

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA**

**CRI-2024-039-000266
[2025] NZDC 26933**

WAIKATO REGIONAL COUNCIL
Prosecutor

v

MATAMATA-PIAKO DISTRICT COUNCIL
Defendant

Hearing: 1 October 2025 via VMR

Appearances: A McConachy for the Prosecutor
D Neutze and E Gan for the Defendant

Judgment: 19 November 2025

SENTENCING DECISION OF JUDGE MJL DICKEY

Introduction

- [1] Matamata-Piako District Council (**MPDC**) has pleaded guilty to:
- (a) one representative charge of unlawfully discharging treated and partially treated municipal wastewater into the Waiwhero Stream between 6 April 2023 and 4 October 2023;¹ and

¹ CRN 2403900035.

- (b) one representative charge of unlawfully discharging treated and partially treated municipal wastewater into the Waiwhero Stream between 6 June 2023 and 5 September 2023,²

contrary to ss 15(1)(a), 338(1)(a) and 340(1)(a) of the Resource Management Act 1991.

[2] The maximum penalty for each charge is a fine of no more than \$600,000.

[3] For the Council Ms McConachy sought a starting point in the region of \$170,000 - \$180,000, while Mr Neutze for the defendant submitted that a starting point of \$80,000 is appropriate.

[4] A Summary of Facts was agreed for the purposes of sentencing.³

[5] No application for discharge without conviction was made. The defendant is accordingly convicted on both charges.

Background

[6] MPDC is a territorial authority, with municipal responsibilities for a population in excess of 37,000 residents within the Matamata-Piako District. MPDC is required to provide and maintain efficient and effective infrastructure to meet the current and future demands of its community.

[7] Until October 2024 MPDC owned, maintained, and operated five Wastewater Treatment Plants within the district, located in Matamata, Te Aroha, Morrinsville, Tahuna and Waihou. In October 2024 MPDC completed a project to decommission its Waihou Wastewater Treatment Plant (**Waihou WWTP**), installing a pipeline to pump wastewater from the pond to the Te Aroha Treatment Plant. On the Waihou site, infrastructure (inlets, screens, and the wastewater pond) remain in place and in use.

² CRN 2403900037.

³ Summary of Facts amended 15 September 2025.

[8] The Water and Wastewater Team within MPDC is responsible for the provision of drinking water, stormwater and wastewater services for the district. It also uses the services of multiple external contractors to support with maintenance, provide technical assistance, and collation of data for regulatory requirements.

[9] A manager oversees the functions of the Water and Wastewater Team, with oversight being provided by the Group Manager, Operations.

[10] Wastewater comprises used water from domestic and commercial premises. It includes a range of potential contaminants of varying concentrations. Sewage is a subset of wastewater which is contaminated with urine and faeces.

The Waihou Wastewater Treatment Plant

[11] The Waihou WWTP, which still contains a holding pond and inlet screen, is located at the western end of Campbell Street, within the Te Aroha township, and serves a population of approximately 480 residents. It receives approximately 63m³ of wastewater per day.

[12] The complete plant consisted of an inlet screen, a single waste stabilisation pond, a biological trickling filter, a secondary clarifier and ultra-violet (UV) disinfection. Towards the end of 2023, due to poor performance of the UV disinfection unit, sodium hypochlorite dosing was added.

[13] After treatment, the wastewater was ~~then~~ discharged either onto a gravel bed, which collected and discharged via a pipe into the Waiwhero Stream, or by irrigation onto a 0.8 hectare area of land adjacent to WWTP.

[14] The discharge location into the Waiwhero Stream was 160m upstream of the confluence with the Piraunui Stream. The combined stream (called Waiwhero at the confluence) flows another 4km before joining the Waitoa River.

[15] Sampling of wastewater post the UV unit, and upstream/downstream of the discharge point within the Waiwhero Stream, was conducted.

[16] In April 2022 MPDC's Wastewater Operations Manager position became vacant and was not permanently filled until October 2023. During that time some responsibilities were filled by a contractor to MPDC and the remainder were absorbed by the Operations and Compliance Teams.

[17] The Waihou WWTP used a Supervisory Control and Data Acquisition-based system for supervision of the treatment process and had a multitude of alarms related to this process.

[18] Meetings are held on a regular basis between the Compliance Team, Wastewater Operations Team and the Water and Wastewater Manager to assist with sharing information through the organisation. Fortnightly meetings are also held between the Water and Wastewater Manager and the Operations Group Manager.

Legislative framework

[19] Section 15(1) of the RMA states:

- (1) No person may discharge any –
 - (a) contaminant or water into water; or
 - (b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water;
- ...
- unless the discharge is expressly allowed by a national environmental standard or other regulation, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one) or a resource consent.

[20] Wastewater containing untreated human sewage is a contaminant pursuant to s 2 of the RMA.

[21] There are no national environmental standards, other regulations, resource consents, or rules in a regional plan that expressly allow for any discharge as described in this decision into water or onto or into land in circumstances which may result in that contaminant entering water, including ground water.

[22] The Waihou WWTP is within the Waikato Region and must comply with the Waikato Regional Plan.

Resource consents

[23] Resource Consent AUTH120703.01.02 permits MPDC to discharge treated municipal wastewater onto land on a seasonal basis and discharge to the Waiwhero Stream, with associated discharges to ground and air. The conditions of Consent that are relevant to this decision are:

Condition	Consent Requirement
6	The maximum daily volume discharged to the Waiwhero Stream shall not exceed an average of 250m ³ per day.
7	The maximum volume discharged to the land application area shall not exceed an average of 350m ³ per Monday to Sunday week.
8	All wastewater shall be UV treated prior to discharge to the land or water.
11	The nitrogen application rate shall not exceed 42kg Total Nitrogen per month onto the 0.8 hectare land area over the 1 November to 31 March period.
20	MPDC shall notify the Regional Council as soon as practicable, and as a minimum requirement within 48 hours, of becoming aware of the limits specified in conditions of this consent being exceeded and/or any accidental discharge, plant breakdown, process upset or any other circumstances which are likely to result in the limits of this consent being exceeded. MPDC shall, within 7 days of the incident or likely non-compliance occurring, provide a written report to the Regional Council identifying the exceedance, possible causes, steps undertaken to remedy the effects of the incident and measures that will be undertaken to ensure future compliance.
22	The concentration of ammoniacal nitrogen (N) to be discharged in the treated effluent shall not exceed 3mg/L median and 5mg/L as a 95th percentile.
24	The concentration of total suspended solids (TSS) to be discharged in the treated effluent shall not exceed 20mg/L median and 30mg/L as a 95th percentile.
25	The concentration of E. Coli to be discharged in the treated effluent shall not exceed 500 cfu/100mL median and 1000 cfu/100mL as a 95th percentile.

[24] Waikato Regional Council uses a compliance rating system to assess a consent holder's compliance with their resource consents. The grading system consists of four potential grades: full compliance, low-risk non-compliance, moderate risk non-compliance, and significant non-compliance. Any 'non-compliance' grading represents a breach of the consent conditions. MPDC has been found to be in moderate risk non-compliance and significant non-compliance for the 2018/19, 2019/20, 2020/21, 2021/22 and 2022/23 monitoring years.

[25] MPDC is required by condition 32 of the Consent to provide an annual report to the Regional Council by 31 August each year. It demonstrates the compliance performance with each consent condition. Discharge data provided to the Regional Council throughout 2022/2023 and within MPDC's submitted annual report identified non-compliances with several Consent conditions.

[26] The Regional Council provides an audit report with a compliance rating on each condition and then overall for the Consent. In October, its 2022/2023 audit identified several significantly non-compliant discharges. An investigation by the Regional Council identified significant non-compliances with conditions 6, 7, 11, 20, 22, 24 and 25 between 1 November 2022 and 4 October 2023.

[27] Between 1 November 2022 to 31 March 2023, MPDC discharged wastewater to land via irrigation. MPDC was found to be significantly non-compliant with conditions 7, 11, 20, 22, 24 and 25 of the Resource Consent over this period of time:

- (a) Condition 7 – On 29 August 2023 the Regional Council received the MPDC Annual Report. The weekly volume of wastewater exceeded the consented limit on 14 out of 22 occasions between 21 November 2022 and 20 March 2023;
- (b) Condition 11 – Monthly nitrogen loadings between November 2022 and May 2023 were above the consented limit, therefore in breach of condition 11;
- (c) Conditions 22 (N), 24 (TSS), 25 (E. coli) – Between 11 November 2022 to 27 March 2023 11,935m³ of partially treated wastewater was

discharged to land. Results of weekly samples dating back to 3 August 2022 showed a consistent failure to adequately treat the wastewater through the WWTP. Wastewater was substantially exceeding consent limitations; and

- (d) Condition 20 – Between 1 November 2022 and 31 March 2023, MPDC did not notify the Regional Council and make it aware of the severity and ongoing non-compliance of the WWTP. On only four occasions out of 20 were the Regional Council notified within 48 hours of receiving knowledge of that breach. No notifications were made within 48 hours of becoming aware of breaches of consent conditions 7 and 11. On none of these occasions was a full and comprehensive report provided to the Regional Council within seven days as required by condition 20.

Circumstances of the offending

Failure to comply with resource consent conditions 6, 20, 22, 24, and 25

Representative charge: CRN 2403900035 – offending between 6 April and 4 October 2023

Breach of condition 6 – maximum volumes

[28] On 10 July 2023 the Regional Council was sent an automated email from WaterOutlook recording that wastewater discharged to the gravel beds on four consecutive days between 23 June 2023 and 26 June 2023 exceeded the consented limit of 250m³.

[29] On 10 August 2023 the Regional Council was sent an automated email from WaterOutlook recording that wastewater discharged to the Waiwhero Stream on six consecutive days between 1 July 2023 and 6 July 2023 was in excess of the consented limit of 250m³.

[30] The exceedances were subsequently formally reported in the 2022/2023 Waihou WWTP Annual Report provided to the Regional Council on 29 August 2023.

Breach of conditions 22, 24, 25 (N, TSS and E. Coli concentrations)

[31] Between 6 April 2023 to 4 October 2023, 20,942m³ of treated and partially treated wastewater was discharged to the Waiwhero Stream.

[32] Wastewater is sampled on a monthly basis from 1 April to 31 October each year. The Table below summarises the performance of the Waihou WWTP against the consented mean and median limitations, as reported in the 2022/2023 monitoring year. This includes the discharges across the whole monitoring year.

[33] Discharge concentration limits of nitrogen, BOD (Biochemical Oxygen Demand) and E. coli are the same for land and water discharge and for all times of the year.

Condition	Parameter	Consent Requirement		2022/2023 Actual Performance	
		Median	95th %ile	Median	95th %ile
22	N (mg/L)	3	5	7.5	14.4
23	cBOD5 (mg/L)	20	30	19.7	41
24	TSS (mg/L)	20	30	52	129
25	E. coli (cfu/100mL)	500	1000	310,000	2,900,000

[34] On 10 June 2023 the Regional Council received its first automated WaterOutlook email advising sample results for the previous 12 months showing a consistent failure to adequately treat the wastewater through the WWTP over the offending period. That resulted in wastewater with E. coli concentrations well in exceedance of the Consent conditions being discharged to the Waiwhero Stream.

[35] Consecutive monthly reports all showed a continued failure to comply with Consent limits. Between 6 April 2023 and 4 October 2023 seven samples were taken of the wastewater post UV (monthly). Six contained E. coli concentrations higher than 5000 cfu/100mL. The average E. coli reading was 209,000 cfu/100mL.

[36] On 13 October 2023 the Regional Council received an email from MPDC notifying a breach of the Consent conditions' parameters. It stated that one of the UV lamps failed on 4 October 2023 (one month after being replaced), and advised that the

operators were arranging for a replacement. That failure resulted in wastewater being discharged with E. coli concentrations of 5200 cfu/100mL.

[37] Following the completion of the Annual Regional Council Consent audit for the Waihou WWTP, on 30 October 2023 the Regional Council issued an abatement notice to MPDC requiring it to cease the unlawful discharge of wastewater to water and the gravel beds.

Breach of condition 20 (notification requirements)

[38] Within the offending period, on only four out of seven occasions did MPDC notify the Regional Council within the required 48 hours of knowing it had breached Consent conditions 22, 24 and 25. None of the breaches of Consent conditions 6 were reported within the required 48 hour timeframe.

[39] On none of the occasions when the Consent conditions were breached was a full incident report provided to the Regional Council within seven days. A report is required to explain the non-compliance and identify actions taken to remedy the effects of the discharge and the measures taken to ensure future compliance with the Consent.

[40] The Regional Council and MPDC hold quarterly meetings to discuss the performance and compliance of the water and wastewater treatment plants. Key staff from the Regional Council consent monitoring team attend, along with the MPDC Compliance Team, Operations Manager and Water and Wastewater Manager. The non-compliances at the Waihou WWTP and the issues with the UV unit were not discussed in this forum until the March 2023 meeting, despite there being a meeting on 13 December 2022.

[41] Within the 2022/2023 Annual compliance report, MPDC stated it had “endeavoured to notify the Regional Council within 48 hours of becoming aware of the limits specified in conditions of this Consent ... MPDC have maintained contact with the Regional Council over the compliance period regarding the issue with the UV and work being undertaken to rectify this issue...”. Not all instances of non-compliance were notified within 48 hours.

Wastewater not treated with UV light prior to discharge

Representative charge: CRN 2403900037 – offending between 6 June and 5 September 2023

Breach of condition 8 (UV treatment)

[42] The 2021/2022 Waihou WWTP Annual Report (provided on 31 August 2022), reported a non-compliance with condition 8, noting a decline in UV performance:

MPDC Operations have noted an issue with the intensity of the UV unit during this monitoring period and therefore at times the wastewater may not have received an adequate UV dosage for disinfection. MPDC have recently engaged [contractor] to service the UV.

[43] On 22 February 2023 the Regional Council received an email from MPDC advising that the Waihou WWTP was experiencing UV issues which had been occurring for a “few months.” The email stated the operations team were working with their servicing contractor to reach a solution.

[44] On 15 March 2023 the Regional Council received an email from MPDC advising that the latest sample results exceeded the Consent conditions. It advised it was still non-compliant with condition 8 and was planning to meet with its servicing contractor on 17 March 2023 to ask the contractor to attend the site and repair the UV unit.

[45] On 20 July 2023 MPDC updated the Regional Council on the UV unit, advising it was “getting closer to a resolution on this and are currently waiting on [the contractor] to source parts to repair the UV unit.”

[46] On 29 August 2023, MPDC provided the Regional Council with its 2022/2023 Waihou WWTP Annual Report. It reported non-compliance with condition 8. The assessment of compliance stated:

MPDC operations have identified an issue with the intensity of the UV unit and therefore at times the wastewater may not have received an adequate UV dosage for disinfection. MPDC have engaged [contractor] to service the UV. [Contractor] are currently awaiting parts that have been ordered from the supplier in Canada.

[47] On 5 September 2023, 13 months after the UV unit was switched off, the contractor completed the repair by replacing the quoted parts. A one-page report was provided by the technician, which was then sent on to the Regional Council. It confirmed UV treatment was reinstated.

[48] In May 2024, the Regional Council sought documents in relation to the faulty UV system through a Production Order. They revealed that on 19 August 2022 a quote was provided by the contractor to MPDC for replacement of the driver boards, the UV sensor and all four lamps. There is no evidence this was actioned at the time the quote was received.

[49] A spreadsheet containing a list of faults logged by MPDC Operators, which was also provided as part of the Production Order, records that on 11 August 2022 the UV units were not working and the lamps were subsequently switched off. This was five months prior to the Regional Council being advised of the fault and non-compliance with condition 8. Notes within the Operators Log spreadsheet confirmed that the UV remained switched off between 11 August 2022 and 5 September 2023. During this period, a total of 39,294m³ of partially treated wastewater was discharged to either land or water from the Waihou WWTP.

[50] The offence period is from 6 June 2023 to 5 September 2023.⁴ Over this time, a total of 12,912m³ of partially treated wastewater was discharged to either land or water from the Waihou WWTP. The Summary of Facts records that corrective actions in respect of the issues experienced with the UV unit were not pursued with urgency by MPDC.

Explanations

[51] MPDC's Water & Wastewater Manager, Wastewater Operations Manager and the Compliance & Improvement Manager were interviewed individually.

⁴ The SOF records that is due to the statute of limitations, which I take to be a reference to s 338(4) RMA.

[52] As to the breach of condition 6 (exceedances to the volumes discharged to water), MPDC explained this was due to the infiltration of rainwater into the system from severe weather events from 23 June 2023 onwards.

[53] In respect of the delays to the UV repairs and subsequent failure to comply with conditions 8 and 25 (failure to UV treat all wastewater and the exceedance of *E. coli* limits), MPDC explained this was due to the faulty UV unit. It arranged for the unit to be repaired, which required the replacement of parts (Driver boards, sensor and UV lights). MPDC explained the extensive delay to completing the repair was due to a delay in the parts arriving due to international shipping, effects of Covid-19 and the contractor's response to Cyclone Gabrielle.

[54] MPDC could not offer an explanation for the breaches of conditions 22 and 24 (discharge of wastewater in exceedance of ammoniacal nitrogen and total suspended solids limits to water).

[55] In respect of the prolonged period in which the Waihou WWTP was non-compliant, and the failure to report non-compliances to the Regional Council in a timely manner, MPDC explained this was due to its inability to detect these non-compliances in real time with the Infrastructure Data application.

Sentencing Framework

[56] I adopt the two-step sentencing process following *Moses v R*.⁵

[57] The purposes and principles of the Sentencing Act 2002 are relevant.

[58] The High Court in *Thurston v Manawatu-Wanganui Regional Council* (*Thurston*) provides a useful summary of the approach to be taken to sentencing.⁶ This includes the offender's culpability; any infrastructural or other precautions taken to prevent discharges; the vulnerability or ecological importance of the affected environment; the extent of the environmental damage, including any lasting or

⁵ *Moses v R* [2020] NZCA 296 at [46].

⁶ *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, -25, -27, 27 August 2010 at [41].

irreversible harm, and whether it was of a continuing nature or occurred over an extended period of time; deterrence; the offender's capacity to pay a fine; disregard for abatement notices or Council requirements; and cooperation with enforcement authorities and guilty pleas.

Effects

Environmental effects

[59] The parties agreed on the likely effects of the discharge.

[60] The Summary of Facts records:

72. The Waiwhero and Piraunui Streams are classified as Surface Water Class in the Waikato Regional Plan. The Waitoa River has a Contact Recreation and Indigenous Fisheries Water Classifications.

73. While dilution into the Waiwhero Stream substantially reduces the immediate concentration, the cumulative effects of such discharges are widely known and published, resulting in the overall degradation of Waikato waterways.

74. Dr Mafalda Baptista, the Regional Council Senior Water Scientist, provided comment on the effect of wastewater on receiving environments (surface water and groundwater) and human health.

- “Wastewater management is given less priority than water provision, although both are equally important. In the past, the continuous release of untreated wastewater into watercourses has contributed to the decline of freshwater quality.”
- “Faecal contamination is a serious public health concern due to the potential for contracting disease. Bacterial contamination in water is measured using indicator organisms, notably *Escherichia coli* (E.coli). Although most E. coli cause only mild infections, their presence is indicative of the potential presence of more pathogenic organisms which are a danger to human health.”
- “Wastewater treatment helps protect the environment. Untreated wastewater poses grave threats to environmental water quality since it releases excess nutrients into river, lakes and aquifer, damaging ecosystem function.”

75. Experts engaged by both Waikato Regional Council and MPDC are agreed that degraded ecosystems can experience further water quality and ecological decline when subjected to further stress. The experts agree that the water quality and ecological condition is poor to intermediate, regardless of the discharge event. An ecological condition described as “poor to intermediate” suggests a system experiencing some level of stress and degradation, but it implies a state where the ecosystem is neither fully healthy

and thriving nor completely degraded and unable to recover. The experts agree that the unlawful discharge during the period of 6 April to 4 October 2023 contributed to the cumulative stressors of the receiving environment. In the absence of specific data and evidence on the receiving environment, the Regional Council is unable to establish beyond reasonable doubt the precise environmental harm that has been caused due to the offending.

76. Discharges from the Waihou WWTP over the period of offending was partially treated.

Cultural impact

[61] The Summary of Facts records:

77. The Waiwhero Stream is a tributary of the Waitoa River which is of significant cultural, spiritual, historical and environmental importance to Ngāti Hāua, Ngāti Hako, Ngāti Tumutumu and other iwi. The Waitoa eventually flows into the Firth of Thames.

78. Many marae are located strategically alongside water bodies of value, primarily to sustain its people. Water is required to sustain the functions of the marae, hapu, community and the people.

79. Te Mana o Te Wai represents the holistic health and well-being (mauri) of a water body by capturing the full range of iwi and community values. It is a matter of national significance and is recognised within the National Policy Statement for Freshwater Management as an integral part of the decision-making process of wastewater treatment.

80. An objective within the Ngāti Hāua Environmental Management Plan is that the mauri of freshwater within their rohe is restored and protected ensuring that water is plentiful and clean enough for drinking, swimming and sustaining plentiful mahinga kai. Policy 11C of the Management Plan “opposes the direct discharge of contaminants, especially wastewater, to rivers and streams”.

Submissions

[62] Ms McConachy submitted the cumulative effects of repeated or sustained discharges, even where individually small or moderate in scale, are recognised by the Courts as contributing to the broader degradation of freshwater resources.⁷ The cumulative effect of repeated small-scale discharges has been described in sentencing decisions as “insidious” and akin to “death by a thousand cuts”. She considered those comments apposite in this case.

⁷ See for example *Bay of Plenty Regional Council v The Lakes (2012) Ltd* DC Hamilton CRN-15070500520, 10 June 2015 at [23] (***Lakes (2012) Limited***); *Otago Regional Council v Civil Construction Ltd* [2019] NZDC 869 at [14] (***Otago Regional Council***).

[63] Mr Neutze did not consider the reference to “death by a thousand cuts” to be appropriate given the Regional Council admitted there was an absence of proof of significant environmental effects. MPDC acknowledged, however, that the discharge contributed to the cumulative stressors of the receiving environment.

Conclusions on effects

[64] It was agreed that the water quality in the receiving environment is “poor to intermediate” – being a system experiencing some stress and degradation. It was also agreed that the discharges contributed to the cumulative stressors of the receiving environment. The importance of the Waiwhero Stream to Ngāti Hāua, Ngāti Hako, Ngāti Tumutumu and other iwi is also relevant to determining the effects of the discharges.

[65] While noting that the wastewater was partially treated, it must be said that such discharges are not only culturally offensive, but also contribute negatively to the overall health of the water. Further, it must be remembered that the unlawful discharges spanned at least seven months, with the consequential and inevitable effect on the nearby waterways.

Culpability

Prosecutor’s submissions

[66] Ms McConachy submitted the discharge of partially-treated⁸ wastewater occurred over an extended period, and continued despite the defendant being aware that its system was faulty. Internal records show MPDC was aware of the UV issue from as early as August 2022. Despite receiving a repair quote for the UV system on 19 August 2022, repairs were not completed until 5 September 2023.

[67] Ms McConachy submitted that although the discharges may not have been intentional, MPDC failed to act with the urgency expected of a prudent consent holder. It failed to notify the Regional Council in a timely manner, failed to submit required

⁸ Originally noted as non-treated, but later corrected by Ms McConachy.

incident reports, and allowed extensive discharges of poorly treated wastewater to continue despite being aware of the issue.

[68] Ms McConachy submitted MPDC's culpability is significantly aggravated by the systemic nature of the failure. This included a lack of monitoring tools, an inadequate internal escalation process and a lack of oversight by management. All of these factors contributed to the unlawful discharges.

[69] Ms McConachy submitted that MPDC's failure to alert the Regional Council of the discharge in a timely manner was unacceptable. So, too, was the failure to investigate and remedy the UV issue with urgency. This delay allowed what was an already serious environmental issue to become significantly worse, and caused further adverse effects on the receiving environment. While not deliberate, the offending was entirely foreseeable and easily preventable. Ms McConachy submitted MPDC's conduct was grossly reckless.

[70] Ms McConachy asserted that although no direct profit was gained, MPDC avoided significant costs that would have been incurred by urgently repairing the UV disinfection system, commissioning alternate replacement parts, or implementing interim treatment solutions to mitigate the known risk of discharging inadequately treated effluent.

[71] Ms McConachy submitted that the fact that the discharges breached the conditions of MPDC's Resource Consent is a relevant aggravating factor. She referred to observations made in *Otago Regional Council v Clutha District Council* regarding the importance of compliance with resource consents:⁹

[38] The fact that this offending involved the breach of numerous conditions of the defendant's resource consents is a particularly aggravating factor in the offending. Resource consents are routinely granted by consent authorities subject to conditions which seek to avoid remedy or mitigate adverse effects. There is a presumption that such conditions will be complied with. Failure to do so strikes at the heart of the resource consent system and destroys confidence which the public should have in the integrity of that system. If, by way of example, when applying for its resource consents CDC had advised the Regional Council that it was not going to keep accurate records, was not going to comply with the requirements of its operation and

⁹ *Otago Regional Council v Clutha District Council* [2020] NZDC 26125 at [38].

maintenance manual and was not going to ensure that its discharges met certain quality criteria, it would not have got resource consents for the plants.

[72] The offending constituted a breach of numerous conditions of the Resource Consent. Ms McConachy referred to the following comments in *Manawatu-Whanganui Regional Council v Midwest Disposals Limited*:¹⁰

[17] ... The breach of conditions of consent is a serious matter in sentencing considerations as it goes to the heart of public confidence in the resource management system.

[18] Condition 6 is not the only condition of consent where Midwest is in breach according to the summary of facts. ...

[19] ... The identified failures, delays and inconsistency pertaining to these matters suggest to me that the Defendant has a casual attitude to compliance and does not appreciate the obligation of strict and timely compliance with its conditions of consent.

[73] Ms McConachy submitted that MPDC had been warned on numerous previous occasions about the importance of compliance with the Resource Consent. She submitted that MPDC's breach of those conditions over a lengthy period is a significant aggravating factor.

Defendant's submissions

[74] Mr Neutze submitted the offending is appropriately categorised as careless, with some extenuating circumstances. He submitted that the prosecutor's characterisation ignores relevant background circumstances.

[75] Mr Neutze submitted that over the period 2022-2023 staff and contractor resources were negatively impacted by factors outside of MPDC's control:

- (a) the Three Change process was consuming a large portion of staff time. It required a large amount of staff resource dedicated to meetings, data- and information- collection and planning for new entities;

¹⁰ *Manawatu-Whanganui Regional Council v Midwest Disposals Limited* [2024] NZDC 28282 at [17]-[19].

- (b) unprecedented urban growth in Morrinsville and Matamata, and resultant plant and operational improvement, occupied a large proportion of professional staff's time;
- (c) high staff turnover within the Water and Wastewater team at MPDC. There was a period of around six months between April and October 2022 before the operations' manager vacancy was filled, followed by a lead-in time before the new Operations' Manager was fully up to speed with the requirements of this demanding role;
- (d) Covid-19 and lockdowns caused widespread disruption to the availability of equipment and resources from early 2020 until 2022; and
- (e) Cyclone Gabrielle negatively impacted the availability of contractors after February 2023 for a period of months. It also had a negative impact on staff availability as restoring services became the immediate focus.

[76] Mr Neutze also advised that one of the primary issues with compliance was the delay in securing a replacement of the UV filter and its parts. This was due, at least in part, to a number of factors outside of MPDC's control:

- (a) although a quote had been received in August 2022 from the contractor for replacement of the UV filter this was during the period of staff transition and recruitment. Unfortunately, it was overlooked at the time;
- (b) on 19 April 2023 MPDC discussed the UV filter's replacement with the contractor, however it was advised that there were delays in the supply of parts for the UV filter from the overseas supplier;
- (c) MPDC received a further quote on 15 May 2023 and MPDC actioned the purchase order the same day. It was submitted that the cost of it was never an issue, and any suggestion that this was a cost cutting exercise is incorrect;
- (d) the contractor then took nearly four months to receive the parts from its suppliers and undertake the installation of the filter;

(e) MPDC followed up with the contractor on 27 June 2023 and 29 July 2023. On 3 July 2023 the contractor advised that the parts were in transit, and on 30 July 2023 that the parts were a week away; and

(f) on 5 September 2023 the works were completed.

[77] Mr Neutze advised that there was no alternative supplier or contractor available for MPDC to use at that time. MPDC understood that it had no choice but to wait for the parts to be obtained from the overseas' supplier, and that any other similar supplier would have experienced the same delay in getting parts.

[78] Mr Neutze submitted the discharges that occurred between 6 April and 4 October 2023, and the lack of UV treatment between 6 June and 5 September 2023 (breach of condition 8), was during the period that MPDC was working with its contractor to get the UV filter replaced. Whilst the first charge has a slightly broader time period, the key problem was the lack of UV treatment between 6 June and 5 September 2023.

[79] Mr Neutze submitted that the prosecutor seeks to include conduct prior to the relevant charging period, and that the facts relating to the time barred period should not be relied on to elevate the seriousness of the offending or culpability, or circumvent the limitation in s 338(4) of the RMA.

[80] Mr Neutze submitted that it is relevant to assessing culpability that the Waihou WWTP has been decommissioned since October 2024. The wastewater that was previously treated at the WWTP is now being pumped to and processed at Te Aroha.

[81] MPDC has paid \$1.7 million for the decommissioning of the WWTP and the bypass to Te Aroha. This process took longer than had originally been anticipated but it has now been completed. In essence, the WWTP was a relatively small but outdated wastewater treatment plant that had experienced a number of problems and was in the process of being replaced by MPDC.

[82] In response to the prosecutor's submission that MPDC was aware of the issue from as early as August 2022, Mr Neutze said that the Regional Council was also aware that the system was faulty prior to 6 June 2023. The Regional Council knew that MPDC was working on decommissioning the WWTP since 31 March 2022. The reality is that both parties were aware that the WWTP was faulty since at least March 2022.

[83] Mr Neutze submitted that any failure to notify by MPDC strictly in accordance with the reporting requirements of the Consent conditions did not have a direct impact on the discharges, which were known by both parties to be occurring.

[84] Mr Neutze acknowledged that the discharge of partially treated wastewater amounted to a breach of the Resource Consent limits/conditions. MPDC accepted that the limits/conditions of the Resource Consent should not have been breached, and that cumulative effects of discharges are relevant. Mr Neutze submitted it is relevant that raw sewage was not discharged.

Conclusions on culpability

[85] Problems with the WWTP were known since at least March 2022. MPDC said that the Regional Council was also aware of the problems. There is no suggestion, however, that the Regional Council countenanced any of the Consent breaches that occurred.

[86] A quote was received to repair the problematic UV system on 19 August 2022. For various reasons, including staff and contractor availability and COVID-19 lockdowns impacting equipment and resources, the quote was overlooked until 19 April 2023, at which point the Council was advised of delays in obtaining parts. It was not until 5 September 2023 that the works were completed.

[87] Furthermore, on 11 August 2022 the UV lamps were switched off – and remained off for 13 months. The Regional Council was not advised about that for five months.

[88] The prosecutor pointed to non-notification of incidents, lack of monitoring tools and a lack of management oversight. MPDC explained the issues it was facing at that time in some detail. While not excusing its failures, it explained the broader issues it was facing with resourcing. I acknowledge the challenges an aging system places on staff, contractors and management. However, the impacts of untreated or partially treated wastewater are well known. That is why consents and Plan provisions are so prescriptive in terms of their environmental bottom lines, required monitoring and notification requirements, among others.

[89] Here, the non-compliances are serious. Eight conditions were breached over the time of the offending. Issues leading up to the offending had been identified and MPDC received multiple warnings. Those matters were recorded in the SOF that forms the basis for this decision. I determine that it is relevant to take into account past warnings leading up to the time of the offending in determining culpability.

[90] Put simply, MPDC failed to react to issues with the Plant in a timely manner, and the outcome was the unlawful discharges. For a period of time within the offending period it seems that no particular resource was devoted to addressing the repair of the UV system. That is unacceptable. It seemed to be a straightforward fix and one that should have been pushed to completion much sooner.

[91] In all the circumstances, I find that MPDC was highly culpable for this offending. Its omissions are explainable, but the consequences are unacceptable.

Starting point

Prosecutor's submissions

[92] Ms McConachy referred to the following cases as being of assistance in setting a starting point: *Waikato Regional Council v Hamilton City Council (HCC 2022)*,¹¹

¹¹ *Waikato Regional Council v Hamilton City Council* [2022] NZDC 17901 – one charge of unlawfully discharging wastewater (including sewage) into water. There was a partial blockage in the wastewater mains. Wastewater overflowed to the stormwater mains systems, then discharged to the tributary via a stormwater outlet, continuing for nine days. The Court found that the offending would have had high adverse effects on the tributary and local environment, with low to moderate effects on the Waikato River. The Court also recognised the cultural effects of the offending because of the significance of the Waikato River to Waikato-Tainui. HCC found to be highly careless: there was a communication breakdown, insufficient awareness of the proper way to notify suspected problems, and the monitoring system was such that a partial blockage was not as noticeable as a full blockage. Starting point \$90,000.

Waikato Regional Council v Hamilton City Council (HCC 2019);¹² *Otago Regional Council v Clutha District Council (Clutha)*;¹³ *Taranaki Regional Council v New Plymouth District Council (New Plymouth)*;¹⁴ and *Manawatu-Whanganui Regional Council v Rangitikei District Council (Rangitikei)*.¹⁵

[93] Ms McConachy submitted that the offending in the present case is considerably more serious than the offending in each of the cited cases. The scale and duration of the offending, the extent of the non-compliance with the resource consent conditions, and MPDC’s high level of recklessness, mean that this offending must be seen as being among the most serious of its kind. She made the following points:

- (a) the offending was not caused by a momentary or “one-off” error but rather due to a prolonged systemic failure, which saw MPDC discharge partially or inadequately treated wastewater to water;

¹² *Waikato Regional Council v Hamilton City Council* [2019] NZDC 16254 – one charge of permitting the discharge of wastewater, containing untreated human sewage, into water. Two mechanisms failed. An estimated 1,782 litres of wastewater discharged into the Waikato River. The discharge would have had a relatively insignificant physical adverse effect. However, the cultural effects to iwi were described by Waikato-Tainui and acknowledged by City Waters. The Court characterised the adverse environmental effects as moderate, given the high volume of discharge, its untreated nature, its location and the cultural effects. Council found to be careless because the supposedly failsafe system failed as the result of human error. Starting point \$80,000.

¹³ *Otago Regional Council v Clutha District Council* [2021] NZDC 26125 – six charges arising from the operation of five wastewater treatment plants. Systemic failure on the Council’s part to properly operate and/or monitor their operation. Failures led to discharges. The Court found the Council was reckless in the extreme, and culpability on the Council’s part was at the very high end of the scale. The breach of numerous conditions of the Council’s resource consents was a particularly aggravating factor. Starting points for each discharge ranged from \$100,000 to \$120,000.

¹⁴ *Taranaki Regional Council v New Plymouth District Council* [2021] NZDC 3372 – one charge of discharging industrial wastewater and untreated sewage from a pump station into the Mangati Stream. 1500 cubic metres of contaminant discharged over nine hours, creating odour and discolouration which extended out to sea for almost one kilometre. The discharge was lethal to fish species, with many dead fish observed in the stream including three at risk species. Primary responsibility for the discharge lay with City Care Ltd and its inadequate response to the alarms that went off. The District Council had acknowledged its vicarious liability. The Court found a high degree of culpability attaching to CCL due to its failures. Starting point for CCL was \$150,000, for Council was \$95,000.

¹⁵ *Manawatu-Whanganui Regional Council v Rangitikei District Council* [2020] NZDC 12891 – one charge of discharging human effluent into water on various occasions over several months. The river was a popular recreational site with a swim spot zone in the vicinity of the discharge. Discharges observed on 8-10 occasions. While no evidence provided of actual physical effects, the Court stated that the discharge of sewage to waterways was repugnant, prohibited by the regional plan, and caused cumulative adverse effects to the river waters, potential adverse effects to human health and caused specific cultural offence to Māori. Regarding culpability, the Court accepted that both Councils at first mistakenly assumed that the discharge was coming from the pump station itself. It was not until the District Council had undertaken extensive investigation that it was discovered that the effluent was coming from an overflow pipe manhole. Nevertheless, the Court stated that the District Council had to accept responsibility. Starting point \$80,000.

- (b) the UV system, a critical final treatment barrier for microbial contaminants, was knowingly deactivated for over a year despite MPDC having received a repair quote as early as August 2022;
- (c) monthly sampling confirmed widespread exceedances of effluent limits for *E. coli*, nitrogen, and total suspended solids, with *E. coli* concentrations exceeding the permitted 95th percentile by over 2,800 times;
- (d) MPDC failed to comply with notification requirements under its Consent. It also failed to file incident reports as required by the Consent;
- (e) MPDC has a history of previous non-compliance and enforcement issues, including multiple formal warnings and prior convictions for unlawful wastewater discharges. It had been put squarely on notice as to what is required to ensure compliance with the Resource Consent and the RMA;
- (f) the offending occurred in a sensitive receiving environment with acknowledged ecological and cultural significance, affecting tributaries to the Waitoa River and downstream areas used by iwi and communities; and
- (g) the discharge of inadequately treated wastewater into a classified Contact Recreation waterway is serious in itself. This is aggravated by the duration of the offending, the scale of the discharges, and the absence of any urgent remedial action being taken.

[94] Ms McConachy submitted that each of the cases cited above reflects judicial recognition that systemic failures by territorial authorities managing public infrastructure must be treated seriously, even though such authorities operate on a not-for-profit basis.

[95] Ms McConachy submitted the offending is much more serious than in both of the *Hamilton City Council* cases due to the duration of the offending, MPDC's level of recklessness, and the widespread systemic failures that were causative of the offending.

[96] Ms McConachy noted that, while the discharge in *New Plymouth* caused significant environmental harm, it was an isolated incident that was caused by human error. The situation was remedied within nine hours. In contrast, MPDC's offending was prolonged and caused in part by chronic and systemic institutional failures. She submitted a significantly higher starting point than was adopted in that case is required here.

[97] Ms McConachy observed that while *Clutha* involved discharges from five separate wastewater treatment plants, the starting points were assessed on an individual basis. She submitted that each of those discharges was comparatively less serious than the offending in the present case. Notably, in *Clutha* the Court held that the individual starting points would have been significantly higher had the offending involved larger wastewater plants.

[98] Ms McConachy submitted MPDC's level of culpability sits at the upper end of the scale for wastewater offending carried out by a territorial local authority. It involved the discharge of inadequately treated or untreated wastewater over a period of five months, a UV disinfection system knowingly being deactivated for over a year, and prior convictions of a similar nature. Considering those features and the guidance provided in the cited cases, she submitted that a starting point in the region of \$170,000-\$180,000 is appropriate.

[99] The proposed starting point equates to less than 15 per cent of the maximum penalty (being \$1,200,000 for both charges). Ms McConachy submitted that given the seriousness of the present offending, the proposed starting point is arguably generous. She referred to s 8(1)(d) of the Sentencing Act 2002, which provides that a penalty near to the maximum prescribed for the offence is required for offending that represents the most serious of its kind.

Defendant's submissions

[100] Mr Neutze submitted the gravity of the offending is at the lower end of the scale in comparison to comparable cases.

[101] Mr Neutze noted the cases cited by the prosecutor are mostly old authorities, with far lower fines than the prosecutor has suggested. *Lakes (2012) Limited* and *Otago Regional Council* concern the discharge of sediment laden discharge, not partially treated wastewater. Sediment laden discharge is inorganic, unlike the organic living material discharged from the treatment plant. Sediment-laden discharges lead to high turbidity and can settle and smother the existing habitat. Nutrients can adhere to sediment laden discharges causing significant adverse effects on a stream's ecosystem, as such nutrients are no longer available for organisms that rely on such nutrients to survive.

[102] Mr Neutze submitted the cases relied on by the prosecutor can be distinguished on their facts. Most had expert evidence of proven significant environmental effects, reports / complaints of the effects from individuals, and all refer to a different set of circumstances to MPDC, such as untreated agricultural effluent for *Northland Regional Council v Roberts*¹⁶ and *West Coast Regional Council v Potae*,¹⁷ and pollution for profit in *Thurston*.

[103] Mr Neutze noted that in undertaking a comparison with previous cases, it must be borne in mind that while UV treatment was absent in this case, the wastewater underwent partial treatment through inlet screens, the waste stabilisation pond, and biological trickling filter before discharge.

[104] Mr Neutze submitted *HCC 2022* should be distinguished as the discharge event involved raw effluent and there was a higher level of culpability. The discharge in *HCC 2022* was a result of a communication breakdown, whereas there were several factors outside MPDC's control that affected the ability to fix the UV filter. Further, the discharge was of partially treated effluent in winter in a rural environment, albeit of a higher volume and over a longer period of time. Mr Neutze submitted the starting point in *HCC 2022* is higher than the appropriate starting point in this case.

[105] Mr Neutze submitted *HCC 2019* is comparable to this case. *HCC 2019* also involved untreated effluent rather than partially treated discharges. Mr Neutze

¹⁶ *Northland Regional Council v Roberts* DC Whangarei CRN 12088500369, 18 September 2013.

¹⁷ *West Coast Regional Council v Potae* DC Greymouth CRI-2009-009-017910, 20 April 2010.

submitted the culpability is the same, both were careless. Further, both defendants co-operated with the investigation, and have taken corrective action.

[106] Mr Neutze submitted the offending in *Clutha* was significantly more serious than MPDC's offending. In *Clutha* there was a total systemic failure of oversight. In MPDC's case, the delay in repair of the UV filter was caused, at least in part, by difficulties with the supplier. The discharge occurred while MPDC was waiting for the necessary parts. Mr Neutze submitted MPDC's conduct must be seen as less serious than *Clutha*. He noted that the Waihou WWTP is relatively small, and there is no detail in the *Clutha* decision regarding the size of the plants or volumes of discharge that would enable any comparison to be made.

[107] Mr Neutze submitted *New Plymouth* is not comparable to the current case, which had no similar environmental impact. The delay in the replacing the UV filter was not in MPDC's control. He submitted the facts are completely different to the present circumstances, and MPDC's offending must be seen as considerably less serious in terms of environmental effects and attract a lower starting point.

[108] While *Rangitikei* involved a discharge of raw effluent, Mr Neutze submitted that in other respects it is one of the most analogous to the current facts because:

- (a) the discharge persisted for a period of some months;
- (b) no longer-term adverse effects had been identified, but the discharges were potentially dangerous for persons who came into contact with the discharged effluent;
- (c) the discharge was into a river with recognised values and offensive to the wider community and Māori; and
- (d) continuation of the discharge after issue of an abatement notice arose due to a genuine mistake as to its source rather than to lack of compliance effort by the District Council. The Court pitched the culpability at moderate for that reason.

[109] Mr Neutze submitted MPDC's discharge was not intentional, although it was aware of the non-compliances (as was the Regional Council). There was a similar lack of long-term adverse effects, and the discharge persisted for a period of months.

[110] Mr Neutze observed that in *Rangitikei* the Court noted that a higher starting point than \$80,000 may have been justified if there was evidence of actual adverse effects on either the river or persons using it. He submitted that similarly here there is no such evidence, so \$80,000 is an appropriate starting point in this case as well.

[111] Mr Neutze submitted the prosecutor's starting point represents an unprecedented departure from the cases discussed. Even *Clutha*, involving reckless systemic mismanagement of five plants with egregious failures and untreated effluent, attracted starting points of only \$100,000-\$120,000. Mr Neutze submitted overall a starting point of \$80,000, in line with *Rangitikei* and *HCC 2019*, is appropriate.

[112] Mr Neutze submitted MPDC's level of culpability does not sit at the upper end of the scale for wastewater offending carried out by a territorial local authority. The discharge was partially treated (not raw sewage) and MPDC was authorised to discharge the partially treated wastewater to water during winter. MPDC acknowledged that it exceeded the limits of the conditions of the Resource Consent.

[113] Mr Neutze reiterated that the Regional Council had knowledge well before 6 June 2023 that there were issues with the WWTP and took no steps during the offending period. He submitted this suggested that the Regional Council did not have significant concerns about the potential environmental effects at the time, and the offending was not considered by the prosecutor at the time to be as serious as is now submitted, both in terms of culpability and effects.

[114] Mr Neutze submitted this is not a case where there is a great need for specific deterrence as the plant has been closed and there is no risk of reoffending in respect of the plant.

[115] MPDC submitted a starting point of a fine of \$80,000 is appropriate taking into account the relevant environmental effects, the degree of culpability, and the principles set out in s 8 of the Sentencing Act 2002.

Conclusion on starting point

[116] I note that an issue which arose at the sentencing hearing was a mathematical error made by the prosecutor in submissions in respect of the discharge volume. In a memorandum filed after the hearing the discharge volumes were confirmed. Ms McConachy advised that this did not impact her written submissions in any material way. She confirmed that the prosecutor considered a starting point in the range of \$170,000-\$180,000 is appropriate. Mr Neutze submitted that the significant overstatement of the discharge volume must have an effect, and the starting point sought should have been adjusted.

[117] The length and scale of the offending is relevant to my setting of a starting point. It was over some months, so to that extent save for *Rangitikei* this offending is different from that described in the cases to which I was referred. Further, the nature of the breaches of Consent conditions as they relate to *E. coli* and N are serious. Turning off the UV system meant, despite the other forms of treatment to which Mr Neutze referred, that that final check on effluent treatment and quality did not occur for the whole period of the offending (and some months before). If the UV quote had been promptly responded to the length of offending might have been considerably reduced. It is clear that many issues – staffing and contractor availability, COVID-19 and Cyclone Gabrielle – negatively impacted MPDC’s ability to comply with the Resource Consent. However, as the Court has said on numerous occasions effluent management, be it of farm or human effluent, is a serious matter because the consequences of failure can be significant. There must be robust systems, back-ups and failsafes in place. There must be rigorous reporting.

[118] I find that there was a partial systemic failure in oversight and management of the WWTP analogous in part to *Clutha*. Taking into account the environmental and cultural effects of the offending, and the level of culpability, I find that a global starting point of \$140,000 is appropriate for the charges.

Aggravating and mitigating factors

Previous non-compliance

[119] MPDC has received formal warnings relating to non-compliance with its Resource Consent for the unlawful discharge of wastewater to land and water from the Waihou WWTP: formal warnings issued May 2017 and April 2021 for non-compliance with wastewater discharge limits, a formal warning issued January 2022 for ongoing non-compliance with Consent conditions, and a formal warning issued November 2022 for non-compliant discharge to water.

[120] MPDC has previously been convicted and sentenced in relation to the unlawful discharge of wastewater: in 2005 for the unlawful discharge of untreated wastewater from a manhole near the Morrinsville pump station in 2003, in 2020 for the unlawful discharge of untreated wastewater from a broken wastewater pipeline in Morrinsville in 2018, and in July 2024 for the unlawful discharge from the Matamata Wastewater Treatment Plant in April 2023.

[121] Ms McConachy submitted that the repeated nature of MPDC's non-compliance with its Resource Consent highlights the need for deterrence. She submitted that the previous non-compliances and convictions are such that a stern sentencing response is required. Prior sentences have failed to have a deterrent effect. She submitted that an uplift of 25 per cent of the starting point is required to account for MPDC's history of relevant similar offending and non-compliance.

[122] Ms McConachy noted that in *HCC 2022*, the Court imposed an uplift of 20 per cent to reflect the defendant's prior history, which consisted of two convictions. She submitted MPDC has a significantly worse history of non-compliance than did Hamilton City Council.

[123] Mr Neutze submitted there are no prior convictions of a similar nature; prior offences were entirely different, and if relevant at all prior offending should be considered as an aggravating factor, not as relevant to culpability and the starting point.

[124] Mr Neutze submitted there should be no uplift. The 2005 case is over twenty years old and in relation to a completely different set of facts. The facts of the 2020 case are very different and did not involve a treatment plant at all. Rather, a wastewater pipe was broken by a fallen tree. Further, the offending occurred in 2018, more than seven years ago. The 2024 offending was different: the wastewater treatment plant was a different one and an inadvertent operator error caused the discharge of raw sewage over the Easter period.

[125] MPDC did not seek a discount for previous good character. Mr Neutze submitted no uplift ought to be applied as the loss of good character discount is sufficient to take into account MPDC's prior convictions. If that is not accepted, he submitted an uplift of no more than five per cent would be sufficient.

[126] I have taken into account past warnings in relation to the WWTP in determining culpability, so will not count them as an aggravating factor here. However, I will take into account the most recent conviction as that, too, related to systemic failures (albeit at a different wastewater treatment plant). I impose an uplift of 10 per cent on the starting point.

Remedial works

[127] Ms McConachy acknowledged that MPDC has taken some remedial steps in response to the offending. Most notably, the UV disinfection system at the Waihou WWTP was repaired on 5 September 2023, after a period of over a year offline.

[128] MPDC transitioned from its outdated data system to a more robust monitoring and compliance platform (WaterOutlook), which provides automated alerts and integrates directly with laboratory results. While this transition occurred during the offending period, implementation of this system may assist in avoiding future compliance failures.

[129] Ms McConachy submitted the remedial steps taken do not amount to mitigating factors worthy of a discount at sentencing. The defendant was simply doing what is

required to ensure compliance with the conditions of its Resource Consent. That is no reason to allow a discount.¹⁸

[130] Mr Neutze advised that, in October 2023, MPDC engaged a Wastewater Process Engineer to provide recommendations on how the performance of the WWTP could be improved. The expert's report, dated 20 November 2023, made a number of recommendations that MPDC implemented prior to decommissioning of the WWTP in October 2024. The measures implemented included hypo dosing, closing the partial pond bypass valve, maintaining the distribution arms, reinstalling the v-notch weir in the secondary clarifier, and undertaking restorative maintenance of the UV system.

[131] MPDC also introduced a robust monitoring and compliance platform (WaterOutlook).

[132] Mr Neutze observed that MPDC has spent \$1.7 million in decommissioning the Waihou WWTP and bypassing it to Te Aroha. There is no risk of any further non-compliance and / or discharge from this WWTP.

[133] Mr Neutze submitted a discount of 10 per cent would be appropriate to recognise steps taken since the discharges.

[134] The Court would not normally allow a discount for steps taken to ensure a system complies, but in these circumstances I am prepared to recognise MPDC's steps in decommissioning the Plant and bypassing it to Te Aroha. That seems to me to be a consolidation of resources and is sensible in the circumstances. I allow a 10 per cent discount.

Guilty plea

[135] Ms McConachy acknowledged that MPDC has pleaded guilty at a relatively early stage of the proceedings. However, she asserted it could not be said that guilty pleas came at the first reasonable opportunity. She submitted that MPDC should receive a 20 percent credit to account for its guilty pleas.

¹⁸ See, for example, *Waikato Regional Council v Arrick Limited* [2025] NZDC 12334 at [80].

[136] Mr Neutze submitted MPDC was only able to enter a guilty plea after the Regional Council amended one of its representative charges and agreement was reached on the Summary of Facts. He submitted MPDC entered a guilty plea as soon as agreement was reached to reduce the number of charges and exclude the summer offending, which was time barred. Mr Neutze submitted MPDC pleaded guilty at the first available opportunity and so should receive the full 25 per cent discount.

[137] I allow a discount of 25 per cent in these circumstances.

Outcome

[138] I have convicted the defendant. Applying the discount of 25 per cent from the starting point, I impose a fine of \$105,000.00.

[139] The fine is to be paid within three months of the date of the decision.

[140] In terms of s 342(2) of the RMA, I order that 90 per cent of the fine be paid to the Waikato Regional Council.

[141] I also order that the defendant is to pay court costs of \$143 and solicitor's fee of \$113 for each charge.

Judge MJL Dickey

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 19/11/2025