

**Before the Hearings Panel
At Wellington**

Under the Resource Management Act 1991

In the matter of an application for resource consent to discharge
contaminants to land, air and water associated with the
proposed long term upgrade and operation of the
Featherston Wastewater Treatment Plan

Applicant **South Wairarapa District Council**

Memorandum of Counsel for Wellington Regional Council

Date: 8 May 2019



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MAY IT PLEASE THE PANEL:

- 1 In Minute #6 of the Hearings Panel, a variety of directions were made in relation to Hearing Procedures. The Panel is entitled to issue such directions as it is given the power to establish whatever procedure it considers fair and appropriate in the circumstances under the Resource Management Act 1991 (**RMA**)¹. It also has specific powers to direct the order of business at the hearing, including the order of evidence and submissions².
- 2 South Wairarapa District Council (**District Council**) has now chosen to challenge those directions by way of its Memorandum of Counsel dated 7 May 2019.
- 3 Each of the issues raised by the District Council are addressed briefly below.

Scope

- 4 This issue will be addressed in a separate memorandum as Minute # 5 of the Hearings Panel have asked for a response from Greater Wellington Regional Council (**Regional Council**) by Monday 13 May 2019. However, it is noted at this stage that despite this being a legal memorandum, no law has been provided to the Panel by the District Council, which is necessary to determine scope.

Conditions

- 5 The District Council seeks that **5pm** is added to the direction of the Panel that a marked up draft set of conditions are provided by the Regional Council by 15 May 2019. This is unnecessary as that is already directed in paragraph 11 of Minute #6.

¹ Section 39(1) of the RMA

² Section 41C of the RMA

Legal advice and/or legal submissions

6 The District Council is seeking that it does not have file legal submissions in advance of the hearing, but that the Regional Council does. The District Council makes no comment in relation to submitters legal submissions. It also suggests the Panel has no power to make such a direction.

7 In my submission:

7.1 The process suggested by the District Council is not acceptable. Either all parties exchange legal submissions or all parties do not. It is unfair to require one party to do so and not others.

7.2 It is common practice that legal submissions are filed in advance for two reasons. First, to reduce the time at the hearing required to present such submissions and second, to allow the Panel some time to read them and obtain an understanding of the legal issues in advance of the hearing. Particularly in a case such as this, where there are some quite technical legal issues.

7.3 There is also no basis to the District Council's suggestion that it is unfair to exchange legal submissions on the same day because it provides it with no opportunity to address the submissions from the other parties. That is not true. That can be done at the hearing when its legal submissions are presented.

7.4 The Panel does have the power to issue such a direction, as set out in paragraph 1 above.

8 The District Council (at paragraph 14) then accepts that legal submissions in advance are sensible and tells the Panel what it will do in terms of legal submissions. That is not how the hearings process works. It is for the Panel to direct what it considers appropriate.

- 9 In my submission, there are 3 potential ways of addressing legal submissions:
- 9.1 The Panel directions remain as they are.
- 9.2 The Panel takes into account the availability issues claimed by Mr Milne in paragraph 13 and moves the simultaneous exchange date to a later date (from 20 May) that is suitable to the Panel.
- 9.3 The Panel directs a staggered set of dates for filing submissions - albeit, it would usually be the applicant that files first.
- 10 Finally, the District Council suggests that the Regional Council's legal submissions follow directly after the District Council's at the hearing. It is submitted that there is no need for that, but again, that is a matter for the Panel to determine.

Applicant's response to further evidence from the Regional Council

- 11 The District Council notes its intentions at paragraphs 18-20 regarding evidence in response to the Regional Council's evidence in reply due on 10 May 2019. This is sensible and in my submission is consistent with the Panel's directions in Minute #6 and therefore requires no change to current directions.

Order of evidence

- 12 It is unclear what the District Council is suggesting in paragraph 22 as the Panel has not directed the hearing commence with the Regional Council presenting its case. In my submission, considering the pre-exchange of evidence and the relative complexity of this matter it is appropriate that the applicant goes first to set out its application and assessment, the Regional Council will then follow, then the submitters and then reply for the Regional Council followed by the District Council final reply. This is what the Panel has directed.

- 13 In paragraphs 23-25 the District Council suggests that following legal submissions (although it omits any reference to submitters legal submissions) the evidence is addressed topic by topic in the order proposed in paragraph 25. In my submission, the process directed by the Panel achieves just as fair and appropriate process and it is not necessary to have a complicated, topic by topic process. In my submission, the usual party by party approach, with reply is the most efficient and straight forward approach. However, this is really a matter for the Panel to determine in terms of what it prefers.
- 14 I note that the last point made by the District Council in paragraph 24 is that the topic by topic approach allows submitters to hear all relevant evidence before they present, rather than have the officers and their experts present after submitters. This is incorrect. The Panel's directions in Minute #6 have the submitters following both Councils and their experts.

Caucusing and possible further changes to the timing of Stage 2B

- 15 Noted. No issues to address.

Potential deferment of the closure of the hearing

- 16 The District Council has raised the issue that it is likely to seek the Panel defer the closing of the hearing until early September 2019 to allow for the decisions on the Proposed Natural Resources Plan to be taken into account.
- 17 While Mr Milne submits that this is an issue to determine later, it is an issue that relates to the Panel's ability to complete this resource consent process in a timely and efficient way for all parties and that is relevant to consider now.
- 18 It is submitted that such a delay is not practical or efficient. If the Panel's decision is put on hold (assuming the relevant legal tests could even be met) until September 2019 it is submitted that all parties are prejudiced by that - particularly in terms of time and cost. For example:

18.1 Further evidence will be required from the Regional Council to set out any changes to the Proposed Natural Resources Plan and how they impact on this application.

18.2 No doubt the District Council will then want to call further evidence on what it considers any changes mean in terms of the assessment of its application.

18.3 A further hearing may be required to address this evidence and allow all parties to submit on it.

18.4 All parties will have to reconsider and 'remember' what they addressed over 4 months previously.

19 In my submission, if the District Council wants the ability for the decisions version of Proposed Natural Resources Plan to be applied to its application, then it needs to make that decision now and seek postponement of the hearing, rather than putting all parties to the cost and expense of a full hearing in May, with the potential of having to repeat that time and expense (or at least a good part of it) again later in the year.

Date: 8 May 2019



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Kerry Anderson/Kate Rogers
Counsel for Greater Wellington
Regional Council