

3 September 2019

By Email: Aurora.Grant@es.govt.nz

Environment Southland  
**Attention:** Aurora Grant

Dear Aurora

**APP-20191140 Response to 2 September 2019 Email and Related Correspondence**

- 1 As you are aware, we act for the Applicants in the above applications. Thank you for your recent emails expressing concerns about the challenges you face dealing with the various packages of information associated with all these applications.
- 2 We recognise that you have a fairly big task, having to prepare s42A reports for these two upcoming hearings, each of which of itself would provide a fairly significant challenge in terms of their extent and the complexity of the matters you will have to consider. Our clients do understand the pressures and the workloads that you must be under and have therefore endeavoured to ensure that any information you indicated would be helpful by way of clarification, was provided as soon as possible.
- 3 It is very normal for applicants to adjust details of their applications throughout the course of processing. More often than not, the full extent of these modifications will only become clear through the evidence they provide for the hearing and even sometimes during the course of the hearing itself. In contrast, our clients have endeavoured to provide you with details of such adjustments as soon as practicable, so that you could have the benefit of this information when preparing your report. On this basis we are satisfied that you have been provided with sufficiently detailed information on the current resource consent applications for this stage of the process. Specifically:
  - 3.1 We have provided you with the reports that you have requested. We acknowledge that Dr Freeman and Ms Legg have recently corrected some minor errors and provided further clarification later to assist you in understanding what parts of an earlier report have been superseded. In our experience this is common for complex resource consent hearings.
  - 3.2 No fundamental aspect of the resource consent applications has been changed over the past two months. The team has solely been concentrating on developing additional good management/mitigation measures to ensure that the proposals will make individual small contributions to improving water quality in Southland. We appreciate that translating these measures into a proposal and then taking account of that in the AEE does involve quite a few steps and requires a number of documents to be consistent and for us to provide a package that can be incorporated into a suite of consent conditions to provide both you and the commissioners with certainty that the modelled results will occur because of the anticipated conditions that would lock certain measures & outputs into place.
  - 3.3 We could go into the details of exactly what you have requested/required and what has been provided. However, we do not think that it would be constructive use of our or your time to debate matters at that level of detail. We are satisfied that what you

now have in the Sharepoint files is more than adequate for you to be able to formulate a report under Section 42A of the RMA.

- 3.4 As an example of the need for some flexibility, we withdraw the submitted WRO P mitigation plan and it will be replaced as soon as possible with a version that provides greater certainty for the Merriburn landowners who are concerned about the future limit setting process. The replacement plan will incorporate fencing of all waterways and 2-metre riparian strips. However, we need to finalise that plan with the Merriburn landowners before putting the final version forward. In addition, an updated lease agreement will be developed to reflect the agreed plan. We are quite confident that this will not affect the existing Overseer modelled P loss reduction of approximately 5%. To assist in understanding this we have put a stamp on that document in the Sharepoint site to make it clear that it has been withdrawn and will be replaced.
- 3.5 We acknowledge the phone conversation that you and Dr Freeman had earlier today and can confirm that he and Ms Legg will provide you with a one page summary by the close of business tomorrow with the key additional GMPs/mitigation measures and how these have been incorporated into the applications. In addition, we confirm that the FEMPs will be reviewed to assess if there is potential to further clarify the GMPs/mitigation measures that are proposed.
- 4 While we accept that the timeframes imposed by the Act and your available resourcing may place you under extra pressure, we do note that those timeframes are there for the protection of applicants and recognition that they ought not to be disadvantaged by delays beyond such timeframes. We do consider that there is more than sufficient information before you to enable you to prepare your report. You will of course also have an opportunity to reconsider any recommendations at the hearing, once you have read and heard all parties' evidence.
- 5 Much as we would like to assist you, we do not consider, in view of the above, that there is a basis on which our clients should properly seek the suspension under s91A to which you refer. They therefore will not be making such a request, but are strongly of the view that the hearing should proceed as scheduled without further delays. We acknowledge that what you recommend in your report is ultimately a matter of your professional judgement, but we respectfully consider that the material now already before you does not provide the basis for a recommendation to refuse the consents under s104(6).
- 6 **Lacey** - We would be grateful if you could forward a copy of this letter and the associated email string to the commissioners, with whom the final determination in accordance with the provisions relevant to the decisions on these applications (including, but not limited to s104(6)) lies. We do consider it would be helpful for them to be aware of our position as to the adequacy of the information that will be before them and our position on the inappropriateness of any further delays to timetabling or the hearing itself.

Yours sincerely



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*Cc: The Hearings Commissioners (APP-20191052 & 20191140)*