

BEFORE THE HEARING PANEL

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

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Cooper Rapley Lawyers
227-231 Broadway Avenue
PO Box 1945
Palmerston North
DX PP80001



Shannon Johnston

06 353 5210

06 356 4345

sjohnston@crlaw.co.nz


MEMORANDUM OF COUNSEL

MAY IT PLEASE THE HEARINGS COMMISSIONER

- [1] This Memorandum is filed on behalf of the s 42A reporting officers (the “Reporting Team”) in relation to the resource consent application by Horowhenua District Council (the “Applicant”) for, inter alia, 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 “Consents”).
- [2] Pursuant to Minute 3 of the Commissioner dated 1 April 2021, the application is presently set down for a hearing on 26 May 2021. Evidence from the Reporting Team is due on Thursday, 30 April 2021.
- [3] Further information was received from the Applicant on 16 April 2021. The information responds to a further information request of Horizons on 8 March 2021 and includes hydraulic modelling that was due with the reporting team on 1 April 2021.¹
- [4] The hydraulic modelling illustrates a considerable increase in the total catchment area (contributing to discharge over 168 hectares, as opposed to a discharge over 131 hectares). There are also changes in total volume of the discharge (76,906m³ during a 100 year AEP event from pre-development, as opposed to 3,700m³ during a 100 year AEP event), post-development peak flows, outflow rates, and offered mitigation. In respect of mitigation, the design has removed the wetland planted low flow channel and stormwater treatment for water quality purposes.

¹ The date of 1 April was volunteered by the Applicant. At the time, it requested additional time for the modelling to be completed, specifically an adjournment of seven (7) weeks, with a proposed timetable filed in support of this position.

- [5] The Reporting Team is concerned with the late nature of the information, bearing in mind the need for, in particular, further input from its technical team regarding the hydraulic modelling and water quality. While this work has been briefed, it is unlikely to be with the Reporting Team in time to allow completion of its evidence in a timely and meaningful manner.
- [6] A further issue arises as to the scope of the changes proposed by the Applicant at this late stage in the process. The reporting team reserves its position regarding this matter and will report further to the Hearing Commissioner on completion of the investigations referred to above.
- [7] For now, the Reporting Team is concerned that the change to the notified application may be outside the jurisdiction of the Hearings Commissioner, given that the changes do not fairly and reasonably fit within the scope of the original application. This is particularly evident when considering factors such as the scale, intensity and character of the altered activity, the altered scale, intensity and character of the effects or impacts of the proposal, and the potential prejudice to the parties (including iwi) and the general public (e.g., downstream landowners).²
- [8] It is proposed to provide an update to the Hearing Commissioner on the question of scope by Friday 30 April 2021. At this point, if appropriate, an updated timetable for the exchange of evidence and proposed new Hearing date will be provided to the Hearing Panel.



Shannon Johnston
Counsel for Manawatū-Whanganui Regional Council

² Iwi did not submit on the application given the initial absence of water quality concerns.