

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2019] NZEnvC 31

IN THE MATTER of the Resource Management Act 1991
AND of an application to change enforcement orders pursuant to s 316 and s 321 of the Act
BETWEEN WEST COAST REGIONAL COUNCIL
(ENV-2015-CHC-067)
Applicant
AND WESTLAND DISTRICT COUNCIL
Respondent

Court: Environment Judge J E Borthwick

Hearing: in Chambers at Christchurch

Date of Decision: 27 February 2019

Date of Issue: 27 February 2019

**DECISION ON (THIRD) APPLICATION TO CHANGE ENFORCEMENT ORDERS
(BY CONSENT)**

- A. Pursuant to sections 279(1)(b), 314(1)(b), 319 and 321 of the Resource Management Act 1991, the Environment Court orders that Westland District Council must:
- (a) from 27 July 2018, undertake fortnightly sampling of the influent flow and load characterisation, including trucked septage inputs, and determine the Final Design criteria for the pond and any potential aeration requirement. Westland District Council will provide copies of all sampling data to West Coast Regional Council if requested. Sampling may cease once sufficient data is obtained to appropriately inform the determination of the Final Design;



- (b) every six weeks from 27 July 2018, provide the West Coast Regional Council and copy to the court, a written report on the completion of Key Milestones for the Project Works;
- (c) if the completion date for any one of the Key Milestones for the Project Works will not be or is unlikely to be achieved, give the West Coast Regional Council not less than five working days prior notice of the non-completion. The Project Director shall provide the West Coast Regional Council with a report(s) from appropriately qualified technical persons giving reasons for the non-completion and any impact this may have on the Key Milestones for the Project Works and on these Orders. The Key Milestones are defined in Order B and are marked Attachment A, attaching to and forming part of these Orders. At the same time as giving notice to the West Coast Regional Council, Westland District Council shall provide a copy of the notice, together with the technical reports, to the Court;
- (d) within ten working days of receiving notice pursuant to Order A(c), the West Coast Regional Council will bring the proceeding back before the court by filing a report advising what effect, if any, the non-compliance has on the wastewater treatment plant being commissioned and made fully operational by 30 August 2019;
- (e) by Friday 3 August 2018, send a copy of the Final Design for the wastewater treatment plant together with the Wastewater Treatment Plant Specifications and a copy of the Design Statement to the West Coast Regional Council and to the Court. The design must be capable of accommodating the minimum design flows and loads for the 15-year design period of the wastewater treatment plant as set out in Attachment B, attached to and forming part of these Orders.
- (f) by Friday 3 August 2018, lodge with the consent authority any resource consent applications required by a District Plan to authorise the Project Works together with any resource consent application required for earthworks under a Regional Plan;
- (g) by Friday 2 November 2018, lodge with the West Coast Regional Council all other resource consent applications, including variations to existing consents, required by a Regional Plan to authorise the Project Works;
- (h) by Friday 30 August 2019, have the upgraded wastewater treatment plant commissioned and made fully operational for Franz Josef and shall report confirmation of this to the West Coast Regional Council and the court.



B: In these Orders:

- (a) "Final Design" means – The design of the treatment plant that will be delivered to accommodate the minimum design flows and loads set for the 15-year design period of the wastewater treatment plant;
- (b) "Design Statement" means – A description of all key elements of the treatment plant that will be delivered to accommodate the minimum design flows and loads set for the 15-year design period of the wastewater treatment plant, together with a summary of methods that will be used to procure, deliver, supervise, commission, monitor and report on each key element and the project as a whole;
- (c) "Wastewater Treatment Plant Specifications" means – The technical specifications of all works forming part of the complete project;
- (d) "Project Works" means – All works necessary to upgrade the wastewater treatment plant to accommodate the minimum design flows and loads set for the 15-year design period;
- (e) "Key Milestones" means – The fourteen milestones documented in the Gantt Chart labelled "Franz Josef Wastewater Treatment Plant – Key Milestones – dated 14 February 2019" attached to and forming part of these Orders.

C: Pursuant to section 314(3) of the Resource Management Act 1991 these Orders apply to the personal representatives, successors and assigns of the Westland District Council to the same extent as they apply to the Westland District Council.

D: Pursuant to section 321 of the Resource Management Act 1991 leave is reserved for any party to apply to change or cancel these Orders.

E: Pursuant to section 285 of the Resource Management Act 1991 there is no order as to costs.



REASONS

Introduction

[1] The Westland District Council and the West Coast Regional Council have jointly applied to change enforcement orders made by the court on 27 July 2018.¹ The orders, which were made by consent, were for the District Council to have commissioned and make fully operational a new wastewater treatment plant for Franz Josef by 30 April 2019.

[2] The following changes are sought to the enforcement orders:

- (a) Order A(d): change date from 30 April 2019 to 30 August 2019;
- (b) Order A(h): change date from Tuesday 30 April 2019 to Friday 30 August 2019;
- (c) Order B(e): change document referred to from "Franz Josef Wastewater Treatment Plant – Key Milestones – dated 25 July 2018" to "Franz Josef Wastewater Treatment Plant – Key Milestones – dated 14 February 2019";
- (d) replace Attachment A of the Orders with Exhibit A to Mr Ross' supporting affidavit of 15 February 2019.

[3] The application was supported by an affidavit of Martin Ross, dated 15 February 2019. Attached to the affidavit was an updated Exhibit A, dated 14 February 2019, detailing the Key Milestones for the project. Exhibit A is attached to this decision and marked "Attachment A".

Background

[4] On 21 December 2018, the District Council gave notice² that one of the Key Milestones for the Project was unable to be achieved. Consequently:

- (a) the Construction Key Milestones scheduled to be completed by end of February would not be able to be achieved; and



¹ [2018] NZEnvC 119.

² In accordance with Order A(c) of [2018] NZEnvC 119.

- (b) based on the “worst case scenario” it is possible that the commissioning and signoff Key Milestones and final 30 April 2019 deadline may not be able to be achieved.

[5] The District Council explained that the processing of the earthworks consent had taken significantly longer than anticipated, as has the obtaining of written approvals for the earthworks from affected parties.³

[6] The Regional Council responded, in a memorandum dated 22 December 2018, noting (in particular):⁴

- (a) there was a lack of detail in the consent applications lodged which resulted in a request for further information;
- (b) the complexity of the activity necessitated independent peer review both of the initial application and the further information received;
- (c) since 21 December written approvals have been obtained from all parties;
- (d) all consents applied for were granted on 21 January 2019; and
- (e) the appeal period expires 15 working days after the decision is received by the parties, at the earliest 12 February 2019.

Discussion

[7] While the court is disappointed to have before it a further application to amend the enforcement orders, it is aware of the history and the complexity of the project and is satisfied with the explanation given by counsel.

[8] On this basis, I am satisfied the Orders promote the purpose of the Resource Management Act 1991 and will exercise my discretion and make the amended Orders sought.

[9] The parties are to note that Order B(e) is amended to change the relevant date to “14 February 2019”. This date is recorded correctly in the application, but a different date is shown on the draft orders submitted by the parties.



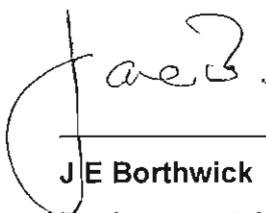
³ Memorandum of counsel for Westland District Council, dated 21 December 2018, at [5].

⁴ Memorandum of counsel for West Coast Regional Council, dated 22 December 2018, at [13].

[10] The enforcement orders are set out in full including the dates amended as sought. For the avoidance of any confusion, I note many of the dates which have not been changed have already passed.

Outcome

[11] The enforcement orders are amended as sought by the parties.



J E Borthwick
Environment Judge



The seal of the Environment Court of New Zealand is circular. It features the coat of arms of New Zealand in the center, which includes a crown, a shield with four quarters, and two figures holding a shield. The text "THE SEAL OF THE" is at the top, "ENVIRONMENT COURT OF NEW ZEALAND" is at the bottom, and "1987" is at the very bottom.

Attachment A

Exhibit A – Updated Key Milestones

1. 2018
2. 2019
3. 2020
4. 2021
5. 2022
6. 2023
7. 2024
8. 2025
9. 2026
10. 2027
11. 2028
12. 2029
13. 2030



WES82573 7311605.1

Affidavit of Martin Ross



Frantz Josef Wastewater Treatment Plant – Key Milestones – dated 14 February 2019

Key Milestones

- 1 Design of plant including proposed works and geotech
- 2 Consultation with Iwi and DOC
- 3 Preparation of resource consent applications for construction of pond
- 4 Land Tenure Agreement (WDPI-CCO)
- 5 Prepare contract documentation
- 6 Invite public tender for new wastewater treatment pond construction
- 7 Apply for any new consent, or variation to existing consent, required by a Regional Plan
- 8 Construct new wastewater treatment pond and modify existing pipework
- 9 Council procure Screening and Aerator 'free issue'
- 10 Invite quotation for power supply and provision of standby generator
- 11 Supply and install overhead power supply. Generator to be supplied 'free issue'.
- 12 Supply and install SCADA/Telemetry system
- 13 Full commissioning of WWTP
- 14 Signoff by Engineer

	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19
1	Completed			Investigate and Design													
2		Completed				Consultation											
3			Completed		Resource consents												
4		Completed				Formalise Land Agreement											
5			Completed		Contract documents												
6					Completed		Tender process and contract award (GETS)										
7				Completed		Resource consent											
8											Major Construction						
9						Completed		Screen and Aerator procurement									
10			Completed		Electricity procurement												
11				Completed					Electrical supply								
12								Completed		SCADA/Telemetry							
13												Major Construction					Commissioning
14																	Sign-off

EXHIBIT A

TeArohanui Retehia Cook, JP

#15248

WAIPUKURAU HOKITIKA

Justice of the Peace for New Zealand

J. Cook
15/2/2019

MR *ARL*



Table 2-4: Design Flows¹ for new WWTP (excluding septage)

Parameter	Unit	Flows
Average Dry Weather Flow, ADWF (Off-peak)	m ³ /day	363
Peak Dry Weather Flow, PDWF (Peak 3 months, summer period)	m ³ /day	1,325
Peak Wet Weather Flow, PWWF (day)	m ³ /day	2,500
Peak Wet Weather Flow, PWWF (hourly)	m ³ /hr	220
Peak Instantaneous Flow, PIF	l/s	61
Peak Instantaneous Flow plus 25% capacity, PIF	l/s	76