

Full Council

19 March 2026

Additional Advice Note

Department: Property & Infrastructure

Title | Taitara: Shotover Wastewater Treatment Plant (SWWTP) Disposal Solution

Overview

1. This additional advice note is provided to Council as a supplementary memorandum to the Shotover Wastewater Treatment Plant (SWWTP) Disposal Solution Council Report. In recent weeks, the discussion of the matter amongst Councillors has focused on the potential extension of the timeline of the long-term SWWTP consent.
2. The substantive report addresses officers' advice and supporting information, which remain the recommended approach. However, if Council seeks to extend the timeline, this advice is compiled to provide additional information so that an informed decision can be made.
3. This memorandum provides Council with specific commentary and advice regarding the implications of a 12 month extension to the timeline, in order to determine the preferred mechanism for the disposal of treated wastewater from the SWWTP. The intention of the potential extension of this timeline is to enable wider options analysis and additional engagement with the community and Kāi Tahu. The extension of the timeline would result in discharge to the Shotover continuing for a longer period of time.
4. This memorandum will address the implications of a timeline extension for the following:
 - a. Enforcement order proceedings
 - b. Current discharge to the Shotover River
 - c. The Water Services Delivery Plan (WSDP)
 - d. The Water Services Council-Controlled Organisation (WSCCO)
 - e. Land-based Disposal Options
 - f. Legal Position

Implications for Enforcement Order Proceedings

5. The discharge of treated wastewater into the Shotover River is subject to a short-term consent application currently before the Environment Court. A long-term consent option must be found to comply with the Enforcement Order, within the timeframe ordered by the court.
6. Council is currently subject to an Enforcement Order. That order requires Council:
 - a. *By 31 May 2026 - make application for resource consent.*

- b. *By 31 December 2027 - completed Engineering design for the New Disposal System*
 - c. *By 31 December 2030:*
 - i. *developed and implement a long-term solution (New Disposal System) for the disposal field,*
 - ii. *stopped discharging under the short-term consent*
7. If the long-term solution is extended, consequential extensions will be required for the short-term solution. This could require an extension of an additional 2 years, or until 31 December 2032 dependent on the long-term solution decision.
 8. The short-term solution is before the Court, and any extension of the long-term solution would require amendment of that consent also. This would be a substantial amendment to the short-term consent in terms of timeframes, could increase potential effects, and the Court would need to consider the changes in accordance with the scope of the original application.
 9. The general rule is that if a consent application is to be modified, and modification reduces the scale or intensity of adverse effects, it is within jurisdiction/scope.
 10. In this case, a modification of the consent application would result in an increase in potential effects because of the extended timeframe and the need to accommodate additional wastewater volumes. This means that the Court might consider this to be a different application which could prejudice other parties unless a new application is lodged and notified.
 11. An extension of time was not anticipated by the ORC at the time it filed Enforcement Order proceedings, and despite QLDC questioning the shorter timeframes, ORC was resolute. The Court is also expecting the matter to proceed with haste and has made orders accordingly.

Implications for Current Discharge to the Shotover River

12. A 12 month extension in deciding on the long-term option will result in a continuation of the existing discharge into the Shotover River for longer (as opposed to a discharge into the Kawarau River which has the comparative advantages outlined in paragraph 14 below.
13. A 12 month extension introduces uncertainty in the programme and would require the extension of the short-term consent as outlined above. It is unlikely that the Shotover River discharge could be replaced in accordance with the current deadline under the Enforcement Order (December 2030). It is likely that this would last for up to two years longer than it would if the timeline was not extended.
14. As outlined in the substantive paper, it remains an option for Council to consider proceeding with the recommended Option A, whilst instructing additional work to occur in parallel. This reduces the risk of non-compliance with the Enforcement Order and enables the discharge into the Shotover River to be discontinued in the shortest possible time. The Shotover River is a dynamic, braided river with significantly lower flows than the Kawarau River. This requires an increased

length of mixing zone and accordingly, increased risk of adverse effects in close proximity to the discharge point.

15. Work that could be undertaken in parallel to Option A includes further engagement with mana whenua, consultation with the community, or more detailed exploration of alternative disposal options. Any such work could occur at the direction of Council.
16. It should be noted that the Council is satisfied it has met its obligations under s77(1)(c) of the Local Government Act through the engagement that has been undertaken with the iwi at various levels since the Project's outset, and which has been ongoing (including through regular hui).

Water Services Delivery Plan Implications

17. Council submitted its Water Services Delivery Plan detailing wastewater capital expenditure projects for 2024/25 to 2033/34 totalling \$733.6 million, including \$77.09 million allocated to the Shotover disposal project. The Department of Internal Affairs (DIA) approved the plan, accompanied by recommendations to monitor the pricing strategy, borrowing requirements and headroom, as well as the delivery of services and the capital programme throughout the implementation phase.
18. Operational quarterly reports on the implementation plan, accuracy of assumptions and departures of the approved WSDP are required to be provided to DIA commencing April 2026. Significant cost changes as a result of further options analysis will require justification and rationale.

WSSCO Implications

19. A 12 month extension to the timeline would place the decision point only three months before the start of the WSSCO. By this time the new WSSCO will likely have both a Board and Chief Executive in place. Given the significance of this decision for the WSSCO's capital programme and overall financial position it is reasonable that the Board would expect involvement in the decision making associated with the SWWTP as its largest treatment facility.
20. The Water Services Strategy is a WSSCO artefact (which is to come into force from 1 July 2027) and this will be the document that gives effect to the decision on the preferred option.

Land-based Disposal Option Implications

21. Further investigation of land-based options could introduce delays into any long-term decision. However, it is understood that land-based options may be considered a better proposition by parts of the community and mana whenua.
22. Further technical investigations would be required including the identification of viable land parcels and the infrastructure connections to those parcels could take many years to complete.

Resource consents/Designations would be required, with adjacent landowner approvals, or in the absence of approvals then resolution of objections in order to expedite the process.

23. A fully land-based disposal option could take between 5 to 10 years (and potentially more depending on process) to implement and an interim wastewater disposal solution would be needed, beyond the short term consent. This could require significant additional funding, but this analysis has not yet been undertaken.

Legal Implications

24. Key legal aspects that should be taken into consideration by Council are as follows:

- a. Extension of Court deadlines – justification for additional time
- b. Implications if the Court does not approve the extension promptly
- c. Gap between short and long-term consents
- d. Risk of legal challenge to Council resolutions
 - i. Value of expert evidence
 - ii. Cost-effectiveness test s254
 - iii. Identifying reasonably practicable options

Extension of Court deadlines – justification for additional time

25. In Court proceedings the usual process is to:

- a. propose draft orders and reasons to the other parties to the legal proceedings;
- b. seek their consent;
- c. potentially negotiate over some of the detail; and
- d. then either:
 - i. present a consent order to the Court for approval; or
 - ii. go to a contested hearing if one or more of the other parties do not agree; and
- e. the Court will make a decision, either “on the papers”, at a hearing, or by way of a reserved decision following a hearing. Consent orders are more likely to be granted, but the Court will in any case scrutinise the evidence filed, apply the applicable law and make a ruling based on its own judgment.

26. Usually when applying to the Court for an extension, the applicant will outline:

- a. what has already been done;
- b. specify what additional steps are proposed;
- c. timeframes for each step; and
- d. monitoring and reporting back.

Including this information for each reason for extension would give the application its best chance of success.

27. In order to apply for the extensions, QLDC would need to liaise with all other parties to the proceedings (both the proceedings relating to the Enforcement Order and the proceedings relating to the direct referral of the short term consent) to determine whether they will consent to the extensions and then file applications to Court in each proceedings. If any of the other parties object, or if the Court so requires, then there may be a contested hearing. Alternatively if the other parties consent and the judge is minded to, then the Court may make a decision “on the papers”. Note that in relation to the short term consent, a fresh application and/or renotification process will be required as explained in paragraph 10.
28. QLDC is likely to be required to file an affidavit providing evidence in support of the applications. The rationale for the extension should be included in the resolution of Council.
29. There should be sufficient time to file the applications and have them heard prior to the first deadline (31 May 2026). However, whether or not the Court issues a decision prior to the deadline is in the hands of the judge.

Implications if the Court does not approve the extension promptly

30. The legal ramifications if the extension is not granted are serious, and are already set out in the Council Report. A key matter for Council to consider is that it might not know whether the extension will be granted until after the date for compliance with the deadline passes. Council should consider this risk and what the fall-back position will be if this transpires and Council finds itself in breach of the Court order.

Gap between short and long-term consents

31. As explained in paragraphs 8-11 above, QLDC has applied for a short-term consent for the current discharge to the Shotover, as required under the emergency works legislation. The application, which has been publicly notified and which other parties (including iwi) have submitted on, is for a timeframe which is aligned with the Environment Court deadlines. If the deadlines change, then there is likely to be a gap in the consents, unless changes are made to the short term consent timeframe.

Risk of legal challenge to Council resolutions

Judicial review

32. The most likely legal challenge to Council decisions on this matter would be via judicial review proceedings in the High Court (not the Environment Court). Such proceedings often allege a number of defects, and these may include “unreasonableness” and failure to comply with specific legal requirements.
33. Anyone has standing to bring judicial review proceedings. This may include people contending that Council should have made a stronger environmental decision or changes to the current operations, or people who are focussed on rates impacts and are satisfied with the current

operational circumstances. However, judicial review is not concerned with whether the Court agrees that Council made the best decision; it is only concerned with the legality of the decision and the process by which it was made.

Value of expert evidence

34. A key issue in any judicial review is likely to centre around the analysis of the long-term options, and whether Council's decision was defective in terms of "unreasonableness" and compliance with specific legal requirements. This is where a consideration of the expert advice received by Council may be important. Generally, where opinion evidence is required it must be given by qualified experts, and the Court will give weight to such evidence; however it will not give weight to opinion provided by a person who is not qualified in the relevant field.

Cost-effectiveness test s254s

35. In particular, on the question of cost-effective options and whether Council has chosen the most cost-effective option, the Court will consider what the expert advice received by Council said about what was cost-effective.

Identifying and assessing reasonably practicable options

36. Areas of potential legal challenge on this point might include:

- a. Whether there are reasonably practicable options that were not identified and assessed. Again, what is "reasonably practicable" could be a subject on which expert evidence is called, including the evidence already provided to Council by its consultants.
- b. Whether Council rules out an option that was reasonably practicable without a proper assessment of its advantages and disadvantages, and without applying the cost-effectiveness test, in which case it may be susceptible to challenge.