



19. 12. 2003

**REPORT BY THE CHAIRMAN OF THE
SUSTAINABLE TRANSPORT AND UTILITIES COMMITTEE**

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. BELFAST WASTEWATER DISCHARGE CONSENT – ENFORCEMENT PROCEEDINGS

Officer responsible City Water and Waste Manager	Author Aidan Prebble, DDI 941-8561
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The purpose of this report is to seek ratification by the Council of an appeal against an abatement notice issued against the Council by the Canterbury Regional Council and an application to stay the abatement notice.

BACKGROUND

The Council operates a wastewater treatment system at Belfast. This was originally built by the Christchurch Drainage Board in the 1960s. Since then, it has undergone significant expansions and upgrades, the most recent of which was in 2000. This upgrade comprised:

- Division of the second pond into three cells.
- Additional aeration.
- Construction of a subsurface floor wetland.
- Additional rock diffusers in the riverbank outlet.

In order to achieve the consent conditions further upgrading work comprising:

- adding additional aeration to the primary pond
- installing aeration into the second pond
- providing a further cell in the second pond (making a total of four cells)

has also been undertaken since then.

That upgrade was the subject of an application by the Council to the Canterbury Regional Council (CRC) for a resource consent for specified upgrade works and a continued discharge of wastewater to the Otukaikino Creek for a term of 10 years. A consent was granted subject to conditions by decision dated 31 January 2000 (CRC990558).

The conditions of consent seek to control a number of matters including:

1. The maximum limited volume of discharge;
2. The maximum permitted medium concentration of faecal coliform bacteria;
3. The maximum permitted concentration of biochemical oxygen demand;
4. The maximum permitted concentration of suspended solids;
5. The maximum permitted concentration of ammonia nitrogen; and
6. The maximum permitted concentration of dissolved reactive phosphorous.

Since the upgrade works have been completed, it has transpired that, although the Council has been able to comply with all of the conditions at some times, it has been unable to consistently comply with them at all times. This led to meetings between officers and CRC staff but these did not lead to a solution.

By letter dated 13 November 2003, the CRC issued an abatement notice against the Council.

This seeks the following action to be taken by the Council:

“Christchurch City Council is required to cease and not recommence discharging wastewater into the Otukaikino Creek from the Belfast Wastewater Treatment Plant at all times that discharge does not comply fully with conditions 1, 5, 6, 7, 8 and 9, set out in resource consent CRC990558.”

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The conditions specified generally impose the controls described above. The abatement notice requires this action to be taken by 13 February 2004.

Although the officers accept that the Council has been unable to comply with the conditions of consent at all times, it has formally advised the CRC of steps it proposes to take to deal with the problem. These include a proposal to bring forward from the 2007/08 and 2008/09 years to the 2004/05 and 2005/06 years the construction of the new pipeline from the Belfast system into the Bromley system (\$3.2m). Eight possible improvement options have been identified that would each slightly lift the performance of the Belfast pond system but none of these options taken either singularly or collectively would achieve compliance with the current consent conditions. An environmental impact report commissioned before the abatement notice was issued has confirmed that the impact of the discharge on the Otukaikino Creek is minor. For this reason, officers considered the most appropriate course of action was to apply to the CRC to change the consent conditions.

The application for a change of conditions for the Belfast wastewater discharge was forwarded to the CRC on Friday 5 December 2003.

None of the steps available to the Council (including the change of conditions application) will enable compliance with the conditions of consent by 13 February 2004.

A failure to comply with the requirements of an abatement notice is an offence under the Resource Management Act 1991 and opens up the Council to potential prosecution action.

APPEAL OF ABATEMENT NOTICE

In this context, officers considered it appropriate to appeal the reasonableness of the abatement notice so as to reserve the Council's position. The primary ground for the appeal is that the time period and the notice is unreasonable and inappropriate in the circumstances because the CRC knows, or ought to know, that there are no methods available to the Council to ensure compliance within that time.

A notice of appeal seeking the cancellation of the abatement notice and an accompanying affidavit of Mr Bourke of the City Water & Waste Unit was filed on Thursday 4 December 2003. This was also accompanied by an application for a stay of the abatement notice pending the resolution of the appeal.

RATIFICATION

There is no delegation to officers or any committee or subcommittee to authorise an appeal by the Council against an abatement notice issued to it. However, case law confirms that so long as the Council could delegate to an officer the power to appeal the abatement notice to the Environment Court, then this action can be subsequently ratified by the Council. Because of timing issues, prior authorisation from the Council was unable to be obtained before the expiration of the appeal period.

Staff

Recommendation: That the Council ratify the notice of appeal against the abatement notice dated 4 December 2003 and accompanying application for stay of abatement notice.

Chairman's

Recommendation: That the above recommendation be adopted.

CONSIDERED THIS 19TH DAY OF DECEMBER 2003

MAYOR