



**DLA Piper New Zealand**  
Chartered Accountants House  
50-64 Customhouse Quay  
PO Box 2791  
Wellington 6140  
New Zealand  
**DX** SP20002 WGTN  
**T** +64 4 472 6289  
**F** +64 4 472 7429  
**W** www.dlapiper.com

Our ref: 1027395

17 April 2020

Hon Steve Chadwick  
Her Worship the Mayor  
Rotorua Lakes Council  
ROTORUA  
**By email**

Geoff Williams  
Chief Executive Officer  
Rotorua Lakes Council  
ROTORUA  
**By email**

Her Worship the Mayor and Geoff

## **TARAWERA RETICULATED SEWERAGE SCHEME**

### **Introduction**

- 1 We act for the Lake Tarawera Ratepayers Association (**LTRA**) in relation to the reticulated sewerage scheme for the Tarawera community.
- 2 LTRA has been asking for a reticulated sewerage scheme since 2012 and despite the formation of the Lake Tarawera Sewerage Steering Committee (**LTSSC**) in 2015, the investigation of various options, extensive consultation with the community/key stakeholders and community endorsement for a preferred option, the scheme has not yet been implemented by Rotorua Lakes Council (**the Council**). This delay is unreasonable.
- 3 The Tarawera community is becoming increasingly concerned about the lack of progress in implementing a reticulated sewerage system for the area and is seeking an assurance from the Council that the delay will cease and action will be taken.
- 4 Now is the time for such action to take advantage of the government considering 'shovel ready' projects in light of the COVID-19 pandemic, to avoid putting the funding from the Ministry for the Environment at risk and to avoid putting a significant number of ratepayers to unnecessary expense due to the rules proposed by Bay of Plenty Regional Council in Plan Change 14.

**DLA Piper New Zealand** is a partnership governed by New Zealand law, which is part of DLA Piper, a global law firm operating through various separate and distinct legal entities.

A list of offices and regulatory information can be found at [www.dlapiper.com](http://www.dlapiper.com).

## Background

- 5 You will be aware that after LTRA's call for a reticulated sewerage system, the Council set up the LTSSC to consult widely and to make recommendations back to the Council regarding a feasible system that would best serve the community and that could be implemented in an affordable way.
- 6 The LTSSC identified five possible and viable options and considered and consulted on those in depth. The LTSSC completed its task in October 2018. It recommended unanimously to Tarawera ratepayers, iwi and Māori landowners that the Tarawera wastewater system should consist of:
- 6.1 An on-site low-pressure grinder pump (**LPGP**) system for each property, and
  - 6.2 A connection from the system trunk main via Tarawera Road to the existing pumping station at Lake Ōkāreka (and then to the Rotorua Wastewater Treatment plant (**WWTP**) at Te Arikiroa).
- 7 The LTRA members resolved unanimously to support the recommended approach. They are the ratepayers that are directly affected by this proposal (and who will be funding a large proportion of it).
- 8 A new Project Steering Committee was established to monitor the project's implementation and to liaise with the community. However, there has been considerable delay in actually implementing the project, largely due to the delay of over a year by the Council and the Te Arawa Trust to complete the final cultural impact assessment, which was asked for by the Māori landowners.
- 9 We understand the feedback from some Māori landowners is that they would prefer an in-catchment treatment plant constructed on their own land and that Mana Whenua have asked the Council to assess the viability of such an approach, in partnership with Mana Whenua. An in-catchment treatment plant would be considerably more expensive (ie, approximately \$60,000 per property compared to \$25,000 per property). LTRA does not consider this is acceptable.

## LTRA's concerns

- 10 As we understand it, the Tarawera community was supposed to be on the same reticulated system as that at Ōkāreka by 2015. The project was included in the Council's Long Term Plan 2018-2028. However, the community is still waiting for the scheme to be implemented, despite agreement by all parties that reticulation is urgently required to mitigate adverse environmental effects on the water quality of Lake Tarawera.
- 11 The community wants an LPGP system and a pipeline taking the waste to the existing pumping station at Lake Ōkāreka. Under section 78 of the Local Government Act 2002 (**LGA 02**) the Council is required to give consideration to the views and preferences of the persons affected by the matter. That clearly includes the Lake Tarawera ratepayers as the

Long Term Plan provides that it is their individual households that will have to make a capital contribution (assessed at \$19,000 + GST at that time).

- 12 While the Council is also required to consider the views of iwi regarding the preferred project option, it is under no legal obligation to act according to the recommendations in the cultural impact assessments obtained for the scheme or according to any other feedback provided. Indeed, to treat those views as determinative and not consider all of the other relevant matters the Council is required to consider when making decisions under the LGA 02 would be an error of law.
- 13 The LTRA is becoming increasingly concerned about the unwarranted delays in progressing the reticulated sewerage scheme. The Tarawera community wishes to see a reticulated system implemented as soon as possible, particularly as the proposed stricter rules in Bay of Plenty Regional Council's Plan Change 14 would affect many property owners and also due to the agreed need to mitigate environmental impacts. Time is also of the essence for three other reasons:
  - 13.1 The debate, consultation and investigation of options has gone on long enough. A decision needs to be made by the Council and a timeline for implementation committed to. This is part of the requirement on local government under the LGA02, which requires effective and efficient decision making. Timeliness of decision making is part of that requirement, as is cost. The LPGP system and a pipeline taking the waste to the existing pumping station at Lake Ōkāreka is clearly the most cost-efficient option.
  - 13.2 The LTSSC successfully secured \$6.5 million from the Ministry for the Environment from the Government Freshwater Improvement Fund for this project. We are instructed that further delays could also put this funding at risk due to the timeframes on the grant. It is unacceptable that Council's delay could result in ratepayers having to pay that, if the funding is lost - the scheme would not proceed.
  - 13.3 The government is currently considering 'shovel ready' projects and we understand Council is submitting a list of 'shovel-ready' infrastructure projects to the Infrastructure Industry Reference Group, as part of its initiative to assist with funding for projects that can start quickly to stimulate the economy and reduce the economic impact of COVID-19. The LTRA considers the Tarawera reticulated sewerage scheme should be added to the list of projects for the government's infrastructure pipeline as the reticulation scheme meets the government criteria. To that end, LTRA seeks the Council's support for such an application.
- 14 Given all relevant matters the Council must consider under the LGA 02 (including the views of those affected and the promotion of the social, economic, environmental and cultural well-being of communities in the present and for the future) there is no reasonable basis not to proceed with the preferred scheme identified by the LTSSC and endorsed by the LTRA community.

- 15 We also wish to relay our client's concerns regarding the rising costs of the project in the interim and the lack of flexibility around payment options for capital costs. The Council's current conduct is putting the Tarawera community to unnecessary expense as a significant number of landowners are likely to be affected by the rules proposed by Bay of Plenty Regional Council in Plan Change 14.
- 16 The Council has also indicated that individual capital contributions from property owners will be required to be paid upfront in the year of construction. For reasons of fairness and equity, LTRA seeks flexible lump sum payment options and reiterates that the Council should give consideration to borrowing and collecting contributions through rates, as has been done for other reticulation schemes.

### **Council decision making during the COVID-19 lockdown**

- 17 We note that if formal decision making is required by Council, the COVID-19 lockdown does not prevent this from happening.
- 18 While the Council's Standing Orders and the LGA 02 have requirements around elected members being physically present to achieve a quorum, emergency legislation has been passed by the Government to enable meetings to occur via audio or audio-visual links. The COVID-19 Response (Essential Matters) Act 2020 (**COVID-19 Response Act**) has amended Schedule 7 to the LGA 2002 to be clear on this. The inclusion of new clause 25B means that there is no longer a need for elected members of a Committee or Council to be physically present to achieve a quorum and nothing to the contrary in Standing Orders applies.
- 19 This process is in place for the duration of the Pandemic Notice issued by the Prime Minister. The COVID-19 Response Act has also amended the Local Government Official Information and Meetings Act 1987 (**LGOIMA**) to enable live streamed audio or audio-visual meetings to meet the 'open to the public' requirements of the LGOIMA.

### **Conclusion**

- 20 The Council stated in its Long Term Plan that it is committed to improving and maintaining lake water quality and will continue to work with the Tarawera community to develop a sewerage scheme that best meets its needs and affordability.
- 21 LTRA now seeks an urgent assurance on behalf of the community that:
- 21.1 The current delay will not continue any longer. There is no reasonable basis on which the Council should further delay the scheme's implementation. It is appropriate to provide certainty to the community after a nearly 8 years of consideration. The community has been very patient.
- 21.2 The scheme will proceed as a priority project, on the basis of the preferred and most cost-effective option identified (LPGP systems and a pipeline taking the waste to the existing pumping station at Lake Ōkāreka).



21.3 The Council will commit to a project timeline as a matter of urgency.

21.4 The Council will put this project forward to government as a 'shovel ready' infrastructure project.

22 We look forward to hearing from you as soon as possible.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kerry Anderson', with a long horizontal flourish extending to the right.

**Kerry Anderson**

Partner

Direct +64 4 474 3255

[kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

28 April 2020

File Ref: 85-08-419-01

Doc No: RDC-1006199

Civic Centre  
1061 Haupapa Street  
Private Bag 3029  
Rotorua Mail Centre  
Rotorua 3046  
New Zealand

Kerry Anderson  
Partner  
DLA Piper New Zealand  
Chartered Accountants House  
50-64 Customhouse Quay  
Wellington 6140

By email: [kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

Cc: Hon Steve Chadwick  
Geoff Williams

Tēnā koe Kerry

**RE: Tarawera Reticulated Sewerage Scheme – Ref: 1027395**

Thank for your letter of 17 April 2020. In that letter you outline the Lake Tarawera Ratepayers' Association (LTRA) concerns in relation to the proposal for a reticulated waste water scheme for the local community and seek that Council progresses the proposal towards implementation as soon as possible.

Firstly, it is important to again reiterate the Council's support for the proposal as it is consistent with our standing objectives to improve the lakes water quality. In that context, Council fully appreciates and understands its legal obligations. Council is also sensitive and understanding of the community's concerns about the scheme's final cost and the time to deliver the desired outcomes. The LTRA consistently raise these concerns with Council.

It is important to note, for clarity a couple of relevant points.

- In paragraph 12 of your letter, it is suggested that Council, while required to consider the views of Iwi for this proposal, is under no obligation to act according to the recommendations in the CIA reports or according to any other feedback provided. While this suggestion is technically correct in some respects the reality is that Council has to balance multiple factors and considerations in its decision making. Firstly, the funding secured from the Ministry for the Environment (2017) "Freshwater Improvement Fund" is conditional upon a number of requirements. Two pertinent requirements/conditions of the funding relate to the commitment that the project's governance group must include representation by the Ministry, the BOPRC and Iwi. Also that the project will include objectives related to mātauranga Māori.
- In paragraph 13.2 the statement is made that the LTSSC (Lake Tarawera Sewerage Steering Committee) secured \$6.5 million of funding from the Ministry of the Environment and that the funding might be in jeopardy because of delays to implementation. The funding in fact was granted to Rotorua Lakes Council's application (supported by the LTSSC).

Council is in contact with the MfE to ensure that the grant remains available for the purposes of the proposal and we have no indication contrary to that currently.

As noted above, decisions on the Tarawera reticulation directly affect other RLC infrastructure projects (and vice versa). We fully appreciate that Tarawera residents do not have direct purview of those broader strategic and financial factors, but it is a relevant matter for RLC to balance and manage the overall risk framework. Council is disappointed that we have yet to secure universal Iwi (mana whenua) support for the proposal as it stands. Significant progress was made which was interrupted by the current COVID-19 emergency. We can confirm that Council has already submitted significant applications (including for wastewater infrastructure) to the Government's "shovel ready" invitation. The Tarawera scheme proposal does not meet these criteria at this stage because there is no certainty whether it would require resource consent (if an in-catchment plant is envisaged), it has not reached the stage of detail design nor tendering process.

In summary, this is to reiterate that Council is fully committed to the proposal and will continue to apply best endeavours to secure all affected parties' support for a final option to progress as soon as possible the implementation of the scheme.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Stavros Michael', with a horizontal line underneath.

Stavros Michael  
Infrastructure GM



Our ref: 1027395

4 May 2020

Hon Steve Chadwick  
Her Worship the Mayor  
Rotorua Lakes Council  
ROTORUA  
**By email**

Geoff Williams  
Chief Executive Officer  
Rotorua Lakes Council  
ROTORUA  
**By email**

Her Worship the Mayor and Geoff

## **TARAWERA RETICULATED SEWERAGE SCHEME**

### **Introduction**

- 1 As you are aware, we act for the Lake Tarawera Ratepayers Association (**LTRA**).
- 2 We refer to the Council's letter of 28 April 2020, responding to our letter of 17 April 2020 which set out LTRA's concerns regarding the lack of progress in implementing a reticulated sewerage system for the Tarawera area.
- 3 LTRA is extremely disappointed in the Council's brief response. The Council has not provided any of the assurances LTRA sought, nor has it substantively addressed most of the issues raised.

### **The Council's letter**

- 4 LTRA sought confirmation that the current delay in the project would not continue and that a decision be made on it as a matter of urgency. In the Council's response, it states that Council supports the proposal as it is consistent with objectives to improve the Lake's water quality and that it understands the community's concerns about the scheme's cost and the time to deliver the desired outcomes.
- 5 However, there is no indication in Council's letter of the steps it intends to take to further advance the reticulation proposal, or the time in which those will occur. The letter merely concludes that Council will continue to try and gain support from all affected parties for a final option and then progress 'as soon as possible'.

In light of the Council's lack of ability to obtain a consensus to date, this provides little comfort to LTRA that a decision will progress anytime soon. This ongoing delay is unreasonable, given the 8 years of consultation and investigations to date.

6 LTRA also sought an assurance that the scheme would proceed on the basis of the preferred and most cost-effective option identified (on-site low-pressure grinder pump system for each property and a pipeline taking the waste to the existing pumping station at Lake Ōkāreka). The response from the Council is confused. It states:

6.1 Council supports the proposal. We read that as the proposal that LTRA supports (ie, on-site low-pressure grinder pump system for each property and a pipeline taking the waste to the existing pumping station at Lake Ōkāreka).

6.2 The Tarawera scheme proposal did not meet the 'shovel ready' criteria because there is no certainty whether it would require resource consent if an in-catchment plant proceeds. This contradicts the statement above as it suggests the Council is still contemplating an in-catchment model. This also overlooks the fact that the Tarawera scheme could be easily 'wrapped up' into the Rotorua Wastewater Treatment Plant upgrade, which was one of the projects nominated as a 'shovel ready' project by the Council.

7 LTRA also asked for some certainty from the Council after years of 'consideration' of the issue. None has been provided. The reason given in the Council letter for the ongoing delay is that Council has yet to secure universal iwi support for the proposal. Mr Michael then goes further and attempts to suggest that DLA Piper is 'technically correct in some respects' that Council is under no legal obligation to act according to the recommendations in the cultural impact assessments obtained for the scheme. This raises two concerning issues:

7.1 The Council considers that while it is potentially 'technically correct' that there is no legal obligation to act according to the recommendations in the cultural impact assessments, that is what Council is going to do.

7.2 That it needs to obtain universal iwi support.

8 LTRA has no issue that iwi views and cultural impacts are matters the Council needs to consider when making decisions under the Local Government Act 2002 (**LGA02**). However, there are also many other factors it has to take into account, including the views of the LTRA as residents affected by the decision, the costs and benefits of what is proposed, the extent of Council's resources, the interests of the current and future communities, prudent stewardship and the efficient and effective use of resources. There is nothing that gives Māori a right of veto over projects or that elevates cultural issues to a higher significance than any of the other relevant considerations.

9 This is reflected in section 14 of the LGA02 where it states:

a local authority should provide opportunities for Māori to contribute to its decision-making processes

- 10 This is simply a requirement on Council to provide opportunities to contribute to decision making, not giving the rights of decision maker.
- 11 The point being, significant time has been spent in consultation with iwi over this project and this needs to be concluded quickly and a decision made by the Council. That is what LTRA is seeking and what it wants Council to commit to.
- 12 LTRA does not consider that the Council's response of 28 April 2020 has addressed the concerns it has expressed regarding the Council's lack of progress in ensuring a decision is made to implement a reticulated sewerage system for the area. LTRA considers that the Council is not complying with the requirements for effective and efficient decision making under the LGA02 and it is disappointing that the Council's response does not seem to recognise the urgency of the matter.

### Next steps

- 13 LTRA seeks a review of the response dated 28 April 2020 and again asks the Council to provide assurances that the current delay will not continue any longer, that the scheme will proceed as a priority project on the basis of the preferred and most cost effective option (the on-site low-pressure grinder pump system for each property and a pipeline taking the waste to the existing pumping station at Lake Ōkāreka) and that it will commit to a project timeline. As already identified, there is no need for decision making to be delayed, given the amendments to the LGA02 by the COVID-19 Response (Essential Matters) Act 2020.
- 14 In the first instance, LTRA would prefer that the outstanding issues and concerns it has raised are addressed in a full response from Council. If Council does not wish to respond further, then LTRA would like the issue (the process applied to deciding on the Lake Tarawera wastewater reticulation) addressed through any internal complaints process that the Council may have. If necessary, and if you have such a process, please treat this letter as a formal complaint.
- 15 LTRA would prefer to resolve this directly with the Council. However, if the Council chooses not to commit to concluding this process and making a decision in a timely manner and then implementing it, our client will need to consider other options which may be available to it. These include:
  - 15.1 approaching the media, and/or
  - 15.2 asking the Office of the Auditor General to undertake a performance audit under Part 3 of the Public Audit Act 2001 (including inquiring into how efficiently and effectively the Council is carrying out its activities in relation to the Tarawera wastewater reticulation project), and/or
  - 15.3 making a complaint to the Office of the Ombudsman under the Ombudsmen Act 1975 with a request for an investigation into this matter.



16 We look forward to hearing from you as how you wish to proceed.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Kerry Anderson', with a stylized flourish extending to the right.

**Kerry Anderson**

Partner

Direct +64 4 474 3255

[kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

28 May 2020

File Ref: 85-08-419-01

Doc No: RDC-1014232

Civic Centre  
1061 Haupapa Street  
Private Bag 3029  
Rotorua Mail Centre  
Rotorua 3046  
New Zealand

Kerry Anderson  
Partner  
DLA Piper New Zealand  
Chartered Accountants House  
50-64 Customhouse Quay  
Wellington 6140

By email: [kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

Cc: Hon Steve Chadwick

Tēnā koe Kerry

**RE: Tarawera Reticulated Sewerage Scheme – Ref: 1027395**

Thank you for your letter dated 4 May 2020. As a starting point, there is no question that the prolonged adverse effects of wastewater on Lake Tarawera can only be addressed through reticulation. Rotorua Lakes Council are committed to doing our part to restore the health of Tarawera lakes.

LRTA seeks confirmation that the current delay in the project will not continue and that a decision will be made as a matter of urgency. I do not accept that there has been undue delay. Rather, my officers' responsibility is to progress a number of infrastructure projects in accordance with Council's obligations under the Local Government Act, Resource Management Act, and other statutory requirements.

The Tarawera sewerage scheme can only be progressed as a part of Council's overall work programme. Obviously, Councils cannot do everything they want to immediately and all at the same time. It is Council's responsibility to progress the full range of projects in a manner that is efficient and effective. It is not simply a question of looking at one project in isolation and I am entirely confident that our progress on the Tarawera scheme is both diligent and appropriate.

It is unfortunate that Covid-19 has disrupted work programmes and decision-making programmes. In the context of that disruption, it is my expectation that elected members will make a decision this year, and I will do everything I can to ensure that they have the information necessary to make the right decision. I am not willing to put the proposal to Council if there is unacceptable risk of an adverse decision (which would be worse than a delay). To that end, Council's Infrastructure Group continues to develop the detail necessary to put a recommendation to Council, and will keep your clients informed throughout the process.

There are some matters of detail that do require a response as follows:

- Your paragraph 7.1 quotes two words from Stavros Michael's letter and mischaracterises both what he wrote and his approach to decision-making. I would point you to the full sentence, which carried on to say 'the reality is that Council has to balance multiple factors and considerations in its decision-making'.

- Nor does Council **require** universal iwi support. Still, iwi are affected parties and partners in the progress of our district so Council would of course prefer to have sufficient iwi support. To that end, Council officers are engaging with Tūhourangi Tribal Authority and Ngāti Rangitahi to confirm their views. Ideally, we would have that finalised by end of September.
- In regards to CIP funding, Rotorua Lakes Council proposed projects supported by thorough technical detail and financial information (including for examples, completed tenders). Despite the good work already undertaken, the Tarawera scheme did not have the necessary detail and information at this stage. This is correct for both an in-catchment plant and for reticulation to the Rotorua WWTP. The right decision was to put up CIP projects with full technical detail as well as demonstrated support from community partners (ie the Rotorua WWTP). It would not be the right decision to weaken that application by 'wrapping up' projects that do not yet have adequate supporting detail. Nevertheless, it is important for your clients to note that any success we achieve on CIP funding will support our balance sheet to carry out the Tarawera reticulation project.
- Council has not said that iwi have a veto, and it is quite incorrect to make such statements. Rather, as noted above, Stavros' letter emphasised the broad range of considerations that Council must take into account. Further, our approach is to work with our communities. For Tarawera this includes iwi, lake users, the ratepayers you represent, other ratepayers within the catchment and the district as a whole, and Te Arawa Lakes Trust (as owners of the lake bed and our partners in the Te Arawa Lakes Strategy Group).

I am happy to confirm that the project will continue at a professional pace, without undue delay and in accordance with all of the Council's responsibilities and obligations. A decision will be made this year, and I give my commitment that it will be sooner where possible.

Nāku noa, nā



Geoff Williams  
Chief Executive



**DLA Piper New Zealand**  
Chartered Accountants House  
50-64 Customhouse Quay  
PO Box 2791  
Wellington 6140  
New Zealand  
**DX** SP20002 WGTN  
**T** +64 4 472 6289  
**F** +64 4 472 7429  
**W** www.dlapiper.com

Our ref: 1027395

2 June 2020

Geoff Williams  
Chief Executive Officer  
Rotorua Lakes Council  
ROTORUA  
**By email**

Dear Geoff

## **TARAWERA RETICULATED SEWERAGE SCHEME - LGOIMA REQUEST**

### **Introduction**

- 1 Thank you for your letter of 28 May 2020.
- 2 LTRA appreciates the response and your commitment to obtaining a decision from Council this year on this issue.
- 3 LTRA would of course like to be informed when this decision will be going to Council (or Committee), as it will wish to take part in public participation at that meeting.

### **LGOIMA Request**

- 4 In the meantime, LTRA would like some further information.
- 5 We make this request under the Local Government Official Information and Meetings Act 1987 and we would like the following information provided in accordance with that Act:
  - 5.1 Confirmation of whether the Rotorua Wastewater Treatment Plant has the capacity to receive and treat the wastewater from the Lake Tarawera residences (ie, how much of the capacity is currently being used). This includes details of what the Plant's current design capacity is, what volumes it is currently receiving and treating, what volumes it is predicted to receive and treat due to growth (and over what period),

DLA Piper New Zealand is a partnership governed by New Zealand law, which is part of DLA Piper, a global law firm operating through various separate and distinct legal entities.

A list of offices and regulatory information can be found at [www.dlapiper.com](http://www.dlapiper.com).

your estimation of whether infiltration and inflow reduction works will reduce the flows to the Plant.

- 5.2 In terms of the proposed upgrade to the Plant, how much will it increase the design capacity by and confirmation of whether the upgraded Rotorua Wastewater Treatment Plant has the capacity to receive and treat the wastewater from the Lake Tarawera residences. The same details for the upgraded Plant are sought as those set out in 5.1 regarding the existing Plant.
  - 5.3 What is the estimated wastewater volume that will be received from the Lake Tarawera residences?
  - 5.4 Are any further resource consents required for the Rotorua Wastewater Treatment Plant to receive the wastewater from Lake Tarawera residences?
  - 5.5 A copy of the current resource consent for the Rotorua Wastewater Treatment Plant.
  - 5.6 An update of where the resource consent process is at for the proposed upgrade to the Plant, including whether there been a decision by the Regional Council yet?
- 6 We look forward to a response from the appropriate officer.

Regards

A handwritten signature in blue ink, appearing to read 'Kerry Anderson'.

**Kerry Anderson**

Partner

Direct +64 4 474 3255

[kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

23 June 2020

File Ref: 85-08-419-01

Doc No: RDC-1020408

Civic Centre  
1061 Haupapa Street  
Private Bag 3029  
Rotorua Mail Centre  
Rotorua 3046  
New Zealand

DLA Piper  
Chartered Accountants House  
P O Box 2791  
WELLINGTON 6140  
Attention: Mr Kerry Anderson

By email: [derry.anderson@dlapiper.com](mailto:derry.anderson@dlapiper.com)

Dear Kerry

### **TARAWERA RETICULATED SEWERAGE SCHEME – LGOIMA REQUEST**

Thank you for your letter dated 2 June 2020. Following is our response to the information requested.

- 1.0 Confirmation of whether the Rotorua Wastewater Treatment Plant has the capacity to receive and treat the wastewater from the Lake Tarawera residence (i.e. how much of the capacity is currently being used). This includes details of what the Plant's current design capacity is, what volumes it is currently receiving and treating, what volumes it is predicted to receive and treat due to growth (and over what period) your estimation of whether infiltration and inflow reduction works will reduce the flows to the Plant.**

The last upgrade to the Rotorua WWTP was completed in 2012 with the installation of a parallel (side stream) membrane bioreactor (MBR) that increased the capacity of the existing plant to treat the following flows up to 2051.

Average daily flow = 24,000m<sup>3</sup>/day  
Peak wet weather flow = 40,000m<sup>3</sup>/day  
(up to the current nutrient limits)

The nutrient removal capability of the plant was set to achieve the consent limits, as follows:

Total Nitrogen = 51 ton/annum at the outlet of the plant  
Total Phosphorous = 4 ton/annum at the monitoring site in the Waipa Stream

Based on the latest annual report dated 27 March 2018 (Appendix 1), the average daily flow treated at the plant is 22,214m<sup>3</sup>/day. With an estimated Average Daily Flow from Tarawera at 409m<sup>3</sup>/day, there is sufficient capacity for the existing plant to handle additional flows from the Tarawera if it is connected to the existing Rotorua Urban Area Sewerage System.

Please note that the average daily flow measured in March 2018 already includes flows from new communities connected to the system such as Okere Falls/Otaramarae/Whangamarino, Mourea/Okawa Bay, Brunswick/Rotorua, Okareka and Hamurana/Awahou.

A sewer rehabilitation programme is in place to manage infiltration and inflow into the system to ensure that it does not significantly affect the capacity of the wastewater treatment plant.

**2.0 In terms of the proposed upgrade to the Plant, how much will it increase the design capacity by and confirmation of whether the upgraded Rotorua Wastewater Treatment Plant has the capacity to receive and treat the wastewater from the Lake Tarawera residences? The same details for the upgraded Plant are sought as those set out in 1.0 regarding the existing Plant.**

The proposed upgrade of the Rotorua Wastewater Treatment Plant has been designed to treat the following flows:

Average Daily Flow = 25,000m<sup>3</sup>/day  
Peak wet weather flow = 60,000m<sup>3</sup>/day

The nutrient removal capability of the plant was set to comply with an expected higher consented limits, as follows:

Total Nitrogen = 32.4 ton/annum at the outlet of the plant  
Total Phosphorous = 3 ton/annum at the outlet of the plant

The design of the proposed upgrade included the connection of the Tarawera community to the Rotorua urban area sewerage system through the Lake Okareka sewer trunk main.

Refer to Appendix 2 - Rotorua Wastewater Treatment Plant – Design Statement for Preferred Treatment Arrangement and Appendix 3 - Excerpt from Rotorua WWTP AEE Application – pages 23-24).

**3.0 What is the estimated wastewater volume that will be received from Lake Tarawera residences?**

The estimated wastewater volume that will be generated by the Lake Tarawera residences and facilities within the scheme area is 409m<sup>3</sup>/day. The details of how this volume was estimated is shown on the following:

(a) Existing and Future Development

Table 1 below presents the current count of sections with dwellings and vacant sections in Lake Tarawera, including the extended area of benefit. The count is estimated in terms of housing unit equivalent (HUE).

*Table 1 – Existing and Future HUE Estimates*

Area of Benefit	HUE Estimates		
	Existing	Future Development	Full Development
<u>Original AOB:</u>			
Sections with Dwelling	413	81	494
Vacant sections			
2 Toilet Blocks	4	-	4
<u>Additional Area of Benefit</u>			
Tarawera Landing toilet block	2	-	2
Tarawera Landing Café	2	-	2
DOC House	1	-	1
Te Mu Road Cluster	21	9	30
Buried Village	2	-	2
DOC car park (Tarawera Trail)	2	-	2
Houses along Tarawera Road	3	-	3
Crater Lake		60	60
<b>Total</b>	<b>450</b>	<b>150</b>	<b>600</b>

(b) Flow EstimatesTarawera Average Daily Flow (ADD)

- Average sewage flow per capita per day : 220L
- No. of persons per house : 3.1
- Average daily flow = 220 (3.1) (600) = 409,200 litres/day = 409m<sup>3</sup>/day

**4.0 Are any further resource consents required for the Rotorua Wastewater Treatment Plant to receive the wastewater from Lake Tarawera residences?**

There are no further resource consents required for the Rotorua Wastewater Treatment plant to receive the wastewater from the Lake Tarawera community.

An earthquake consent may be required to manage the excavation of trenches for the pipeline. This is however considered as low risk.

**5.0 A copy of the current resource consent for the Rotorua Wastewater Treatment Plant**

Attached is a copy of the current resource consent for the Rotorua Wastewater Treatment Plant (Appendix 4).

**6.0 An update of where the resource consent process is at for the proposed upgrade to the Plan, including whether there has been a decision by the Regional Council yet?**

The application has been directly referred to the Environment Court for a decision.

Attached are links to the relevant documentations related to the application.

- Report and Recommendation of Consenting Authorities (Planning Reports)  
<https://atlas.boprc.govt.nz/api/v1/edms/document/A3538611/content>
- Rotorua Lakes Council's Wastewater Treatment Plant Application which sits under RM18-0508: Rotorua Lakes Council  
<https://www.boprc.govt.nz/environment/resource-consents/notifications>

You have the right to seek an investigation and review by the Ombudsman of this decision. Complaints can be sent by email to [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz), by fax to (04) 471 2254, or by post to The Ombudsman, PO Box 10152, Wellington 6143.

**Publication of responses to LGOIMA requests**

Please note: Our LGOIMA responses may be published on the Rotorua Lakes Council website after they have been responded to, with requesters' personal details withheld. If you have any concerns about this please contact the Council on [info@rotorualc.nz](mailto:info@rotorualc.nz).

Yours faithfully



Jean-Paul Gaston  
Group Manager, Strategy / Privacy Officer

Attachments:

- Appendix 1: Rotorua WWTP Discharge Consent 60739 – Annual Summary to 27 March 2018
- Appendix 2: Rotorua Wastewater Treatment Plant – Design Statement for Preferred Treatment Arrangement
- Appendix 3: Excerpt from Rotorua WWTP AEE Application
- Appendix 4: Current Resource Consent for the Rotorua Wastewater Treatment Plant

30 June 2020

File Ref: 01-65-096

Doc No: RDC-1026472

DLA Piper  
Chartered Accountants House  
P O Box 2791  
WELLINGTON 6140  
Attention: Mr Kerry Anderson

By email: [kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

Tēnā koe Kerry

I refer to your email to Oonagh Hopkins of 29 June 2020.

Firstly I want to say there appears to be some confusion between the Annual Plan and the Tarawera project that is causing concern for the residents and ratepayers at Tarawera.

The Annual Plan is year 3 of the current long-term Plan (2018-2028). Councils are not required to consult on an Annual Plan if there are no significant changes to the direction and content of the annual budget for the year which is coming up. All councils undertake the requirement to prepare an Annual Plan quite differently and we keep a watch on what other are doing in order to refine ways to engage and gain feedback.

Rotorua Lakes Council, in light of COVID-19, has reflected the Rotorua Build Back Better recovery plan within its Annual Plan. As a result council sought feedback from the community. Feedback was open from 19 May to 17 June. During this time the community has been able to provide feedback by many options (Lets' talk – digital platform, phone, email and written) and the community had opportunities to come and talk directly to elected members at two world café events. These ways of receiving feedback are being used more and more as communities have stated that this way of face to face feedback is a more constructive way of sharing views rather than the adversarial way of "hearings". Formal hearings are now reserved when Council is required to undertake a special consultative procedure.

The Annual Plan is not a special consultative procedure.

In regard to the Tarawera sewerage scheme and its place within the Annual Plan where I believe confusion and concern is arising, I provide the following:

The Tarawera project is captured in Council's Long-term Plan for year 5 and 6 (2023 and 2024). This has not changed and there is no and has never been any impact on this Annual Plan. There was a reference to slowing the amount of debt that Council would take on and pushing that debt out into later years by suggesting that some projects could be pushed out into later years. This is what has caused the concern. I can assure you that Council remains committed to getting to a solution for sewerage disposal for Tarawera.

Council is currently waiting for the opportunity to discuss with local mana whenua the feasibility of an in-catchment WWTP for the proposed scheme as requested by the Cultural Impact Report. Because of the effects of COVID-19 there was some delay in that discussion. The direct contact with the affected Iwi

authorities is expected by the end of September. From here a report will be prepared for Council's consideration and depending on that Council resolution, a detail design of the system can commence. By this time Council will be consulting on the next Long-term Plan 2021-31 (expected to be April 2021). Within this the timing and costing of the Tarawera sewerage scheme will be consulted upon.

I understand that part of the request from the Tarawera residents is to bring the project forward into the 2020/21 year. For the reasons outlined above, cultural impact assessment, discussion with Iwi authorities and detailed design to fix more accurately costs which need to be completed first, there is no way that construction would be able to be commenced/completed in the coming financial year.

I hope that this helps to relieve some of the concerns. If there is still ongoing concern might I suggest a meeting between residents and Council's Infrastructure Group Manager, Stavros Michael.

Kind Regards



Geoff Williams  
Chief Executive



**DLA Piper New Zealand**  
Chartered Accountants House  
50-64 Customhouse Quay  
PO Box 2791  
Wellington 6140  
New Zealand  
**DX** SP20002 WGTN  
**T** +64 4 472 6289  
**F** +64 4 472 7429  
**W** www.dlapiper.com

Our ref: 1027395

5 August 2020

Geoff Williams  
Chief Executive Officer  
Rotorua Lakes Council  
ROTORUA  
**By email**

Dear Geoff

## **TARAWERA RETICULATED SEWERAGE SCHEME**

### **Introduction**

- 1 As you are aware, we act for the Lake Tarawera Ratepayers Association (**LTRA**).
- 2 We refer to your letter of 30 June 2020 regarding Council's Annual Plan deliberations. In that letter you gave an indicative timeline for a number of steps associated with the Tarawera sewerage scheme (these were also presented at the Committee meeting of the same date).
- 3 You advised that:
  - 3.1 Council was waiting for the opportunity to discuss with local mana whenua the feasibility of an in-catchment wastewater treatment plant, and that direct contact with the affected iwi authorities was expected by the end of September. At the Committee meeting, officers stated the CIA was 'complete', but further discussions were to occur before it was 'finalised'.
  - 3.2 This would be followed by a report for Council's consideration, after which detailed design of the system could commence.
  - 3.3 The timing and costing of the Tarawera sewerage scheme will be consulted upon as part of the next Long-Term Plan 2021-2031, which is expected to occur in April 2021.

DLA Piper New Zealand is a partnership governed by New Zealand law, which is part of DLA Piper, a global law firm operating through various separate and distinct legal entities.

A list of offices and regulatory information can be found at [www.dlapiper.com](http://www.dlapiper.com).

## Next steps

- 4 As we are now in August, LTRA would like to understand the timeframes a little better. While, LTRA appreciates your commitment to obtaining a decision from Council this year on this issue we would like to be kept informed of progress. To date there has been no further information around progress with the mana whenua discussions or confirmation about the proposed timing of the Council decision this year.
- 5 Accordingly, our client would like the following information:
  - 5.1 Confirmation of the dates on which discussions/meetings have been or will be held with the relevant iwi authorities;
  - 5.2 If those discussions have been held, an update on outcomes or next steps;
  - 5.3 A copy of the CIA that officers advised was 'complete' and confirmation of when the 'final' CIA is likely to be available;
  - 5.4 An update on when it is likely the Council (or the relevant Committee) will consider the relevant reports and make a decision on the Tarawera sewerage scheme this year.
- 6 Considering the delays to date, LTRA would like to see this progressed in an efficient and timely manner. If it does not progress in that way, LTRA will need to consider the options available to it which we have raised with you previously. This includes approaching the media and/or pursuing formal complaints processes with the Office of the Auditor General or the Office of the Ombudsman.
- 7 We look forward to your response.

Regards



**Kerry Anderson**

Partner

Direct +64 4 474 3255

[kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

2 September 2020

File Ref: 85-08-419-01

Doc No: RDC-1051378

Civic Centre  
1061 Haupapa Street  
Private Bag 3029  
Rotorua Mail Centre  
Rotorua 3046  
New Zealand

DLA Piper  
Chartered Accountants House  
P O Box 2791  
WELLINGTON 6140  
Attention: Mr Kerry Anderson

By email: [kerry.anderson@dlapiper.com](mailto:kerry.anderson@dlapiper.com)

Dear Kerry

Thank you for your correspondence dated 5 August 2020.

As made clear in our earlier correspondence, Council is working through a number of complex work programmes that require community engagement, and the timing of those programmes is interrelated and often involves sensitive management of interconnecting issues.

In that regard, on Friday 28 August you will have seen that Council (with our iwi partners) announced an agreed alternative solution for the Rotorua wastewater treatment plant. Previously, that project was subject to a very difficult and contested Court process and it would have been most unwise to further inflame and provoke iwi opposition by pushing ahead with a Tarawera proposal. Rather, our approach is to work in partnership with all parts of our community, including with iwi. Obviously we would not discuss these concerns with a third party while that Court process was on foot. However, perhaps you might now have better insight into the complexities that Council is managing, and the patience required to work through to effective (and broadly supported) outcomes.

We remain committed to finalising the arrangements for the Tarawera scheme this year, and we are pleased to be in a much stronger position now to do so.

In response to your information request, we confirm:

- Meetings to date have occurred in the context of resolving the resource consent litigation and are subject to litigation privilege.
- The CIA is attached.
- As previously advised, elected members will be briefed and asked to make a decision this calendar year, and that remains the case. We have not set the matter down for a particular Council meeting yet, but we are happy to provide you with early notice as soon as this is done.

Yours faithfully



Geoff Williams  
Chief Executive