

**Before Commissioners for Wellington Regional Council GWRC WAR 170229
At Featherston**

Under the Resource Management Act 1991

In the matter of an application for resource consent to discharge
contaminants to land, air and water associated with the
proposed long-term upgrade and operation of the
Featherston Wastewater Treatment Plan

Applicant **South Wairarapa District Council**

Memorandum of Counsel for the Applicant

Date: 19 October 2018

MAY IT PLEASE THE PANEL:

1 The purpose of this Memorandum is to update the Panel and submitters as to progress regarding this application and seek further directions and waivers.

Applicant to advise whether it intends to proceed with the current application by 19 October

2 I confirm that the Applicant has decided that it will continue with the current application.

3 There remains a possibility that the Applicant may seek that processing of the application be suspended pursuant to section 91A of the Act so that the hearing or at least decisions follow decisions on the PNRP provisions.

4 The Applicant will be in a position to decide regarding suspension and/or adjustments to the timetable within the next few weeks and no later than 9 November, once it has received the reports from the GW ecologists (due next week) and interim advice from its groundwater experts.

Further amendment to the Applicant's proposal

5 The Applicant had decided to bring forward stage 2A (irrigation of additional land) to the end of year 5 rather than the end of year 10 (with the result that stage 1B would be reduced from 8 to 3 years). This is additional to the change which was announced in August, of bringing forward stage 2B (storage ponds) forward by 8 years (end of year 13 instead of the end of year 20).

6 In summary the staging proposal is as follows:

| Stage | Description | Estimated average frequency of | Estimated average frequency of direct | End date as per application | As now proposed |
|--------------|--------------------|---------------------------------------|--|------------------------------------|------------------------|
|--------------|--------------------|---------------------------------------|--|------------------------------------|------------------------|

| | | direct discharge to Donalds Creek at any flow | discharge to Donalds Creek at flows below median flow | | |
|----|------------------------------|--|--|------------------------------------|------------------------------------|
| 1A | No irrigation | 328 days | 146 days | 2 years after commencement | 2 years after commencement |
| 1B | Irrigation to 78 ha | 186 days | 29 days | 10 years after commencement | 5 years after commencement |
| 2A | Further irrigation to 116 ha | 146 days | 15 days | 20 years after commencement | 13 years after commencement |
| 2B | Storage ponds | 14 days | 0 days | Commissioned by the end of year 20 | Commissioned by the end of year 13 |

7 The primary reason for these amendments to the proposal, is to so far as is reasonably practicabl, reduce the period during which potentially more than minor adverse ecological and cultural impacts will occur,. (This is without prejudice to the Applicant’s position that these effects are *no more than minor* when viewed in the context of the overall proposal.)

8 The other reason for this change is to reduce the period of significant non compliance with section 107 in terms of “*conspicuous changes to clarity*”. (It will be the Applicant’s position that any non-compliance with s107 can be authorised under section 107(2).)

9 I am satisfied that these amendments to the proposal are within the scope of the current application and are amendments which could have been imposed in any event by the Panel if it found that appropriate. Whilst the bringing forward of the discharge to the additional land has

potentially (less than minor) effects on adjoining landowners, those parties have submitted and can be heard on those effects.

- 10 If any submitter or potential submitter wishes to raise a ‘scope’ issue in respect of the proposal to bring forward stages 2A and 2B then I suggest that it would be appropriate for the Panel direct that that should be signalled to the Applicant and Panel as soon as possible.

Update regarding purchase of additional land

- 11 The Council has purchased the Featherston Golf Course land. That purchase has no direct implications for the current application. The Applicant does not intend to make any application for additional consents for discharge to this land at this stage. The Council has not yet decided whether it will utilise this land for additional irrigation, but if it did so, that would not avoid the need to use the land which is proposed as part of the current application. The purchase does however provide additional flexibility for the Applicant and fits within its proposed “adaptive management” approach.

The PNRP issues

- 12 This issue was outlined in my previous Memorandum. There are ongoing discussion between the GW officers/advisors and Counsel for the Applicant as to whether the proposal is for a “new discharge” or an “existing discharge”. That issue is determinative of whether the proposal is for a *non-complying* or *discretionary activity* and whether Policy 81 or Policy 83 of the PNRP is applicable. (The applicant maintains that the proposal is for an existing discharge).
- 13 This will be an issue which this Panel will need to determine. Clearly, it would be desirable if this issue and associated issues with related plan provisions could be addressed within the context of the decisions of the PNRP panel, however that would require an application pursuant to section 91A and a potentially significant delay to the commencement of the application hearing. The Applicant would prefer to avoid further delay. (One alternative may be to defer a final decision after the closing of the hearing until after PNRP decisions are available).
- 14 The Applicant and has made submissions to the PNRP panel on the definition of “new discharge” and related issues and has requested the PNRP Panel to bring forward its decisions on these provisions to before the rescheduled hearing of this application. It has not yet had a response to that request, but will make further inquiries next week. That response will be relevant to whether the Applicant seeks any further delay to the hearing of this application.

Progress on the joint work commissioned by the Applicant and the Regional Council.

- 15 Unfortunately, due to availability of various experts for both councils, there has been a delay in the joint report from the freshwater ecologists. That is now due in draft form next week and will be made available on the GW website once finalised and by no later than 2 November.
- 16 The groundwater experts have also met and made progress. They have agreed to the commissioning of further investigations which will be

complete by the end of November. The joint reports from these experts will follow after that monitoring and may not be available until early December. That will require an adjustment to the directions to provide this information to submitters by 26 October. The Applicant proposes that this information be provided at the same time as the Applicant's evidence and the S42A report on 14 December 2015.

Date for the s 42A report and Applicant's evidence

- 17 The s42A report is currently scheduled for Friday 30 November. Assuming that the Applicant does not seek suspension, its preference would be to proceed with the hearing as scheduled. Because of the unavailability of the GW reporting officer and the Applicant's experts in January and early February period, a March hearing would require the s 42A report to be available prior to Christmas. (If the s42A report was not available until early February, the Applicants evidence would not be available until early March.)
- 18 The Applicant proposes that the date for the s 42A report be shifted to Friday 14 December. This will allow time for the further groundwater information to be attached to and reflected in the report.
- 19 Although the Applicant's evidence is not required until March, it would prefer to make its initial evidence available to GW and submitters prior to Christmas and accordingly, proposes providing that at the same time as the S42A report would be due (14 December).
- 20 The other aspects of the timetable should remain the same. However, it is proposed that the Applicant provides any evidence in response to the s42A report by Friday 8 February. (2 weeks before submitter expert evidence is due).
- 21 I note that the need for such further evidence would be minimised if a near final draft of the s42A report can be provided to the Applicant by the originally directed date for the report of 30 November. That would allow responses to be included within the Applicant's evidence on 14

December and any further response (if required) could be dealt within the Applicant's reply which is directed for 12 March.

Summary of the Applicant's proposed timeframes

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|-------------------------|---|
| On or before 2 November | Joints statement from freshwater ecologists to be filed |
| On or before 9 November | Applicant to advise whether it seeks to proceed to a March hearing or seek suspension |
| 30 November | Draft s42A report to Applicant |
| 14 December | Finalised S 42A report to be filed and to be available on the website by Monday 18 (including joint groundwater statement). |
| 14 December | Applicant's evidence in chief to be filed and to be available on the website by Monday 18 December. |
| 8 February | Applicant's evidence in response to the s42A report (if required) to be filed |
| 22 February | Submitter's expert evidence to be filed. |
| 12 March | Expert evidence in reply to submitters from the Applicant to be filed |
| 12 March | GW evidence in reply to submitters and any response to |

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|----------------------------|---|
| (proposed additional step) | the Applicant's reply to be filed (Applicant's experts may respond at the hearing). |
| 18 March | Hearing commences |

22 The Applicant proposes removing the directions for caucusing and joint statements. There has already been extensive caucusing of the relevant experts for the Regional Council and the Applicant. There will be joint statements available on freshwater ecology and ground water prior to Christmas. There are ample opportunities in the above timetable for any areas of dispute to be discussed or resolved informally, or highlighted via evidence. If submitters call expert evidence then the question of whether there should be caucusing can be revisited after the Applicant's reply is filed on 12 March. (caucusing can of course occur during the hearing if directed.)

Dated: 19 October 2018



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Philip Milne
Counsel for the Applicant

South Wairarapa District Council