

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2025] NZEnvC 178

IN THE MATTER of the Resource Management Act 1991

AND an application under s316 of the Act

BETWEEN OTAGO REGIONAL COUNCIL

(ENV-2025-CHC-001)

Applicant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Sitting alone pursuant to s309 of the Act

Counsel: K J Logan for Otago Regional Council
D G Allen and M J Dicken for Queenstown Lakes District
Council
L J E Rapley for Queenstown Airport Corporation
P I Richardson for Aotearoa Water Action Incorporated

Last case event: 16 May 2025

Date of Decision: 9 June 2025

Date of Issue: 9 June 2025

**DETERMINATION OF APPLICATION FOR WAIVER AND
APPLICATION FOR ENFORCEMENT ORDERS**



- A: Under s281 RMA,¹ the application by Aotearoa Water Action Inc for waiver of time for the filing of a s274 notice to join this proceeding is declined.
- B: Under ss314 and 319 RMA, the orders set out in Annexure A are made by consent.
- C: Leave is reserved for the parties to apply for further (or other) enforcement orders, if required.
- D: Leave is reserved so that if it is necessary and appropriate, any party may apply under s321 of the RMA to change the enforcement orders.

REASONS

Background

[1] The Shotover Wastewater Treatment Plant (SWWTP) was established in the 1970s. In 2019, it was upgraded by installation of a consented dose and drain disposal field (Disposal Field). That was for the purpose of removing the direct discharge of treated wastewater to the Shotover River via a channel to the south of the treatment ponds.

[2] However, the Disposal Field has suffered ongoing performance challenges and has ultimately proven to be unfit for purpose. For example, the discharge from the treatment plant (especially the pond stream) contains suspended solids that have, over time, blocked the pores in the gravel soils, reducing their permeability. This has resulted in consistent ponding of water in the Disposal Field. In addition, biological growth has occurred inside the Disposal Field cells, reducing the ability of treated wastewater to discharge from the cells into the

¹ Resource Management Act 1991.

surrounding gravels.

[3] In order to address the issues with the Disposal Field, Queenstown Lakes District Council (QLDC) constructed an unconsented overflow pipe in September 2024 to enable the controlled release of treated wastewater from the Disposal Field when the water level becomes high into the Shotover River.

[4] In that context, on 22 January 2025, Otago Regional Council (ORC) applied for enforcement orders against QLDC in relation to the compliance and operation of the SWWTP.

[5] Queenstown Airport Corporation (QAC) joined the proceeding as a s274 party in view of the close proximity of the Disposal Field to Queenstown Airport's main runway. Its concern is as to a potential elevated risk to aviation due to birds gathering in the ponding in the Disposal Field.

[6] On 31 March 2025, Aotearoa Water Action Inc (AWA) applied *ex parte* for interim enforcement orders seeking to prohibit QLDC from discharging treated wastewater from the Disposal Field to the river. The application also raised concerns regarding QLDC's decision to rely on s330 RMA to make the discharge.

[7] On 31 March 2025, the court declined AWA's application.² However, the decision recorded:

[24] AWA is directed to consider whether it is appropriate to bring an application under ss 274 and 281 to join this existing enforcement proceeding.

[25] The issues concerning s330 of the RMA and whether it applies, will be addressed in the context of the existing application for enforcement orders by Otago Regional Council.

² *Aotearoa Water Action Incorporated v Queenstown Lakes District Council* [2025] NZEnvC 97.

[26] QLDC is placed on notice that it bears its own legal risks in the meantime for any wrongful use of the s330 of the RMA.

The application for waiver

[8] On 1 April 2025, AWA filed a notice under s274 RMA to join this proceeding, with an associated application for waiver for late filing.

[9] The application was made on the following grounds:

- (a) AWA has been monitoring the progress of this proceeding and recently became aware that QLDC intends to exercise, or purport to exercise, powers under s330 of the RMA to divert treated wastewater from the Disposal Field into the Shotover River (without resource consent);
- (b) AWA was concerned that this was a way for QLDC to “circumvent” the enforcement order proceedings and/or to otherwise avoid the need to seek consent variations or further consent;
- (c) there will be no prejudice to any party if AWA joins as an interested party as the matters relating to the use of s330 RMA have not yet been resolved;
- (d) the matter is of wider public interest and AWA represents aspects of that wider public interest; and
- (e) it is in the interests of justice to allow AWA to join the proceedings at this stage, despite some steps having been already taken in the proceedings.

The other parties’ joint position opposing waiver

[10] By joint memorandum dated 7 April 2025, QLDC, ORC and QAC gave notice that they opposed the application for waiver.

[11] Their joint position is that they have invested significant time and resources

to reach a resolution in this matter and that they will be unduly prejudiced if AWA joins as a party. In particular, they record that experts they engaged have completed without prejudice expert conferencing and the parties have attended two days of court-facilitated mediation and undertaken extensive discussions in order to reach a resolution in this matter. They submit that allowing AWA to join at this stage of the proceeding will:

- (a) potentially unravel the significant work already undertaken to resolve issues relating to the enforcement orders;
- (b) force the parties to recommit resources, which could be better used elsewhere, on relitigating matters, likely having to attend more mediation and potentially requiring a court hearing; and
- (c) have the potential to delay making the orders by months, or longer if a hearing becomes required due to AWA's involvement.

[12] The parties refer to *Man O' War Station Ltd v Auckland Council*,³ where the court held:

If, as the appellant asserts here, there have been discussions which have been fruitful and will be the basis of mediation between it and the Council, then in my view to allow another opposing party into the proceedings, in the absence of some extraordinary factor, would amount to undue prejudice to the appellant and the parties which may support its decision. If that is the view, then there really is no residual discretion, given the mandatory drafting of s281(2).

[13] The parties submit that the same reasoning applies in this matter. For example, there have been “fruitful” discussions and there is nothing extraordinary in AWA's position that supports the application for waiver being granted.

[14] QLDC also made separate submissions in relation to the application by AWA. It submits that AWA has no interest in the enforcement orders. Its

³ [2011] NZEnvC 345, at [10].

position is that this proceeding relates to the enforcement orders sought by ORC and not to the emergency works being undertaken by QLDC. QLDC's view is that the appropriate process for determining the emergency works is through the consent process QLDC is required to follow under s330A RMA. QLDC considers it more appropriate for AWA to comment on the resource consent application, once notified, rather than join this proceeding.

[15] It also submits that AWA has no interest 'greater than the general public has' and does not have standing to join this proceeding under s274(1)(d) RMA. It refers to the established position that interest greater than the public is such that a person must have an interest in the proceedings that is of "some advantage or disadvantage which is not remote". QLDC submits that being an advocate for environmental issues and having concerns about an outcome of a proceeding is not enough to become a s274 party.

Statutory discretion as to waiver and principles

[16] On an application for waiver of time for lodgement of an interest under s274 RMA, the court has a qualified discretion. This is pursuant to s281(1)(a)(ia) RMA relevantly as follows:

281 Waivers and directions

- (1) A person may apply to the Environment Court to—
 - (a) waive a requirement of this Act or another Act or a regulation about—
 - ...
 - (ia) the time within which a person must give notice under section 274 that the person wishes to be a party to the proceedings; or
 - ...
- (2) The Environment Court shall not grant an application under this section unless it is satisfied that none of the parties to the proceedings will be unduly prejudiced.
- (3) Without limiting subsection (2), the Environment Court shall not grant an application under this section to waive a requirement as to the time within

which anything shall be lodged with the court (to which subsection (1)(a)(ii) applies) unless it is satisfied that—

- (a) the appellant or applicant and the respondent consent to that waiver;
or
- (b) any of those parties who have not so consented will not be unduly prejudiced.

...

[17] There are two tests to be met by an applicant relying on s281. The overarching test, derived from s281(1), is whether the court should exercise its discretion to grant the waiver or directions sought. What may be described as the threshold test, relates to whether there is any undue prejudice to the parties to the proceeding as set out under s281(2) and (3).⁴

[18] Therefore, the consideration of applications under s281 is a two-step process. First the court is required to make a determination as to whether or not the parties to the proceeding will be unduly prejudiced if the waiver is granted. Secondly, if no party is unduly prejudiced, the court must determine the waiver application on its merits.

Application for waiver is declined

[19] Having considered the various points made by AWA in its application for waiver and memorandum in reply, I decline the application for waiver.

[20] I am satisfied that there will be substantial undue prejudice to the parties if AWA was permitted to join the proceeding at this stage, given the parties have reached an agreement that will resolve this proceeding.

[21] In determining whether to exercise my discretion under s281, I find that

⁴ *Shirtcliff v Banks Peninsula District Council* EnvC C17/99, 19 February 1999.

AWA does not meet the statutory requirement under s274(1)(d) that it ‘has an interest in this matter greater than the interest the general public has’. While I accept that AWA may be ‘interested’ in the proceeding, this does not amount to an interest in the proceedings greater than the general public. Being an advocate for environmental issues concerning water and having concerns about the outcome of a proceeding, is not enough to have a sufficient interest to become a party to it under s274(1)(d) RMA.

Enforcement orders agreed by consent

[22] The enforcement orders sought by ORC relate to:

- (a) the performance of the SWWTP, including avoiding future treatment failures and remedying and/or mitigating the effects of any such failures; and
- (b) the discharge of treated wastewater beyond the consented DAD disposal field.

[23] By joint memorandum of counsel dated 2 April 2025, the parties advised the court that they had reached an agreement to jointly pursue amended enforcement orders by consent. The memorandum is accompanied by the affidavit of QLDC Infrastructure Operations Manager, Simon Mason in support of the orders. Mr Mason has 18 years’ experience in engineering, primarily in infrastructure construction, management and maintenance. He backgrounds the issues and circumstances and reasons for his support for the amended orders. His relevant conclusions are:

QLDC are committed to delivering the best available short-term solution practically achievable in the circumstances while advancing further plant upgrades and its long-term consent. QLDC acknowledges the urgency of remedying the status quo situation and its effects. By instigating emergency works QLDC now needs to seek resource consents under s330A of the RMA. QLDC also realises that it has to do better, and the funding has been committed to enable an enduring and sustainable long-term outcome to be achieved.

Through seeking the Orders ORC has initiated a process which the parties, by working together, have used to significantly advance the consideration of, planning for and the delivery of both the short-term and long-term outcomes to address the effects of the discharge of treated wastewater beyond the SWWTP site.

[24] There were a number of aspects of the enforcement orders that were not agreed and the parties sought more time to consider those outstanding issues.

[25] Following further discussions, the parties filed a further memorandum dated 7 May 2025 advising that they had reached agreement as to remaining matters of wording. The parties have confirmed that there are no further orders to be resolved.

[26] On the basis of all the information provided to me, including the affidavit of Mr Mason, I accept the joint assurances made in the memoranda of counsel on behalf of QLDC, ORC and QAC that the orders sought “are necessary to mitigate the adverse effects on the environment.”

[27] On this basis, the court makes the enforcement orders sought by ORC by consent.

Outcome

[28] Under s281 RMA the application by AWA for waiver of time for the filing of a s274 notice to join this proceeding is declined.

[29] Under ss314 and 319 RMA the court makes the orders set out in **Annexure A** by consent.

[30] Leave is reserved for the parties to apply for further (or other) enforcement orders if required.

[31] Leave is reserved so that, if it is necessary and appropriate, any party may apply under s321 of the RMA to change the enforcement orders.



J J M Hassan
Environment Judge



Annexure A

1. The Otago Regional Council applies for enforcement orders requiring the respondent to do the following things to avoid, remedy and/or mitigate adverse effects on the environment at the Shotover Wastewater Treatment Plant (the **WWTP**):

Operations and Management Manual

- 1.1 The respondent must amend its Operations and Maintenance Manual (**OMM**) for the WWTP as follows:
 - 1.1.1 By 28 March 2025, to require three-monthly monitoring of the blower inlet filters, including assessment of the condition of blower inlet filters and recording of the differential pressure shown by the Pressure Differential Indicators on the inlet filters.
 - 1.1.2 By 28 March 2025, to require the monitoring of trends in the aeration manifold pressure at table 32 at 6.8.5 of the OMM.
 - 1.1.3 By 28 March 2025, to require the respondent to report the trends referred to at paragraph 1.1.2 in its annual report to the applicant, with an explanation of any values deviating from normal values.
 - 1.1.4 By 30 June 2025, to require monitoring of turbidity levels at the outlet of the combined clarifier wastewater streams.
 - 1.1.5 By 30 June 2025, to require a relationship to be established between total suspended solids (**TSS**) and turbidity at the outlet of the clarifier and TSS and ultraviolet transmittance (**UVT**) at the UV chamber inlet.
 - 1.1.6 The relationship between TSS and UVT must be established by 30 June 2025 by taking a minimum of twelve weekly samples at each of the combined clarifier outlet and UV chamber inlet.
 - 1.1.7 The respondent must review the relationship between TSS and UVT again after 12 months or at the time the ponds are decommissioned, whichever is earlier.
 - 1.1.8 By 28 March 2025, to require specific operating procedures about how the operator assesses whether the WWTP is exceeding capacity, and what response is required if it exceeds capacity. The procedures must identify the steps which are to be taken when the concentrations

for the pond or clarifier wastewater exceed the 90th/95th percentile for the parameters described in resource consents RM2008.238.v2 at condition 3, RM13.215.03.v2 at condition 12, or any other consent to discharge wastewater from the WWTP, whichever is applicable at the time, irrespective of whether the 90th/95th percentile condition specified in the relevant resource consent is contravened when the relevant annual results are considered.

1.1.9 By 30 April 2025, to require a plan to be followed in the event of failure of critical equipment, which:

1.1.9.1 Identifies critical equipment (which must include any equipment critical to the basic functioning of the WWTP);

1.1.9.2 Identifies installed redundancy;

1.1.9.3 Identifies lead times for obtaining replacement parts for the WWTP;

1.1.9.4 Provides for the holding of spare/replacement parts by the respondent (or its contractor);

1.1.9.5 Identifies options for temporary plant hire;

1.1.9.6 Identifies other contingency measures to avoid or mitigate adverse effects on the environment.

1.1.10 By 30 April 2025, to require a plan to be followed in the event of failure of the de-watering system, which:

1.1.10.1 Identifies lead times for obtaining replacement parts for the de-watering system;

1.1.10.2 Provides for the holding of replacement parts by the respondent (or its contractor);

1.1.10.3 Identifies an interim solution if the de-watering system is unavailable;

1.1.10.4 Identifies other contingency measures to avoid or mitigate adverse effects on the environment.

1.2 The respondent must operate and maintain the WWTP in accordance with the OMM.

Training

- 1.3 The respondent must prepare and implement an operator training plan that includes the identification of and response to operational and performance issues by **30 June 2025**.

Sampling and Monitoring

- 1.4 The respondent must collect weekly samples of the final treated wastewater after UV treatment at the autosampler and have the samples analysed for TSS, carbonaceous biochemical oxygen demand (cBOD₅), COD, total nitrogen, ammoniacal-nitrogen and E Coli. The samples must be analysed at a laboratory that meets ISO 17025 or IANZ standards. The Respondent must provide the applicant with weekly sampling results within 5 working days of receipt of the results from the laboratory.
- 1.5 Upon detecting an "event", the Respondent must collect samples of wastewater after UV treatment at the autosampler 5 days in every 7-day period and analyse the samples in its onsite laboratory.

An "event" is any occurrence which results in treated effluent having concentrations that exceed the 90th/95th percentile limits for the parameters described in resource consents RM2008.238.v2 at condition 3, RM13.215.03.v 2 at condition 12, or any other consent to discharge wastewater from the WWTP, whichever is applicable at the time, whether or not the percentile condition is contravened when annual results are considered.

Samples collected must be analysed for **TSS**, chemical oxygen demand (**COD**), total nitrogen, nitrate-nitrogen and ammoniacal-nitrogen. If the event is caused by an exceedance of the 90th/95th percentile limit for TSS, ultraviolet transmittance (**UVT**) must be gathered from the UV system and the minimum, average and maximum values for each day reported.

The sample results must be provided to the applicant within 24 hours of the sample having been analysed. The testing must continue for at least 3 weeks following any event or until the process returns to normal operational performance, whichever is the later.

- 1.6 By 30 April 2025, the Respondent must provide ORC with an investigation and monitoring plan for the purpose of monitoring the effects of non-compliance at the site, which must be prepared by a suitably experienced

and qualified environmental practitioner and accepted by ORC's technical advisor (acceptance not to be unreasonably withheld).

The investigation and monitoring plan must include monitoring of groundwater and surface water quality and ecology appropriate to the nature of the discharge occurring at the time.

The Respondent must implement and follow the investigation and monitoring plan.

Repairs/Improvements to the WWTP

- 1.7 The respondent must replace liners for sludge conveyors 2 and 3 by 30 April 2025 and replace conveyor 1 by 29 August 2025. The respondent must maintain all sludge conveyors which remove dewatered sludge from the wastewater at the WWTP in accordance with the OMM for the WWTP.
- 1.8 The Respondent amend the Programmable Logic Controller (**PLC**) code to redirect flush water during a flush cycle from the centrifuges to the drain (instead of to the conveyors which remove dewatered sludge) by 30 April 2025.

MLE Upgrades

- 1.9 The respondent must complete the WWTP upgrades currently being undertaken, being the installation of a new Modified Ludzak-Ettinger (**MLE**) plant, clarifier and supporting infrastructure so that the new MLE plant and clarifier are operational, and resource consent RM2008.238 exercised by 31 December 2025.
- 1.10 The respondent must construct a calamity pond for treated wastewater (to which wastewater can be re-directed if TSS levels at the autosampler exceed the 90th/95th percentile limits for the parameters described in resource consents RM2008.238.v2 at condition 3, RM13.215.03.v2 at condition 12 or any other consent to discharge wastewater from the WWTP, whichever is applicable at the time, whether or not the percentile condition is contravened when annual results are considered) at the treatment plant and to have the calamity pond available for use by **31 December 2027**.

Disposal Field

- 1.11 The respondent must provide the applicant and Queenstown Airport Corporation with a monthly report on progress made towards the delivery of a

new disposal solution, commentary on the WWTP's operation and sampling results from the WWTP, groundwater levels and sampling results for samples collected from the groundwater bores, and any receiving environment sample results obtained in that period.

While the DAD disposal field (being the dose and drain field to which treated wastewater is reticulated, the **Disposal Field**) is utilised, the report must also include an update on overflows, the management of overflows and the effects of such overflows.

The first report must be provided within 8 weeks of the enforcement order being granted.

- 1.12 If the Respondent resumes use of the Disposal Field, it must, within six weeks of resumption, incorporate a process into its operations and maintenance manual on limiting flow to the disposal field to minimise overflows from the disposal field.

- 1.13 The Respondent must:

1.13.1 On or before 13 June 2025 lodge applications for; and

1.13.2 Do everything reasonably necessary to obtain;

short-term (for a period expiring on or before 31 December 2030) resource consents for an interim solution for treated wastewater discharges from the WWTP until the long-term solution is implemented and operational under Order 1.19.

If the long-term solution is implemented and operational under Order 1.19. before the expiry of any consent obtained in accordance with this Order 1.13, the Respondent must, within 3 months of the long-term solution under Order 1.19 becoming operational, surrender (under section 138 Resource Management Act) the consent obtained in accordance with to this Order 1.13.

- 1.14 Subject to consent applications under Order 1.13 being granted and commencing, the respondent must exercise those consents within 2 months from the consent(s) commencing.

- 1.15 The respondent must:

1.15.1 engage a suitably qualified engineer to assess the strength of the bund constructed around the perimeter to the Disposal Field, including assessing the seepage through the bund, to avoid uncontrolled overflows resulting from a breach of the bund and to provide recommendations on necessary actions to increase the resilience of the bund; and

1.15.2 if the Disposal Field is being used as at 27 June 2025 undertake the necessary actions to increase the resilience of the bund as recommended by the engineer.

While the Disposal Field is:

1.15.3 being used; and/or

1.15.4 is retaining water (treated or otherwise),

the respondent must:

1.15.5 Undertake a visual inspection of the bund and photographs of it on a monthly basis; and

1.15.6 provide those to Otago Regional Council together with a comment on potential changes in stability and seepage amounts.

1.16 If the respondent retains the bund around the perimeter of the DAD disposal field as part of the short-term solution under Order 1.13, then it will seek retrospective consent for it.

1.17 The respondent must, within 10 working days of receipt of an itemised invoice, pay the reasonable costs of the applicant undertaking environmental monitoring of the Shotover River, Kawarau River and Shotover Delta for the collection of samples no more than:

1.17.1 the locations identified in Table 1; and

1.17.2 the parameters of samples in Table 1,

for the period from 9 April 2025 until 30 June 2025.

Table 1

| Sampling location | Frequency | parameters |
|--|---------------------|--|
| In the final wastewater stream post UV treatment | When ORC thinks fit | E coli, BOD ₅ , TN, TSS, total phosphorous, pH, |

| | | |
|---|---------------------|--|
| | | ammoniacal nitrogen, total oxidised nitrogen |
| At the point of discharge via the overflow pipe that the respondent has installed in the bund to the Disposal Field | When ORC thinks fit | E coli, BOD ₅ , TN, TSS, total phosphorous, pH, ammoniacal nitrogen, total oxidised nitrogen |
| Any other point that wastewater is discharging from the Disposal Field | When ORC thinks fit | E coli, BOD ₅ , TN, TSS, total phosphorous, pH, ammoniacal nitrogen, total oxidised nitrogen |
| Any three locations in each of the Shotover and Kawarau Rivers that ORC thinks fit | When ORC thinks fit | E coli, BOD ₅ , TN, TSS, microbial source tracking, total phosphorous, pH, ammoniacal nitrogen, total oxidised nitrogen |
| Any new areas of ponding on the Shotover Delta | When ORC thinks fit | E coli, BOD ₅ , TN, TSS, microbial source tracking, total phosphorous, pH, ammoniacal nitrogen, total oxidised nitrogen |

1.18 If the DAD Disposal Field is operational as at 5 May 2025, the respondent must commence measuring the volume of treated wastewater overflowing from the Disposal Field and the water level in the Disposal Field for a period of 3 months or until the DAD disposal area is no longer utilised, whichever is the later.

1.19 'The respondent must develop and implement a long-term solution (**New Disposal System**) for the disposal field by **31 December 2030**:

1.19.1 Application for resource consent must be made by 31 May 2026.

1.19.2 engineering design for the New Disposal System must be completed by 31 December 2027.

1.20 The Respondent must, within 10 working days of days of the sealing of the orders, pay the Applicant \$235,000 (plus GST), for costs associated with monitoring, investigating, testing, reporting and of and incidental to the application for, and filing, the Orders. This order is additional to and does not affect the Respondent's obligations to pay monitoring costs under 1.17.

1.21 The respondent must design, develop and implement any short-term solution under Order 1.13 and long-term solution under Order 1.19 so that it does not attract any birds that are hazardous to aircraft or may endanger aircraft operations. The bird species that have been observed at the airport and

which may be hazardous to aircraft are gull, oyster catcher, hawk, spur-wing plover and duck.

