

**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**

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**Memorandum of Counsel for the Applicant**

**in response**

**28 November 2018**

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**MAY IT PLEASE THE PANEL:**

1 This Memorandum responds to an email circulated by Officers to submitters dated 17 November, a further Memorandum filed on behalf of the submitters Mr Emms and Ms Tait and comments from other submitters.

***The officer's email to submitters***

2 The Applicant has only just been provided with the email from Mr Andrewartha to submitters. There are aspects of that email which require clarification.

3 The email comments that: *"Obviously the panel are keen for attendance of the key expert witnesses at the hearing to allow for robust questioning at the time and ultimately for an informed decision to be made..."*. The Applicant is certainly not proposing that there should be any exclusion of experts. Indeed, to the contrary, it is proposing an adjustment to the timetable which accommodates the availability of the GW reporting officer and which will allow more time for the submitter's experts to respond to the Applicant's evidence.

4 The suggestion that the Applicant has indicated that the March date is *problematic for the applicant* is inaccurate. In fact, the Applicant's position as stated in my Memoranda of 8 and 14 November is that a March hearing date would likely create difficulties for submitters because the Applicant's evidence would only be available two weeks prior to the hearing. That has been confirmed by Ms Tancock's memoranda and the comments from other submitters.

5 The reason that a March date cannot be achieved, is because the s 42A report will not be available until at least mid-February given that the joint ground water statement will not be available until just before Christmas and given the reporting officer's availability. Both Councils agree that the additional work is important and should be carried out

and commented on by the experts prior to the s42A report being finalised.

- 6 I also note that the Applicant's ecologist will be providing his clarification of various points arising out of the joint statement by 20 December and the Applicant will be tabling and amended version of suggested conditions by that date.<sup>1</sup> All of that will assist in ensuring a fully informed section 42A report and the submitter's understanding.
- 7 The Applicant has requested clarification and correction of some points in the draft joint ecological statement. Its preference is that those points be clarified before the statement is finalised. That would delay the joint statement until up to 20 December. If that joint clarification is not provided then the joint statement can be released this week as proposed. In that event, the Applicant's experts will be providing his clarifications by 20 December and the Regional Council's expert should respond in the section 42A report.
- 8 The Applicant's ground water report will not be available to GW's expert until 14 December. Whether or not a joint statement can be prepared by the 20<sup>th</sup> depends upon the availability of all three experts. If needs be the GW response can be provided as part of the Section 42A report.

**Response to further Memorandum of 20 November on behalf of submitters**

***Claims of prejudice***

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<sup>1</sup> The Applicant has requested that this be a joint clarification but that has been resisted by the officers. Accordingly, the Applicant's expert will provide his clarification to GW prior to Christmas so that the Regional Council's expert can respond within the section 42A report.

9 The claims of prejudice are unsupported by evidence. In any event, a hurried hearing process where submitters feel that they do not have sufficient time to consider technical evidence, is more likely to lead to appeals and delays than the less hurried timing proposed by the Applicant.

***Irreconcilable requests***

10 The submitter resists delay, yet seeks adequate time to consider the Applicant's evidence and seeks that the application be put on hold. Those latter two requests are incompatible with the first.

11 The submitters seek that the application be "put on hold" (presumably meaning suspended) while the further information is obtained.

12 The further information agreed on by the consent authority and the Applicant will be available before Christmas along with additional information which the Applicant is proposing to provide.

13 No purpose would be achieved by the Applicant seeking suspension of the application. Counsel for the submitters does not explain how that would assist submitters or avoid delay. In any event, the Regional Council cannot *suspend* the application or put it on hold without the Applicant's agreement.

14 I do not understand the basis for Ms Tancock's suggestion that the Applicant is questioning its ability to meet the timetable it has proposed to the consent authority. The Applicant can be ready for an 8 April or later hearing. There may be delays to the joint groundwater statement (or may not be a joint statement at this stage). That will not delay the hearing because the Applicant's ground water expert's reports will be available before Christmas.

**The possibility of a further application for a short-term consent to discharge to land**

15 The Applicant may well make an application for a short-term discharge to land. That is irrelevant to its application for waiver and irrelevant to the current application.

16 If that application proceeds, it would not be as an alternative to any part of the current application it would duplicate one aspect of the current application and remove that aspect from the complications caused by the PNRP.

17 The purpose of such an application would be to seek a consent to commence discharge to a limited portion of the land (the majority of the land discharge of stage 1B of the current application) as soon as possible rather than being delayed by potential appeals of the current application. This is in line with the council's wastewater strategy and PNRP objectives of removing discharges to freshwater as quickly as possible. I also note that the land in question does not adjoin the submitter's property.

***Expert conferencing with the submitters' experts***

18 A May hearing date may well allow time for such conferencing to occur prior to the hearing (at least by telephone) if the Panel considers that to be necessary for particular experts. That decision does not need to be and should not be made now. The submitters and the Applicant are at liberty to request caucusing once the submitters' evidence has been exchanged and it is apparent what matters are in issue. If that occurs the Panel can decide at that point whether caucusing would be useful and if so when. The process of caucusing during a hearing is common practice. It is premature to direct caucusing before the section 42A report is available.

***Additional matter of concern to the submitter***

19 As should be apparent to Counsel, from reading the AEE and checking the plan provisions, the proposal is not for a prohibited activity.

20 As I have explained in previous Memoranda, there is a debate as to whether or not the discharge to freshwater is an existing or 'new' discharge and accordingly whether that activity is for a discretionary or non-complying activity. That is a matter for the hearing.

***Directions proposed by the submitter***

21 The first and third items are unnecessary. The second item is opposed.

22 The Application for waiver must be judged against the statutory criteria rather than assertions and incorrect or irrelevant information.

23 If the Application for waiver is not granted, then the Application would need to be heard in March (because of GW officer unavailability in April). In that event, the Applicant's evidence would not be available until 10 working days before the hearing. That is contrary to what these submitters and others seek. It is also not in the interests of good decision making.

24 The current collaboration between the ecological experts has been very useful for both the consent authority and the Applicant and will assist submitters and most importantly the Panel. I am confident that the current groundwater investigations and subsequent caucusing will also be of assistance. The proposed timeframes are needed to allow for both workstreams to be completed and to be incorporated into the section 42A report, for the Applicant to respond to any recommendations or points of difference in that report and for the submitter's experts to respond to both.

**Request that the Panel rather than the officer determine time frames**

25 The Applicant is strongly of the view that the independent panel is in the best position to make decisions on timing. That will avoid any suggestions of bias or predetermination. It is also consistent with the

fact that the Application and subsequent Memoranda from all parties have been directed to the Panel.

- 26 Given that the Panel has not been delegated the power to determine the waiver application and given that the final form of the waiver is dependent upon the timing of the hearing, the Applicant requests that the Panel makes a recommendation to the officers on the waiver application. The expectation being that the officers would then follow that recommendation unless there is very good reason not to.

**Dated:** 28 November 2018

A handwritten signature in black ink, appearing to read 'Philip Milne', with a horizontal line underneath it.

Philip Milne: Counsel for the Applicant