

**WAR120258 – South Wairapapa District Council – Martinborough Wastewater
Treatment Plant**

Directions of Commissioners

Introduction

1. Pursuant to RMA s34A independent Commissioners Rob van Voorthuysen, David McMahon and Anthony Olsen were appointed by the Greater Wellington Regional Council as consent authority (GWRC or the Council) to hear and determine applications by South Wairapapa District Council (SWDC or Applicant) for the Martinborough Wastewater Treatment Plant.
2. To this end, our decision dated 11 February 2016 on this suite of applications was issued by GWRC on 15 February 2016. That decision was to grant the resource consent applications sought by the Applicant for the proposal subject to the imposition of various conditions set out in Appendix 2 of the decision.
3. Whilst the decision is final with regard to grant, duration and other matters of substance we recorded that it is 'interim' with regard to the detailed wording of conditions. Accordingly, we invited the parties (including the GWRC reporting officers) to provide us (via Mr Andrewartha) comments outlining any improvements that can be made to the detailed wording of the conditions that does not alter their substantive intent within 10 working days of the receipt of the decision. We stated that following the receipt of any comments on the interim conditions we would issue a final suite of conditions within 10 working days thereafter.
4. On 17 February, counsel for the Applicant, Mr Philip Milne, wrote to GWRC seeking an extension of time in relation to the comments on the draft conditions for this (and the Greytown WTP) suite of consents. Mr Milne sought that the time for the Applicant's response be extended to 5pm Friday 4 March. He also requested that the Commissioners did not alter the deadline for the receipt of comments from GWRC and other parties. He outlined six reasons for the request.
5. This Minute outlines our response and subsequent directions arising from that request.

Ruling and Directions

6. Without going into the reasons for the Applicant's request above, we accept that they are genuine. Given the importance of this condition fine tuning exercise, we agree with Mr Milne that in view of the time involved in these matters to date, the slight delay he is requesting is immaterial and will not prejudice any person. Accordingly, we hereby grant the extension sought in part subject to compliance with the following provisos and comments.
7. Before specifying the parameters applying to our granting an extension, we wish to strongly reiterate the purpose of the interim conditions exercise. This is best conveyed by directly quoting from the final decision as it relates to the role of conditions and the reason why we have treated them on an interim basis.

We are satisfied that our final resource consent conditions, both singularly and in total, are necessary and appropriate to avoid, remedy or mitigate potential adverse effects identified by the technical reports and investigations, the peer reviews, the expert evidence and the submitters. We are also satisfied that the monitoring and reporting conditions will enable the ongoing effects of the SWDC's proposal to be

assessed over time, thereby informing whether or not future reviews of conditions under section 128 of the RMA are necessary.

However, we are cognisant that we have made numerous amendments to the wording of recommended conditions, as discussed above. Consequently, we find that we should issue a decision that is final with regard to grant, duration and other matters of substance but is 'interim' with regard to the detailed wording of conditions.

We give the parties 10 working days to file comments on any improvements that can be made to the detailed wording of the conditions that does not alter their substantive intent. We will disregard any comments that seek to re-litigate our decisions and findings on the substantive matters addressed in this decision report.

[emphasis added]

8. The above three paragraphs essentially convey the point we want to stress; namely that the conditions that we have formulated, although perhaps not fully endorsed by all the parties, are fundamentally necessary for our conclusion to remain that the effects can be appropriately avoided, remedied or mitigated. As such, the opportunity we have provided for parties to comment on the conditions is not, in the same way that applies to the substantive decision itself, an opportunity for the parties to re-litigate the need for certain conditions. Rather it is an opportunity for the parties to perhaps improve the wording of certain conditions and the interrelationship between conditions such that any potential uncertainty or workability issues are addressed and avoided.
9. To this end, it is critical in our view that regardless of whether there is the agreement on the need or otherwise of a condition, that the Applicant (as ultimate consent holder) and GWRC (as regulator) work together on this exercise in order to produce an agreed wording of the interim conditions that they can respectively implement and enforce.
10. On the above basis it is our strong expectation that we will be presented with a single document with minor wording changes that improve the readability, understanding and practicality of the conditions. Where agreement on wording is not completely possible between GWRC and the Applicant, we will allow each of those parties to explain the basis for that disagreement. We iterate that we expect this scenario to be the exception, rather than the rule.
11. As mentioned, we have retained the original timeframe for submitters to respond to the wording of the interim conditions and we would hope that this would inform any wording changes contemplated by both GWRC and the Applicant. We did give some initial consideration to adding a third step to this review process which would enable some further comment by submitters on any residual alterations to condition wording made by GWRC and the Applicant; however, we have decided against that. The principal reason for this is that this entire exercise is limited to wording improvements and clarifications not matters of substance underpinning the decision.
12. In addition, we are not anticipating any substantive alterations to the conditions by the Applicant/Council. For completeness, we will reconsider this matter on receipt of the delivery of the final version from the Council and the Applicant, and should there be any reason to re-consult submitters we will do so; however, we indicate at this state that this is not our expectation.

13. Accordingly, our directions are as follows:

- a) Any comments from submitters on the wording of the interim conditions is to be received no later than the original date specified in our decision (we note that this was to be 10 working days from the receipt of the decision, and that parties lodging comments should note when the decision was received by email). To avoid any confusion, we consider this due date to be:
 - (i) for those who received the interim conditions by email: 5pm on 29 February 2016; and
 - (ii) for those that received the interim conditions via the traditional postal service: the due date is 10 days from the date of receipt of that form of mail (NB. we require that person using the traditional postal service to note in their comments when the decision/interim conditions were received by them).
- b) A joint version of conditions (along with any dissenting comments) from the Applicant and GWRC are to be received by 5pm on 7 March 2016;

14. If any party wishes to seek further clarification around the interim condition process or the proposed timetable, please contact Mr Shaun Andrewartha (phone 06 8261606); email Shaun.Andrewartha@gw.govt.nz in the first instance.

DATED this 19th day of February 2016



DJ McMahon on behalf of
Rob van Voorthuysen
Chair of Hearing Panel