



Hans van der Wal  
Barrister  
027 787 8052  
Hans@Hansvanderwal.co.nz

Walker Street Chambers  
DX WX11109  
Christchurch  
Also at 14 Queen Street  
Blenheim

16 August 2022

Tasman District Council  
Private Bag 4  
Richmond 7050

Att: Paul Gibson

By email: [paul.gibson@tasman.govt.nz](mailto:paul.gibson@tasman.govt.nz)

Dear Paul

**Further Information Request for Resource Consent Applications RM210785 & RM210786 – Ruru Building Limited at 54 Green Lane, Motueka**

1. I am in receipt of your letter of 12 August 2022.

**Meeting**

2. In your email of 27 March 2022, in response to my request to meet with you, you stated *“Once I have received comments from internal staff re their respective areas I will be in a position to meet to discuss the further information. I will advise of this as soon as I can.”*.
3. In view of your 12 August letter it seems you have received the comments from internal staff you were awaiting to schedule a meeting. It appears you have reneged on your commitment to meet once you had received that information. My client still seeks such a meeting. Please provide proposed a date and time so that I can obtain instructions regarding availability. While we await that meeting, I wish to record some matters arising from your 12 August letter.

**Section 91 Request**

4. My client is seeking professional advice from Envirolink Ltd on the technical issue you raise in your request under s91 Resource Management Act 1991 (RMA) for a further resource consent application. Pending receipt of that professional advice my client reserves its position regarding the appropriateness of such a request.

**Wastewater Details Site Layout**

5. The revised site layout plan to identify the relocated wastewater management system will be provided as soon as practicable.

## **Degree of Obstacle Limitation Surface (OLS) Intrusion**

### *Request Invalid*

6. At the top of page two of your 12 August 2022 letter under the heading “Outstanding Further Information” you state that the 12 October 2021 further information request included a request for a plan “per the corrected Schedule 16.11 dated 22 July 2022 (copy attached)”. With respect, this cannot be right, because on 12 October 2021 that “corrected Schedule” was not yet in existence.
7. This is therefore a request for new further information not yet requested. However, that request is invalid, because it fails to set out the reasons for that request as required in s92(3).

### *Reasons for Request*

8. I cannot see how a valid request for such an assessment can be made.

### “Correction” Invalid and Not Retroactive

9. For the reasons set out in my letter of 12 August to the TDC’s Mr Phil Doole, the “correction” cannot be validly done under Clause 20A Schedule 1 RMA, because this is neither a correction nor minor. The only way in which it could validly be done is via a plan change following the full notification and hearing requirements of Schedule 1 RMA.
10. As a result, the assessment is sought against an invalid document that is irrelevant to the current application.
11. That matter aside, if the “correction” were valid, Section 88A indicates that changes to planning documents cannot have retroactive effect. It certainly cannot affect the current application. That would be giving it an impermissible retroactive effect.

### No Valid Reason for Request

12. In your 12 August 2022 letter you state that Mr Phil Doole regards the request for an indication of the extent of any intrusion into the District Plan’s purported OLS as a reasonable request. I have received from Mr Doole three letters, dated respectively 15 July 2022, 22 July 2022 and 10 August 2022.
13. In my letter of 15 March 2022 that was provided with the response to the Council’s further information request, I pointed out to you that:
  - a. Irrespective of whether it is possible to establish that there is a breach of the District Plan’s OLS, the activity status of the application is fully discretionary<sup>1</sup>. It is therefore not necessary to have the information you have requested in order to determine the activity status. Importantly, it is also not something that needs to be determined to be able to consider the effects on aviation, which can be considered irrespective of whether there is a breach of that OLS<sup>2</sup>, since this is a fully discretionary activity.
  - b. The effects on aviation are nil<sup>3</sup>. This is irrespective of whether there is an OLS-related rule breach. They have already been fully addressed by Mr Haines.

---


<sup>1</sup> Paragraph 39

<sup>2</sup> Ibid

<sup>3</sup> Paragraph 48.

14. In view of that and Mr Haines' report, whether there is, or if there is, what the extent is of, an intrusion into the District Plan's OLS is irrelevant to the:
  - a. The activity status;
  - b. Whether effects on aviation can be considered and
  - c. If so, what the extent of those effects is.
15. Even if there were to be a contravention of such a district plan OLS, it would only result in the effects on aviation being something that can be considered as a result of that breach (as well), which, as a fully discretionary activity, they can already. Those effects have been assessed by Mr Haines and have been demonstrated to be nil, irrespective of whether there is a breach or if there is, what the extent of such a breach might be.
16. Neither your 12 August 2022 letter nor either of Mr Doole's letters have responded to this issue. Mr Doole has purely concentrated on his views regarding the validity of the relevant rule. You (and Mr Doole) have therefore failed to consider a very relevant matter that shows that the effects on aviation are already fully addressed, even if the view were to be taken that the relevant rule is valid. That is a crucial matter without which you cannot possibly determine whether that further assessment is still required.
17. In view of what I have pointed out above and in my 15 March 2022 letter regarding the actual effects on aviation, that further information cannot be required to better understand the effects of the proposal, because those are fully addressed by Mr Haines' assessment. It is therefore outside the scope of the power given to the Council under s92 RMA.
18. The current suspension of the application under s92 on that basis and the request for assessment against the "corrected" schedule are invalid.
19. I await your earliest response to the above matters.

Yours Faithfully

  
Hans van der Wal  
**Barrister**