

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER OF applications for resource consent
to Horizons Regional Council
associated with the operation of
the Eketahuna Wastewater
Treatment Plant (APP-
200511178.01)

BY **TARARUA DISTRICT COUNCIL**

Applicant

**MEMORANDUM OF COUNSEL FOR THE APPLICANT REGARDING
TIMEFRAME FOR LODGING ADDITIONAL RESOURCE CONSENT
APPLICATIONS**

30 January 2018

BUDDLE FINDLAY
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MAY IT PLEASE THE HEARING PANEL:

1. INTRODUCTION

- 1.1 This memorandum is filed on behalf of Tararua District Council ("**TDC**"), the applicant for consents relating to the Eketahuna wastewater treatment plant (the "**Eketahuna WWTP**").
- 1.2 At the re-convened hearing on 23 May 2017, TDC confirmed to the Panel its intention to proceed with a proposal to provide additional wastewater treatment with a discharge to the Makakahi River ("**the River**"), which would include a wetland located on land adjacent to the River owned by the Eketahuna Golf Club ("**the Golf Club**"). It was noted that additional resource consent applications would be required for the construction of and discharge from the wetland.
- 1.3 At the hearing the Panel noted the desirability of this proposal being subject to Cultural Values Assessments ("**CVA**") by Rangitāne o Tamaki nui-ā-Rua ("**Rangitāne**") and Kahungunu ki Tamaki-nui-ā-rua ("**Kahungunu**") and expressed the hope that such CVAs would be provided with the additional resource consent applications required for the Eketahuna WWTP proposal.
- 1.4 The Panel directed TDC to provide a memorandum setting out a detailed timeline of the steps needed (including lodging additional resource consent applications and obtaining CVAs from Rangitāne and Kahungunu) to enable the Panel to make its overall decision on the Eketahuna WWTP proposal, and setting out the legal basis for the Panel's proposed re-adjournment of the proceedings.
- 1.5 TDC responded to these directions in a memorandum to the Panel dated 29 May 2017, together with an appended timeline, as requested by the Panel.
- 1.6 In an email to Carina Hickey dated 12 June 2017, counsel proposed lodging the additional resource consent applications required for the proposed wetland by 2 February 2018 in order to allow time for engagement with iwi and stakeholders to take place and for the CVAs to be prepared.
- 1.7 The Panel issued a memorandum on 7 July 2017 ("**Memorandum 5**") directing that the further applications be lodged with Manawatu-Wanganui Regional Council ("**Horizons**") by 2 February 2018.

- 1.8 Since the re-convened hearing, TDC has continued its work on the Eketahuna WWTP proposal and additional required resource consents, and this has included productive engagement with Rangitāne and Kahungunu.
- 1.9 This memorandum will:
- (a) update the Panel on the recent communications TDC has had with Rangitāne and Kahungunu representatives regarding the application process and, in particular, the CVAs;
 - (b) in light of those communications, seek an extension of time to enable CVAs to be completed, considered and lodged together with the applications; and
 - (c) set out the legal basis on which the Panel is able to, should it make the directions sought, extend the time limit for completion of these proceedings.

2. IWI COMMUNICATIONS

- 2.1 Since the hearing's re-adjournment in May 2017, TDC has remained actively engaged with Rangitāne and Kahungunu in relation to the proposed Eketahuna WWTP wetland and associated CVAs. This has included site visits, face-to-face meetings and telephone and email correspondence.
- 2.2 This engagement has proved to be very useful, and recent discussions with representatives from both iwi demonstrate their continued willingness to work collaboratively with TDC as the Eketahuna WWTP application process progresses.

Rangitāne

- 2.3 In email correspondence from 24 November 2017 Dave Watson, TDC's Plant and Property Group Manager, and Hineirangi Carberry, representing Rangitāne, discussed the progress of Rangitāne's CVA. Ms Carberry sought confirmation that the Eketahuna CVA was still required and advised that Rangitāne was making steady progress in the drafting of the CVA. Mr Watson responded to that email confirming that the CVA was still required and has since followed up with Ms Carberry by email and telephone. TDC will continue to engage with Rangitāne as matters progress.

Kahungunu

- 2.4 Likewise, TDC's communications with Kahungunu continue to be productive and Kahungunu's work on the CVA is ongoing. In September 2017 Morry Black, representing Kahungunu, provided an initial scoping report to Mr Watson and sought confirmation from TDC about the level of resourcing available for the CVA. At that time, Mr Black anticipated the CVA being completed by 1 March 2018, pending confirmation on resourcing.
- 2.5 More recently on 18 January 2018, Mr Black and Mr Watson had a telephone conversation to discuss the progress of the CVA. Mr Black advised that due to competing work commitments and the availability of people required for the completion of the CVA, the suggested 1 March 2018 date would need to be revisited. Friday 13 April 2018 was agreed as the date on which Kahungunu would provide the completed CVA.
- 2.6 A meeting was held on 26 January 2018 between TDC and representatives of Rangitāne and Kahungunu during which the Eketahuna WWTP was discussed. Roger MacGibbon of Opus presented a draft design for the Eketahuna wetland to the meeting. The discussions were positive and a further meeting has been arranged for 22 February 2018.

3. DIRECTIONS SOUGHT

- 3.1 Throughout TDC's engagement with Rangitāne and Kahungunu it has become evident that a significant amount of time and work has been required to produce high-quality CVAs.
- 3.2 TDC understands the importance of ensuring the CVAs are prepared carefully and with the appropriate people involved. That being the case, however, the CVAs will not be completed in time to meet the 2 February 2018 deadline.
- 3.3 In light of the circumstances, counsel respectfully seek the Panel's directions on how to proceed in this matter and in particular, seek an extension of time on behalf of TDC to enable the additional resource consent applications required for the proposed Eketahuna wetland to be lodged together with the requested CVAs.
- 3.4 Although TDC is unable to provide assurances, on behalf of Kahungunu and Rangitāne, of when the CVAs will be available, counsel acknowledge the Panel's earlier preference for the CVAs to be provided along with the additional resource consent applications. Counsel also note the revised deadline of 13 April 2018 for the completion of Kahungunu's CVA.

3.5 If the Panel is minded to grant additional time for further discussion and completion of CVAs, TDC seeks an extension until **Friday 11 May 2018**. This would allow time, following receipt of the CVAs (provided Rangitāne's CVA is completed by 13 April 2018), for TDC to carefully consider the information provided, including how it may be incorporated in the application documents, or alternatively to provide the Panel with a progress update.

4. LEGAL BASIS FOR EXTENDING RMA TIMEFRAMES

4.1 In its memorandum dated 29 May 2017, counsel advised the Panel of the legal basis for re-adjourning the current proceedings following the hearing on 23 May 2017.

4.2 As set out in that memorandum, under section 103A of the Resource Management Act 1991 ("**RMA**"), the hearing of the applications for the Eketahuna WWTP proposal was required to conclude on or before 23 August 2016.

4.3 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 Act¹, 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).

4.4 Provided it is satisfied that the section 37A(5) criteria have been met, it is open to the Panel to extend the time limit for completing the hearing by granting the directions sought in this memorandum.

4.5 For the avoidance of doubt, counsel confirms that TDC agrees to a further extension of the time limit for completing the hearing in accordance with section 37A(5)(a) of the RMA. With regard to section 37A(5)(b), granting an extension to allow for further engagement with iwi and completion of the CVAs would be in the interests of the community and any affected persons, and would not cause any unreasonable delay.

¹ 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.

DATED this 30th day of January 2018

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David Randal / Esther Bennett

Counsel for Tararua District Council

IN THE MATTER of the Resource Management Act
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IN THE MATTER OF applications for resource consent
to Horizons Regional Council
associated with the operation of
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BY **TARARUA DISTRICT COUNCIL**

Applicant

**MEMORANDUM OF COUNSEL FOR THE APPLICANT REGARDING
TIMEFRAME FOR LODGING ADDITIONAL RESOURCE CONSENT
APPLICATIONS**

11 May 2018

BUDDLE FINDLAY
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MAY IT PLEASE THE HEARING PANEL:

1. INTRODUCTION

- 1.1 This memorandum is filed on behalf of Tararua District Council ("**TDC**"), the applicant for consents relating to the Eketahuna wastewater treatment plant (the "**Eketahuna WWTP**").
- 1.2 On 30 January 2018 counsel for TDC filed a memorandum updating the Panel on its engagement with Rangitāne o Tamaki nui-ā-Rua ("**Rangitāne**") and Kahungunu ki Tamaki-nui-ā-rua ("**Kahungunu**"). The memorandum also, in light of that engagement, sought an extension of time for TDC to lodge its resource consent applications (together with the Cultural Values Assessments ("**CVA**") received from iwi) or alternatively to provide the Council with a progress update. An extension of time until 11 May 2018 was sought.
- 1.3 On 11 April 2018, counsel received a letter from Manawatu-Wanganui Regional Council ("**Horizons**") and the Panel Chair confirming that, pursuant to section 37A(1) of the Resource Management Act 1991 ("**RMA**"), the extension of time sought was granted.¹
- 1.4 This memorandum:
 - (a) provides a further update to the Panel on the recent communications TDC has had with Rangitāne and Kahungunu representatives regarding the application process and, in particular, the CVAs;
 - (b) provides an update to the Panel on the status and progress of TDC's additional resource consent applications;
 - (c) in light of (a) and (b), confirms an earlier indication that TDC will not be in a position to lodge its additional resource consent applications, and the accompanying CVAs, by today;
 - (d) seeks an extension of time until **Friday 1 June 2018**, by which time TDC will either lodge the additional resource consent applications and accompanying CVAs, or provide a further update; and
 - (e) sets out the legal basis on which the Panel is able to extend the time limit sought.

¹ Letter dated 26 March 2018 to Esther Bennett from Fiona Morton and Brent Cowie.

2. IWI COMMUNICATIONS

- 2.1 Since the previous memorandum, TDC has continued its useful discussions with representatives from both Kahungunu and Rangitāne and understands that CVAs are expected to be provided shortly. TDC remains encouraged that the collaborative spirit of its relationships with iwi will continue to grow as these matters progress.
- 2.2 In particular, TDC, primarily through its Plant and Property Group Manager Dave Watson, has continued to liaise with representatives of Rangitāne as to the progress of its CVA. These conversations are ongoing.
- 2.3 Representatives for Kahungunu have indicated recently that a CVA would be provided imminently, and was awaiting being bound.

3. STATUS OF ADDITIONAL RESOURCE CONSENT APPLICATIONS

- 3.1 TDC continues to actively progress the additional resource consent applications required for the Eketahuna wetland.
- 3.2 Technical reports were commissioned on specific hydrological matters related to the proposed wetland, which include recommendations for the wetland's design. Roger MacGibbon, the engineer preparing the wetland design for TDC, has advised his design report will be finalised shortly. Once that final report is complete, the applications will be ready for lodgement (once the CVAs are received).

4. OVERALL UPDATE AND EXTENSION SOUGHT

- 4.1 In light of the updates set out above in this memorandum, counsel confirms its previous indication that TDC will not be able to lodge the additional applications for consents today. However, given the progress of the wetland design, and indications from Kahungunu, TDC is hopeful it will be in a position to furnish the Panel with both the applications, and the CVAs, shortly.
- 4.2 TDC seeks an extension of time until **Friday 1 June 2018** by which date it will either:
 - (a) receive and consider the CVAs, and provide these, together with the additional resource consent applications, to the Panel; or
 - (b) provide the Panel with a further update.

5. LEGAL BASIS FOR EXTENDING RMA TIMEFRAMES

- 5.1 As set out in TDC's memoranda dated 29 May 2017 and 30 January 2018, the legal basis upon which the Panel may extend timeframes under the RMA is provided for in sections 37 and 37A(1).
- 5.2 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).
- 5.3 Provided it is satisfied that the section 37A(5) criteria have been met, it is open to the Panel to extend the time limit for completing the hearing by granting the extension sought in this memorandum.
- 5.4 Counsel confirms that TDC agrees to a further extension of the time limit for completing the hearing in accordance with section 37A(5)(a) of the RMA. With regard to section 37A(5)(b), granting an extension to allow for further engagement with iwi and completion of the CVAs would be in the interests of the community and any affected persons, and would not cause any unreasonable delay.

DATED this 11th of May 2018



David Randal / Esther Bennett
Counsel for Tararua District Council

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.

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Treatment Plant (APP-
200511178.01)

BY **TARARUA DISTRICT COUNCIL**

Applicant

**MEMORANDUM OF COUNSEL FOR THE APPLICANT REGARDING
EARTHWORKS, SEEPAGE AND DIVERSION OF FLOOD FLOWS
RESOURCE CONSENT APPLICATION**

29 June 2018

BUDDLEFINDLAY
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MAY IT PLEASE THE HEARING PANEL:

1. INTRODUCTION

- 1.1 This memorandum is filed on behalf of Tararua District Council ("**TDC**"), the applicant for consents relating to the upgrade and ongoing operation of the Eketahuna wastewater treatment plant (the "**Proposal**").
- 1.2 As part of the Proposal, TDC is lodging an application for resource consents relating to earthworks to construct a wetland, seepage from the wetland and diversion of flood flows today, 29 June 2018, in accordance with the Panel's *Memorandum 6* dated 22 May 2018. As set out below counsel understand Manawatu-Wanganui Regional Council ("**Horizons**") have delegated or will delegate responsibility for determining that application to the Panel.
- 1.3 This memorandum is intended to assist the Panel in its consideration of the resource consent applications that form the Proposal by:
 - (a) providing a brief background of the Proposal's application process to date;
 - (b) stepping through counsel's understanding of the notification and decision-making process going forward;
 - (c) updating the Panel on recent communications TDC has had with Rangitāne o Tāmaki nui-a-Rua ("**Rangitāne**") and Kahungunu ki Tāmaki-nui-a-Rua ("**Kahungunu**"), including in relation to cultural values assessments ("**CVAs**"); and
 - (d) updating the Panel on an option TDC had earlier considered for dealing with Eketahuna's wastewater, namely a pipeline running from Eketahuna to the Pahiatua wastewater treatment plant.

2. BACKGROUND

- 2.1 TDC's original application for resource consents relating to the Proposal was heard by the Panel on 5 to 7 April 2017. At the conclusion of that period, the Panel adjourned the hearing to allow time for TDC to consider further how it might proceed with the Proposal.
- 2.2 The hearing reconvened on 23 May 2017, at which time TDC confirmed to the Panel it intended to proceed with the Proposal, but would amend it to include a wetland located on land adjacent to the river owned by the Eketahuna Golf

Club ("**the Golf Club**"). It was noted that additional resource consent applications would be required for the construction of, and discharge of treated wastewater from, the wetland.

- 2.3 At the hearing the Panel noted the desirability of the Proposal being subject to CVAs by Rangitāne and Kahungunu and expressed the hope that such CVAs would be provided with the additional resource consent applications required for the Proposal.
- 2.4 In a memorandum dated 7 July 2017, the Panel directed that the further applications be lodged with Horizons by 2 February 2018. That deadline was extended by the Panel twice, firstly, until 11 May 2018, and subsequently, until 29 June 2018.

3. PROCESS

- 3.1 As the Panel will appreciate, the additional application lodged will need to be dealt with in the usual manner under the Resource Management Act 1991 ("**RMA**"), including the notification process as well as the substantive decision-making process.
- 3.2 TDC has lodged an application for resource consents relating to earthworks, seepage from the wetland and diversion of flood flows under section 88 of the RMA. Provided Horizons accepts the application as complete and does not make a section 92 request for further information, the next step will be for Horizons to consider whether the application should be notified.
- 3.3 The notification decision must be made within 20 working days after the day on which the application is first lodged (counsel calculate this to be **Friday 27 July 2018**) and, if Horizons decides to notify the application, it must do so by that same date.
- 3.4 If the application is notified, the parties notified (or the public, if it is public notification) will be given the opportunity to make submissions on the application and must make any submissions within 20 working days after the date on which notification was given.
- 3.5 Counsel acknowledge that although there is no requirement to hold a hearing in respect of a resource consent application, Horizons may decide to do so, under section 100 of the RMA, if it considers a hearing is necessary. It is also

understood that if Horizons notifies TDC's application a submitter may request a hearing.

- 3.6 While the above process is framed on the basis that Horizons will act as the decision-maker, it is counsel's understanding that some or all of the decision-making powers (counsel is not clear whether the notification decision will be or has been delegated) in respect of the present application have been or will be delegated to the Panel under section 34A of the RMA, as has been the case thus far in the broader Eketahuna wastewater treatment plant proceedings.
- 3.7 Counsel also acknowledge the present application relates to one part of a larger Proposal, in respect of which proceedings are ongoing. As set out above, the hearing for TDC's earlier application for resource consents was adjourned to allow further work to be undertaken on the proposed wetland, which is now the subject of the current application at issue.
- 3.8 Once the Panel has had the opportunity to consider the present application, counsel understand the Panel will then decide how it wishes to proceed, and in particular whether or not to convene a hearing (of the new application) and/or reconvene the hearing more broadly.

4. IWI ENGAGEMENT AND CULTURAL VALUES ASSESSMENTS

- 4.1 On behalf of TDC, counsel wish to express its gratitude for the meaningful and ongoing communications it has had with both Rangitāne and Kahungunu over the past year. From TDC's perspective this engagement has been constructive and, importantly, has enabled TDC to gain a deeper understanding of the values and tikanga of those iwi, particularly in the context of the Eketahuna wastewater treatment plant and Makakahi River.
- 4.2 The details of TDC's engagement with Rangitāne and Kahungunu since the adjournment of the May 2017 hearing are set out in detail in the memoranda of counsel for the Applicant dated 30 January 2018 and 11 May 2018. Since the 11 May 2018 memorandum was filed these discussions have continued.

Kahungunu

- 4.3 On 21 May 2018 Kahungunu provided its CVA in relation to the Eketahuna and Pahiatua wastewater treatment plants. The CVA is appended to the resource consent application lodged today as **Appendix VII**.

- 4.4 The amount and quality of work that has gone into the preparation of Kahungunu's CVA is clear, and TDC is grateful for the analysis provided in respect of both the Eketahuna and Pahiatua wastewater treatment plants.
- 4.5 Counsel acknowledge Kahungunu has reserved judgment, in its CVA, on the degree to which the wetland will be effective in addressing tikanga Māori concerns. Nonetheless, it is pleasing to note Kahungunu recognises the potential of the wetland to improve discharge quality and has included recommendations in its CVA for further addressing its concerns.
- 4.6 TDC has taken Kahungunu's concerns and recommendations into account in preparing the application and wetland design, and this is reflected in section 4 of the application.
- 4.7 Finally, on behalf of TDC counsel echo the sentiment expressed in Kahungunu's CVA in relation to the free-flow of information between the parties. TDC has appreciated the time taken by Kahungunu to consider the Proposal, engage in useful, good faith discussions, and prepare a comprehensive and considered CVA. TDC looks forward to continuing this engagement going forward.

Rangitāne

- 4.8 Since the last memorandum was filed on 11 May 2018, TDC has continued to communicate with Rangitāne in relation to the Proposal and the progress of Rangitāne's CVA and these discussions are ongoing.

5. PIPELINE OPTION

- 5.1 In the Panel's *Memorandum 6* of 22 May 2018, it directed that the timeframe for TDC to lodge its additional application as part of the Proposal be extended to 29 June 2018, to ensure the application aligned with matters TDC had included in its LTP process, and to allow all relevant information to be included in the application.
- 5.2 As part of the 2018 - 2028 LTP process TDC considered two options for processing Eketahuna's wastewater. One option was to upgrade the Eketahuna wastewater treatment plant, including constructing a wetland. The other option was to construct a pipeline running from Eketahuna to the Pahiatua wastewater treatment plant that would transport Eketahuna's wastewater and discharge it at the same discharge point that would be used

for Pahiatua's wastewater. Both options were included in TDC's LTP public consultation document.

5.3 Having undertaken further investigation into both options, TDC determined the pipeline option would not be feasible at this stage and proceeded to prepare its application on the basis of the upgraded plant and wetland option.

6. CONCLUSION

6.1 Counsel trust the above analysis is of assistance to the Panel, and look forward to receiving further directions from the Panel once it has considered TDC's resource consent application.

DATED this 29th of June 2018

Two handwritten signatures in black ink. The signature on the left is 'DR' and the signature on the right is 'Esther Bennett'.

David Randal / Esther Bennett
Counsel for Tararua District Council