

5. CWTP RESOURCE CONSENT FOR WASTEWATER EFFLUENT DISCHARGE

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The purpose of this report is to seek the Council's approval of conditions to settle in part the Council's appeals against the consent to continue to discharge treated wastewater to the Estuary.

BACKGROUND

By a final decision dated 20 June 2002, the Canterbury Regional Council granted consent to the Council's application to continue to discharge treated wastewater into the Estuary ('the consent'). The Council appealed a number of the conditions of the consent. The two primary conditions of consent challenged by the appeal are the duration of the consent (five years) and the requirement for ultraviolet treatment of wastewater discharged to the Estuary. A large number of technical conditions have also been appealed. The appeal against these technical conditions is not the subject of this report.

The following persons and organisations have given notice to the Environment Court that they wish to be heard on the City's appeal:

- The Director-General of Conservation.
- The Christchurch Combined Residents Association.
- The Southshore Ratepayers Association Incorporated.
- The Christchurch Estuary Association Incorporated.
- Janet and David Currie.
- Mr Reg Mundy (who has since withdrawn).
- Crown Public Health.
- Mr J S Freeman.
- Sumner Residents Association.
- The Honourable Ruth Dyson.
- The Surf Rider Foundation (Christchurch Chapter) Incorporated.
- Canterbury Windsurfing Association Incorporated.
- Sumner Longboarders Incorporated.
- Mr Jonathan McCarthy.

Since the appeal was lodged last year, the Council has resolved not to proceed with options to discharge into the Estuary on a long-term basis and has resolved to pursue a resource consent application for an ocean outfall from which to discharge the treated wastewater. In October last year, the Council also resolved that *"legal appeals to the short-term five year consent to discharge to the Estuary be pursued so that acceptable conditions can be obtained to allow continued discharge into the Estuary until a longer term solution is available."*

To streamline the negotiation process to resolve the conditions, the Council in November 2002 delegated to the Sustainable Transport and Utilities Committee *"the power to commit the Council to a binding agreement to resolve the appeals lodged against this resource consent granted for application CRC012011 (discharge 500,000m³/day wastewater to estuary) in respect of duration of consent and the conditions requiring UV treatment."* The power to settle the remaining parts of the appeal against the technical conditions were delegated to the Planning and Projects Manager of the City Water and Waste Unit.

Council officers and representatives have, since December last year, been involved in extensive negotiations with the parties listed above in an endeavour to reach agreement on acceptable conditions on the discharge consent.

NEGOTIATIONS

At the request of the parties, the Council's negotiations have focused on the two key issues of duration and the conditions requiring UV treatment. It is anticipated that if agreement can be reached on these matters, agreement on the final wording of the technical conditions should follow.

In terms of the two key issues, most of the parties have expressed the view that their principal concern is to have the wastewater discharge removed from the Estuary as soon as possible. The negotiations have proceeded on the basis that if the consent is limited to the shortest period realistically possible to enable the ocean outfall to become operational, then the conditions requiring UV treatment of the Estuary discharge can be deleted.

From the Council's point of view, the negotiations have been pursued on the basis that, having resolved to pursue an ocean outfall consent, it is reasonable that the duration of the Estuary consent be limited to such time as is reasonable to obtain consent for, construct and make operational the ocean outfall. This negotiation stance has been coupled with the Council's position that conditions requiring UV treatment for any such limited period of discharge cannot be justified because of the significant capital cost. This position is supported by the expert opinion of the Council's consultants that UV treatment during this period would not have such an environmental benefit as to outweigh the economic costs.

It is also recognised that significant improvement will be achieved to the quality of the wastewater discharge resulting from the upgrade work presently being undertaken on the oxidation ponds. These improvements are programmed for completion by 30 April 2004 and will provide an improved quality of wastewater in the estuary until the ocean outfall pipeline is commissioned.

AGREEMENT IN PRINCIPLE

Council officers have reached an agreement in principle with a number of the parties on the issues of duration and UV treatment. The negotiations proceeded on the understanding that officers do not have the power to settle these issues and any potential agreement is required to be put to the Committee for approval.

The conditions that have been agreed to in principle are **set out in full in the recommendations at the conclusion of this report**. They had been agreed to in writing by the following parties:

- The Canterbury Regional Council as consent authority.
- The Director-General of Conservation.
- The Christchurch Combined Residents Association.
- The Southshore Ratepayers Association Incorporated.
- The Christchurch Estuary Association Incorporated.
- Janet and David Currie.

Verbal agreement has been received in principle from the Sumner Residents Association, the Honourable Ruth Dyson and Crown Public Health. We are awaiting confirmation of agreement to the proposed conditions from Mr J S Freeman whom we understand does not oppose the conditions but at the time of writing this report, has yet to provide confirmation of his position.

The position of the Surf Rider Foundation (Christchurch Chapter) Incorporated, Canterbury Windsurfing Association Incorporated, Sumner Longboarders Incorporated and Jonathan McCarthy is not so clear. None of the parties have been represented at any of the meetings arranged by officers to negotiate the conditions. Mr McCarthy has written to the Council seeking more information on the issue of UV treatment. This information has been provided to him although it appears that he requires further information before he can make an informed decision. If the proposed conditions attached to this report are acceptable to the Committee and lead to an agreement with all parties except those represented by Mr McCarthy, the Committee may in time have to consider whether to formalise an agreed position with those other parties and pursue this at a hearing in the Environment Court against the parties represented by Mr McCarthy.

The proposed duration conditions centre on condition 1. This provides that the consent shall endure until the ocean outfall is commissioned or until 30 September 2009, whichever is the sooner. The date 30 September 2009 is based on a realistic assessment by officers and Council consultants as to when the outfall should be commissioned. This assessment has factored in a period for preparing and lodging the resource consent application, dealing with possible appeals, tendering and completing construction of the pipeline and so on. It should be noted that the time period is not sufficient to provide for all possible contingencies that may arise. In this respect, as part of the negotiation process, officers prepared timelines based on optimistic, realistic and pessimistic scenarios. The duration condition of 30 September 2009 is based on the realistic scenario.

The pessimistic scenario builds in extra time for contingencies such as possible High Court appeals. It extends the duration date to September 2010. This was the date preferred by officers but was unacceptable to the parties **unless** accompanied by conditions requiring UV treatment.

The assessment of officers and Council consultants is that the commissioning of the ocean outfall by September 2009 is realistically achievable. If this is not done, the Council will be required to lodge a further resource consent application to continue the Estuary discharge by no later than six months before the expiry date of 30 September 2009. This would be required to keep the Estuary discharge consents "alive" until the ocean outfall is finally commissioned. The trade-off for this earlier date is the agreement of these parties (including the Canterbury Regional Council as consent authority) to the deletion of the conditions requiring UV treatment.

Conditions 2 - 8 require the Council to use all practicable measures to achieve specified target dates. The target dates are set out in condition 2. They are the events that officers and Council consultants consider are reasonably within the power of the Council and should be able to be achieved by the dates specified. Conditions 3 - 8 set out a process that require the Council to account for any failure to achieve the target dates, including officers notifying and attending a public meeting of any interested persons to explain why any particular target date has not been met.

The process set out in conditions 2 - 8 were identified by the parties as important to show that the Council will be doing everything within its powers to remove the wastewater discharge from the Estuary as soon as reasonably practicable.

It is anticipated that the agreement of most of the other parties (except those represented by Mr McCarthy) to these conditions will be obtained by the time of the Committee meeting in May 2003.

DURATION CONDITIONS

1. The consent duration shall be until the ocean outfall is commissioned and becomes operational or until 30 September 2009, whichever is the sooner.
2. The consent holder shall use all practicable measures to achieve the following target dates ('the target dates'):
 - (a) Treatment pond upgrade completed by 30 April 2004;
 - (b) Final report on ocean current modelling made publicly available by 30 April 2004;
 - (c) Future water quality outcome from treatment plant report made publicly available by 31 August 2004;
 - (d) A complete resource consent application for the ocean outfall lodged with the Canterbury Regional Council by 20 December 2004;
 - (e) The tender for the construction of the ocean outfall awarded within eight calendar months of the commencement of the ocean outfall resource consent;
 - (f) The ocean outfall commissioned and operational within 19 calendar months of the date on which the tender for construction is awarded.
3. The process to make the ocean outfall operational is set out in the chart entitled "Ocean Outfall Co-ordination Programme" annexed as Appendix 1 to this decision. For all events and processes not specified as the target dates, the consent holder shall use its best endeavours to achieve the milestone events specified in the "optimistic" time line in Appendix 1 which provides for the commissioning of the ocean outfall by June 2008. In the event that the optimistic time line cannot be achieved, the consent holder shall use its best endeavours to achieve the "realistic" timeline.
4. The consent holder shall report to the consent authority any event or circumstance that may prevent any of the target dates being achieved as soon as it becomes known.
5. If, notwithstanding the requirements of conditions 2 and 3, the consent holder fails to achieve any of the target dates by a period of more than five working days, it shall immediately notify the consent authority and the parties listed in Appendix 2 of this and provide to those organisations a written report (Target Date Review Report) within ten working days of the target date giving reasons for not achieving the target date.

(Note: The parties listed in Appendix 2 are the persons and organisations who gave notice of an interest in the appeal proceedings that led to the determination of this consent.)

6. The Target Date Review Report shall set out the earliest date on which any target date event that has not been achieved can be met by the consent holder using all practicable measures after allowing for the event or circumstance that caused the target date to be missed (“the proposed revised timetable”).
7. The consent holder shall, upon provision of the Target Date Review Report, publicly notify a public meeting to explain to any interested person or persons the reasons for not achieving the target date and to present the proposed revised timetable. The public meeting shall be held within 20 working days of the target date.
8. A final revised timetable that demonstrates that the consent holder is taking and continues to take all practical measures to achieve the target date(s) at the earliest possible time shall be provided to the consent authority within 20 working days of the public meeting required by condition 7.

Recommendation: That the Council agree to a consent order to resolve the appeal against CRC 012011 in respect of duration of consent and the conditions requiring ultraviolet treatment, with the duration conditions listed above, on the basis that the conditions requiring ultraviolet treatment are deleted.