

IN THE ENVIRONMENT COURT
AT WELLINGTON

I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

IN THE MATTER of appeals under cl 14 of Schedule 1 to
the Resource Management Act 1991

BETWEEN MASTERTON DISTRICT COUNCIL
(ENV-2019-WLG-000110)

CARTERTON DISTRICT COUNCIL
(ENV-2019-WLG-000112)

PORIRUA CITY COUNCIL
(ENV-2019-WLG-000116)

WELLINGTON WATER LIMITED
(ENV-2019-WLG-000123)

RANGITĀNE TŪ MAI RĀ TRUST
and RANGITĀNE O WAIRARAPA
INC SOCIETY
(ENV-2019-WLG-000125)

SOUTH WAIRARAPA DISTRICT
COUNCIL
(ENV-2019-WLG-000127)

Appellants

AND WELLINGTON REGIONAL
COUNCIL

Respondent

Court: Environment Judge B P Dwyer sitting alone under s 279 of the
Act

Date of Order: 27 October 2021

Date of Issue: 27 October 2021

MASTERTON DISTRICT COUNCIL v WELLINGTON REGIONAL COUNCIL
(Topic 32)



CONSENT ORDER

- A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the changes set out in **Appendix A** be made to the Proposed Plan.
- B: The parts of the appeals concerning Topic 32 Water quality / discharges to water — Wastewater: definitions of existing discharge, new discharge, wastewater and wastewater network, Objective O50, Policies P68, P81, P82, P83, and P83A, and Rules R61 and R62 are otherwise dismissed.
- C: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] The Court has read the notices of appeal and the memorandum of the parties received 11 August 2021.

Other relevant matters

[2] The following persons gave notice of an intention to become parties to the appeals under s 274 of the Act, and have signed the consent memorandum setting out the relief sought:

- Kāpiti Coast District Council;
- Minister of Conservation;
- Wellington International Airport Ltd;
- Powerco Ltd;
- Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited; and

- Royal Forest and Bird Protection Society of New Zealand Inc.

[3] Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society, Masterton District Council, Carterton District Council/ South Wairarapa District Council, Wellington Fish and Game Council and Kāinga Ora - Homes and Communities did not sign the consent memorandum, but in accordance with the Court's direction in its minute dated 28 April 2021, they are deemed to have accepted the consent memorandum and order.

[4] The Regional Council advised that s 274 parties Federated Farmers of New Zealand, CentrePort Ltd and CentrePort Properties Limited, Fire and Emergency New Zealand and Kahungunu Ki Wairarapa were supplied with the consent order in accordance with the Court's 4 June 2021 direction. CentrePort Ltd and CentrePort Properties Ltd and Federated Farmers of New Zealand confirmed they have no interest in this Topic. As there was no response from Fire and Emergency New Zealand and Kahungunu Ki Wairarapa, it is assumed they have no interest in the matter.

[5] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order or are deemed to have done so in accordance with the Court's minute of 28 April 2021;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular,

Part 2.

B P Dwyer
Environment Judge



KEY:

Red track - changes made at mediation

Green track - changes in the Decisions Version of the PNRP, with clause 16 changes

APPENDIX A - RELEVANT PROVISIONS - (DECISIONS VERSION - WITH CLAUSE 16 CHANGES) - TOPIC 32

TOPIC 32 WORDING CHANGES

Existing wastewater discharge	<p>In the context of wWastewater discharged into fresh or coastal water from a wastewater treatment plant or a wastewater network means that is:</p> <p>a) a discharge already authorised by an existing resource consent resource consent at the time of application for a new resource consent relating to the same or similar activity (the replacement resource consent application may seek a different quality, and/or quantity, and/or discharge location within the same or a downstream waterbody), and / or</p> <p>b) discharges from previously occurring a heavy rainfall event overflows from a wastewater network that has occurred prior to 31 October 2020.</p>
New wastewater discharge	<p>A discharge of wastewater from a wastewater treatment plant not previously authorised by resource consent.</p> <p>In the context of wWastewater discharged into fresh or coastal water from a wastewater treatment plant or a wastewater network means a discharge that is not an existing wastewater discharge, not authorised by resource consent at the time of application for a resource consent, or a discharge that was authorised by a resource consent at the time of application for a new consent but is to be increased or otherwise altered by a new resource consent.</p>
Wastewater	Liquid waste (and liquids containing waste solids) from domestic, industrial or commercial premises, including, but not limited to, human effluent, grey water , sullage and trade wastes, but excluding stormwater.
Wastewater network	A community reticulated wastewater system, including, but not limited to, a network of devices, pipes and pump stations, designed to accept and transport wastewater from properties to a treatment plant and the discharge of treated wastewater from a wastewater treatment plant then to disposal.

Objective O50

Discharges of **wastewater** to fresh water are progressively reduced.

Policy P68: Avoiding Inappropriate discharges to water



Discharges to fresh and coastal water of:



- (a) untreated **wastewater**, except as a result of ~~extreme weather-related heavy rainfall event overflows or wastewater system failures or from recreational boating activities~~, and
- (b) **animal effluent** from an **animal effluent** storage facility or from an area where animals are confined, and
- (c) untreated industrial or trade waste, and
- (d) untreated organic waste or leachate from storage of organic material,

shall be avoided.

Policy P70: Managing point source discharges for aquatic ecosystem health and mahinga kai 

Where an objective in Table 3.4, Table 3.5, Table 3.6, ~~Table 3.7~~ or Table 3.8 of Objective O25 is not met, **point source discharges** to water shall be managed in the following way:

- (a) for an ~~existing activity discharge~~ that contributes to the objective(s) not being met, the discharge is only appropriate if:
 - (i) ~~the~~ **at a minimum** an application for a resource consent includes a defined programme of work for upgrading the ~~activity discharge~~, in accordance with **good management practice**, within the term of the resource consent, and
 - (ii) conditions on the resource consent require the **reduction of** adverse effects of the ~~activity discharge to be~~ **minimised** in order to improve water quality in relation to the objective(s) ~~not met~~ **within the term of the consent**, and
 - (iii) in determining the improvement to water quality required in (ii), and the timeframe in which it is to be achieved, consideration will be given to the discharge's contribution to the objective(s) not being met.**
- (b) for a **new activity discharge**, ~~other than a wastewater discharge~~, the discharge is ~~only appropriate~~ **inappropriate** if the ~~activity discharge~~ would ~~not~~ cause the affected fresh water body or area of coastal water to ~~become any worse~~ **decline** in relation to the objective(s), ~~except that a new temporary discharge to coastal water from a wastewater network or wastewater treatment plant to facilitate maintenance, repair, replacement or upgrade work that has temporary adverse effects may not be inappropriate.~~

~~In assessing the appropriateness of a new discharge or existing discharge, the ability to offset residual adverse effects may be considered.~~

Policy P81: Minimising and improving wastewater discharges



The adverse effects of existing **wastewater** discharges ~~of wastewater~~ to fresh water and coastal water shall be **minimised**, and:

- (a) in the case of existing **wastewater** discharges to fresh water ~~or coastal water~~ from **wastewater** treatment plants, the quality of discharges shall be progressively improved and the quantity of discharges shall be progressively reduced, and
- ~~(b)~~ in the case of existing **wastewater** discharges to coastal water from **wastewater** treatment plants, the quality of discharges shall be progressively improved where the discharge contributes to an objective in Table 3.3 of Objective O24 or Table 3.8 of Objective O25 not being met, and
- ~~(b)~~(c) in the case of existing **wastewater** discharges to fresh water or coastal water from **wastewater networks** overflows during or following rainfall events, the frequency and/or volume of discharges shall be progressively reduced.

Where improvements are required, these are undertaken within timeframes appropriate to the degree of improvement required and the level of effects of the discharge on the environment.

Policy P81A: Quality of existing wastewater discharges to rivers

The quality of existing **wastewater** discharges to rivers shall be assessed in relation to the following water quality guidelines in the receiving water after the **zone of reasonable mixing**:

- (a) when measured below the discharge point compared to above the discharge point:
 - (i) a decrease in the Quantitative Macroinvertebrate Community Index of no more than 20%, and
 - (ii) a decrease in water clarity of no more than:
 1. 20% in River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or
 2. 30% in any other river, and
 - (iii) a change in temperature of no more than:
 1. 2°C in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or
 2. 3°C in any other river, and

- (b) consider the extent to which the discharge causes the following to be exceeded:
- (i) the 7-day mean minimum dissolved oxygen concentration of no lower than 5 mg/L, and
 - (ii) the daily minimum dissolved oxygen concentration of no lower than 4mg/L, and
 - (iii) soluble carbonaceous biochemical oxygen demand (BOD₅) of no more than 2mg/L at flows less than flood flows, and
 - (iv) particulate organic matter (POM) no more than 5mg/L at flows less than median, and
 - (v) nitrate toxicity of no more than:
 - 1. 1mg/L (annual median) and 1.5mg/L (annual 95th percentile from monthly samples) in outstanding waterbodies (Schedule A1), River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or
 - 2. 2.4mg/L (annual median) and 3.5mg/L (annual 95th percentile from monthly samples) in any other river, and
 - (vi) ammonia toxicity (at pH 8 and 20°C) of no more than:
 - 1. 0.03mg/L (annual median) and 0.05mg/L (annual maximum from monthly samples) in outstanding waterbodies (Schedule A1), River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or
 - 2. 0.24mg/L (annual median) and 0.4mg/L (annual maximum from monthly samples) in any other river.

Policy P82: Mana whenua values and wastewater discharges



~~Reasonable steps shall be taken to reflect m~~**Mana whenua** values and interests shall be reflected in the management of wastewater discharges to fresh and coastal water and receiving waters, including adverse effects on Māori customary use, Ngā Taonga Nui a Kiwa, outstanding water bodies and mahinga kai.

Policy P83: Avoiding new wastewater discharges to fresh water

New wastewater discharges ~~of wastewater~~ to fresh water are avoided.

Policy P83A: Discouraging new discharges of treated wastewater to coastal water 

New discharges of treated **wastewater** to coastal water are discouraged, **unless:**

- (a) adequate consideration of alternative methods and sites has been undertaken, and
- (b) discharge to land is not practicable, and
- (c) the adverse effects of the discharge are **minimised**, and
- (d) one or more of the following applies:
 - (i) it is a relocation of a previous freshwater discharge, or
 - (ii) it is a discharge from an existing **wastewater** treatment plant for an increased volume, or
 - (iii) it is a discharge from an existing **wastewater** treatment plant to a new location to assist with achieving Objectives O24 and O25.

When considering the practicability of discharges to land, regard shall be given to new and emerging technologies.

Rule R61: Existing ~~w~~Wastewater discharges to coastal and fresh water – discretionary activity 

The discharge of **wastewater**:

- (a) into coastal water, or
- (b) that is an **existing wastewater** discharge into fresh water and meets the following conditions:
 - (i) the volume of the discharge is reduced **from that previously consented**, and
 - (ii) ~~the volume or concentration of contaminants is reduced~~ the loads of the contaminants monitored under the previous consent are reduced, **and or**
 - (iii) ~~the range of contaminants in the discharge is not increased~~
- (c) that is an **existing wastewater** discharge into fresh water as a result of a heavy rainfall event overflow, and the application is accompanied by a management plan to demonstrate how the frequency and/or volume of the discharge will be progressively reduced.

is a discretionary activity.

Notification

Any resource consent application arising from Rules R61 and R62 may be publicly notified; but shall be notified to the relevant iwi authority where their written approval has not been obtained.

Rule R62: ~~New~~ Discharges of wastewater to fresh water – non-complying activity

The discharge of **wastewater** ~~that is a new discharge~~ into fresh water that is:

(a) an existing **wastewater discharge** into fresh water that does not comply with Rule R61(b) or (c), or

(b) a **new wastewater discharge** into fresh water

is a non-complying activity.

