

**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 the Applicant

Date: 5 September 2018

MAY IT PLEASE THE PANEL:

1 I refer to the Joint memorandum from the two Councils dated 30 August. The Panel has subsequently requested the Councils to confirm the statutory basis on which the application for waiver has been sought.

2 I confirm that the application is made in reliance on sections 37 and 37A of the Act. The reasons for the application are in part as set out in the Joint Memorandum.

3 So far as the further expert input is concerned, the application reflects the Regional Councils request for further information regarding some matters. (In particular ground water mounding issues). It also reflects the fact that Applicant does not agree with certain aspects of the Regional Council's ecological expert's reports and/or the planning officers' interpretation of those reports.

4 Within this context, the Councils have agreed that it would be useful for all of the relevant experts (ground water and freshwater ecology) to caucus on these issues with a view to resolving, narrowing or defining the matters in dispute before the section 42A report is finalised. That approach is likely to be of considerable assistance to the Panel.

5 From the Applicant's perspective there is an additional and important reason for the request which is not reflected in the Joint Memorandum, but in fact is the primary reason for its agreement to the suggested delay.

6 This issue relates to the officer's provisional interpretation of the provisions of the PNRRP and section 107 of the Act.

7 The application was lodged on the basis that it was considered that the application was for an "*existing discharge*" to freshwater under the PNRRP which is a *discretionary activity*. It has subsequently become apparent that the officers have now reached a preliminary conclusion that the application is for a "*new discharge*" to fresh water because it is being "changed" (significantly reduced volumes and contaminant loads

from year 3 after commencement.) That interpretation if correct would have the result that the application is for a *non-complying activity* and policy 83 of the PNRRP would make it difficult to obtain consent. The suggested interpretation also has the effect, that Policy 81 (which allows for existing discharges which are being upgraded- as here) would not apply.

- 8 Counsel for the Applicant does not agree that this is a sensible, necessary or intended interpretation. The further time provided by the request will allow the Regional Council officers and legal advisors to reconsider their position on this matter. Clearly if the matter can be resolved that will assist the Panel.
- 9 If this matter cannot be resolved, the Applicant will need to consider whether to continue with the application or request that the processing of the application be suspended pursuant to section 91A of the Act, or withdrawn and resubmitted, pending the finalisation of the of the PNRRP provisions.
- 10 The associated interpretation issue, relates to the application of section 107 of the RMA and the Regional Council officer's and legal advisor's preliminary view that this precludes the grant of consent. This is position is also disputed and if not resolved will be a critical issue at the hearing. Again, the Applicant is of the view that it is desirable that the parties continue to try to resolve their differences on this matter.

Date: 5 September 2018

A handwritten signature in black ink, appearing to read 'Philip Milne', with a horizontal line underneath.

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Philip Milne
Counsel for South Wairarapa District
Council