

15. CANTERBURY WASTEWATER TREATMENT PLANT RESOURCE CONSENT: ECAN DECISION

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The purpose of this report is to recommend that the Council lodge a proforma appeal to the Environment Court against the Commissioners' decisions on the wastewater consents, to keep the Council's options open and allow time for a more carefully considered response.

BACKGROUND

On 6 May Environment Canterbury's Commissioners released their decisions on the Council's applications for consents for the Christchurch Wastewater Treatment Plant. The major decisions were significantly different from what the Council applied for in March 2001 and if confirmed will affect the Council's broader environmental strategy for wastewater and add significantly to the capital and operating budgets. See attached supplementary report to Sustainable Transport and Utilities Committee meeting of 6 May for an outline of the content of the decisions.

In reaching their decision the Commissioners heard the Council's case and also heard from some 63 submitters and ECan's reporting officers. Their report covers 236 pages, reflecting the complexity of the applications. The decisions themselves cover some 26 pages and include many detailed conditions.

Note that some of these conditions are in line with the Council's proposals, while others impose requirements that would be expensive or difficult to implement.

Note also that the decision on the main consent, i.e. the application to discharge treated wastewater to the Estuary, is an interim decision as the Commissioners have invited comment on details of the conditions.

PROPOSED IMMEDIATE STEPS

1. A supplementary report was submitted to Sustainable Transport and Utilities Committee on 6 May, to give an initial report on the content of the decision.
2. This report is submitted to the Strategy and Finance Committee to recommend lodging of proforma appeals. This will keep the Council's options open and allow time for a more carefully considered response. Appeals against the decisions must be lodged with the Environment Court by 27 May 2002.
3. A Council seminar has been arranged for Wednesday 15 May to inform Councillors more fully of the Commissioners' decisions, (the Council's legal adviser, Mr A Hearn, QC, will be present at that seminar).
4. The Council meeting on 23 May will receive the reports from Sustainable Transport and Utilities, and Strategy and Finance Committees.
5. The Commissioners have invited the Council and others to comment on details of the conditions they have stated for the main consent, and staff and consultants are preparing comments in time for the closing date of 24 May.

APPEALS

The Resource Management Act allows the Council and other parties to appeal to the Environment Court against the decisions for 15 working days from the day we received them. If we do not lodge appeals by that time, i.e. by Monday 27 May, we cannot ask later for a reconsideration of either the core decisions or any of their conditions. On the other hand it is possible to withdraw the appeal, in part or in whole, at any time up to a formal hearing, (in the normal course of events we would expect a hearing late 2002 or early 2003).

It is considered vital that the Council does not rush a final conclusion on its position without reviewing thoroughly the Commissioners' decision and reviewing carefully our options. Apart from the major decisions (to grant only a five-year consent to discharge to the Estuary, and to install a UV plant within two years) there are many conditions that the Council will want to review and possibly seek to change. By lodging appeals the Council will have time to give the subject the careful consideration it requires, including seeking second opinions from suitably qualified experts, obtaining further legal advice, and considering the financial implications of the options.

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The filing of an appeal by 27 May 2002 does not mean the Council must pursue the appeal. The Council can withdraw the appeal if it wishes at any time. The filing of the appeal itself does not incur the Council in significant expense and does not prevent the Council from discussing all options as is proposed below.

Note that legal counsel (Mr A Hearn, QC), has been asked to prepare appeal documents. In view of the complexities and the need to provide the Council with flexibility in its later decision-making. This will need to be done carefully and is not expected to be drafted until a few days before the closing time.

COST OF SEWAGE DISCHARGE PLANNING PROCESS

The cost of all work associated with planning for a consented future discharge has been around \$2.2m. This includes the cost of examination of the broad options including initial costs and concept design for an ocean outfall, extensive public consultation (including consultation on estuary and ocean outfall options), and much detailed work by many expert consultants, expert witness reports, preparation of an Assessment of Environmental Effects document, consent preparation and lodging, ECan fees for consent processing, legal fees, Council staff time and the like.

An important point to note is that when the Council decides what option it wishes to pursue (be it Estuary or ocean etc) a large proportion of the work already done (and paid for within the above \$2.2m) will not be wasted but will be recycled in the next consent application (or appeal whichever the Council chooses).

PROPOSED LATER STEPS

1. It is intended to hold a further seminar in July prior to formal consideration by the Committee and the Council to establish its position and so make decisions in relation to the appeals.
2. If the Council chooses to then confirm its appeals, either in part or in whole, it will then have opportunities to have preliminary hearings and negotiations with interested parties and potentially resolve issues before the Environment Court hears the case. Or, the Council may choose to move down an alternative path to the Estuary discharge and instruct staff to start working towards those ends.

The City Manager comments:

I appreciate that there are significant differences of opinion both within the community and among elected members as to the most appropriate method for discharge from the treatment works.

My advice, however, is that given the time restriction imposed by the Resource Management Act for lodging an appeal and the technical complexity of the decision, the Council has no prudent course of action open at the current time other than to lodge an appeal. Doing so leaves our options open, not doing so closes options and may lead to unnecessary costs arising from the detail of some of the conditions on the consent.

Recommendation: That the Council approve the lodging of proforma appeals to the Environment Court against the decisions of the Commissioners, so as to keep the Council's options open in the meantime, in relation to the Christchurch Wastewater Treatment Plant consents and to allow the Council time to consider carefully and thoroughly the decisions of the Commissioners before confirming the directions it wishes to take in relation to the consents.

Deputy Chair's

Recommendation: For discussion.