

**BEFORE THE HEARING COMMISSIONERS**

**IN THE MATTER OF**            the Resource Management Act 1991

**AND**                            The Proposed Natural Resources  
Plan for the Wellington Region

**AND**                            **Hearing 3 – Water Allocation**

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SUPPLEMENTARY PLANNING EVIDENCE IN RESPONSE TO REQUESTS FROM THE  
HEARING PANEL

of **PHILLIP HARRY PERCY**

on behalf of:

Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa

Minister of Conservation

The Wellington Fish and Game Council

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Dated: 22 September 2017

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## INTRODUCTION

1. During my appearance before the Hearing Panel for the topic of Water Allocation in Hearing Stream 3, the Panel asked me to prepare a response in writing on the following matters:
  - a. Where did the volumes for domestic and stock water takes proposed in my recommended definition of 'Class B take' come from?
  - b. What was the origin of my recommended definition of 'Permanent horticultural or viticultural root crops' come from?
  - c. How does the recommendation for a non-complying activity referred to in paragraphs 301 to 302 of my evidence in chief translate into provisions in the Plan?
  - d. Provide a s32AA evaluation summary for the main changes that I have proposed to the water quantity management approach in the Plan.
2. The following sections of this supplementary statement address the four matters listed above.

### Origin of the volumes in the 'Class B take' definition

3. In my evidence in chief I recommended the addition of a new definition for 'Class B take', which is a term used in my recommended amendments to the permitted and controlled activity water take rules in the Plan. The definition I proposed was:

Abstraction of water for any of the following activities:

(a) Firefighting

(b) Up to 250 litres per person per day for an individual's reasonable domestic needs

(c) Up to 70 litres per animal per day for the reasonable needs of a person's animals for drinking water

(d) Group drinking water supply or community drinking water supply up to a maximum of 250 litres per person supplied per day for the reasonable domestic needs of individuals

(e) water takes for the purpose of supplying water for the health needs of people and animal drinking water

4. The reason for the inclusion of quantities for the relevant types of takes (domestic use and stock water) is to provide certainty due to the term relating to the interpretation of permitted activity rules. In my opinion, it is helpful to have certainty around what might be considered to be 'reasonable needs'.
5. The origin of the quantities I included in the recommended definition of 'Class B take' was Rule 16-6 of the Horizons One Plan. The volumes in the One Plan rule are comparable to those set out in the Ministry of Health's guidelines on appropriate volumes for household requirements and stock watering.<sup>1</sup> These are set out below:

<b>Household Use</b>	<b>Litres/person/day</b>
Drinking	2
Cooking and food preparation	3
Bathing/showering/cleaning	100
Toilet flushing	80
Clothes washing	65
General use	50
<b>TOTAL</b>	<b>300</b>

<b>Other Uses</b>	<b>Volume/day</b>
Stock Watering	Up to 50 litres/stock unit

6. On reflection, it is unnecessary to include volumes in the definition of Class B take because the rules that the term applies to either already have maximum daily volume

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<sup>1</sup> Ministry for Health, *Household Water Supplies*, updated 2013, p.4-5.

conditions in place (Rule R136) or are controlled or restricted discretionary activities where the reasonable amount of each take can be determined on a case-by-case basis.

### **Origin of ‘Permanent horticultural or viticultural root crops’ definition**

7. In my evidence in chief, I recommended inserting a definition for ‘Permanent horticultural or viticultural root crops’ as a consequence of it being used in rules in the Plan (such as Rule R.R1). Rangitāne and Fish and Game sought that the Plan be amended so that water takes for root stock protection are not able to occur below minimum flows (including by deleting provisions that provide for such takes). The changes I have recommended, including the introduction of the 2-tier minimum flow methodology, retain reference to root stock protection in the rules but I consider that it is necessary to include a definition to ensure that the rule is clear.
8. The definition I recommended is derived from Policy P115 as notified, but includes additional details to ensure the definition does not capture annual or short-rotation crops. While the reference to 5 years is not essential, it does clarify that the plants that are relevant are those that require time to establish and which cannot be readily replaced or replanted.

### **Non-complying rule recommendation**

9. At paragraphs 301 to 302 of my evidence in chief, I discussed the request in the Rangitāne submission that sought a non-complying rule for takes that were not otherwise captured by Rule R.R3 as prohibited activities. The activities are those excluded from Rule R.R1(a), being:
  - a. Water for the health needs of people
  - b. Water for rootstock protection
  - c. Water used by industry from a community drinking water supply for a period of 7 years from the date the Plan was notified.
  - d. Groundwater
10. Because those activities are excluded from having to comply with Condition (a) of Rule R.R1, they are not then captured by Rule R.R3. My reading of the Plan is that those

activities would therefore be captured by Rule R142, which is the 'catch-all' discretionary activity rule (assuming the Plan does not otherwise permit those activities).

11. My recommended amendments to Rule R.R1 resolve the exclusion issue above and result any non-compliance with conditions (a) and (b) of the Rule R.R1 becoming prohibited activities. The Rangitāne submission sought a 'grace period' for such activities and that was the basis of my original recommendation to include a non-complying activity. On further consideration, I no longer consider that a non-complying activity is necessary because I have built the necessary grace period into the conditions of Rule R.R1.

### **S32AA evaluation of recommended water quantity management framework**

12. In addition to the analysis that was included in my evidence in chief, which addressed a number of matters relevant to the consideration of the appropriateness of my recommended approach, I have prepared a summary evaluation of the changes to the water quantity management framework recommended in my evidence. That summary is included in Appendix 1.
13. The conclusion that I draw from that evaluation is that the management framework as notified is unlikely to be effective in achieving the purpose of the Act, in a large part because the provisions of the Plan are unlikely to be effective in achieving its objectives. The notified approach is also likely to create a number of inefficiencies, both in terms of transactions costs around resource consent decisions, but also in the longer term where economic costs are likely to be incurred where resource overuse allowed through the notified regime will have to be resolved in the future. The notified management regime has the potential to allow for over-allocation or further over-allocation, particularly in relation to water quality where discharges associated with the taking and use of water are not considered in an integrated manner.
14. The alternative approach that I have recommended will incur some additional cost for the Council to undertake additional research and populate a set of interim limits to provide for water body values. However it is likely to reduce the transaction cost to resource consent applicants while also increasing certainty around the resource use outcomes that are likely in the future. Increasing certainty of the management regime and potential natural resource availability allows people to make more informed

investment decisions because the management approach is only likely to be refined rather than overhauled (which is what I consider will be necessary if the notified framework persists).

### S.32AA assessment of alternative water allocation regime

In preparing this further evaluation, I have evaluated my recommended changes against the notified version. This has been done on the assumption that the notified objectives and provisions were considered to be the most appropriate at the time of notification so therefore any change to those objectives and policies would need to demonstrate that the alternative is more appropriate.

I have not evaluated individual provisions, other than the objectives, because the individual policies and methods work together as a set. Instead, I have evaluated the key changes in approach that I have recommended.

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<b>Objectives</b>	Insert new Objective O52A that describes water quantity outcome.	32(1)(a) - the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act	<ul style="list-style-type: none"> <li>While an overall outcome for water quantity management could be, at least in part, deciphered from the full suite of objectives in the Plan (O2, O3, O4, O5, O6, O7, O8, O9, O11, O12, O13, etc) there was no clear statement of the water quantity outcomes. The piecemeal approach creates plan interpretation complexity and risks key outcomes that are necessary for achieving sustainable management being overlooked.</li> <li>The objectives in the Plan do not clearly connect water quantity management outcomes to the achievement of values. The NPS-FM, which is intended to guide regional councils in achieving the purpose of the Act in relation to freshwater management, has the maintenance and enhancement of values as the primary outcome.</li> </ul>	<ul style="list-style-type: none"> <li>Objective O52A establishes a clear outcome that is consistent with s5 of the Act and incorporates the values-based water management approach prescribed in the NPS-FM.</li> <li>O52A sets out in a single objective the fundamental approach to water quantity management, rather than requiring plan users to traverse a significant number of other objectives in the Plan to determine the outcomes.</li> <li>O52A provides a central outcome 'platform' for the policies and methods of the Plan to connect to.</li> <li>It does not require recourse to Part 2 of the Act as it describes an</li> </ul>

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			<ul style="list-style-type: none"> <li>The over-arching management framework set out in s5 of the Act is dispersed over multiple objectives which must be read together. That is, the relationship between the sustainable management components either side of 'while' in s5 is spread across multiple objectives. This makes it difficult to determine the relative weighting of different objectives and it is difficult to determine whether the combined effect of the objectives is an outcome consistent with s5. Currently the Plan is likely to require recourse to Part 2 of the Act in order to interpret and apply the objectives in each particular case.</li> </ul>	outcome consistent with s5 directly in the Plan.
	Delete Objective O52	32(1)(a) - the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act	<ul style="list-style-type: none"> <li>Objective O52 describes various means of managing water use, which is the function of policy.</li> <li>It describes a trajectory of change towards an outcome (improved and maximised through time) but does not actually describe an outcome.</li> </ul>	<ul style="list-style-type: none"> <li>Deleting O52 and incorporating the management methodology it incorporates into policies is more consistent with plan construction set out in s67(1). S67(1) prescribes a framework for plans that supports clear application of sustainable management at the local level.</li> </ul>
<b>Provisions (policies, rules and other methods)</b>	Establish a management framework based on catchment and sub-catchment values. This includes creation of a	Benefits of the environmental, economic, social, and cultural effects that are anticipated from	<ul style="list-style-type: none"> <li>Avoids the need to incur the cost of identifying values and putting in place interim water quantity outcomes to reflect those values.</li> </ul>	<ul style="list-style-type: none"> <li>The objectives of the Plan already list a set of values so a set of provisions that are also value-focused would more clearly connect the implementation to</li> </ul>

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	Schedule XX listing the relevant values for each catchment.	the implementation of the provisions including the opportunities for— (i) economic growth that are anticipated to be provided or reduced; and (ii) employment that are anticipated to be provided or reduced		<p>the Plan’s outcomes. In the notified provisions, there is little obvious relationship between the objectives and the provisions.</p> <ul style="list-style-type: none"> <li>• When applicants and decision-makers consider a proposal against the objectives and policies of the Plan, a set of policies that provide a clear structure for that assessment will improve decision-making efficiency and consistency.</li> <li>• The Council has already undertaken identification of some values (such as recreation, fishery and ecosystem values) for individual catchments, so incorporating those within the Plan for respective catchments improves Plan clarity and certainty.</li> <li>• Establishing a values-based management framework that is consistent with the whitua committee deliverables reduces the plan-making transaction costs involved in inserting the whitua committee recommendations into the Plan. These benefits accrue to the Council as well as to submitters participating in the process.</li> <li>• Establishing a structure that is consistent with the NPS-FM framework improves certainty for</li> </ul>

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				<p>resource users who can see how the resources affecting them are to be managed into the future. The issues then revolve around refinement of the value outcomes and natural resource attributes that are necessary to achieve the values.</p> <ul style="list-style-type: none"> <li>• A clear structure included in the Plan now improves management certainty for individual resource consent decision-making. It allows applicants and decision-makers to easily identify management aspects that are both certain and uncertain and encourages appropriate precautionary decision-making. With a clear values-focussed evaluation process, interim decision-making takes into account long-term outcomes rather than focussing on short-term localised effects.</li> <li>• Economic growth opportunities are managed more accurately where there is increased certainty around what information is known and unknown. It allows resource users to make better informed economic decisions (including the ability to take into account potential changes to particular natural resource access such as allocation volumes in</li> </ul>

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				<p>particular catchments) as compared with the notified regime, which does not clearly demonstrate where the information uncertainty exists.</p> <ul style="list-style-type: none"> <li>The values-based management framework supports better long-term economic and employment decision-making for resource users because it is clear where the regulatory regime 'gaps' are and it is clear when they have been filled. This improves understanding of the potential volatility of the regional plan regulatory regime and investment decisions can be made taking this into account.</li> </ul>
		<p>Costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions including the opportunities for—</p> <ul style="list-style-type: none"> <li>(i) economic growth that are anticipated to be provided or reduced; and</li> <li>(ii) employment that are anticipated</li> </ul>	<ul style="list-style-type: none"> <li>A high degree of plan analysis is required to identify and assess the wide range of objectives that influence a proposal. The obligation is on applicants and decision-makers to negotiate the Plan to do this, which is likely to result in inconsistent assessments and decisions.</li> <li>The degree of complexity involved in evaluating the notified provisions will incur costs on applicants as a result of more extensive AEE's, higher Council processing costs (due to more time involved) and potential increased costs and time delays through increased likelihood of further information</li> </ul>	<ul style="list-style-type: none"> <li>Much of the economic development impact of a change like this, would stem from the interim management regime in terms of how this played out between now and when the Waitua committee changes come in. If existing resource users/existing resource consents can continue for a period of time without change, then there is little economic impact on them.</li> <li>There may be some interim costs to resource users where a precautionary approach to resource access is more likely to</li> </ul>

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		to be provided or reduced	<p>requests (to evaluate provisions that have been missed).</p> <ul style="list-style-type: none"> <li>Increased potential for inconsistency of management of the water resources where decision-makers are required to decipher the intent of the provisions.</li> <li>Potential environmental and community costs as a result of inconsistent decision-making.</li> <li>Higher cost to applicants as a result of having to determine which values are present and the degree of attainment necessary on a case-by-case basis. As currently drafted, every value identified in the suite of objectives (approximately 32) will need to be assessed to determine whether it is present in the relevant water body affected by a proposal.</li> </ul>	be applied (because the 'gaps' in the management regime are more clearly seen by decision-makers). However these potential financial costs are likely to be off-set by the avoidance of adverse effects on other values that may not otherwise be protected.
		Risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions	<ul style="list-style-type: none"> <li>The information identifying where values are present and what is necessary to achieve them is not complete to allow for fully informed decision-making. The risk of not making this very clear in the Plan is that resource use decisions are made which undermine some of the values.</li> <li>Given the NPS-FM obligation to avoid over-allocation (or further over-allocation) and to resolve existing over-allocation, the risk of a less transparent management framework is that those obligations are not met,</li> </ul>	<ul style="list-style-type: none"> <li>There is some, but not complete, information on which values are present in particular catchments, and what the water quantity parameters to achieve them are. Including either place-holder values and water quantity requirements has a potential to impact on resource users by denying them access to natural resources that they would otherwise have. However in the case of the Ruamahanga catchment at least, much of the</li> </ul>

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			<p>or that they transfer the resolution of over-allocation to future generations.</p> <ul style="list-style-type: none"> <li>Without a clear framework that identifies where there is insufficient information on what is required to achieve particular outcomes, there is an increased risk that individual decisions will contribute to adverse effects (including cumulative effects) on the environment and values.</li> </ul>	<p>water quantity resource is fully allocated based on current flows and volumes so there is little expectation of 'new' water. Therefore the potential risk of economic costs in the short term are likely to be low. The risk of not taking a precautionary approach to resource use (by identifying interim values and limits) is that the environmental effects and other values are degraded.</p>
	<p>Define a two-tier minimum flow regime</p>	<p>Benefits of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions including the opportunities for— (iii) economic growth that are anticipated to be provided or reduced; and employment that are anticipated to be provided or reduced</p>		<ul style="list-style-type: none"> <li>Establishing a set of minimum flow limits that ensure the objectives of the Plan will be achieved is more effective than a regime where there is uncertainty around whether the objectives will be met.</li> <li>Clarity around minimum flows improves certainty for resource users as it allows for informed decisions around capital investment and activity management. It minimises the uncertainty that is associated with a low-flow management regime that is adjusted at the discretion of the Regional Council.</li> <li>Defined minimum flows avoid over-allocation because they define the point at which over-allocation will occur. An ad-hoc minimum flow regime as notified</li> </ul>

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				<p>does not define a transparent resource use limit and has significant potential to result in over-allocation (resulting from a freshwater objective not being met).</p> <ul style="list-style-type: none"> <li>• The regime clarifies to communities how different water takes and uses will be prioritised.</li> <li>• A minimum flow regime that applies to s14(3)(b) takes provides certainty to the community and individual resource users when adverse effects are likely to occur.</li> <li>• The minimum flow regime accounts for cumulative effects of multiple takes, which is difficult to determine on an individual take-by-take basis.</li> <li>• Reduces the potential costs to the environment and other resource users that are likely to result if minimum flows are exceeded.</li> </ul>
		<p>Costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions including the opportunities for— (iii) economic growth that are</p>	<ul style="list-style-type: none"> <li>• The current approach does not provide certainty as to whether the objectives of the Plan will be met because control of individual takes are not considered collectively.</li> <li>• Economic costs associated with uncertainty around when alternative water supply costs will be incurred when discretionary restrictions are applied. These are potentially greater than the costs of putting in place pre-</li> </ul>	<ul style="list-style-type: none"> <li>• Some economic impact to individual water users is possible where there is not an opportunity for Council discretion to allow some takes to continue below minimum flows.</li> <li>• Some cost is likely to be incurred by some resource users as a result of having to put in place contingency measures for when minimum flow restrictions apply</li> </ul>

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		<p>anticipated to be provided or reduced; and employment that are anticipated to be provided or reduced</p>	<p>emptive contingency measures because there is less opportunity to spread capital cost over time or to investigate more efficient alternatives.</p> <ul style="list-style-type: none"> <li>The current approach is not consistent with giving effect to the RPS (Policy 13) which requires the establishment of allocation limits for the total amount of water that can be taken.</li> </ul>	<p>(such as installing storage or establishing alternative water sources).</p>
		<p>Risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions</p>	<ul style="list-style-type: none"> <li>The regional council is unlikely to have sufficient information to be able to manage the cumulative effects of individual takes on a case by case basis through water shortage orders. The risk is that adverse effects of allowing takes below minimum flows occur, undermining the achievement of values including safeguarding life-supporting capacity.</li> </ul>	<ul style="list-style-type: none"> <li>There is currently incomplete information on the minimum flow levels necessary to achieve all of the values. The risk of relying on the current minimum flows is that values that have not been taken into account when they are set (such as Māori values) will be impacted. The risk of setting conservative minimum flows that take into account all values is that they are overly restrictive and result in additional costs to some resource users. In the Ruamahanga whitua, the economic impact risk of setting conservative minimum flows is significantly lower than in other whitua because the Ruamahanga Whitua Committee is expected to be presenting refined minimum flow recommendations that take into account all values by the end of 2017.</li> </ul>

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	Integrated management of water quantity and water quality	Benefits of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions including the opportunities for— (iv) economic growth that are anticipated to be provided or reduced; and employment that are anticipated to be provided or reduced	<ul style="list-style-type: none"> <li>Does not impose any regulatory obligations or costs on resource users who are discharging contaminants to land (these effects are dealt with in a non-regulatory way so resource users can determine their own level of management and therefore cost).</li> </ul>	<ul style="list-style-type: none"> <li>Promotes efficient management of multiple natural resources to achieve the objectives of the Plan (which relate to values and therefore cut across multiple natural resource components).</li> <li>Improves transaction efficiency for resource consent applicants to enable land use, water take/use and discharge aspects of activities to be considered as part of a single resource consenting process.</li> <li>Reduces inconsistent management responses that are likely to occur where water quantity and water quality are managed in disconnected management silos.</li> <li>Reflects the inherent relationship between water quality and quantity (the capacity of freshwater bodies to assimilate pollution is in part affected by the amount of water they hold).</li> <li>Improves regulatory certainty for individual resource users by acting as a 'one-stop-shop'. Considering all resource use aspects of an activity together allows for investment and management decisions to be made with full knowledge of resource constraints and regulatory obligations.</li> </ul>

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				<ul style="list-style-type: none"> <li>• Improves the ability to consistently manage cumulative effects of multiple activities of the same type (e.g different types of farming activities).</li> <li>• Allows for decision-making to be consistent with Policy B5 of the NPS-FM by ensuring decisions on water take and use applications do not contribute to water quality over-allocation.</li> <li>• Allows for long-term certainty for individual activities due to comprehensive consideration of all effects of an activity. This is likely to lead to improved employment and investment opportunities as business finances and management can be planned for.</li> </ul>
		<p>Costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions including the opportunities for— (iv) economic growth that are anticipated to be provided or reduced; and</p>	<ul style="list-style-type: none"> <li>• The notified regime requires separate consideration of different aspects of resource use associated with the same activity, resulting in the need for multiple interactions with the council and the Plan.</li> <li>• The notified plan assumes non-point source discharges from primary production activities will be effectively managed through good management practice compared with regulation of water take and use. That provides little certainty as to integrated outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>• Incurs some cost on resource applicants to consider combined effects when preparing assessments of effects and designing their proposed activities.</li> <li>• May result in some activities having to be modified to account for adverse effects from associated discharges that would not otherwise have been necessary under the notified regime.</li> </ul>

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		employment that are anticipated to be provided or reduced	<ul style="list-style-type: none"> <li>• Does not reflect the integrated management of water quality and quantity that is recommended in the NPS-FM (Objective C1, Policy C1(a)) and the RPS (including Objective 12, Policy 12 and Policy 40).</li> <li>• Policy 40 of the RPS requires that when considering applications for resource consents, regard is given to requiring that water quality, flows and water levels and aquatic habitats...are managed for the purpose of safeguarding aquatic ecosystem health. The policy and rule framework as notified does not provide scope for this to be done.</li> <li>• Does not provide the Council with an opportunity to manage activities that are likely to cause significant adverse effects as a result of associated discharges.</li> <li>• Where adverse effects consequential to water use are likely to be generated but not controlled through decisions on resource consents, it may mean that the Council is acting inconsistently with Policy B5 of the NPS-FM by a decision on a resource consent (albeit a water take and use consent) allowing over-allocation of a resource (in terms of water quality).</li> <li>• Increased uncertainty for individuals and businesses due to potential regulatory change in the future to</li> </ul>	

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		<p>Risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions</p>	<p>allow the Council to manage associated diffuse discharges through regulation. This may arise from the whitua process.</p> <ul style="list-style-type: none"> <li>Where applicants do not provide information on discharges and associated effects from individual activities, there is significant potential for adverse cumulative effects to be created as a result of decisions on water take and use applications. In the case of water use involving significant capital investment (such as irrigation), there is likely to be significant economic costs if that investment needs to be rewound to resolve associated discharge effects.</li> </ul>	<ul style="list-style-type: none"> <li>There is sufficient information available to enable a management regime to be established to account for discharge effects associated with water take and use. There is some risk that current modelling tools such as Overseer have some uncertainty associated with them, however the consequential effects (economic and environmental) of that uncertainty is likely to be less than the notified approach of not actively assessing and managing associated discharges<sup>1</sup>.</li> </ul>

<sup>1</sup> Analysis of discharge assessment and management will be addressed in Hearing 4.