

# MASTERTON DISTRICT COUNCIL

SERVING THE COMMUNITY

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WELLINGTON REGIONAL  
COUNCIL

23 DEC 2002

RECEIVED

19 December 2002

Mr Colin Wright  
Wellington Regional Council  
PO Box 41  
MASTERTON

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Dear Colin

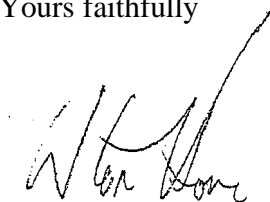
## MASTERTON WASTEWATER DECISION

1. Council staff and advisers have now had an opportunity to consider the decision. We' are appreciative of the pragmatic yet firm approach. which has been taken by the commissioners.
2. We are of the view that barring events beyond its control, the Council should be able to have its upgrade in place within the seven years provided. In the event that that cannot be achieved for any reason, the Council would of course have to apply for a further short term consent. You can rest assured however, that this option would be a last resort.
3. We do however have a difficulty with condition 15 of the consent. That requires the Council to have made a "decision on the long term upgrade option ... no later than 2 years from the commencement of this consent".
4. Depending upon- the outcome of the Public Works Act and resource management procedures in relation to the Forbes' property, let alone the possibility of their being other properties, it may be difficult for the Council to comply with that condition.
5. We also note that Simpson Grierson have advised that the condition is unenforceable, since it seeks to fetter the District Council's discretion in terms of making a policy decision. The condition is directive rather than restrictive, and relates to a matter which should not be part of the consent.
6. The Council is nevertheless reluctant to appeal the consent. One option is for the Council to do its best to comply with the condition but, if it cannot be complied with, to take the position that it is unenforceable. Another option would be to seek a variation of the condition under section 127 if it becomes apparent that it cannot be met. The third option would be for the Council if necessary, to make its

decision on the long term upgrade subject to any contingencies. For example, the decision might be to proceed with rapid infiltration on the Forbes' property, *subject to* it acquiring the land. (It is unlikely that the same issues would arise if the decision were to be in favour of Manaia Road or continued river based discharge.)

7. So that the Council can make an informed decision as to whether or not to appeal this condition, it would be appreciated if the Regional Council could confirm that a "*conditional decision*" would, in its view, be a "*decision*" within the meaning of condition 15. (I note that the term "*decision*" is not defined in the condition.)
8. If that indication can be given and if the file is noted with this Council's reservations regarding the validity/enforceability of conditions 15, 16 and 17, then the Council has instructed officers it will not appeal.
9. I note that in the hopefully unlikely event that there is an appeal, it would be limited to seeking the deletion of conditions 15, 16 and 17 on the grounds of invalidity, but would not challenge the term of the consent.
10. In order for this matter to be concluded within the time remaining to lodge an appeal, if that were to be the eventuality, the Council requests your response by Friday 10th January 2003.

Yours faithfully



Wes ten Hove  
Chief Executive Officer  
MASTERTON DISTRICT COUNCIL