

**BEFORE THE HEARING COMMISSIONERS**

**IN THE MATTER** of the Resource Management Act 1991  
(RMA)

**AND**

**IN THE MATTER** of applications by the Regional Assets  
Section, Hawkes Bay Regional Council  
to remove gravel and undertake other  
earthworks at various locations along the  
Ngaruroro River, the Tukituki Catchment  
Rivers and the Tūtaekuri River to the  
coast

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**HEARING PANEL DECISION**

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## DECISION OF HEARING COMMISSIONERS

### i. Introduction

- 1) The Regional Assets Division of the Hawkes Bay Regional Council (“**The Applicant**”) has applied for resource consents to extract gravel<sup>1</sup> from the beds of the Ngaruroro River, Tukituki Catchment Rivers and the Tūtaekuri River, including in both the active river channel and berms but excluding the actively flowing channels.
- 2) The three applications were publicly notified on the 2<sup>nd</sup> of February 2019. The applications received eight submissions, two of which took a neutral position and the others supported the proposal. There were no submissions received opposing the application but both Ngati Kahungunu Iwi Inc (“**NKII**”) and Te Taiwhenua o Heretaunga (“**TTOH**”) qualified their support on the basis that the proposed conditions would need to be substantially revised to address their concerns and interests. The submitters are listed in Schedule 1 **attached** to this decision.
- 3) We, Paul Cooney (Chair), Rauru Kirikiri and Malcolm Green were appointed as Independent Commissioners to hear and decide the applications by the Hawkes Bay Regional Council as Consent Authority.
- 4) A hearing was held at the Regional Council office in Napier on the 10<sup>th</sup> of December 2021. Those persons who attended the hearing and presented evidence are listed in Schedule 2 **attached** to this decision. Prior to the hearing we undertook a site visit to the rivers on the 8<sup>th</sup> and 9<sup>th</sup> of December 2021.
- 5) We found the site visit to be helpful and gave us an appreciation of the nature and extent of the proposed extraction work as a flood mitigation measure and the potential impact the work could have on the natural and physical environment.

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<sup>1</sup> Defined as gravel and associated sand, silt and other riverbed sediments.

- 6) To assist us to decide the applications we received and read the following documents:
- i. The applications and assessments of environmental effects (AEE) with supporting technical reports.
  - ii. The submissions received.
  - iii. A s42A Report prepared by Mr Sven Exeter, an Independent Planning Consultant.
  - iv. The submissions and evidence presented at the hearing.
  - v. A joint witness statement and revised draft conditions as a result of caucusing, and legal submissions in reply.

**Background:**

- 7) The back story to these applications is the need to manage the potential flood risk from the braided river systems in the Hawkes Bay region. The situation is summarised in the evidence of Mr Christopher Dolley<sup>2</sup>, Group Asset Manager for Council.

*a. The Asset Management Group at Hawkes Bay Regional Council is responsible for managing flood protections schemes throughout the Hawkes Bay Region, including on the Ngaruroro River, Tūtaekuri, Waipawa and Tukituki Rivers. The scheme as we know it today has evolved over the last 130 years from the efforts of Local River Boards in the late 1800s, through to the Hawkes Bay River Board, Hawkes Bay Catchment Board and since 1989, the Hawkes Bay Regional Council.*

*b. A key component of the schemes is a series of stopbanks and other flood protection assets designed to contain floodwaters within a defined floodway without overtopping or compromising the stopbanks.*

*c. The Ngaruroro River, Tūtaekuri Waipawa and Tukituki Rivers transport gravel and other sediments from the ranges, particularly during major flood events. This can cause sediment to build*

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<sup>2</sup> Statement of evidence – 8 December 2021.

*up in some locations raising the bed level and reducing the channel capacity between the riverbed and the top of the stopbanks.*

*d. If that sediment build-up was allowed to continue unchecked, the stopbanks would eventually be overtopped during large flood events. To prevent this happening, the Council actively manages the sediment build-up by allowing aggregate suppliers to excavate gravel from the dry parts of the riverbeds as a means of maintaining the bed at the design grade required to maintain their required floodway capacities.*

*e. Areas where gravel is required to be extracted for river management purposes and areas where the bed height above design grade are greatest will be targeted for extraction to maintain the required floodway area and the required level of flood protection.*

- 8) In 2010 Council undertook an independent review on the way Council managed riverbed and coastal gravel resources in its region. The review resulted in Council adopting a Gravel Management Plan in 2017 that recommended Council instead of extractors should hold the resource consent for gravel extraction within an authorised zone. Council would then issue authorisations to the commercial extractors allowing them to operate within those zones.
- 9) According to Mr Dolley, that is the basis on which these consent applications had been made. It will provide a more comprehensive management regime with a single consent holder namely the Hawkes Bay Regional Council (Regional Assets Section).

**The Proposal:**

- 10) The Applicant has filed separate consent applications for each of the Ngaruroro River, Tukituki Catchment Rivers and the Tūtaekuri River, with each application having its own AEE.
- 11) The Applicant is seeking consent to undertake the gravel extraction in locations extending along the braided riverbeds of the subject rivers identified on planning maps in each application.
- 12) Extraction is to be carried out clear of any actively flowing channels within the riverbeds and the work is to be extended to the removal of mainly sand and silt that accumulates on the river berms from high river flows.

- 13) Gravel is to be extracted only from those dry areas of the river identified through cross section surveys where there has been an aggregation of gravel above the flood design level of the riverbed. There however may be instances where gravel extraction is required to control excessive meandering in a river reach where the riverbed is below the design riverbed level (grade line).
- 14) Gravel is to be extracted using an excavator or loader, which generally will load the gravel into a large dump truck to avoid double handling. The dump trucks will remove the gravel to a site off the "active" riverbed, where it will be further processed or stockpiled. Trucks will follow the minimum number of tracks as possible to minimise effects on riverbeds. Gravel extraction usually only occurs during low river flows, to avoid or minimise crossing of active channels, and to maximise the area and height of gravel beaches.
- 15) The Applicant originally sought a term of 25 years but is now seeking a 20-year term combined with a non-statutory 5 yearly review process.

**Status of the Applications:**

- 16) Under the Hawkes Bay Regional Resource Management Plan (RRMP) large scale riverbed gravel extraction (exceeding 0.25m<sup>2</sup>) is a restricted discretionary activity and similarly under the Hawkes Bay Regional Coastal Environmental Plan (RCEP) large scale extraction in the coastal area outside of the coastal marine area is also a restricted discretionary activity. Discretion is restricted to a range of matters referred to in the respective rules classifying the activity as a restricted discretionary activity.
- 17) We note here that the applications also cover the flood management and gravel extraction ancillary activities that are permitted activities in both plans such as beach raking and tree removal.

**Statutory Framework:**

- 18) As a restricted discretionary activity we are obliged to consider under s 104 and s 104C of the RMA the actual and potential effects on the environment of allowing the proposal but only in relation to those matters in the plan over which our discretion is restricted, any offset or compensation offered by the Applicant to address any adverse effects, what the relevant planning provisions say about this proposal and any other relevant matters, all of which are to be evaluated in



making our decision including where appropriate consideration of part II matters.

**The Hearing:**

- 19) As mentioned earlier no submitters actively opposed the applications but both NKII and TToH had made it clear in their submissions that they would give qualified support for the proposal subject to suitable conditions being included in the consents that would ensure tangata whenua rights and interests in the awa and the riverbed are provided for.
- 20) Prior to the hearing and over an extended period of time three pre hearing meetings were held involving the Applicant and submitters to discuss draft conditions and the concerns raised by NKII and TToH. Also discussed was the development of a Memorandum of Understanding (MOU) between the Applicant and NKII and TToH to provide cultural oversight of gravel extraction operations and to inform the functions of proposed Kaitiaki Liaison Groups to be established under the conditions of consent.
- 21) As these discussions were confidential, we do not intend to summarise the outcomes reached except to say that no resolution was reached and both NKII and TToH requested a hearing be held.
- 22) Before traversing the evidence given at the hearing and in order to provide context, we wish to outline the key issues raised by tangata whenua submitters. Those issues were the primary focus of the evidence presented at the hearing. The key issues were:
  - ii. The scope of the applications and whether other consents should have been sought including district council land use consents.
  - iii. Whether the location of activities as a matter of restricted discretion allows for a wide range of effects to be considered including, cultural, groundwater and sedimentation, river system effects, the natural character of rivers and coastal extraction activities.
  - iv. That there are gaps in the assessment of effects of large scale gravel extraction and an incomplete assessment of the relevant planning documents including the National Policy Statement for

Freshwater Management 2020 (NPSFM20) and Iwi Management Plans.

**The Applicant's Case:**

- 23) Ms Lara Bloomfield, Counsel for the Applicant addressed a number of jurisdictional issues in her submissions. Ms Bloomfield emphasised that the applications were seeking consent for gravel extraction from the bed of the rivers, not to undertake gravel processing for which land use consents would be required. The consents sought included the disturbance of the riverbed and the discharge of sediment and any associated diversion of water.
- 24) Ms Bloomfield explained that no land use consents were required except for a consent under the Central Hawkes Bay District Council Operative District Plan to extract gravel from river sites having significant conservation value identified in that plan. That consent was being sought separately.
- 25) Ms Bloomfield also submitted that NKII and TToH were now raising in their evidence matters relating to groundwater effects, loss of instream habitat and interference with the natural character and hydrology of the rivers that were outside the scope of their submissions. She contended that unless the Applicant offered conditions specifically addressing these matters they were issues that were outside the panel's consideration and limited discretion.
- 26) Ms Bloomfield confirmed the Applicant was seeking a global consent for a term of 20 years and that any matters of concern to tangata whenua that may arise from the exercise of the consent could be dealt with under proposed review conditions rather than limiting the term to 10 years as sought by NKII and TToH.
- 27) Mr Christopher Dolley described in his evidence the need to undertake gravel extraction from the Hawkes Bay river systems in order to maintain flood protection schemes to protect people and property from flood events. He explained that currently short term consents are issued to commercial gravel extractors to take gravel from riverbeds but the problem with this process is that there is no certainty provided and that there are costs and delays involved. Under the proposed system, the Applicant will be the consent holder and will be responsible for meeting the conditions of consent. This means that iwi and other stakeholders will be able to engage with a single consent holder rather than with multiple extractor parties.

- 28) Mr Dolley confirmed that the extraction of gravel is solely for flood protection maintenance reasons and is based on identifying areas where the riverbed height has aggregated above the flood protection scheme design height or where other flood control measures are required.
- 29) Mr Dolley makes the point that gravel extraction is not a discretionary task. He said that if maintenance is not carried out then at some point in the future the flood control scheme will not deliver the current level of protection for the community.
- 30) We heard evidence from Mr Jose Beya, a rivers and control engineer employed by the Applicant. Mr Beya described in his evidence the outcome of a study in 2018 into the effects of gravel extraction on river morphology. Mr Beya was one of the co-authors of the Gravel Resource Management Report<sup>3</sup> which reviewed the whole of the gravel extraction process including potential changes in river morphology, natural river sediment transport and coastal sediment supply rates. The report concluded that although gravel extraction has led to significant changes to river systems, gravel extraction is necessary to prevent or mitigate flood risk to development on the flood plains. The report supported using the adaptive approach consisting of cross-section surveys of the riverbed height to determine areas for extraction where there has been increases in levels above the design riverbed level. As Mr Dolley had explained earlier, this is the strategy to be used for identifying the areas for gravel extraction.
- 31) Mr Beya also explained in his evidence that he is involved in a research project to consider the interaction between surface water and ground water in braided rivers and the influence gravel extraction may have on subsurface processes. According to Mr Beya this study is still in progress so no conclusions can be drawn from it. As an aside this study does reinforce, in the panel's view, the need for appropriate adaptive review and monitoring conditions in the consents.
- 32) We heard evidence from Dr Robin Holmes, a freshwater ecologist at the Cawthorn Institute who had undertaken a comprehensive assessment report for the Applicant in 2017<sup>4</sup> on key instream species with specific focus on native fish and salmonid species. That report concluded that the instream values in the Ngaruroro and Tūtaekuri Rivers consist of 21 species of fish, with six of

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<sup>3</sup> September 2018.

<sup>4</sup> Effects of Gravel Extraction and Beach Raking on Key Instream Species in HB Rivers.



those fish having the threat ranking of “At Risk, Declining”. All the rivers have mahinga kai species throughout and support regional significant trout species.

- 33) Dr Holmes considered that gravel extraction can impact on river ecology in two ways: the direct effects created by the disturbance from machinery and the indirect effects on channel morphology caused by the removal of gravel. Dr Holmes focused on the direct effects and concluded that machinery crossing side braids will only have a localised effect on stream-bed organisms including small fish but that river fish populations as a whole are unlikely to be adversely affected. However as there was a lack of information on the level and effects of the resuspension of fine sediment from machinery crossing braided river channels or from gravel extraction itself, Dr Holmes recommended monitoring assessments be undertaken to inform any required changes to gravel extraction practices through a review process. Dr Holmes considered it was unnecessary to consider gravel extraction during fish migration and spawning periods due to the localised scale of effects and that no extraction is to occur in actively flowing river channels.
- 34) We next heard from Dr Forbes, an ecologist who undertook an assessment of the effects of gravel extraction on riverbed bird species in 2017<sup>5</sup>. Dr Forbes has also prepared Ecological Management and Enhancement Plans for each of the Ngaruroro, Tūtaekuri and Tukituki Rivers.
- 35) Dr Forbes considers in his assessment that the Ngaruroro, Tūtaekuri and Tukituki Rivers hold moderate to very high ecological values for river birds and that management measures are required to reduce the level of effects from gravel extraction disturbance. If the management measures he recommends are followed, then the level of impact would be low to very low.
- 36) Dr Forbes then described those management measures in his evidence with the key measure being a requirement by the consent holder to conduct pre-extraction inspections by a qualified and experienced ecologist to identify whether nesting is taking place in a proposed extraction area prior to work commencing. If the seasonal inspection identifies nesting activity, the extraction activity is to be directed to an alternative location to avoid direct effect on the nesting birds. With the management measures in place Dr Forbes considers the threat to river birds becomes negligible.

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<sup>5</sup> Gravel Review; Terrestrial Ecology Assessment.

- 37) Dr Forbes also acknowledged that gravel extraction with beach raking does have a positive effect by addressing weed encroachment thereby maintaining open breeding habitats for river birds.
- 38) Mr Simon Bendall, a Planning Consultant presented planning evidence at the hearing for the Applicant. He addressed a range of matters including a planning analysis of the relevant planning documents, an assessment of the level of effects from the proposed extraction activities and an outline of the conditions proposed by the Applicant with some changes and refinements to address concerns raised by tangata whenua. This included having clearer maps defining the extent of extraction areas.
- 39) Mr Bendall considered many of the cultural issues could be addressed through a Memorandum of Understanding with NKII and TToH which would define the terms of reference for the establishment of Kaitiaki Liaison Groups under the conditions of consent. The Kaitiaki Liaison Groups would provide cultural oversight of gravel extraction operations. Mr Bendall concluded that from a planning analysis perspective there is no reason why consents cannot be granted subject to appropriate conditions.

**Tangata Whenua Concerns:**

- 40) Although NKII and TToH had lodged separate submissions on the applications, their cultural and effects based concerns were similar and they presented together at the hearing.
- 41) Mr Ngaio Tiuku, Director of Environment and Natural Resources for NKII presented oral evidence to us outlining the close relationship that tangata whenua have with the three river systems where gravel extraction is being undertaken. One of the matters Mr Tiuku raised in the hearing was in relation to the MOU and the Kaitiaki Liaison Groups proposed by the Applicant to provide cultural oversight of the gravel extraction operations. Mr Taiuku said that NKII was reluctant to support the establishment of Kaitiaki Liaison Groups until the purpose and functions of the groups were better defined by the Applicant and acceptable to both NKII and TToH. Mr Tiuku agreed with their planner Ms Grey Wilson that the purpose and functions of the proposed Kaitiaki Liaison Groups should be defined in the conditions of consent.
- 42) Mr Mārei Apatu, Chief Executive of Te Taiwhenua o Heretaunga explained how the physical and metaphysical aspects of waterways in the Māori world view



are inseparable. Environmentally tangata whenua see an awa as a whole entity whose parts are interdependent and the health and well-being of any flora, fauna, birds, fish or insects will be affected by the health of the awa, and vice versa and consequently the well-being of people. Mr Apatu then explained his iwi's connection to the Ngaruroro River, Tūtaekuri River and Tukituki Catchment Rivers all of which have sites of significance, being wāhi tapu, wāhi taonga and mahinga kai - including whitebait and eel gathering places. He expressed concerns that gravel extraction has the potential to adversely impact on these sites and that they needed to be excluded or protected from extraction operations.

- 43) Mr Apatu concluded his evidence by listing a number of conditions that should be imposed as conditions of consent to address the concerns of TToH. The consent should have a maximum term of 10 years, a 5 year general review condition to review the operation of the consent and conditions defining how adverse effects were being managed, a condition requiring an annual hui with tangata whenua to review the previous year's operations and a condition requiring the gravel extraction areas be restored to the pre-extraction conditions.
- 44) We next heard from Mr Shade Smith on behalf of NKII and TToH. Mr Smith is a senior scientist at NKII. He outlined in his evidence the connected relationship between surface water and ground water in braided river systems and that the effects of gravel extraction on this relationship should be given equal and concurrent consideration where gravel extraction consents are being considered. He said it was an important consideration in order to give effect to Te Mana o Te Wai (NPSFM 2020) that promotes the health of freshwater. Similarly he considered the effects of gravel extraction on the natural character and habitat quality of river systems also needs to be properly assessed. Mr Smith contends that the applications have failed to assess these matters in any meaningful way with limited consideration to the well-being of the water bodies.
- 45) Ms Grey Wilson presented planning evidence on behalf of TToH and NKII. Her evidence focused on identifying legal and evidentiary gaps in the Applicants assessment of the proposal within the relevant planning framework. Ms Wilson described in her evidence the lack of any detailed assessment in the applications of Iwi Management Plans, cultural effects, effects on ground water, the NPSFM 20 and the lack of specificity in the Applicants proposed draft

conditions requiring management plans and the formation of Kaitiaki Liaison Groups.

- 46) Ms Wilson concluded in her evidence that if the panel was of the view that there was sufficient evidence before it to consider the Applications then the applicants proposed draft conditions needed to be substantially overhauled, particularly in relation to addressing cultural concerns. We have more to say on this issue later in our decision.

**Applicant's Response to Submitters Evidence:**

- 47) In response to the concerns raised by Mr Apatu that inanga spawning habitats may be compromised from gravel extraction, the Applicants ecologist Dr Holmes confirmed that a number of whitebait spawning habitats in the three river mouths have been identified in the Code of Practice for river control works and that they are unlikely to be affected by fine sedimentation or gravel extraction because gravel extraction occurs only in the dry gravel river areas which are not spawning areas for whitebait. Dr Holmes also confirmed that no gravel extraction is to take place in Significant Conservation Areas (SCA). He considered any fine sediment that is transported from gravel extraction upstream that may enter SCA areas to be only a minor risk and will be subject to a monitoring condition.
- 48) As to Mr Smith's concerns about the potential impact gravel extraction may have on ground water, Mr Beya, for the Applicant, reiterated the interaction between surface water and ground water is currently subject to a research project by NIWA but at this stage the study has not concluded that gravel extraction in braided rivers affects aquifer recharge. We note here also the Applicant proposes that the outcome of that study will be subject to the Applicant's proposed 5 yearly review condition.
- 49) Mr Bendall, the Applicant's Planning Consultant addressed many of Ms Wilson's legal and planning concerns. He produced updated maps that showed more clearly the areas along the river reaches where gravel extraction is expected to occur.
- 50) In response to Ms Wilsons criticism that the NPSFM 2020 has not been adequately addressed in the applications, Mr Bendall outlined the elements of the applications that are consistent with the directions in the NPSFM 2020 such as avoiding work in the flowing river channel and the proposal to involve tangata



whenua in the management and oversight of extraction activities through the conditions of consent.

- 51) As to the cultural and environmental concerns raised by Ms Wilson and Mr Apatu, Mr Bendall set out in his evidence a table showing how the proposed conditions are intended to address these concerns such as the creation of the Kaitiaki Liaison Groups and a 5 year review that would engage with the Groups to identify any practices and activities that should be avoided or modified to address any adverse effects on the environment and cultural values.

**The s42A Report:**

- 52) We were presented with a helpful s42A Report and evidence from Mr Sven Exeter, an Independent Planning Consultant to help us decide the applications. Mr Exeter undertook a comprehensive analysis of the applications including the NPSFM 2020 and the NESFW 2020. He concluded that the proposed activities would have no more than minor adverse effects on the environment if undertaken in accordance with recommended conditions but with the qualification that the consent conditions should be further refined to ensure the issues raised by tangata whenua are adequately managed as per the intent of the Te Mana o Te Wai concept in the NPSFM . Overall Mr Exeter supported the granting of consents.

**The Panel's Assessment of the Applications:**

- 53) From the evidence we heard at the hearing, it became clear to us that tangata whenua submitters were not opposed to the extraction of gravel from the riverbeds for flood management purposes but rather they considered the applications had evidence based deficiencies that needed to be addressed or better explained, particularly the lack of specificity in the proposed conditions . It seemed to us these issues were capable of being resolved or narrowed through further discussion between the parties over the appropriate conditions to be imposed if consents were to be granted.

- 54) Accordingly at the conclusion of the hearing we directed the Applicant to prepare a revised set of conditions defining the matters which management plans should address including the objectives of the Kaitiaki Liaison Groups

proposed by the Applicant. We directed the Applicant to confer with submitters over the revised set of conditions for the purpose of reaching agreement on the conditions, further refining them or where conditions were not agreed for the reasons to be provided in a joint witness statement.

- 55) We subsequently received a revised set of conditions and a joint witness statement in accordance with our directions. The joint witness statement set out the revised conditions that were agreed and those conditions that were still in contention and the reasons for the disagreement. We are grateful to the parties and the facilitator for complying with our directions. The outcome as a result of caucusing has been helpful to us in deciding the applications. We will comment on the conditions later in our decision.

Jurisdictional issues:

- 56) Ms Grey Smith, Planning Consultant for the tangata whenua submitters raised in her evidence a number of jurisdictional issues relating to the scope of the applications that need to be addressed before consents could be granted. We do not accept that to be the case.
- 57) The Applicant has applied for consents under r 74 of the RRMP and r 61 of the RCEP which cover riverbed disturbance, sediment discharges and diversions that are associated with gravel extraction. We are satisfied those activities are within the scope of the applications. We are also satisfied the riverbed extends to include the berms within the stopbanks that are covered by higher river flows.
- 58) The Applicant is not seeking district land use consents to process extracted gravel. That is the responsibility of the authorised operators. Overall we are satisfied the applications can be considered on their merits.

Instream species:

- 59) Dr Holmes for the Applicant presented evidence to us on the effects of gravel extraction on instream fish species and also macroinvertebrate communities. In his evidence he concluded:

a. *"The gravel extraction activities proposed by the applicant may have some localised effects and macroinvertebrates, either through the resuspension of fine sediment or through crushing streambed fauna through machinery at side-braid crossing sites. However these effects are unlikely to adversely affect the wider fish*

*populations because the areas effected will be small compared to the vast areas of habitat that will remain unaffected”*

*b. “Migration for any fish species is unlikely to be effected because extraction activities do not occur in the mainstream river-braids and crossing of side braids are episodic . Any effects on fish spawning will be limited in extent and duration to the few reaches of river where extraction activities are occurring”<sup>6</sup>*

- 60) Dr Holmes acknowledges there is little information on the degree and extent of turbidity increases as a result of the gravel extraction activities. He recommends that to cover off this gap in information the severity, extent and duration of turbidity plumes should be included as part of a 5 yearly review to monitor potential instream ecological effects of gravel extraction.
- 61) The Applicant proposes a condition to this effect. We also note proposed conditions require the crossing of side-braids near or within shallow riffle areas by machinery be kept to a minimum, no extraction is to take place in the active river channel and extraction sites are to have a one metre bund between the site and a flowing channel.
- 62) Having regard to the evidence of Dr Holmes and the proposed conditions that are intended to avoid, remedy or mitigate any adverse effects, we are satisfied the effects of gravel extraction on the instream values of the rivers are likely to be minimal when considered in the context of the river systems as a whole.

River Birds:

- 63) In his evidence Dr Forbes for the Applicant noted the Ecological Management and Enhancement Plans he had prepared for Council for the Ngaruroro, Tūtaekuri and Tukituki Rivers constrain gravel extraction activities in a number of ways so as to avoid impacts to breeding river birds during their breeding seasons. These measures include the pre-extraction and avoidance measures we had outlined earlier as described in Dr Forbes' evidence. These constraints are intended to be imposed through the proposed conditions of consent.

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<sup>6</sup> Dr Holmes evidence 5<sup>th</sup> November 2021, para 32 and 33

- 64) We note no expert evidence was presented to us by submitters to address the potential effects gravel extraction may have on avian ecology. Having regard to Dr Forbes' evidence and so long as the protection measures proposed by Dr Forbes are followed, we are satisfied such effects will be minimal.

River Morphology:

- 65) Tangata whenua submitters expressed concern that changes in river morphology or channel form from gravel extraction may adversely affect groundwater recharge, natural character and instream habitat. The Applicant acknowledges that over-extraction has resulted in changes to the natural river sediment transport, morphology and coastal sediment supply rates.<sup>7</sup> In order to counter these effects and the uncertainty associated with the lack of reliable data on these matters, we note that the Applicant proposes to constrain gravel extraction by undertaking river cross section surveys so that gravel will only be extracted from dry riverbed areas that are above the flood scheme design level of the riverbed. According to Mr Beya this allocation method will control the aggradation and avoid the degradation of riverbed levels. An exception to this allocation method would be where gravel extraction is necessary to control excessive meandering in a river reach.

- 66) In terms of maintaining the natural character of a river system, the Applicant proposes a condition requiring the reinstatement of disturbed areas as far as practical on completion of gravel extraction work to minimise the release of sediment to flowing waters. We consider the condition should go further to address natural character and to read:

*d All disturbed areas shall be reinstated as far as practical to minimise the release of sediment to flowing waters and to maintain the natural character of the river system.*

We received little evidence on the appropriateness of using the Habitat Quality Index and Natural Character Index as advocated by Mr Smith to assess changes in habitat or natural character from gravel extraction. We are therefore not prepared to impose that method of assessment as a condition of consent. However, we note that the proposed Freshwater Environmental Monitoring and Evaluation Plan (FEMEP) contains provisions for monitoring intended to

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<sup>7</sup> Beya evidence 5 November para 12.



quantify the structure, form and changes in the ecologically significant aspects of the geomorphology of the rivers that may arise from gravel extraction.

- 67) Overall we are satisfied that the effects of gravel extraction on river morphology can be appropriately managed through the conditions of consent and the gravel allocation method proposed by the Applicant.

Groundwater:

- 68) Mr Smith raised in his evidence on behalf of the tanga whenua submitters concerns that the applications had failed to assess the impact of gravel extraction of the Heretaunga aquifer. According to Mr Smith there is a risk the integrity of the aquifer could be compromised by the lowering of riverbed levels from gravel extraction.

- 69) In response we were told by Mr Beya at the hearing that the interaction between surface and groundwater in braided rivers is currently the subject of a research study and that no conclusion can be drawn at this stage about the effect gravel extraction may have on aquifer recharge. We received no other expert evidence on the relationship between surface and water groundwater and how gravel extraction may affect that relationship.

- 70) We consider there is insufficient information before us to make a definitive finding on this issue. We therefore agree with the Applicant that the outcome of the research study can be addressed through the 5 yearly review condition that provides for consideration of any new research information in a report to Council including making recommendations and providing methods to avoid or reduce any adverse effects. We note that any recommendations in the report can be enforced by Council through the statutory s 128 review conditions.

Whole of river assessment:

- 71) Ms Wilson in her evidence was critical in the lack of an overall whole of river assessment regarding the potential effects of the proposed activities on the various river systems under consideration. Her criticism reflects Mr Smith's concerns that various stresses on riverine ecosystems should not be considered in isolation but holistically so that imbalances can be addressed. This approach acknowledges the interconnected nature of the environment consistent with Te Mana o Te Wai.

- 72) We note that both Dr Forbes and Dr Holmes undertook whole of river assessments in determining the likely impact of gravel extraction on river ecology, and that any potential adverse effects on groundwater are covered by the review condition if any relevant information is forthcoming on the interconnection between surface water, groundwater and gravel extraction.
- 73) We are satisfied there is sufficient information before us to determine the likely level of impact of gravel extraction on the whole river systems after taking into account the constraints on and the review of extraction operations provided for in the proposed conditions of consent.

Cultural Effects:

- 74) The main cultural concerns raised by tangata whenua submitters, in addition to their concerns over the impact of gravel extraction on the natural environment, relate to maintaining access to, and the protection of, mahinga kai - including inanga spawning areas, and, the protection of wāhi tapu and other customary sites. The Applicant accepts that all of these issues need to be addressed and argues that they can be addressed through the Kaitiaki Liaison Groups. According to the Applicant the purpose of the Kaitiaki Liaison Groups is to provide cultural oversight of gravel extraction activities by ensuring areas of cultural significance are appropriately identified, and for exchange of dialogue if areas are threatened or affected. We should mention here that under the revised set of conditions the Kaitiaki Liaison Groups are now referred to as Tangata Whenua Operations Management Groups (TWOMG)
- 75) In response Ms Grey for the submitters considers that a comprehensive Cultural Impact Assessment (CIA) should have been undertaken with input from TToH and NKII as well as the Heretaunga Tamatea Trust. The latter had been granted statutory acknowledgement over the three rivers that was finalised after submissions on the consent applications closed.
- 76) Further, and irrespective of whether a CIA is ordered, Ms Grey considers it is important that specific conditions be included in the consents to avoid, remedy or mitigate cultural effects such as the identification and exclusion of culturally significant areas from extraction operations.
- 77) The panel considers a CIA at this late stage of the consent process is not necessary as tangata whenua submitters had clearly articulated their concerns at the hearing. Moreover, there were concerns expressed during caucassing on

whether or not there was the necessary “manpower” readily available to undertake and produce a CIA expeditiously. Nevertheless we largely agree with Ms Wilson that the conditions need to be specific on how potential cultural effects from extraction operations are to be addressed. In this regard, we are satisfied the now revised TWOMG condition sets out with sufficient clarity the purpose of the TWOMG which is to provide tangata whenua with the opportunity to provide cultural oversight of extraction operations so that adverse effects on cultural areas of significance can be avoided.

Positive Benefits:

- 78) We consider that having Council as the single consents holder instead of issuing short term consents to individual operators is clearly a better and more efficient management regime for the future extraction of gravel for flood control purposes. The consent holder will be responsible for meeting all consent conditions and be required to undertake closer monitoring of operations delegated under authorisations to various operators. It will enable iwi and other stakeholders to engage with a single consent holder rather than multiple parties, and for operators it will reduce their consenting costs and delays.
- 79) Overall we are satisfied the proposed new regime for gravel extraction will achieve a better environmental outcome than the earlier method of issuing individual consents.

Planning Documents:

- 80) Each of the AEE’s accompanying the three consent applications provided us with an analysis of the planning framework within which these applications are to be considered. A further updated analysis was presented to us at the hearing by the Applicant’s consultant planner Mr Bendall and by the s42A Report planner Mr Exeter. Their assessments take into account changes to the statutory planning framework that have occurred since the applications were lodged with Council.
- 81) In our consideration of the relevant planning framework, we have taken into account the overall purpose of the applications which is to provide a more efficient management regime for undertaking gravel extraction for flood management purposes.

- 82) In terms of a national direction covering gravel extraction activities, the National Policy Statement for Freshwater Management 2020 (NPSFM), the National Environmental Standards for Freshwater 2020 (NESF), the National Environmental Standards for Human Drinking Water 2007 and the New Zealand Coastal Policy Statement (NZCPS) are all potentially relevant planning documents. We agree with Mr Exeter's assessment that the Applicant's proposal is not inconsistent with, or in ordinary parlance will not offend, these enactments.
- 83) In order to ensure compliance with the NPSFM and the NESF, the Applicant proposes a condition that there is to be no extraction activity within 100 metres of a wetland, and has adopted an effects management hierarchy to manage potential effects on the river systems.
- 84) There is nothing in the NES for drinking water that would be triggered by the Applicants proposal as it is not anticipated that any registered drinking water supply will be affected.
- 85) The directive policy 11 in the NZCPS would apply where gravel extraction is undertaken in the coastal environment. Policy 11 provides a strong direction that any adverse effects on threatened or at-risk species that have been identified by Dr Holmes and Dr Forbes in the three river systems are to be avoided. However we are satisfied that any adverse effects on those indigenous species will be minimal after taking into account the evidence, and the mitigation measures proposed by Dr Holmes and Dr Forbes as conditions of consent.
- 86) We now turn to a consideration of the regional planning documents. Under both the Regional Policy Statement (RPS) and the Regional Resource Management Plan (RRMP), gravel extraction for flood management purposes is a recognised activity to be undertaken in accordance with policy guidance criteria under policy 53 of the RPS on the matters to be considered including the avoidance of increases in turbidity maintaining existing fish passages, and the effects on river ecology. As mentioned earlier the Applicant proposes to adopt an effects management hierarchy through the proposed conditions of consent to address potential effects on riverbed values.
- 87) The relevant policy provisions of the RRMP and the RCEP provide direction in a more general way on the natural environment considerations raised in Policy 53 of the RPS that specifically apply to gravel extraction. Gravel extraction is



given the status of a restricted activity with discretion limited to a range of matters that include the criteria in Policy 53.

88) Although we note the matters to which our discretion is limited do not include specific reference to matters of significance to iwi/hapu we are still obliged to consider the matters of discretion through the lens of the tangata whenua provisions of the RPS, RRMP and the RCEP, particularly the consideration of the gravel extraction on the ecology of the river.

89) Mr Exeter in his s42A Report has set out a comprehensive analysis of all these provisions including recent changes to the RRMP through Plan Change 7 and Plan Change 9. He concludes the proposed gravel extraction work for flood control purposes to be undertaken subject to operational constraints provided for in the conditions will not be contrary to any objectives in the relevant planning documents. He also concludes the proposal will not offend three registered iwi management plans namely;

- Kahungunu Ki Uta, Kahungunu Ki Tai; Marine and Freshwater Fisheries Strategic Plan;
- Mana Ake – an expression of Kaitiakitanga, Te Taiwhenua o Heretaunga;
- Tūtaekuri Awa Management and Enhancement Plan.

90) Having considered the relevant planning documents and their provisions, and Mr Exeter's planning analysis of them, we agree that this proposal can be undertaken in a manner consistent with the relevant planning framework that recognises the need for the extraction work for the purpose of managing flood risk.

Other matters:

91) There are no other matters that would influence our decision on this application.

**Conditions:**

92) As mentioned earlier, after the hearing was adjourned to enable the parties to caucus on an agreed set of conditions, we received a joint witness statement and a draft set of conditions for our consideration. The joint witness statement set out the conditions that were agreed and those where there was still

disagreement with the reasons for the disagreement. The conditions that are in dispute are within a relatively narrow compass and are addressed by the panel as follows:

*The term of the consent:*

- 93) The Applicant is seeking a 20 year term. Both TToH and NKII are seeking a 10 year term unless all the conditions they are seeking are accepted
- 94) The Panel considers a 20 year term is appropriate for each of the 3 consents. Gravel extraction for flood protection purposes is not a new activity. The activity has been undertaken for decades and is likely to continue into the future. A review of operations is enabled by a statutory s 128 RMA review condition which the Panel considers is a more appropriate method for addressing adverse effects on the environment including cultural values than imposing a shorter term with associated renewal costs and uncertainty for what is an essential activity. A term of 20 years is also entirely consistent with the recognition in the RRMP for 20 year or longer consents for this type of activity. For these reasons we consider a 20 year term is appropriate.

*Tangata Whenua Groups:*

- 95) Both TToH and NKII have belatedly sought changes to the constitution of the Kaitiaki Liaison Groups, now called Tangata Whenua Group(s) under the revised set of conditions.
- 96) They seek an increase in the number of representatives on each of the Heretaunga and Tamatea Tangata Whenua Groups for the Tukituki Catchment rivers and the formation of two new groups for the Ngaruroro and Tūtaekuri Rivers.
- 97) The Applicant does not agree with those changes for the reason it is more efficient to have the Heretaunga and Tamatea Tangata Whenua Groups represent iwi and hapu interests, with each group representing separate flood control schemes in relation to the three river systems. According to the Applicant, having two additional groups will create an additional administrative and financial burden on the Applicant.
- 98) We agree with the Applicant. We consider iwi and hapu interests would be more effectively represented through the two groups and having two representatives per appointee within each group would ensure a more efficient process can be

followed. We consider the Tangata Whenua Groups should be limited to the Heretaunga Gravels and the Tamatea Tangata Whenua Group as originally proposed.

*Memorandum of Understanding (MOU):*

- 99) TToH and NKII are seeking to have a condition precedent as a condition of consent requiring the establishment of a Memorandum of Understanding to inform the Tangata Whenua Groups before the other conditions of consent can be exercised.
- 100) We do not agree a condition of that kind is reasonable or necessary. An MOU stands outside the RMA process and is a matter for negotiation between the parties. Such a requirement could frustrate the exercise of the consents which stand by themselves as authorisations for the proposed works. It follows that the Panel does not favour the inclusion of an MOU in the conditions of consent.

*Condition 22 Waahi (or Wāhi) Taonga (Tukituki Consent):<sup>8</sup>*

- 101) Ms Wilson on behalf of TToH and NKII is seeking to have a reference to waahi taonga as defined in the Hastings District Plan in the conditions requiring the Applicant to avoid causing significant adverse effects on matters of cultural significance.
- 102) The Applicant does not raise a strong objection against the reference to waahi taonga, but as defined the Applicant considers the reference to taonga is too broad in scope and may include the river itself. There is a risk the exercise of the consent could be frustrated. The Applicant proposes a revised condition to include in 22b;

*All waahi taonga sites and sites of significance to tangata whenua identified in Appendix A .*

- 103) We agree with the Applicant that waahi taonga as defined in the Hastings District Plan is too broad and raises uncertainty. For that reason and to avoid having an open ended reference we prefer the Applicants revised wording but to include "*or as identified by the Tangata Whenua Operations Management*

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<sup>8</sup> The Panel uses wāhi out of choice and is not stipulating the use of a macron if their usual preference is to use waahi.



*Groups*” as provided for in condition 19d. The revised condition 22 b would then read;

*All waahi taonga sites and sites of significance to tangata whenua identified in Appendix A or as identified by the Tangata Whenua Operations Management Groups.*

104) We consider the revised condition 22b will provide a greater level of certainty to the consent holder in exercising the consent as well as providing for the wider protection for sites of significance for tangata whenua. Consequential amendments would be required to be made to conditions 53 II and 54 a II

*Cultural Impact Assessment / Cultural Aspirations Report:*

105) The parties are unable to agree whether a CIA or what is referred to as a Cultural Aspirations Report (CAR) should be commissioned by the consent holder within 18 months of the commencement of the consent, as sought by TToH and NKII.

106) As indicated earlier in this decision, we consider the requirement for a CIA or CAR is not necessary given the number of agreed conditions in the consent that recognise and provide for the protection of tangata whenua cultural values. We refer to conditions (Tukituki consent) 18,19, 22, 24, 53II, 54(a), (d), (e) and 60-66. We therefore find that conditions requiring a CIA (56 to 59, Tukituki) should be deleted from the caucusing draft set of conditions.

107) Except for those conditions we have discussed, the parties are largely in agreement with the other conditions in the revised set of conditions we received following caucusing. Those conditions provide for the cultural oversight of gravel extraction operations through the establishment of the Tangata Whenua Groups, provide for stand alone operational requirements with defined obligations, management plans with clear objections and ongoing monitoring requirements, extensive reporting and review requirements including a Mātauranga Māori Monitoring and Mauri Enhancement Plan to give effect to the Te Mana o Te Wai.

108) We are satisfied the revised conditions subject to our further amendments are appropriate and will provide for the closer management and monitoring of gravel extraction operations.



**Overall assessment:**

109) It is our overall conclusion that the consents should be granted taking into account that the purpose of the consents is to manage flood risk. We are satisfied that under the revised conditions of consent any potentially significant adverse effects can be avoided, remedied or appropriately mitigated. The revised conditions we received following caucusing define more clearly the consent holders obligations to ensure gravel extraction is undertaken in a more sustainable way than has occurred in the past.

**Decision:**

110) For the reasons set out in this decision the Panel grants consents for gravel extraction to be undertaken at various locations at the Ngaruroro River, the Tukituki Catchment Rivers and the Tūtaekuri River to the coast in accordance with the consents and their conditions attached to this decision.

Date **30<sup>th</sup>** June 2022

P H Cooney  
Chair

Rauru Kirikiri  
Commissioner

Malcolm Green  
Commissioner