

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

Decision No. [2018] NZEnvC 119

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 July 2018

Date of Issue: 27 July 2018

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

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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 [the date of the decision], 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 [the date of the decision], 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 10 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 April 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 Tuesday 30 April 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 25 July 2018" 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 has not complied with enforcement orders made by the Environment Court on 18 November 2016 ([2016] NZEnvC 223]). 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 2018.

[2] On the date for compliance, the District Council filed an application seeking to substantially change the enforcement orders and extending the date for the commissioning of a new treatment plan by ten months.

[3] The application was supported by a brief affidavit<sup>1</sup> giving reasons for the District Council's failure to comply with a court order. In summary, the District Council says that it could not comply because it lacked the capacity (in terms of relevant in-house technical expertise) and second, progress was compromised by its procurement processes for the wastewater treatment plant which are/were the subject of a Serious Fraud Office investigation.

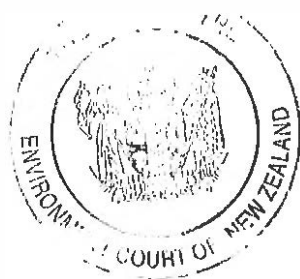
[4] Since the Orders were made I am told that the District Council's thinking on the design of the treatment pond has continued to evolve. Instead of replacing the existing wastewater treatment plant (as ordered) the Council proposes to upgrade its existing plant so that it can accommodate minimum design flows and loads for a 15 year design period. This limited life reflects uncertainty over the long-term location of Franz Josef township due to its proximity to the Alpine Fault and the Waiho River.

[5] The West Coast Regional Council does not oppose the application to change the enforcement orders.<sup>2</sup>

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<sup>1</sup> Affidavit of D I Inwood, dated 30 April 2018.

<sup>2</sup> Joint memorandum dated 18 May 2018.



## Discussion

[6] It will have come as no surprise to the parties that the Environment Court would require detailed technical information in support of the application to amend the orders, given the District Council was in breach of the orders at the time it was made. The reason for that is that the court must satisfy itself that the District Council has the technical capacity and funding in place to comply with the amended orders and second, that the orders, if made, will achieve the purpose of the Act.

[7] With the assistance of Environment Commissioner Jim Hodges, the court has sought further evidence in support of the application.<sup>3</sup> The Councils have responded by filing affidavits from David Inwood,<sup>4</sup> Jason Ewert and Martin Ross,<sup>5</sup> on behalf of the District Council and Andrew Springer<sup>6</sup> and Heather McKay<sup>7</sup> for the Regional Council.

[8] The Regional Council confirmed that on two occasions this year<sup>8</sup> the District Council was not complying with the condition of its discharge consent. The District Council has, however, complied with the abatement notice that was issued in respect of those non-compliances. The Regional Council was not drawn on what action it would take if there were any further non-compliances with the enforcement orders of the court, other than to say that it would consider the matter seriously.

[9] I accept on this occasion, that extraordinary circumstances have conspired to frustrate the District Council's ability to comply with the earlier Orders made by the court. Nevertheless, I caution that further non-compliance may have the effect of undermining public confidence in the enforcement action provisions of the Resource Management Act. I am pleased that the parties have agreed to the court's suggestion to include an Order that the matter may be brought back before the court on any occasion when the District Council reports that it cannot, or is unlikely to, comply with the Key Milestones of the project work. The Orders may be reviewed or cancelled in this event, with the Regional Council to take the lead on any further enforcement action that is warranted.

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<sup>3</sup> Minutes dated 25 May and 13 June 2018.

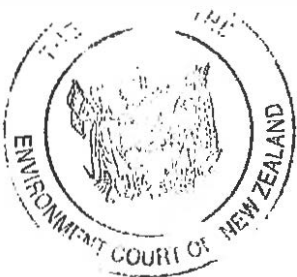
<sup>4</sup> Sworn 30 April, 5 and 25 July 2018.

<sup>5</sup> Sworn 5 June 2018.

<sup>6</sup> Sworn 8 June 2018.

<sup>7</sup> Sworn 13 June 2018.

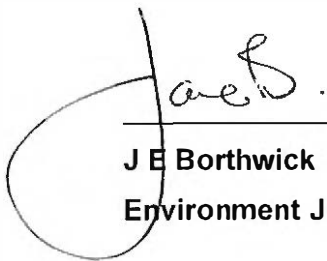
<sup>8</sup> Being the only time period reported on by Ms McKay.



## Orders

[10] The parties have filed a final agreed set of draft Orders. These Orders respond to the feedback given by the court on the basis of the detailed evidence provided by the deponents.<sup>9</sup> Some minor grammatical amendments have been made. The amendments have not been tracked as they do not change the substance of the Orders.

[11] 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.

  
J E Borthwick  
Environment Judge



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<sup>9</sup> Memorandum dated 13 July 2018.



**Franz Josef Wastewater Treatment Plant - Key Milestones - dated 25 July 2018**

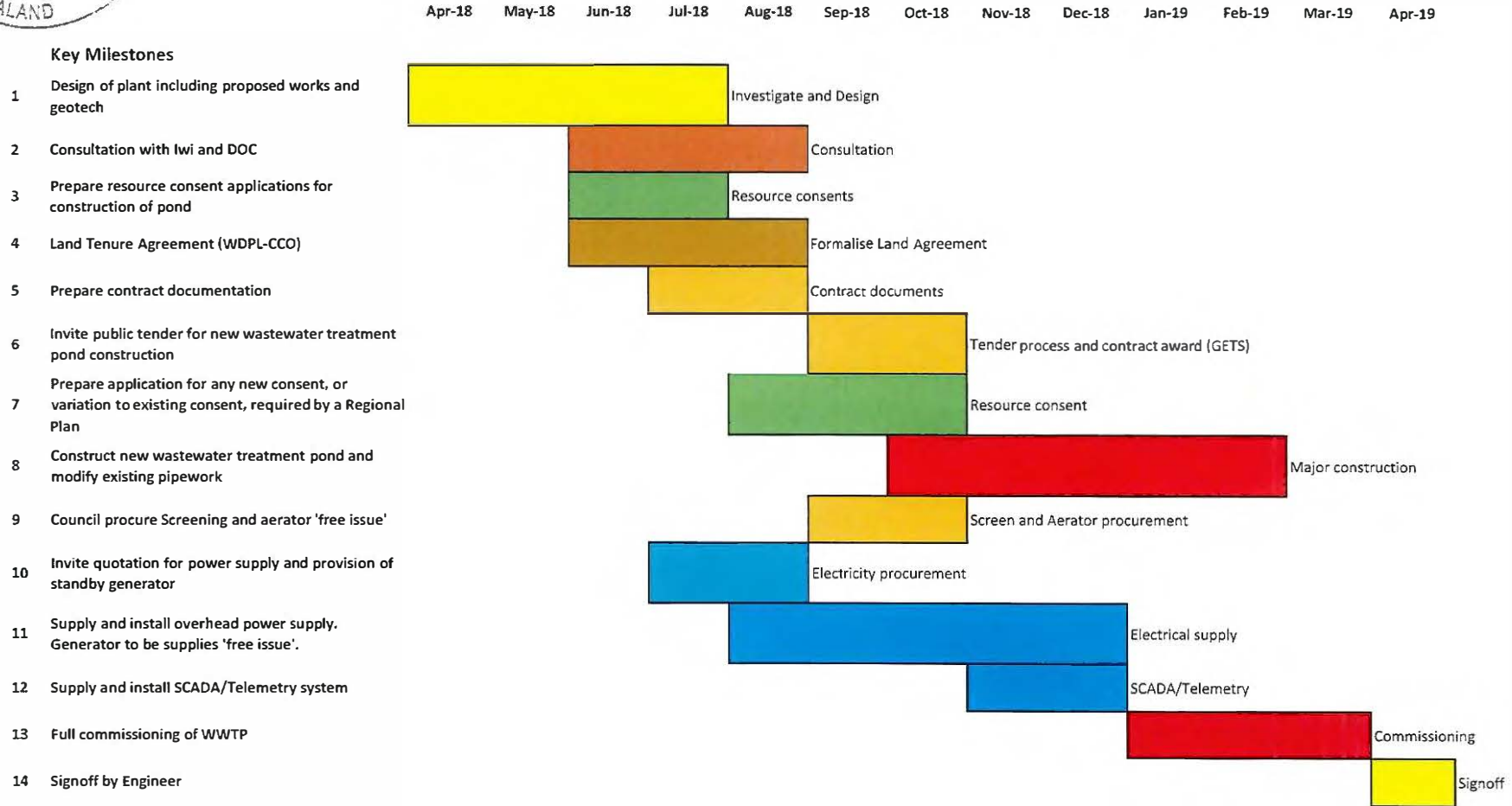




Table 2-4: Design Flows<sup>1</sup> for new WWTP (excluding septage)

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