

**BEFORE THE CANTERBURY REGIONAL COUNCIL (CRC)**

**IN THE MATTER OF**     the Resource Management Act 1991 ('the RMA')

**AND**                     A RESOURCE CONSENT APPLICATION by Oceania Dairy Limited under section 88 of the RMA for the construction of a 7.5 kilometre pipeline and discharge of treated wastewater from a milk-processing factory situated at 30 Cooney's Road, Glenavy, into the Coastal Marine Area.

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**FIRST MINUTE OF THE HEARINGS PANEL**

**7 MAY 2020**

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## **PURPOSE**

- 1 The purpose of this minute is to;
  - (a) inform participants of the Commissioner appointments to the Panel of Independent Commissioners (the 'Panel') by the Canterbury Regional Council (CRC) and;
  - (b) issue hearing preparation directions for the applications for resource consent filed by Oceania Dairy Limited (Oceania) under identifier numbers CRC201187, CRC201191, CRC201192, CRC201188, CRC201190 and CRC201194 for the purpose of advancing, during the COVID-19 lockdown period and beyond, toward a hearing in person.

## **APPOINTMENT OF PANEL MEMBERS AND BACKGROUND**

- 2 On or about 24 March 2020 Paul Rogers, Emma Christmas and Hoani Langsbury, all Ministry for the Environment accredited Independent Commissioners, were appointed to the Panel to hear and decide the applications for resource consent filed by Oceania described above. Paul Rogers was appointed Panel Chair.
- 3 On 24 March 2020 CRC, via the hearings Administrator, informed all hearing participants that the hearing scheduled to commence on 22 April 2020 would be postponed due to the COVID-19 lockdown.
- 4 While the hearing remains postponed Commissioners consider progress can still be made with hearing preparations with a notice of hearing to then issue.
- 5 The Commissioners understand that all section 42A reports have been completed and have been circulated to all participants and those reports have been loaded to the relevant page of the CRC website.

## **EVIDENCE CIRCULATION**

### **Oceania**

- 6 The Commissioners understand that Oceania ceased evidence preparations upon receiving notice of the hearing postponement. The position of other participants in respect of evidence preparations is unknown.

- 7 The Commissioners request that Oceania circulates expert evidence within 15 working days of receipt of this minute.

### **Other Hearing Participants**

- 8 As to all other participants the Commissioners request they circulate any expert evidence within 20 working days of receipt of this minute.

### **PANEL TO ISSUE QUESTIONS**

#### **Questions Process**

- 9 The members of the Panel have decided via the Hearings Administrator to put in writing prior to the commencement of the hearing any questions they have arising from the Application documents, the reporting officers' reports and the applicant's expert evidence.
- 10 The Panel's expectation is that those questions will be answered both within an addendum to the reporting officers' reports and within expert evidence, all of which is to be pre circulated prior to the hearing.
- 11 The answers to the Panel's questions, if included within the body of the evidence and/or report, can be identified by way of footnote or some other identifier. Alternatively the answers to the Panel's questions could be provided in a separate appendices to the evidence or officers' reports.
- 12 The Hearings Administrator will circulate all of the Panel's questions by email to the respective parties and place those questions on the CRC hearings web page.
- 13 The Panel's purpose in asking questions prior to the hearing is to facilitate an efficient hearing process, to elicit informed answers to the Panel's queries and to enable key issues to be fully explored.

#### **Questions for the Oceania**

- 14 The Panel will first issue Oceania questions arising from the application documents. The Panel requests that Oceania's witnesses incorporate the answers to those questions in the manner detailed above within their written evidence which is to be provided within 15 working days of receipt of this minute.

- 15 Any further questions the Panel may have arising from Oceania's evidence will be then provided to Oceania. Oceania is to respond to those questions within 3 working days of receiving those questions.
- 16 If any other parties' experts, the lay submitters or reporting officers wish to respond to those questions and answers from Oceania then they can do so during their presentations at the hearing.

### **Questions for the Reporting Officers**

- 17 The Panel will next issue written questions to the section 42A reporting officers and their experts, with responses to be provided in the manner described above, within 3 working days of receiving the questions.
- 18 Reporting officers are also requested to take note of the Panel questions of other participants and they are welcome to respond to those questions and answers within their reports and / or further presentations to the panel.

### **Other Experts**

- 19 Where submitters who wish to be heard call expert evidence, the Panel may issue written questions in the manner described above. Those experts are directed to respond to Panel questions in the manner detailed above no later than 2 working days prior to their scheduled appearance at the hearing.

### **Lay Submitters**

- 20 The Panel will not ask written questions of lay submitters prior to their appearance at the hearing. However, the Panel may ask lay submitters questions when they appear at the hearing.
- 21 If the Oceania and other participants' experts and lay submitters wish to respond to the Commissioners' questions and answers from any other participant then they can do so during their presentations at the hearing.

## **Questions at the Hearing**

- 22 The Panel may still ask questions of any participant at or during the hearing, even if written questions have already been put to those participant.

## **REQUEST FOR LEGAL SUBMISSIONS**

- 23 The RMA does not provide the Panel with power to require legal submissions from participants to be provided to the Panel prior to the hearing.
- 24 However, we request that Oceania, and any other participant engaging legal counsel to represent them to provide their written legal submissions 3 working days prior to their scheduled appearance at the hearing.

## **SITE VISIT**

- 25 Oceania advised it is prepared to obtain all necessary Civil Aviation and other permissions to operate aerial drones to provide video footage of the proposed pipeline route.
- 26 The Commissioners consider this would be very helpful and in all likelihood would dispense with the need for a site visit.
- 27 Turning to what the footage should cover the Commissioners ask that the footage include the existing plant and its surrounds including the current land based disposal system. The footage should include the proposed pipeline route. The flight elevation, subject to achieving regulatory compliance, should be sufficient to see the route as well as its immediate surrounds. The seaward disposal area should also be included as well as coverage of the foreshore area including the break in and through the foreshore land formation.
- 28 If the above includes flying near submitter properties then it would be helpful they be identified.
- 29 The video footage or other form of record would need to be capable of being replayed on computers and laptops. Regard should be had to file size and the ease of downloading for parties viewing the footage. It may be necessary to present the flyover in a number of smaller files.

- 30 An audio to accompany the video footage for the purpose of identifying features and landmarks and to provide an informative commentary on the video would be extremely helpful.
- 31 If those submitters and Section 42A officers who wish to be heard have any particular requests as to areas or features that should be included within the drone flight path they are to advise the hearings administrator within 5 working days of receiving this minute.
- 32 Following receipt of any requests Commissioners will confirm the flight path and timing of circulation of the video footage.

### **THE HEARING**

- 33 At the time of preparing this minute the country moved out of Alert Level 4 on Monday 27 April at midnight and entered Alert Level 3 until 11 May, at which time Alert Level 3 will be reviewed.
- 34 Alert Level 3 rules are not conducive to holding a resource consent hearing in the usual way. So alternative arrangements utilising web based platforms needed to be explored.
- 35 Oceania and the section 42A reporting officers have confirmed they are open to, and have the capability to, conduct a hearing using an online meeting platform such as Microsoft Teams, which is an online video conferencing platform. CRC utilise that platform.
- 36 The Hearings Administrator on behalf of the Commissioners approached the remaining hearing participants seeking views on utilising web based platforms instead of a hearing in person. While some participants agreed others expressed concern about both access to and reliability on internet connections. Some additional concerns were raised about familiarity with such platforms with suggestions that lack of familiarity could cause disadvantage, A preference for face to face communication was expressed along with the opportunity to be present at a hearing throughout. We acknowledge these preferences are not always achievable utilising an internet connection.
- 37 Alternatives are available to those who consider they are disadvantaged by the use of such platforms. They include use of telephone and perhaps appearances in person. However because Alert level 2 rules are not yet known personal appearances may also be challenging. In addition some participants raised issues

relating to health risks given the current status of the COVID- 19 pandemic. These matters if they eventuated could cause for a disjointed and extended hearing process.

- 38 We have helpfully be made aware of the COVID-19 Response (Further Management Measures) Legislation Bill particularly schedule 8. While only a Bill schedule 8 enables hearings using remote access facilities during the COVID-19 response period, provided it is appropriate and fair to do so and the decision maker is satisfied that the necessary remote access facilities are available.
- 39 Taking all of these matters into account, including, the Bill, the importance of providing a fair hearing for all, the current state of preparation for the hearing, how much more time will be required to be ready for a hearing, the improving COVID- 19 circumstance nationally, we have decided not to have a hearing utilising an on line video conferencing platform.
- 40 So we direct all participants to continue preparation for an in person hearing for which a hearing notice inclusive of commencement date and venue will soon issue.

#### **CORRESPONDENCE INCLUDING RESPONSES CONCERNING THIS FIRST MINUTE**

- 41 Any correspondence should be directed to Alison Cooper, Hearings Administrator at CRC Email: Alison Cooper [hearings@ecan.govt.nz](mailto:hearings@ecan.govt.nz)
- 42 The Hearings Administrator will ensure circulation of all evidence and posting of the same to the relevant page of the CRC website, enabling all participants to access and review relevant information.
- 43 A number of directions and requests have been made of Participants. The Commissioners will assume in the absence of any form of response the relevant participant is supportive of the relevant direction and will proceed accordingly.

P G Rogers

Paul Rogers

**Independent Commissioner – Chair- on Behalf of the Panel**

Dated: 7 May 2020