

BEFORE THE HEARING COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application by Horowhenua District Council (Applicant) to Manawatū-Whanganui Regional Council to discharge stormwater, construct attenuation structures, and undertake earthworks, in an unnamed tributary to the Koputaroa Stream.

MEMORANDUM OF COUNSEL

Dated: 30 April 2021



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MAY IT PLEASE THE HEARINGS COMMISSIONER

- [1] This Memorandum is filed to provide an update to the Hearings Commissioner on matters raised in the Memorandum of Counsel dated 23 April 2021 for s 42A reporting officers (the “Reporting Team”) in relation to the resource consent application by the Applicant for, the discharge of stormwater, the construction of attenuation structures, and the undertaking of earthworks associated with those structures in an unnamed tributary of the Koputaroa Stream (the “Application”).
- [2] Further information is required before the Reporting Team can report to the Hearing Commissioner on the changes to the Application arising out of the additional information received from the Applicant on 16 April 2021.
- [3] Discussions, including through legal counsel, have commenced with the Applicant and this has resulted in some matters being clarified further. For example, it has been confirmed today that the wetland planted low flow channel is not being removed by the Applicant.
- [4] However, questions remain for the Reporting Team on the information currently available. These include, significantly, matters relating to assumptions made within the updated modelling report, and with respect to related downstream effects (including the extent, depth and duration of flooding for various flood events at the confluence of the Koputaroa stream and Manawatū river, Koputaroa scientific reserve, and at the site of a recently identified habitat of critically threatened Powelliphanta snails).
- [5] Accordingly, a further s 92 request is being prepared, with the Reporting Team beginning discussions with the Applicant over a process for obtaining the further information. The Reporting Team intends for the s 92 request to be formally issued to the Applicant early next week.
- [6] Counsel understands the Applicant to be of the view that the changes to the Application arising out of the information of 16 April 2021 are not beyond the scope of the Application, including the anticipated intensity and scale of the effects of the activity.

- [7] However, with respect, these are matters that the Reporting Team must consider themselves as part of its reporting on the Application, with all the necessary technical information to inform an assessment as to scope with regard to the relevant legal enquiries, which will be well known to the Commissioner and which counsel can submit on in due course, if required.¹
- [8] It is appropriate to observe, however, that enquiries as to whether modifications to an application are properly within 'scope' are factual in nature and are to be determined through a lens of fairness to persons who did not lodge a submission, but may have if the Applicant had made their application showing the full spectrum of effects.²
- [9] It is respectfully submitted that enquiries which go to procedural fairness should not be rushed, and care should be taken to ensure that they are properly informed by the appropriate level of information.
- [10] For this reason the Reporting Team respectfully seek additional time to address the issues raised by the information received on 16 April 2021 constructively with the Applicant via a section 92 request and/or discussions. This is to ensure that a properly informed assessment can be made.
- [11] Having regard to the above a further reporting date in a fortnight is respectfully proposed, being 14 May 2021. By that stage, the parties would have agreed a process and timeframes for dealing with the further information sought by the Reporting Team and any issues as to scope, including timing of any meetings between the relevant technical experts.



Shannon Johnston

Counsel for Manawatū-Whanganui Regional Council

¹ In brief, the enquiry is a factual one for determination by the consent authority, involving an assessment of changes as to the scale and intensity of the proposed activity, as compared to the original application, along with consideration of the impacts of those changes (both in terms of adverse effects and the planning framework) and whether there would have been parties who submitted otherwise.

² *Haslam v Selwyn District Council* (1993) 2 NZRMA 628 (PT).