



File No: WAR170229 [34616, 34617, 34618, 34619]
26 September 2019

Extension of time limit Resource consent WAR170229

(Sections 37(1), 37A(2)(b) and 37A(5) of the Resource Management Act 1991)

Background

The applicant has requested that the Regional Council defer the commencement of the hearing of this application and has requested the Regional Council use its powers under the Resource Management Act 1991 (the Act) to extend the time to complete a hearing until **29 May 2020** (see paragraph 2 of the attached Letter from South Wairarapa District Council Chief Executive dated 23 September 2019).

The primary reason provided by the applicant to support its deferment request is to enable sufficient time for the outstanding issues to be resolved or clarified before the commencement of the hearing, as directed by the Hearings Panel in their previous Minutes.

Specifically, to allow SWDC adequate time:

- To consult and engage with submitters, the community, Maori/iwi representatives, and GWRC officers (including time to consult on the further technical assessment work results), and take into account their outstanding concerns.
- To review the Proposed Natural Resources Plan decisions (with its legal counsel) in relation to wastewater discharges (activity status, objectives and policies (particularly PNRP policies 71, 81 and 83). This will avoid unnecessary and time consuming debate as one of the key areas of disagreement between GWRC and the applicant is the activity status of the proposal, and the outstanding matters to be addressed if the activity is non-complying i.e. gateway test, and what the relevant objectives and policies are. Allowing time for this issue to be clarified will reduce time and cost relating to the determination of this matter.
- To complete the technical assessment work being undertaken with regard to pathogen effects and risks, and for discussions to occur with those who may be affected.



- To resolve the matter regarding scope, including whether the amended description of pathogen risk represents a change or amendment to the activity.
- To address groundwater information and effects agreed to in the Joint Witness Statement and for this to be provided to GWRC, and discussed further among technical experts.
- For further discussion between experts (including caucusing and workshops) regarding the results of the assessment work currently being undertaken and the outstanding areas of disagreement.
- Allowing an opportunity for further collaborative dialogue with GWRC officers regarding the section 42a report, evidence and caucusing.

Assessment

In making a decision on this application, the Wellington Regional Council is very aware of the time already elapsed since this resource consent application was filed and the previous extensions of time limits granted on 6 September 2018, 3 December 2018, 15 May 2019 (which allowed for the commencement of the hearing by the 18 March 2019 and 7 June 2019 and then complete the hearing by 1 November 2019 respectively). It has carefully considered this further extension of time in light of the evidence that has been filed by all of the parties and what benefits could be gained (for all parties) by allowing further time before the hearing is completed. It considers the potential benefits outweigh the disadvantages of a further extension. In particular:

- It is clear that one of the key areas of disagreement between the Regional Council and the applicant is the activity status of the proposal and the additional matters that need to be addressed, if the activity is non-complying (ie, the gateway tests) and as part of that, what the relevant objectives and policies are in the proposed plan (decisions version).
- It is also clear that another area of disagreement between the Regional Council and the applicant is the level of information provided by the applicant in relation to the effects of discharge to land, particularly in relation to groundwater. If the applicant could provide this information and discuss further with Council experts, then this issue may be able to be resolved (or at the least, the Regional Council experts could provide an opinion which they currently cannot due to information deficits). Again, will result in less time and cost for all parties and would be helpful to the Panel in making its determination; and
- Finally, there is also disagreement between the Regional Council and the applicant in relation to scope (as set out in the memorandums of the applicant and the Regional Council dated 7 May 2019 and 13 May 2019). In particular, now that there is an identified public health risk arising from pathogen spread through the groundwater, is that within scope of what was applied for? This is a fundamental procedural issue that needs determining and further time may allow the applicant to resolve this issue. The applicant has also stated that they are investigating whether there is an amendment to the wastewater treatment approach, this could also impact on the scope assessment.

These are all matters the Regional Council has considered and weighed in deciding whether it is appropriate and fair to all those involved in this hearing process, to defer its commencement to see if any of these issues can be resolved or clarified.

In making its decision, the Regional Council has taken into account the following matters, as required by section 37(A)(1) of the Act:

- The interests of any person who the Council considers may be directly affected by the extension; and
- The interests of the community in achieving adequate assessment of the effects of the proposal; and
- The Council's duty under section 21 of the Act to avoid unreasonable delay.

The Regional Council recognises that this further extension request does cause delay to the process and that submitters will be affected by the delay in the hearing of the application and its ultimate determination. However, the Regional Council considers that, on balance, this deferment will achieve a potential overall benefit to submitters as the applicant will have further time to address the effects which are related to submitters concerns, and give the submitters a better understanding of how they are affected and how this could be mitigated. It may also reduce the length of the hearing if some of these matters can be resolved or clarified and that is a time and cost benefit to all parties.

The Regional Council also considers that this extension will provide an opportunity for the applicant to ensure there is an adequate and complete assessment of effects of the proposal. That is in the interests of the community.

Finally, it is noted that the applicant will also be affected by the delay, but it has requested this deferment (see attached letter dated 23 September 2019) and therefore agrees to the extension in terms of s37(A)(5) of the Act.

Decision

The General Manager, Environmental Management, Wellington Regional Council, acting under authority delegated by the Wellington Regional Council, hereby further extends the time limit to **complete** the hearing on above resource consent to 29 May 2020 under sections 37(1), 37A(2)(b) and 37A(5) of the Act.

The reasons for the extension are as follows:

- So that the issue surrounding scope and whether the amended description of pathogen risk represents a change or amendment to the activity can be resolved and a course of action determined by the Panel
- So that the issues surrounding pathogens can be adequately addressed by the applicant and it can have discussions with those affected

- So that the information on groundwater that was agreed in the JWS can be provided to GWRC (for Groundwater and Related Wastewater and Land Treatment Expert Caucusing, dated 20/12/2018) by the applicant and discussed further among the experts
- To allow for further discussions to occur between other experts, particularly surrounding the outstanding areas of disagreement and areas where more information is required
- To allow SWDC further time to consult with submitters and the community regarding their concerns
- To allow the application to be considered under the decisions version of the PNRP, which will have efficiencies in terms of process and decision making



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Acting General Manager, Environmental Management

Attached: Applicant's letter dated 23 September 2019 requesting further time extension



**SOUTH WAIRARAPA
DISTRICT COUNCIL**
Kia Reretahi Tātau

23 September 2019

Greater Wellington Regional Council
Shaun Andrewartha
Manager, Environmental Regulation

Your ref: WAR/170229/

Shaun.anderwartha@gw.govt.nz

Dear Shaun

Featherston Wastewater Treatment Plant Request for extension of timeframe for commencement of hearing

1 Background

The applicant, South Wairarapa District Council (SWDC), has previously requested three extensions of time limits granted 6 September 2018, 3 December 2019, and 15 May 2019. These three extensions allowed for the commencement of the hearing by 18 March 2019, and 7 June 2019, and the completion of the hearing by 1 November 2019 respectively.

The last extension to timeframes granted by Greater Wellington Regional Council (GWRC) recognised that on balance, the deferment of hearing would be of benefit as the applicant will have further time to assess the effects which are related to submitters concerns, and give the submitters a better understanding of how they may be affected, and how this could be managed or mitigated. GWRC also recognised that this may also lead to the length of the hearing being reduced if some of these matters can be resolved or clarified, and there being a time and cost benefit to all parties.

2 Request and reasons for extension of timeframe under section 37 of the RMA

The SWDC formally requests an extension of timeframe under section 37 of the Resource Management Act 1991 (RMA) from the current timeframe requirement to complete a hearing by 1 November 2019 **to complete a hearing by 29 May 2020.**

The primary reason for seeking an extension to defer the completion of a hearing is to enable sufficient time for outstanding issues to be resolved or clarified before the commencement of the hearing, as directed by the Hearings Panel in their previous Minutes.

Specifically, to allow SWDC adequate time:

- To consult and engage with submitters, the community, Maori/iwi representatives, and GWRC officers (including time to consult on the further technical assessment work results), and take into account their outstanding concerns.

- To review the Natural Resources Plan decisions (with its legal counsel) in relation to wastewater discharges (activity status, objectives and policies (particularly PNRP policies 71, 81 and 83). This will avoid unnecessary and time consuming debate as one of the key areas of disagreement between GWRC and the applicant is the activity status of the proposal, and the outstanding matters to be addressed if the activity is non-complying i.e. gateway test, and what the relevant objectives and policies are. Allowing time for this issue to be clarified will reduce time and cost relating to the determination of this matter.
- To complete the technical assessment work being undertaken with regard to pathogen effects and risks, and for discussions to occur with those who may be affected.
- To resolve the matter regarding scope, including whether the amended description of pathogen risk represents a change or amendment to the activity.
- To address groundwater information and effects agreed to in the Joint Witness Statement and for this to be provided to GWRC, and discussed further among technical experts.
- For further discussions between experts (including caucusing and workshops) regarding the results of the assessment work currently being undertaken, and the outstanding areas of disagreement.
- Allowing an opportunity for further collaborative dialogue with GWRC officers regarding the section 42a report, evidence, and caucusing.

SWDC has been progressing the matters identified above, as identified in three previous joint memorandums to the Hearings Panel.

3 Section 37A RMA matters

In making its decision, we understand that GWRC can take into account the three following matters under section 31(A)(1) of the RMA:

- The interests of any person who the Council considers may be directly affected by the extension; and
- The interests of the community in achieving adequate assessment of the effects of the proposal; and
- The Council's duty under section 21 of the Act to avoid unreasonable delay.

SWDC has provided comments under each of these matters in support of its request for an extension to timeframe.

3.1 The interests of any person who the Council considers may be directly affected by the extension

The party most likely affected by the proposed extension to timeframe for the completion of the hearing is the applicant, who is acting on behalf of its ratepayers to deliver a service to provide for the management and treatment of wastewater. By extending the timeframe for completing a hearing, this will reduce risks to SWDC arising from:

- The uncertainty involved with the PNRP decisions on activity status and objectives and policies, which may make appeals less likely and provide certainty over activity status and objectives and policies. This will enable the applicant to address outstanding issues and matters in the interests of all parties. This will also avoid unnecessary debate over the relevant provisions.
- Submitters having the opportunity to provide further feedback through additional consultation and engagement the applicant will undertake. A site visit to the Greytown and Featherston Wastewater

Treatment Plants (WWTP) is proposed soon to enable submitters and the community to see how the proposal will work 'on the ground' at Greytown's operational WWTP, and 'on the ground' context to the location of the Featherston WWTP.

- Providing further information through the technical assessment work being undertaken, so submitters will gain a better understanding of what the effects are, how they may be affected, and how the applicant proposes to manage or mitigate such effects.
- Reducing the length of the hearing if the matters can be resolved or clarified up front before commencing to a hearing with workshops and expert caucusing.
- Many submitters have voiced concern for the previous extensions of timeframes in providing undue stress and uncertainty. The applicant does not agree with this because proceeding to a hearing without resolving outstanding matters and issues (of which there are several that submitters have identified in their submissions) would also create stress and uncertainty to submitters (and a delay to SWDC) if an adjournment of the hearing was imposed, because of inadequate preparedness or information available to the Hearings Panel. It is in the best interests of the applicant to ensure there is an adequate and complete assessment of effects of the proposal.

3.2 The interests of the community in achieving adequate assessment of the effects of the proposal

Deferring the commencement and completion of the hearing will allow the applicant to complete the further technical assessment and monitoring work directed by the Hearings Panel to contribute to achieving adequate assessment of effects of the proposal (particularly effects on groundwater and the risk of pathogens).

Deferring the hearing will also enable the consideration of the objectives, policies and other relevant provisions of the PNRP to be analysed by both the applicant and GWRC officers. The applicant is also investigating whether there is an amendment to the wastewater treatment approach.

3.3 The Council's duty under section 21 of the Act to avoid unreasonable delay.

The applicant is committed to upgrading the town's wastewater treatment system and improving the quality of freshwater. Enabling technical specialist input and consideration of feedback from consultation with the community as to the treatment options and how to proceed with the current proposal will enable robust information to be included in the consent process. This will then avoid potential years of delays if the consent were to be declined, and there were resulting appeals.

Therefore proceeding to a hearing without robustly addressing the agreed outstanding issues and matters is not practical nor fair on submitters and GWRC officers who should have clarity on such outstanding issues and matters (particularly as they relate to environmental effects). Not addressing such outstanding issues and matters will also waste time and resources. Therefore a further extension to timeframe would not create an unreasonable delay.

I look forward to receiving a determination of this extension request in due course.

Sincerely



Harry Wilson
Chief Executive Officer, South Wairarapa District Council