

**BEFORE THE HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of applications by Tararua District Council to Horizons Regional Council for application **APP-2005011178.01** for resource consents associated with the operation of the Eketahuna Wastewater Treatment Plant, including a discharge into the Makakahi River, a discharge to air (principally odour), and a discharge to land via pond seepage, located at Bridge Street, Eketahuna.

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**REPORT TO THE COMMISSIONERS**

**DR BRENT COWIE (CHAIR), MR REGINALD PROFFIT AND MR PETER  
CALLANDER**

**SUPPLEMENTARY REPORT OF FIONA MORTON - PLANNING**

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**7 April 2017**



## A. INTRODUCTION

### Qualification and Experience

1. My name is Fiona Janet Morton.
2. I am contracted to the Manawatu-Wanganui Regional Council (Regional Council) in the position of Senior Consents Planner.
3. I prepared the s42A report on planning matters, which has been pre-circulated and I understand will be taken as read.
4. My qualifications are stated in my previous s42A evidence to the Commissioners dated 7<sup>th</sup> March 2017.
5. This supplementary report has been prepared to expand on matters that have arisen during through expert evidence and submitters. It also provides a response to Direction #2
6. As per my previous evidence I confirm that I have read the Environment Court's Code of Conduct for expert witnesses contained in the Environment Court Practice Note (2014) and I agree to comply with it.

### Direction No. 2 – Mixing zone distance

7. The Commissioner's have asked the following questions of the officers of the Regional Council.

*Mr Carlyon's evidence raises questions about the proposed mixing zone of 330m. We accept that this seems inconsistent with the provisions of the One Plan; however we also acknowledge that the "mixing zone" needs to provide for comparable upstream and downstream monitoring sites. We seek comment on this matter from both the applicant and the officers*

8. This matter has been addressed by Mr Brown in his supplementary evidence. In summary, as long as there is an upstream and downstream comparable monitoring site, it is my view that the mixing zone should be consistent with the One Plan definition of reasonable mixing. Therefore the mixing zone should be

more in the vicinity of 105 metres, rather than the 330 metres in the conditions detailed in Annex one of my s42A report.

## **S107**

9. The second matter directed at the Regional Council officer's was

*Mr Carlyon also outlines that the proposal appears inconsistent with the provisions of s107(1)(g) of the RMA, noting that the experts agree that the discharge has significant adverse effects on aquatic life. Given this, any decision to grant the consent will need to be based on the exemption provisions of s107(2), at least until the discharge receives significant additional treatment. We seek comment on this matter from both the applicant and the officers.*

10. There is a level of consensus by the respective experts<sup>1</sup> that the discharge in its current form is causing a breach of s107(1)(g) of the RMA.
11. Section 107(2) allows for a discharge permit to be granted that contravenes Section 107(1) if it is satisfied that
- a. *Exceptional circumstances justify the granting of the permit; or*
  - b. *The discharge is of a temporary nature; or*
  - c. *That the discharge is associated with necessary maintenance*
- And that it is consistent with the purpose of the Act to do so.*
12. I consider that the provisions of Section 107(2) are singular and require one of the provisions to be met in order to allow for a discharge permit to be granted.
13. In the case of the Eketahuna WWTP discharge, I do not consider that clauses (a) or (c) apply.
14. It is my view that the only potential avenue remaining in this case would be to demonstrate that the discharge is of a temporary nature.

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<sup>1</sup> Ms McArthur, para. 20, Mr Brown para.78

15. The application did not provide a specified timeframe. The modified conditions proposed by the applicant indicate that they intend to meet improved discharge standards by 1 July 2020.
16. Mr Crawford's evidence (para. 11.40) indicates that approximately 32 months is necessary from the date of commencement of the consent (if granted) to complete the proposed upgrading work. It was my understanding from discussions at the pre-hearing that the Applicant anticipated that this first phase would be in the vicinity of 18 months. The reasoning for this was that the Eketahuna commissioning phase was to largely mirror the Pahiatua site, and consequently less time would be required.
17. In addition to the 32 months above, it is my understanding that the Applicant desires 12 months of influent monitoring data and other parameters.
18. The discharge of wastewater into the Makakahi River will continue while allowing for the construction and commissioning of the upgraded wastewater treatment plant. Following the completion of the upgrade, Mr Crawford indicates that a further 36 months would be required for performance testing, making season adjustments and undertaking parallel receiving water investigations.
19. The above timeframes have led to the 1 + 3 + 3 year (7 year term) discussion during the course of the last two days.
20. The previous consent (2012), required improvements in discharge standards to occur. These improvements were not achieved. The Applicant has been aware that upgrades have been required for a number of years. For the discharge to continue in its existing state for a further 1 year (data) + 3 years (design, build and tweak), when coming off the back of a previous short-term consent, is, in my opinion, too long to be considered as temporary under s 107(2)(b).
21. I am unclear why the first year (data) could not be run concurrently to the three years (design and build). Further I still think three years is stretching the bounds of what could be considered 'temporary' under 107(2)(b).
22. Section 107(3) is an important provision in the consideration of this section. This allows for the imposition of conditions (in addition to any other imposed

under the Act) requiring the permit holder to carry out works in stages to ensure that upon expiry of a permit is able to meet the requirements of Section 107(1). The construction of the upgraded plant will need to ensure that the standards of the conditions of APP-2005011178.01 are achieved to ensure that the matters under Section 107(1) are met.

23. In summary I consider that to navigate s107(2), the discharge could only continue in its present form for a further 32 months (from commencement of the permit until completion of build). S107(3) provisions should be utilised in order to take a milestone approach to ensuring that any future significant adverse effects on aquatic life are avoided.

### **Policy 5-11**

24. The application is inconsistent with Policy 5-11. The Applicant is attempting to address this issue via the installation of an unlined wetland. However at this point I consider that the application remains inconsistent with this policy.

#### **Policy 5-11: Human sewage *discharges*<sup>^</sup>**

Notwithstanding other policies in this chapter:

- (a) before entering a surface *water body*<sup>^</sup> all new *discharges*<sup>^</sup> of treated human sewage must:
- (i) be applied onto or into *land*<sup>^</sup>, or
  - (ii) flow overland, or
  - (iii) pass through an alternative system that mitigates the adverse *effects*<sup>^</sup> on the *mauri*<sup>\*</sup> of the receiving *water body*<sup>^</sup>, and
- (b) all existing direct *discharges*<sup>^</sup> of treated human sewage into a surface *water body*<sup>^</sup> must change to a treatment system described under (a) by the year 2020 or on renewal of an existing consent, whichever is the earlier date.
25. This is a renewal of an existing consent so consideration of clause (a) is necessary. The discharge must meet one of (i), (ii) or (iii). It is my understanding that while the application does not currently meet any of those clauses, over the course of a future permit there is the intention to meet subclause (iii). Failure to achieve (iii), does not preclude achievement of (i) or (ii).
26. I consider that inconsistency with Policy 5-11 is a factor to be taken into account when evaluating what potential consent duration may be appropriate.

### **Discharge location**

27. There have been two alternate discharge locations proposed. Mr Brown has commented on the vagaries associated with Option 1. The Regional Council preferred discharge location is Option 2. However the ultimate decision for the discharge location remains with the applicant.
28. The applicant has indicated that some form of wetland is likely at both discharge locations. The applicant is aware that construction of the wetland is will require a land use consent for earthworks. Without seeing a final design and discharge path, it is unclear if additional consents are required.

### **Pond lining**

29. The previous consent required that the pond was to be lined. I am unsure why the applicant did not undertake the pond lining as required under the previous permit. I am also unsure why the Regional Council did not undertake enforcement on the pond lining condition, once the specified timeframe in the condition (2013) had passed.
30. In the case of this application, the first I was aware that the Applicant may not line the ponds was when Mr Crawford's evidence alluded to some of the install difficulties. However I note that the applicant proposed conditions contained in Ms Manderson's primary and supplementary evidence does not delete the condition which stated that pond lining would be completed by 1 July 2018.
31. The original s92 request (24 June 2015) specifically asked if the ponds were to be lined or not. And if they were to be unlined, then what information would be required in order to assess potential effects. This request also included groundwater information which would assist in understanding these effects.
32. The s92 response (December 2015), confirmed that the ponds were to be lined. The reasoning that the ponds were to be lined, was also justification for not providing further investigation in respect of groundwater.

## **NES for Drinking Water Standards**

33. I had discounted the National Environmental Standards for Drinking Water Standards as not requiring consideration, largely due to the distance (33.5km) of the Pahiatua Water Supply from the Eketahuna discharge. However given the evidence from MidCentral Health on this point, it is probably prudent that I revise my view on this and state that they do apply.
34. The National Environmental Standards for Sources of Human Drinking Water (NES) came into force in June 2008.
35. Regulation 7 of the NES sets out that a Regional Council must not grant a discharge permit for an activity that will occur upstream of an abstraction point if the discharge will result in the drinking water not meeting health quality criteria or exceeding aesthetic guidelines.
36. In addition, Regulation 12 of the NES requires a consent authority to consider whether an activity could result in an event, or as a consequence of an event, that may have a significant adverse effect on the quality of water at any abstraction point. Regulation 12 applies to abstractions serving at least 25 people for more than 60 calendar days a year. This regulation further stipulates that if the situation described above applies, a condition must be imposed on the resource consent which requires notification of the registered drinking water supply operators.
37. Therefore I consider that an additional condition should be included which would read similar to the following:
- xx. *At any time of a spill or discharge event occurring that may have an adverse effect on the quality of the water at any abstraction point downstream of the point of discharge, the consent holder shall notify the registered drinking water supply operators and the Manawatu-Wanganui Regional Council within 4 hours of the event occurring.*

## **What does a decline mean?**

38. The discharge can only be legalised through a resource consent. If this application is declined, it would be an unauthorised discharge as there is no



means for the residents of Eketahuna to dispose of their wastewater. Noting that s124 rights would continue until matters had been determined at Court level. In the case of a decline, the discharge cannot be legalised in the interim via an enforcement order. It would continue as unauthorised until such time as a consent was sought, processed and ultimately granted.