IN THE DISTRICT COURT
AT HAMILTON

I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA

CRI-2018-019-004917
[2019] NZDC 16254

WAIKATO REGIONAL COUNCIL
Prosecutor

v

HAMILTON CITY COUNCIL
Defendant

Hearing:	5 August 2019
Appearances:	JM O'Sullivan for the prosecutor M Crocket for the defendant
Judgment:	31 October 2019

RESERVED SENTENCING DECISION OF JUDGE MJL DICKEY

Introduction

[1] The defendant has pleaded guilty to contravention of the Resource Management Act 1991 (**the RMA**). There is one charge of permitting the discharge of a contaminant, namely wastewater containing untreated human sewage, into water, against s 15(1)(a) of the RMA. The charge relates to unlawful activities associated with the operation of the Bridge Wastewater Pumping Station (**Bridge SPS**) between 20 February 2018 and 21 February 2018.

[2] The defendant has pleaded guilty to the charge. There has been no suggestion that the defendant should be discharged without conviction and it is convicted

accordingly. A restorative justice process has been undertaken, and I outline its outcomes later in this decision.

[3] The maximum penalty for the charge is a fine of $600,000. The differences between counsel were in respect of the starting point that I should adopt for the charge, with the prosecution submitting that an appropriate starting point in the range of $80,000-$100,000 is appropriate.

[4] For the defendant, it was submitted that the appropriate starting point is in the range of $50,000-$60,000.

Regulatory framework[1]

[5] The relevant plan is the Waikato Regional Plan (**the Plan**). Under Rule 3.5.7.8, discharge of untreated human effluent to water is a prohibited activity. Section 15(1)(a) RMA provides that no person may discharge any contaminant into water unless the discharge is expressly allowed by a national environmental standard or other regulations, 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.

[6] There is no resource consent for this discharge, and no other regulations that allow for it.

[7] Wastewater is a contaminant pursuant to s 2 of the RMA.

Background[2]

[8] The agreed Summary of Facts describes the background to the offending, including information on the environmental effects of the offending. As this Summary of Facts is agreed, I must accept as proven all facts, express or implied (s 24(1)(b) Sentencing Act 2002).

[1] Summary of Facts, paragraphs 63-66.
[2] Summary of Facts, paragraphs 1-62.

[9] The defendant is a territorial authority pursuant to the Local Government Act 2002, having municipal responsibilities for a population in excess of 160,000 residents within the city boundary comprising an area of approximately 110km^2.

[10] Pursuant to s 10 of the Local Government Act 2002, the Council is obliged to provide and maintain efficient and effective infrastructure to meet the current and future demands of the community.

[11] City Waters is the departmental arm of the Council whose responsibilities incorporate wastewater, drinking water and stormwater. The wastewater component of City Waters includes in excess of 140 wastewater pumping stations. A manager is appointed to oversee the functions of City Waters, with the hierarchical oversight being provided by the general manager, City Infrastructure.

[12] All of Hamilton City's wastewater that is covered by the wastewater reticulation network is pumped to the Wastewater Treatment Plant located on Pukete Road, Hamilton. This plant receives an average of 45,000m^3 of untreated wastewater on a daily basis.

[13] A network of pipes and pumping stations in combination with rising mains which lift the wastewater via pumps to allow for a continuity of flows across the greater city wastewater catchment, facilitates the operation of the network. An electronic system that provides the functionality across the city's sewage pumping stations is called SCADA.

[14] The Bridge SPS is one of the Council's larger pumping stations comprising four individual pumps. It is on a frequent wash schedule because it is a high flow SPS, due to its location being adjacent to the bridge over the Waikato River on Anzac Parade, and near the river walkway, and primarily due to its propensity for odour. This SPS is washed fortnightly.

[15] The layout of the Bridge SPS comprises a wet-well overflow weir, control box and a wash-down connection point to the water mains.

[16] The Summary of Facts sets out in detail the components of the SPS and the role they play in ensuring the safe operation of the Bridge SPS. It is sufficient for present purposes to record that two primary mechanisms, which would have ensured that the discharge in this case did not occur, failed on the day leading up to the discharge.

[17] The first was an unauthorised alteration to the span setting for the SPS, having the effect of cancelling out the primary wet-well sensing equipment. As a result, the wastewater contents within the well rose to the level of the overflow discharge point without activating the overflow float level switch, creating a discharge directly into the Waikato River that was unreported through the SCADA alarm system and went unnoticed for a period of 19 hours.

[18] The second relates to the back-up system within the SPS, the overflow alarm float, which operates independently from the primary ultrasonic sensor. That float was set at a height within the wet-well that enabled the overflow discharge level to be breached before that float switch triggered. It subsequently became clear that the float switch had been tied up, that is coiled up completely and was therefore out of range.

The offence[3]

[19] The unauthorised alteration to the span setting was made at approximately 2.40pm on Tuesday 20 February 2018 and was not discovered until 21 February 2018, when the operations engineer noticed an anomaly within the Bridge SPS trend data, which appeared to have flatlined – indicating no pumping activity at that pumping station.

[20] The engineer went to the Bridge SPS to investigate the cause for the trend data inactivity. He discovered that the contents of the wastewater SPS were discharging to the Waikato River. He immediately responded by over-riding the sensor equipment and manually operating the pumps, which instantly stopped the overflow discharge.

[3] Summary of Facts, paragraphs 36-42

[21] An estimated volume of 1,782m^3 or 1,782,000 litres of wastewater was discharged into the Waikato River over that 19-hour period in the location of Anzac Parade.

[22] That constituted an offence against s 15(1)(a) of the RMA.

Investigation[4]

[23] An investigation into the cause of the SPS failure identified there were two independent but inter-connected issues that enabled the overflow discharge to occur unnoticed, which as mentioned was the span setting alteration and the location of the overflow alarm float.

[24] During the course of the investigation, another issue identified was that the Bridge SPS, as well as other SPS within the city, does not have a level chart. This is a chart comprising an adhesive sticker that is attached within the control box cabinet door. This chart has provision for the specific levels particular to that SPS to be recorded and includes the overflow float level as a measurement.

[25] As to the two issues identified that enabled the overflow discharge to occur, it was noted:

(a) With regard to the span setting alteration, access to the SCADA computer software required a password, but the password was not user-specific. There is no timed "lockout" for access to the system. Anyone with proximity to one of the few computer terminals within the greater Hamilton City area that is connected with SCADA could have created the span setting data entry change, if that computer was logged into SCADA at the time. Access to the building is by swipe card. The Council has not been able to identify any individual as being responsible for that data alteration;

(b) As to the overflow alarm float, it was discovered that the float had been tied up and was therefore out of range. Pump servicemen confirmed it is

[4] Summary of Facts, paragraphs 43-62.

> common practice to coil up the excess length of cable to prevent excess accumulating within the control cabinet. Ostensibly, that float could have been in an incorrect position, albeit unknown to the serviceman who maintained the SPS, for some time.

[26] Since the offending, a number of management and operational measures have been developed so as to prevent future discharges, and all but one has been implemented as at the date of this hearing.

Sentencing principles

[27] Against that background I must adopt a starting point for a fine. The purpose and principles of sentencing under the Sentencing Act 2002 are relevant in RMA sentencing cases insofar as they are engaged by a particular case.[5] The Court must also recognise that the purpose of the RMA is to promote the sustainable management of natural and physical resources. "Sustainable management" means using natural resources while avoiding or remedying or mitigating adverse environmental effects.[6]

[28] Matters of national importance are specified; they include preserving and protecting the natural character of rivers and their margins from inappropriate use. In relation to managing the use and protection of natural and physical resources, the Court is also required to have particular regard to the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment and any finite characteristics of natural and physical resources, among other things.[7]

[29] The factors that also assume relevance in RMA sentencing include: an assessment of the offender's culpability for the offending, any infrastructural or other precautions taken to prevent the discharges, the vulnerability or ecological importance of the affected environment, the extent of the environmental damage, deterrence, the offender's capacity to pay a fine, disregard for abatement notices or Council

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[5] *Thurston v Manawatu Wanganui Regional Council* High Court, Palmerston North, 27/8/2010, CRI-2009-454-24.
[6] Section 5 RMA.
[7] Sections 6 and 7 RMA.

requirements, remedial steps taken to mitigate the offending or prevent future offending, and cooperation with enforcement authorities and guilty pleas.[8]

Nature of the environment and environmental effects[9]

[30] The significance and importance of the Waikato River to the region and its people, including Waikato-Tainui, is beyond question. Hamilton City Council and the Waikato Raupatu River Trust are parties to a 2012 Joint Management Agreement, which agrees shared responsibility to restore and protect the health and wellbeing of the Waikato River for future generations.[10] The river environs surrounding the discharge point incorporate the central area of the Hamilton CBD, which is directly downstream of the discharge point, and includes the recreational activities associated with the Hamilton Rowing Club, which are located directly across the river.

[31] The defendant commissioned an environmental assessment of the likely effects of the discharge on the Waikato River from Streamlined Environmental Limited (**the Assessment**). The Assessment was provided with the Summary of Facts.[11]

[32] Ultimately, the adverse effects of the discharge, following full mixing with the volumes of water flowing through the River will be minimal. However, there was a high level of contaminant risk within the plume of concentrated discharge within the immediate and proximate downstream environs of the discharge point to the Waikato River, both throughout the discharge and for a period of time thereafter.

[33] The Assessment concluded:[12]

> **7. Conclusions**
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> Despite the high contaminant concentrations in the raw wastewater, once fully mixed, dilutions in the receiving water would have resulted in significant reductions in the final concentration of nutrients, faecal bacteria (*E. coli*), heavy metals, biochemical oxygen demand and total suspended solids in the Waikato River following the 19-hour wastewater discharge. Mass balance dilution modelling predicts that final concentrations in the receiving water following the discharge are only slightly higher than

[8] *Thurston*, above n 5, paragraphs 41 and 42.
[9] Summary of Facts, paragraphs 67-69.
[10] Restorative Justice Conference Report dated 30 July 2019, at page 3.
[11] A final copy of that assessment was provided after the hearing had concluded by consent.
[12] Assessment, section 7, page 15.

> background concentrations in the Waikato River. Given that the projected concentrations in the receiving water following the discharge were not significantly different from the baseline concentrations, discharge is expected to have "no adverse effect" upon full mixing.

The final version of the Assessment qualified the above conclusion, stating that the spilled wastewater may not have been immediately fully mixed with the receiving water and may have extended its influence downstream, depending on prevailing meteorological conditions and river morphology. In that regard, it stated that:[13]

> Regardless of the mixing scenario, the plume would remain relatively small and insignificant in the context of the volume, width, depth and length of the Waikato River.

[34] Culturally, the discharge to the river was of particular concern to iwi. In the Restorative Justice Conference Report, Waikato-Tainui spoke of the cultural impacts on the users of the river, waka ama and other activities. They talked about the significance of the river to the mana whenua, and how the awa is seen as the tūpuna for the people of Waikato; this includes the riverside and all that are connected to the awa. For Waikato-Tainui, it was said:[14]

> This incident highlighted the need to be able to respond quickly, for the river and everyone connected to it. In the past, if such an incident had occurred, everyone whose livelihoods had been affected would have been informed; a rāhui would have immediately been put in place, and a process on how kai would have been collected, and how and when the river would be available for use, would be discussed and agreed.

[35] For City Waters, the public health impact and the effect of the discharge on river users and mana whenua was acknowledged. It was said:[15]

> Māori were impacted significantly. We understand that Māori consider the discharge of contaminants to water diminishes the mauri of that water, and that the discharge of wastewater to water (particularly human waste) is abhorrent physically, culturally and spiritually. Subsequent to the discharge event, we were also made aware that waka were operating in the river during the time in which the discharge occurred, and understand the cultural and spiritual impact that the exposure to the wastewater discharge may have had.

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[13] Assessment, section 7 at page 16.
[14] Restorative Justice Conference Report dated 30 July 2019, at page 5.
[15] Restorative Justice Conference Report dated 30 July 2019, at pages 5-6.

Culpability of the defendant for the offending

[36] Ms O'Sullivan for the prosecution submitted that the defendant's culpability is moderate and that its behaviour was careless. While it was agreed that the discharge was inadvertent in the sense it was not intended, counsel submitted that the defendant failed to implement adequate systems and safeguards to protect against such a possibility.

[37] It was submitted that, in particular, the SCADA computer system did not have user-specific passwords or a timed "lockout", meaning that any person in proximity to an appropriate computer terminal could change system settings. Further, information as to the correct level for the overflow alarm float to be hung was not readily available at the pumping station.

[38] It was also submitted that, while systems such as the SCADA system and the overflow alarm float system were in place to prevent discharges, these systems were only necessary because the design of the pumping station was such that overflows of wastewater would be directed into the Waikato River.

[39] For the defendant, Ms Crocket submitted that this was not a case in which it had failed to provide failsafe measures. Counsel submitted that sensible measures were in place to respond to situations when the pump station was not operating in a normal manner, and which required operator intervention to prevent a wastewater overflow event occurring.

[40] Ms Crocket submitted that the two failsafe systems at the Bridge Street SPS were disabled separately, one on site and the other off-site. The defendant did not know that either system had effectively been disabled, and there is no evidence that any staff member realised prior to the discharge that either system was not functional, let alone that any staff member was aware that both systems were out of action. As to the overflow float switch, the defendant accepts that ideally staff members would have been given training, so they could recognise that it had effectively been disabled.

[41] In response to the prosecutor's characterisation of the defendant as careless, Ms Crocket submitted that carelessness implies a level of awareness of risk, which it

did not have. With the benefit of hindsight, the defendant accepts that there were measures that it could have taken. She submitted that the defendant's failures were inadvertent rather than careless.

[42] I consider that the defendant's culpability can be described as careless because its 'failsafe' system failed in this case. I acknowledge that both failures occurred as a result of human error. However, the Bridge SPS' proximity to the River, and the fact that any overflow would result in a direct discharge of untreated human effluent into a river of significance, requires a more robust set of protections. I acknowledge that the Council, upon discovering the issues, took immediate steps to remedy them, however the fact that improvements have been able to be made to its systems and infrastructure tells me that the system was somewhat vulnerable.

Extent of attempts to comply/attitude of offender

[43] The defendant has been fully cooperative with the Council's investigation. I record that it has participated in a restorative justice process and has also undertaken an internal investigation into the cause of the discharge. The prosecutor stated that "the defendant has demonstrated an exemplary attitude toward the investigation, restorative justice and considerations for the future".[16]

[44] Also, the defendant has identified a number of corrective actions that it could take in order to prevent future discharges. I was told at the hearing that all but one of them had been implemented.

[45] The key elements include: [17]

(a) policies for accessing the Three Waters network;

(b) further training for maintenance staff;

(c) a management of change process for the SCADA system and for high-priority sewage pumping stations;

[16] Prosecutor's submissions, paragraph 19(e).
[17] Defendant counsel's submissions, paragraph 61.

(d) the updating of processes in order to ensure/eliminate the risk of maintenance staff changing critical control points;

(e) 'pump not running alarms' have been programmed in critical sewage pumping stations;

(f) restriction of access to the SCADA system;

(g) access protocols for access to sewage pumping stations; and

(h) quality checks and random compliance inspections to ensure that sewage pumping stations' wet-wells are being cleaned to the required standard.

Sentencing levels in comparable cases

[46] Ms O'Sullivan referred to a number of cases she considered to be comparable in order to address the sentencing principle that similar offending by similar offenders in similar circumstances ought to be generally consistent in terms of outcomes. Counsel acknowledged that none of the cases cited to me is on all fours with this situation. For completeness I record them as being:

(a) *Waikato Regional Council v Waikato District Council*[18] - pumps at a wastewater treatment plant failed to activate during a heavy rain event causing partially treated wastewater to overflow from a storage pond. Starting point of $70,000;

(b) *Wellington Regional Council v Porirua City Council*[19] - an overflow from the sewage wastewater treatment plant entered stormwater drains, discharging into the sea. The discharge was substantial in volume. Starting point $70,000;

(c) *Otago Regional Council v Clutha District Council*[20] - a sewer pipe was clogged by an accumulation of fat, resulting in untreated human wastewater being discharged into a river. Starting point $35,000;

[18] *Waikato Regional Council v Waikato District Council*, Hamilton CRI-2013-019-6418, 4 July 2014.
[19] *Wellington Regional Council v Porirua City Council*, Wellington CRI-2014-091-769, 12 June 2014.
[20] *Otago Regional Council v Clutha District Council*, [2018] NZDC 16724.

(d) *Otago Regional Council v Queenstown-Lakes District Council*[21] - a sewer pipe was blocked by an accumulation of fat, causing untreated wastewater to divert into the river via the stormwater system. Starting point $50,000;

(e) *Manawatu-Whanganui Regional Council v Whanganui District Council*[22] - the *Clutha* and *Queenstown-Lakes* cases were discussed. There was sewage overflow from a pump station caused by a failure of the electrical supply. Starting point $30,000 but note that the Court put weight on the fact that the prosecution only sought that starting point;

(f) *Otago Regional Council v Queenstown-Lakes District Council*[23] - a blockage in a sewer main caused a manhole to overflow. Starting point $30,000.

[47] It is also relevant to record that in her submissions, Ms O'Sullivan referred to the use of culpability bands in sentencing, and to the High Court's decision in *Stumpmaster & Ors v WorkSafe NZ*[24] but advised that the prosecution was not advancing the *Stumpmaster* approach in this case.

[48] Ms Crocket did not bring to my attention any other cases that could assist with the setting of a starting point. Counsel did however, and while not denying that failures occurred, distinguish those cases as having important aggravating features that are not present in this case.

Setting the starting point

[49] The starting point proposed by the prosecution is in the range of $80,000-$100,000 on the basis that the defendant's conduct was careless and there was a significant, albeit not long-term, environmental consequence of its offending. While it did take precautions to avoid an overflow, these proved to be ineffective in the circumstances of the case. The seriousness of the offending is elevated, having regard to the duration of the discharge and the high volume of discharge involved, the location

[21] *Otago Regional Council v Queenstown-Lakes District Council*, [2017] NZDC 28767.
[22] *Manawatu-Whanganui Regional Council v Whanganui District Council*, [2018] NZDC 26705.
[23] *Otago Regional Council v Queenstown-Lakes District Council*, [2019] NZDC 832.
[24] *Stumpmaster & Ors v WorkSafe NZ*, [2018] NZHC 2020.

of the discharge in central Hamilton, and the fact that it was into the Waikato River, give rise to the effects on cultural and amenity values.

[50] The defendant submits that a starting point of between $50,000-$60,000 is appropriate on the basis that, while failures occurred, none of the aggravating factors were present as in the cases that were cited to me by the prosecution. For example, that this is not a situation where alarms or high holding tank levels were not acted on, as occurred in *Waikato Regional Council v Waikato District Council;*[25] that the failure of the failsafe was not foreseeable as it was in the *Whanganui District Council* case;[26] that there was no ongoing failure to carry out inspections and maintenance, as occurred in *Otago Regional Council v Queenstown Lakes District Council*,[27] *Clutha District Council*,[28] and *Porirua City Council*.[29] Ms Crocket also submitted that the defendant's proposed starting point is slightly lower than the starting point in *Porirua City Council*,[30] in which approximately four times more wastewater was discharged.

[51] While the cases I was cited were helpful, I consider that each case depends largely on its own facts. I have characterised the defendant's actions as careless. I have characterised the effect on the environment as moderate, given the high volume of discharge, its untreated nature, its location, and the cultural effects of that discharge.

[52] While I acknowledge that the defendant did have in place two primary systems designed to avoid an overflow occurring, those systems failed through human error. The outcome was a direct discharge of effluent into the Waikato River, which gave rise to the effects on the receiving waters and on cultural and amenity values. I consider that an appropriate starting point for this offending is $80,000.

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[25] *Waikato Regional Council v Waikato District Council*, above n 18.
[26] *Manawatu-Whanganui District Council v Whanganui District Council*, above n 22.
[27] *Otago Regional Council v Queenstown Lakes District Council*, above n 21.
[28] *Otago Regional Council v Clutha District Council*, above n 20.
[29] *Wellington Regional Council v Porirua City Council*, above n 19.
[30] *Wellington Regional Council v Porirua City Council*, above n 19.

Aggravating and mitigating factors

Previous history

[53] The defendant has one previous conviction in its history of managing the wastewater treatment network. In 2011, approximately 145m^3 of treated wastewater sludge overflowed from a day tank at the Wastewater Treatment Plant. A blocked pipe caused a well to overflow onto land, via the stormwater system, into the Waikato River.

[54] Ms O'Sullivan submitted that this is an aggravating factor that justifies an uplift in the starting point.

[55] Ms Crocket submitted that I should have little regard to that conviction. The defendant does not have a history of non-compliance, and the previous conviction relates to offending that occurred eight years ago and in a different context (at the Wastewater Treatment Plant).

[56] I do not consider that it is appropriate to impose an uplift in this case. I regard the two events as quite different in terms of causation.

Restorative justice

[57] Two restorative justice hui took place. At the outset of the process, the defendant made a sincere apology. Further, an extensive list of outcomes was agreed at those hui. For convenience I attach those outcomes.

[58] For the defendant, Ms Crocket submitted that only one of the agreed actions involves a direct payment by the defendant ($20,000 for riparian planting) but that it is likely that there will be additional non-direct cost to the Council in the delivery of the agreed outcomes, both in terms of staff time and engagement of external consultants, as actions are further defined, scoped and implemented. Ms Crockett submitted that it should be given credit for the totality of the outcomes of the restorative justice process.

[59] Section 8(j) requires the Court to take into account any outcomes of restorative justice processes, including anything referred to in s 10. Section 10(1) of the

Sentencing Act 2002 requires the Court to take into account any offer, agreement, response or measure to make amends. In deciding whether and to what extent any matter referred to in s 10(1) should be taken into account, s 10(2) states that I must take into account:

> (a) whether or not it was genuine, and capable of fulfilment; and
>
> (b) whether or not it has been accepted by the victim as expiating or mitigating the wrong.

[60] The prosecution accepted that the restorative justice process had been both genuine in order to accept responsibility and an attempt to put things right. It accepted that the outcomes are capable of fulfilment.[31] Ms O'Sullivan submitted that the defendant's approach to restorative justice in this case has been commendable. She stated that the process appears to have involved an authentic connection with the community through hui, and a willingness to engage deeply with the concerns held by the community and in particular local iwi, to further the defendant's appreciation of their concerns. She acknowledged that a discount is clearly available.

[61] Ms Crocket submitted that a reduction of $25,000-$30,000 in respect of the restorative justice process would be appropriate. Further, in respect of the corrective actions that the defendant has taken, she submitted that a further credit should be allowed. I was referred to the *Clutha District Council*[32] case where there was a 20 per cent discount on the basis that its programme of improvements went beyond simply responding to acknowledged shortcomings. Further, in *Porirua City Council*[33] the Court gave a 25 per cent discount, which took into account co-operation, a plant upgrade and a donation.

Corrective actions

[62] Ms Crocket submitted that certain of the corrective steps that the Council has taken go beyond the minimum measures which would have prevented the discharge. She submitted that those steps show real remorse and that there should be appropriate credit for them.

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[31] Prosecutor's submissions at paragraph 40.
[32] *Otago Regional Council v Clutha District Council*, above n 20.
[33] *Wellington Regional Council v Porirua City Council*, above n 19.

[63] A discount is appropriate to recognise that the defendant's commitment to the Restorative Justice Process led to the outcomes that have been agreed. Ms Crocket suggested a reduction of $25,000-$30,000, which translates to a reduction of 32-38 per cent. I have carefully considered this matter. I acknowledge the defendant's remorse and that its commitment to the Restorative Justice Process has been commendable. There has been an authentic engagement with the community through the huis. I note that the outcomes from the Restorative Justice process should lead to greater information sharing, riparian planting, and the development of the Mauri Restoration Model, among others. In those circumstances I allow a discount of 10 per cent. Finally, I am not clear which of the corrective steps implemented by the Council go beyond those required to address the circumstances leading to the offending. No further discount is therefore allowed.

Peter paying Paul

[64] It was submitted by counsel for the defendant that there is also the "Peter paying Paul" aspect when a fine imposed goes from one local authority to another and ratepayers bear the cost either way. Counsel submitted that it would be appropriate that the fine, or a portion of it, be directed to a local environment project or organisation for the benefit of the Waikato River and selected by the Regional Council.

[65] In response, the prosecutor reminded me of the Regional Council's legislative responsibilities for monitoring activities, involving investigation and enforcement. The "Peter pays Paul" argument was submitted to be a little too simplistic given that the legislature proposes that 90 per cent of a fine return to the prosecuting authority. Counsel submitted that this is not a factor that ought to impact on the fines imposed.

[66] No local environmental project or organisation was advanced by the defendant in support of its submission. The restorative justice process has resulted in a number of outcomes that the defendant is obliged to follow through on. I see no particular need or value in making an order requiring the payment of further environmental compensation.

Early guilty plea

[67] The prosecution accepts that the defendant is entitled to credit for its early guilty plea and acknowledges that the defendant's guilty plea was entered at the first reasonable opportunity. According to *Hessell v R*,[34] the maximum credit available is 25 per cent. The defendant is therefore entitled to a further 25 per cent deduction.

Result

[68] Hamilton City Council is convicted on the charge and fined the sum of $54,000.00. Ninety per cent of the fine is to be paid to the informant Council pursuant to s 342 of the RMA.

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Judge MJL Dickey
District Court and Environment Judge

Date of authentication: 31/10/2019
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.

[34] *Hessell v R*, SC 102/2009 [2010] NZSC 135.