

From:  Paul Thompson <Paul.Thompson@eliotsindair.co.nz>  
To:  Suzanne Blyth  
Cc:  
Subject: RE: [#393569] RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Hi Suzanne

Thank you for your email.

### LWRP Rule 5.89

We are of the view that Rule 5.89 is relevant to the proposal during its construction phase only.

#### *Municipal Solid Waste*

5.89 *The discharge of municipal solid waste or hazardous waste into or onto land, or into or onto land in circumstances where a contaminant may enter water and is not categorised as a prohibited activity is a discretionary activity.*

5.90 *The discharge of municipal solid waste into or onto land, or into or onto land in circumstances where a contaminant may enter water, where the discharge is:*

- (a) in the Christchurch Groundwater Protection Zone as shown on the Planning Maps; or*
- (b) in a Group or Community Drinking-water Protection Zone as set out in Schedule 1;*

*is a prohibited activity.*

We accept the Asbestos Containing Material being brought to the site is a hazardous substance and therefore accept the proposal involves 'hazardous waste' for the purposes of Rule 5.89.

The definition of discharge in the RMA says 'discharge includes emit, deposit, and allow to escape'. In the event an accidental release of ACM takes place (which could only occur during the construction phase) we consider a 'discharge' would occur notwithstanding that there would be no intent to 'allow to escape'. In coming to this view we note that Westlaw NZ provides the below commentary on the RMA definition of 'discharge'.

#### *A2.49.01 Ordinary meaning of "discharge"*

##### *(1) McKnight v NZ Biogas*

*The full Court of Appeal in McKnight v NZ Biogas Industries Ltd [1994] 2 NZLR 664; [1994] NZRMA 258, held that "discharge" encompasses the consequences of activities that are broader than direct action. The inclusion of "emit" also points to this interpretation. That is so, even for the particular meaning, "allow to escape", that implied both awareness and ability to control.*

##### *(2) Doug Hood Ltd*

*Doug Hood Ltd v Canterbury RC [2000] 1 NZLR 490; [2000] NZRMA 166 (HC), involved the discharge of dam materials into a river. The High Court adopted the ordinary meaning of "discharge" in this case. See also [A15.02](#).*

Our reading is that our precautionary approach is aligned with the interpretation of the Courts.

On completion of the containment cell we do not consider there is any potential for a 'discharge' to occur even on a precautionary basis and therefore Rule 5.89 only applies in relation to CRC167579.

As such we consider CRC167579 should refer to the 'discharge of a hazardous substance' not CRC167580, and the draft conditions of consent be amended to this effect.

#### Request for Extension of Time

I have put the request for an extension of time to determine the application to the applicant however I regret to inform you that Penley Ltd are not agreeable at this time.

They do not agree that the ECan decision need follow a CCC decision. Simply, a project can only be implemented if all the required consents and approvals are in place. This is a matter for the applicant not a Council.

The alignment of conditions of a consent to ensure consistency and avoid unnecessary duplication can take place by which ever Council (CCC or ECan) makes their decision last.

Penley Ltd reserve however the right to agree to an extension of time once a decision has been made.

We look forward to hearing from you soon.

Regards,

Paul

**From:** Suzanne Blyth [<mailto:Suzanne.Blyth@ecan.govt.nz>]

**Sent:** Thursday, 30 June 2016 5:17 p.m.

**To:** Paul Thompson

**Subject:** RE: [#393569] RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Hi Paul,

Thanks for the call today about consent conditions and comments about Rule 5.89.

I have passed on your query with regards to Rule 5.89 and can confirm our position on Monday 4 July.

In the meantime if you come to a conclusion on whether the applicant seeks a consent under Rule 5.89 that would be helpful. Once a decision on the consent application is made I will send out a final version of the consent conditions.

Regards  
Suzanne

**From:** Paul Thompson [<mailto:Paul.Thompson@eliotsinclair.co.nz>]  
**Sent:** Thursday, 30 June 2016 4:23 p.m.  
**To:** Suzanne Blyth  
**Subject:** RE: [#393569] RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Hi Suzanne

Just to confirm I have some comments to make on the draft conditions, when you have time to discuss.

Regards, Paul

**From:** Suzanne Blyth [<mailto:Suzanne.Blyth@ecan.govt.nz>]  
**Sent:** Thursday, 30 June 2016 10:48 a.m.  
**To:** Paul Thompson  
**Subject:** RE: [#393569] RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

No sorry – I meant 4<sup>th</sup> July.

I have been asked again whether the applicant would consider extending the timeframes to enable Environment Canterbury to align our decision making with CCC?

Would the applicant consider extending the timeframes so that Environment Canterbury can make a fully informed decision on the application? Once the CCC grant/ decline decision, the CRC will follow very promptly.

Extending the timeframe would also enable the conditions to be aligned – which is unlikely if the CRC decision is made prior to the CCC decision.

Policy 18.3.3 of the RPS recommends an integrated approach across agencies for the management of hazardous substances. Given CCC responsibilities for the land use and development it would be prudent for that decision to be made first as we do not want to grant a consent for an activity that cannot be exercised.

Suzanne

**From:** Paul Thompson [<mailto:Paul.Thompson@eliotsinclair.co.nz>]  
**Sent:** Thursday, 30 June 2016 9:57 a.m.  
**To:** Suzanne Blyth  
**Subject:** RE: [#393569] RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Thanks Suzanne I'll have a look at the draft conditions and get back to you.

Did you really mean 29 July?

Regards, Paul

**From:** Suzanne Blyth [<mailto:Suzanne.Blyth@ecan.govt.nz>]  
**Sent:** Wednesday, 29 June 2016 9:13 p.m.  
**To:** Paul Thompson  
**Subject:** RE: RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Kia ora Paul,

I will be passing on my report tomorrow for the and hope that the decision will be made on Monday 29 July.

I have made some revisions to the conditions (in red or track changes) – would you like to review them – if so would the applicant consider extending the timeframe for the review? The changes are not significant, however I have included the covenant that you sent through to align with any CCC conditions.

Regards  
Suzanne

**From:** Paul Thompson [<mailto:Paul.Thompson@eliotsinclair.co.nz>]  
**Sent:** Thursday, 23 June 2016 10:44 p.m.  
**To:** Suzanne Blyth  
**Subject:** Fw: RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Hi Suzanne

Attached for your information.

Can you please advise on the timeframes ECan are working towards making their s.95 and s.104 decisions.

regards

Paul

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**From:** Botha, Carlo <[Carlo.Botha@ccc.govt.nz](mailto:Carlo.Botha@ccc.govt.nz)>  
**Sent:** Wednesday, 22 June 2016 4:55 p.m.  
**To:** Paul Thompson  
**Cc:** Lowe, Paul  
**Subject:** RMA92032968 - RMA/2016/869 - 318 Kennedys Bush Road, Halswell s95 Decision

Hi Paul,

Please find attached the Commissioners decision on the s95 Report for the above consent.

Please contact Council Senior Planner Paul Lowe if you have any questions.

Kind Regards,

**Carlo Botha**

Planner

Resource Consents Unit

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