respective commitments and to act reasonably and in good faith to one another.

    d. *The Principle of Active Protection – the Crown's obligation to actively protect the interests of Maori in their land and resources.*

59. I have taken into account Section 8 of the Act. I acknowledge that the Applicant has attempted to engage with representatives of Ngā Kaitaiki o Ngāti Kauwhata. However, given the information provided by Ngā Kaitiaki o Ngāti Kauwhata and Aorangi Marae Trustees, I am currently unable to determine whether the Applicant has achieved the above four principles.

Section 5 - Purpose

60. Section 5 states that the purpose of the Act is to promote sustainable management of natural and physical resources. Section 5(2) of the Act then proceeds to state that:

"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 the natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;

[2] New Zealand Maori Council Case 54/87

b) safeguarding the life-supporting capacity of the air, water, soil and ecosystems; and

c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

61. I consider that all matters of section 5 of the RMA are relevant. The purpose of the RMA is not to inhibit activities but rather enable activities that ensure natural and physical resources are managed in a sustainable manner while protecting the benefits and life supporting capabilities the resource provides, for future generations.

62. Due to a lack of information, and disparity in the information provided, I am currently unable to determine the level of environmental effects of the activity. The information provided to date does not adequately demonstrated the potential effects on air quality. Ms Patterson's and Mr Barnett's supplementary evidence conclude that they are unable to determine the level of effects on soil or water quality. Therefore, I am unable to conclude that the proposal will safeguard the life-supporting capacity of air, water, soil and ecosystems.

63. The Applicant has proposed several measures within their supplementary evidence as to how they will avoid, remedy or mitigate any adverse effects on the environment. However, due to the level of uncertainty that remains, as outlined below in Paragraph 65, I am not satisfied that these measures will be effective and address s5(c).

64. In conclusion, I am of the view that the application is not in accordance with Section 5 of the RMA.

G. SUMMARY AND RECOMMENDATION

65. I have reviewed the additional evidence provided by the Applicant. In summary I consider that:

    a. There is uncertainty and insufficient information contained within the supplementary evidence regarding several outstanding matters such as:

        i. Process details e.g. the onsite wastewater treatment plant;

        ii. level of contaminants within the air discharges and the level of effect on air quality;

        iii. public health and amenity effects;

        iv. provision of a CIA or assessment of cultural effects; and

        v. an updated assessment against relevant planning provisions and Part 2 of the RMA.

    b. I acknowledge the work done by Mr Frentz in respect of the conditions. Had the matters noted below in Paragraph 73 been adequately addressed then these conditions would provide an adequate framework to develop further.

66. Regardless, I consider that matters such as the provision of a CIA, would be required prior to a consent being granted.

67. I have reviewed the additional evidence provided by the various submitters. In summary, there appear to be valid concerns about:

    a. Involvement of Tangata Whenua, the level of cultural effects, provision of a CIA and giving effect to Te Tiriti o Waitangi;

    b. Modelling used as a basis for determining effects on air quality and subsequent wider effects on soils and water quality;

    c. Proposed monitoring as part of conditions; and

    d. Whether any additional consents are required.

68. I have reviewed the s42A supplementary evidence of Mr Curtis, Ms Patterson and Mr Barnett and note that:

    a. Mr Curtis, Ms Patterson and Mr Barnett do not currently have sufficient information to determine the level of effects on air quality, water quality or soil quality respectively;

    b. Several conditions of consent regarding monitoring and management plans are recommended for inclusion should the Commissioners be of a mind to grant consent; and

    c. Ms Patterson is currently unable to form a view as to whether consent for a discharge of contaminants to water would be required.

69. Based on the s42A supplementary evidence of Mr Curtis, there is uncertainty in relying on the assessment of Dr Kelly when consdiering health effects. Therefore there is insufficient information to determine the level of effects on public health and amenity.

70. Based on the information provided to date, from both representatives of Ngā Kaitiaki o Ngāti Kauwhata and Aorangi Marae as tangata whenua, I consider the potential effects of the proposal on cultural values to be more than minor.

71. Whilst I consider the proposal to be consistent with the NPS-REG, I do not currently have enough information to determine if the proposal is consistent, in most instances, with the relevant provisions of the NES-AQ or the One Plan.

72. Taking all of these matters into consideration, I do not consider that there is sufficient information to allow me to be confident regarding the level of effects from the proposal on the environment. On that basis, and considering s104(6) of the RMA, I recommend the Hearing Panel ***decline*** the application for an air discharge consent on the basis of the information that has been presented to date.

73. While my recommendation is to decline the consent, if the Commissioners determined that it was possible to grant, then in my opinion this should not occur until the following information has been received:

    a. information outlined by Mr Curtis in his supplementary s42A evidence;

b. an updated Policy and Rule Assessment and Assessment against Part 2 of the RMA from the Applicant;

c. a Cultural Impact Assessment/Cultural Values Assessment prepared with input from Tangata Whenua; and

d. confirmation of the scope of the application in order to address inconsistencies presented throughout the application process.

74. Should a consent be granted, a shorter consent term of six years to align with the Common Catchment expiry date of the Oroua Water Management Zone (1 July 2029) would be appropriate to recognise the uncertainties within the application.

DATED this 15 day of February 2023

Bryony Huirua
Consents Planner