



16 January 2003

Mr Colin Wright
Wellington Regional Council
PO Box 41
MASTERTON

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21 JAN 2003

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Partner Reference
P J Milne - Wellington

Writer's Details
Direct Dial: +64-4-924 34 11
Fax: +64-4-472 6986
E-mail Address:
philip.milne@simpsongrierson.com

Dear Colin

MASTERTON WASTEWATER DECISION

1. Further to Mr ten Hove's letter of 19 December 2002 and your response of 8 January 2003, Masterton District Council, we are pleased to advise that the District Council has decided not to appeal any of the conditions of the decision. It has made that decision on the basis of our legal advice, that condition 15 of the consent is invalid and/or unenforceable and therefore need not be appealed. The Council also welcomes your confirmation of 8 January 2003, that the Regional Council would accept a "conditional decision . . . if this could be shown to be absolutely necessary at the time". Obviously, the District Council will not make a conditional decision unless that is necessary.
2. The Council of course accepts your comment that the overriding consideration for both Councils is the definite progress towards the long term upgrade. Masterton District is obviously committed towards achieving that so far as it is possible within the seven years envisaged by the commissioner's decision. We note however, that the decision does not and cannot preclude the possibility of a further application and nor does section 107 of the Act. It seems unlikely however, that that would be necessary.
3. So far as condition 15 is concerned, we wish to put on record our views as to why that condition is unenforceable.
 - (a) A resource consent condition must relate to controlling adverse effects on the environment and must not fetter another local authority's discretion in respect of policy decisions. Accordingly, in our view the Council cannot be required to make a decision by any particular date (although it will certainly endeavour to meet the timing indicated in condition 15).
 - (b) The condition is directive rather than restrictive,

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