

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER OF

applications for resource
consents (APP-200511178.01) to
Horizons Regional Council
associated with the operation of
the Eketahuna Wastewater
Treatment Plant

BY

TARARUA DISTRICT COUNCIL

Applicant

**MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT
REGARDING ADJOURNMENT OF THE HEARING**

29 May 2017

BUDDLEFINDLAY
Barristers and Solicitors
Wellington

Solicitor Acting: **David Randal / Esther Bennett**
Email: david.randal@buddlefindlay.com / esther.bennett@buddlefindlay.com
Tel 64-4-499 4242 Fax 64-4-499 4141 PO Box 2694 DX SP20201 Wellington 6140

MAY IT PLEASE THE HEARING PANEL:

1. INTRODUCTION

1.1 This memorandum is filed on behalf of Tararua District Council ("**TDC**") as the Applicant.

1.2 On 5 April 2017 the hearing in respect of TDC's application to discharge treated wastewater from the Eketahuna Wastewater Treatment Plant ("**WWTP**") commenced before the Hearing Panel ("**the Panel**"). The hearing ("**the Eketahuna hearing**") was adjourned on 7 April 2017, to be reconvened on 23 May 2017.

1.3 On 17 May 2017, TDC confirmed in a memorandum that it intended to proceed with its application to provide additional wastewater treatment with a discharge to the Makakahi River by progressing "Option 2", a larger constructed wetland on a lower river terrace on land owned by the Eketahuna Golf Club.

1.4 On 19 May 2017, the Panel issued a memorandum ("**Memorandum 4**") to the participants. In that memorandum, the Panel directed that:

- (a) the Eketahuna hearing would need to be re-adjourned (following an update from TDC) to allow additional resource consent applications necessary for the construction of TDC's proposed wetland to be lodged and considered; and
- (b) that at the re-convened Eketahuna hearing on 23 May 2017, TDC provide the Panel with a detailed timeframe as to when those applications would be lodged.

1.5 At the reconvened hearing on 23 May 2017, Ms Manderson provided the Panel with a timetable setting out the work necessary to complete in order for the applications to be lodged and considered. The Panel then re-adjourned the Eketahuna hearing after directing that TDC provide a memorandum:

- (a) setting out a detailed timeframe for completing the necessary steps (including lodging additional resource consent applications and obtaining cultural values assessments from Rangitāne o Tamaki nui-ā-Rua and Kahungunu ki Tamaki nui-ā-rua) to enable the additional applications to "catch up" with the existing application and allow the

Panel to make one overall decision in relation to TDC's application to discharge treated wastewater from the Eketahuna WWTP; and

- (b) setting out the legal basis for the Panel's proposed re-adjourment of the proceedings.

1.6 This memorandum responds to the Panel's directions.

Timetable

1.7 A timetable setting out the work to be undertaken in respect of the proposed wetland is attached as **Appendix A**. This updates the document titled "*Timeline to prepare additional consents in relation to Eketahuna WWTP*" which was provided to the Panel on 23 May 2017.

Legal basis for adjournment

1.8 Section 103A of the Resource Management Act 1991 ("**RMA**") requires a hearing for a notified resource consent application to be completed no later than 75 working days after the closing date for submissions, if the application was publicly notified.

1.9 The applications at issue were publicly notified on 9 and 11 April 2016 and the closing date for submissions was 9 May 2016. Section 103A therefore required the hearing to conclude on or before 23 August 2016.¹

1.10 However, sections 37 and 37A(5) of the RMA give the consent authority the power to extend a time limit imposed in respect of a resource consent application, so that the extended period exceeds twice the maximum time period specified in the Act², provided that:

- (a) the applicant agrees to the extension; and
- (b) the authority has taken into account the matters specified in section 37A(1) (those matters are: the interests of any persons directly affected by the extension; the community interests in achieving an adequate assessment of the proposal, policy statement or plan; and the consent authority's duty under section 21 to avoid unreasonable delay).

¹ Calculated on the basis of 15 working weeks (75 working days), taking into account Queen's Birthday (Monday 6 June 2016).

² A "time period as extended...not exceed[ing] twice the maximum time period specified in this Act" is envisaged by 37A(4). This does not apply in the present circumstances therefore section 37A(5) is the relevant provision.

- 1.11 In the present case, if the Panel satisfies itself that the criteria specified in section 37A(5) are met, it may extend the time limit³ for completing the Eketahuna hearing to allow the hearing to be completed after the 75 working day time limit set by the RMA (23 August 2016), and indeed beyond "twice the maximum time period specified under the Act" (7 December 2016)⁴.
- 1.12 As confirmed in the re-convened hearing on 23 May 2017, TDC agrees to an extension of the time frame for completing the Eketahuna hearing in accordance with section 37A(5)(a) of the RMA.
- 1.13 We understand the Panel considers the further resource consent applications, as well as engagement with Rangitāne o Tamaki nui-ā-Rua and Kahungunu ki Tamaki nui-ā-rua, are required to enable full consideration of the wetland proposal. That being the case, it is open to the Panel to conclude that a decision extending the time limit for the hearing's conclusion for a period longer than 150 working days following the closing date for submissions would take into account the interests of both the community as a whole and any affected persons, and would not cause any unreasonable delay.

DATED this 29th day of May 2017



David Randal / Esther Bennett

Counsel for Tararua District Council

³ This is provided the Panel's delegated authority includes the power to extend extensions under sections 37 and 37A. If this is not the case, that power lies with Horizons Regional Council.

⁴ Calculated on the basis of 30 working weeks (150 working days), taking into account Queen's Birthday (Monday 6 June 2016) and Labour Day (Monday 24 October 2016).