

**Before the Environment Court  
I MUA I TE KOOTI TAIAO O AOTEAROA**

<b>In the Matter</b>	<b>Of the Resource Management Act 1991</b>
<b>And</b>	<b>Of an appeal pursuant to Clause 14(1) of the First Schedule of the Act</b>
<b>Between</b>	<b>Carterton District Council Appellants</b>
<b>And</b>	<b>Wellington Regional Council Respondent</b>

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**Notice of Appeal by Carterton District Council against decision on the Proposed Natural Resources Plan for the Wellington Region**

**Dated 18 September 2019**

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CONSTRUCTION | INSURANCE | RESOURCE MANAGEMENT

Notice of Appeal

## Form 16

### Notice to Environment Court of appeal on provisions of the Proposed Natural Resources Plan for the Wellington Region

To

The Registrar  
Environment Court  
Wellington

1. Carterton District Council (“Carterton DC”) appeals against part of the decision of the Independent Hearing Panel appointed by the Wellington Regional Council in respect of the Proposed Natural Resources Plan for the Wellington Region (“PNRP”).
2. Carterton DC lodged submissions and further submissions against the PNRP.
3. Carterton DC received notice of the decision on 31 July 2019.
4. The decision was made by the Wellington Regional Council.
5. The part of the decision that Carterton DC appeals relates to:
  - 5.1 **Stormwater Network Management**

#### ***Appeal Point 1: Objective O48 - Stormwater Network Outcomes***

(a) ***PNRP Section:***

- (i) Section 3.11: Discharges to Land and Water - Objective O48

(b) ***Decision Appealed:***

The focus of the objective on all ‘adverse quality and quantity effects’ and omission from the objective of the expression ‘significant adverse’ effects.

(c) ***Reasons:***

Objective 48 has been amended to read: ‘*The adverse quality and quantity effects of stormwater discharges from the stormwater networks and urban land uses are improved over time.*’

Carterton DC’s submission sought that the expression ‘*effects*’ in the publicly notified Objective O48 be replaced with the expression ‘*significant adverse environmental effects*’.

The PNRP does not clearly identify the environmental effects associated with stormwater that this objective (and the suite of policies and rules that flow from it) are concerned to improve.

The section 32 report prepared in support of Objective O48 does not, either, identify the issue or the environmental effects that Objective O48 (and its related policies and rules) is attempting to address. The objective and its related policies and rules need to focus on significant adverse environmental effects.

(d) **Relief Sought:**

- (i) Amend Objective O48 by inserting the underlined expression ‘significant’ as follows, or other words that have equivalent effect:

*‘The significant adverse quality and quantity effects of stormwater discharges from the stormwater networks and urban land uses are improved over time.’*

**Appeal Point 2: Policies P73, P74, P75, P76 and P77, Schedule ‘N’ and - Local Authority Stormwater Networks**

(a) **PNRP Sections:**

- (i) Section 4.8.2 Policies P73, P74, P75, P76 and P77  
(ii) Section 12: Schedule ‘N’

(b) **Decision Appealed:**

The requirements in Policies P73 to P77 for ‘first-stage’ and ‘second-stage’ consents for the discharge of stormwater from local authority stormwater networks (including the requirements contained in Schedule ‘N’) and the requirement to minimise all adverse effects of stormwater discharge to the smallest amount reasonably practicable.

(c) **Reasons:**

Method M15 states that Wellington Regional Council will work with city and district councils and with mana whenua in a regional stormwater working group to (amongst other matters) support the development of stormwater management strategies and a monitoring and reporting framework.

The policies, and their requirements, are premature and should not have effect until the actions intended by Method M15 have been completed.

In the absence of clear evidence of the resource management issue that the policies are intended to address in Carterton’s

urban area, the policies and their requirements have the potential to impose unnecessary costs and uncertainty for the operation of stormwater networks (which are defined in the Plan as ‘regionally significant infrastructure’).

(d) ***Relief Sought:***

- (i) Delete Policies P73, P74, P75, P76 and P77 and Schedule ‘N’ or otherwise amend them so that their wording is not finalised and their implementation is deferred until completion of the actions specified in Method M15.

***Appeal Point 3: Rules R50 and R51 - Local Authority Stormwater Networks***

(a) ***PNRP Sections:***

- (i) Section 5.2 Rules for Discharges to Land and Water: Rules R50 and R51
- (ii) Section 12: Schedule ‘N’

(b) ***Decision Appealed:***

The rule requirements for ‘first-stage’ and ‘second-stage’ consents for the discharge of stormwater from local authority stormwater networks (including the requirements contained in Schedule ‘N’).

(c) ***Reasons:***

Method M15 states that Wellington Regional Council will work with city and district councils and with mana whenua in a regional stormwater working group to (amongst other matters) support the development of stormwater management strategies and a monitoring and reporting framework.

The rules are premature and should not have effect until the actions intended by Method M15 have been completed.

In the absence of clear evidence of the resource management issue that the Plan’s objective, policies and these rules are intended to address in Carterton’s urban area, the rules and the requirements of Schedule ‘N’ have the potential to impose unnecessary costs and uncertainty for the operation of stormwater networks (which are defined in the Plan as ‘regionally significant infrastructure’).

(d) ***Relief Sought:***

- (i) Delete Rules R50 and R51 and Schedule ‘N’ or otherwise amend them so that their wording is not finalised and their

implementation is deferred until completion of the actions specified in Method M15.

## 5.2 Management of Water Races and Clearance of Vegetation from Water Races

### *Appeal Point 4: Water Races and Category 2 Surface Water Bodies*

#### (a) **PNRP Sections:**

- (i) Section 2.2 Definitions: Definition of 'Category 2 Surface Water body'
- (ii) Section 5.4.3: Rule R97

#### (b) **Decision Appealed:**

The failure to explicitly exclude water races from the definition of 'Category 2 surface water body'.

#### (c) **Reasons:**

The expression 'Category 2 Surface Water Body' is used in Rule R97 which restricts livestock access to surface water bodies.

Carterton DC implements a code of practice for land use adjoining its water race network which addresses (amongst other matters) stock access to water races, fencing to exclude stock access and riparian planting along water races.

Carterton DC's experience, since the code of practice has been implemented, is that parts of the water race network are becoming significantly blocked by weed growth and parts are difficult to access for machine clearing.

Carterton DC is currently reviewing the code of practice, to address these challenges and wishes to ensure that the PNRP's definition of 'Category 2 Surface Water Body' excludes water races, so that the rules controlling fencing and stock exclusion do not conflict with its own code of practice or exacerbate the challenges it is facing throughout its water race network.

#### (d) **Relief Sought:**

- (i) Amend the definition of 'Category 2 Surface Water Body' to explicitly exclude water races; or
- (ii) Alternatively, amend Rule R97 to clarify that it does not apply to water races; or
- (iii) Such other or further relief as will achieve the same outcome.

***Appeal Point 5: Definition of ‘Drain’ and Rules R121, R122 and R129 and the Management of Water Races***

(a) ***PNRP Sections:***

- (i) Section 2.2 Definitions: Definition of ‘Drain’
- (ii) Section 5.5.5: Rules Controlling Activities in Beds of Lakes and Rivers: Rules R121 and R122
- (iii) Section 5.5.7: Rules for All Other Activities in the Beds of Rivers and Lakes: Rule R129

(b) ***Decision Appealed:***

The applicability of Rules R122 and R129 to water races (as a consequence of amendments made to Rules R121 and R122)

(c) ***Reasons:***

The amendments made to the definition of ‘drain’ do not explicitly exclude water races. However, the associated amendments to the definition of ‘highly modified river or stream’ clarify explicitly that, for the purposes of Rule R121 (only), a ‘highly modified river or stream’ does not include a water race.

Rule R121 is also explicit that it does not apply to any water race. However, there remains confusion about whether Rule R122 applies to the removal of vegetation from the beds of water races and whether the default Rule R129 captures the clearance and removal of vegetation from water races. Rule R129 captures all other activities in river and lake beds that are not permitted.

Water supply races are explicitly excluded from the RMA definition of ‘river’. However, there are parts of the water race network that are streams, or which flow along formerly ephemeral streams or which supply water to streams and wetlands (and, by doing so, are thereby connected to those streams and wetlands).

Carterton DC considers that the PNRP has no jurisdiction over activities occurring in the beds of artificial water races. However, there remains doubt about the purported applicability of Rules R122 and R129, as a consequence of amendments made to the definition of ‘drain’ and Rules R121 and R122.

(d) ***Relief Sought:***

- (i) Amend the definition of ‘Drain’ to explicitly exclude water races; and

- (ii) Amend Rules R122 and R129 to clarify that these rules do not apply to water races; or
- (iii) Such further or other relief as will achieve the same outcome.

***Appeal Point 6: Rules R122 and R129 and the Management of Stormwater Networks***

(a) ***PNRP Sections:***

- (i) Section 5.5.5: Rules Controlling Activities in Beds of Lakes and Rivers: Rule R122
- (ii) Section 5.5.7: Rules for All Other Activities in the Beds of Rivers and Lakes: Rule R129
- (iii) Section 2.2 Definitions: Definition of ‘Highly Modified River or Stream’

(b) ***Decision Appealed:***

The applicability of Rules R122 and R129 to stormwater networks (as a consequence of amendments made to Rules R121 and R122)

(c) ***Reasons:***

The amendments made to the definition of ‘drain’ do not explicitly exclude stormwater networks. However, the associated amendments to the definition of ‘highly modified river or stream’ clarify explicitly that, for the purposes of Rule R121 (only), a ‘highly modified river or stream’ does not include a stormwater network. Rule R121 is also explicit that it does not apply to any stormwater network. Rule R122 explicitly does not apply to highly modified rivers or streams. However, there remains confusion about whether a stormwater network is a ‘highly modified river or stream’. Consequently, there is confusion about whether Rule R122 applies to the removal of vegetation from the beds of stormwater networks and whether the default Rule R129 captures the clearance and removal of vegetation from stormwater networks.

Carterton DC remains opposed to the prescriptive requirements of Rule R122, to the extent that these apply to the management of stormwater networks. Carterton DC also opposes Rule R129 to the extent that it applies to stormwater networks.

(d) ***Relief Sought:***

- (i) Amend Rules R122 and R129 to clarify that these rules do not apply to stormwater networks; or

- (ii) Amend the definition of ‘highly modified river or stream’ to clarify that it excludes stormwater networks’; or
- (iii) Such further or other relief as will achieve the same outcome.

***Appeal Point 7: Rule R58 Discharge from Water Races***

(a) ***PNRP Sections:***

- (i) Section 5.2.4: Rules Controlling Water Races and Pumped Drainage Schemes: Rule R58
- (ii) Section 13: Map 28 (Water Races in the Wairarapa) Section 2.2 Definitions: Definition of ‘Water Race’

(b) ***Decision Appealed:***

The requirement for discretionary activity consent for discharges to water from a water race.

(c) ***Reasons:***

Carterton DC opposes the requirement for discretionary activity consent for every discharge of water or contaminant from a water race to a ‘river’. Necessary activities undertaken within water races, including activities to maintain channel capacity, that are undertaken in accordance with best practice and which minimise actual and potential adverse effects on river water quality and river ecosystem health should be provided for without requiring consent. The wording of Rule R58 as publicly notified did not require consent for such discharges as now proposed by the amended wording. The publicly notified text of Rule R58 had a completely different meaning from the amended rule in the Decisions Version of the PNRP.

(d) ***Relief Sought:***

- (i) Amend Rule R58 to specify the discharge of water, including water containing contaminants, from a water race into water is a permitted activity or controlled activity; or
- (ii) Such further or other relief as will achieve the same outcome.

5.3 **Discharge of treated Wastewater to land**

***Appeal Point 8: Rules R79 and R80 Discharge of Treated Wastewater to Land***

(a) ***PNRP Sections:***

(i) Section 5.2.6: Wastewater: Rules R79 and R80

(b) **Decision Appealed:**

The exclusion from controlled activity Rule R79 of the discharge of treated wastewater from a wastewater network and the consequence that all applications for the discharge of treated wastewater from a wastewater network must be considered as a restricted discretionary activity under Rule R80.

(c) **Reasons:**

No submission point sought the exclusion of discharge from a wastewater network or the replacement of the controlled activity rule with a first-position restricted discretionary activity rule.

Carterton DC supported rule R79 and also supported the default rule R80, for applications that failed the rule R79 standards. Carterton DC's submission also sought refinement of some of the Rule R79 standards. The PNRP's objectives and policies elsewhere seek to avoid new discharges of treated wastewater to water and seek to promote the discharge of treated wastewater to land. Carterton DC has practical experience of implementing the discharge of treated wastewater to land and of the practical challenges for doing so. These include the reality that large areas of land are required, that it is difficult to aggregate sufficient suitable land in a suitable location relative to the wastewater treatment network, and that rural landowners are reluctant to make their land available for land discharge of treated wastewater, regardless of the standard of treatment.

The amendment to Rule R79 has created another practical disincentive to expanding land discharge of treated wastewater. On the one hand, the Plan seeks to encourage the method of disposal and, with the amendment to Rule R79, has made it less easy to achieve.

(d) **Relief Sought:**

- (i) Amend Rule R79 to include the discharge of treated wastewater from a wastewater network; and
- (ii) Include in amended Rule R79 the standards specified in Submission S301/061; or
- (iii) Such further or other relief as will facilitate the discharge to land of treated wastewater from a wastewater network as a controlled activity.

#### 5.4 Discharge of Treated Wastewater to Water

***Appeal Point 9: Definitions of ‘Existing’ and ‘New’ Wastewater Discharges and Rule R62***

(a) ***PNRP Sections:***

- (i) Section 2.2 Definitions: Definitions of ‘Existing Discharge’ and ‘New Discharge’
- (ii) Section 5.2.6: Wastewater: Rule R62

(b) ***Decision Appealed:***

The text of the definitions of ‘Existing Discharge’ and ‘New Discharge’ and the implications of those definitions in requiring non-complying activity consent under Rule R62.

(c) ***Reasons:***

The definition of ‘*existing* discharge’ (as it applies to wastewater discharges) does not capture all of the beneficial improvements that could be made to existing authorised wastewater discharges, including changed location, outfall type and discharge regime. Consequently, the definition of ‘*new* discharge’ inappropriately captures beneficial improvements to lawfully established existing wastewater discharges to water. That approach could constrain the ability or willingness of infrastructure operators to actively seek to improve their wastewater discharges.

Carterton DC expects that there will continue to be circumstances where discharge of treated wastewater to water will be required in the future, including where necessary to manage peak flows resulting from heavy rainfall events. The policy framework is clear in seeking to avoid and minimise wastewater discharges. Carterton DC’s view is that discretionary activity status is sufficient to enable full consideration of all potential effects on the environment, where discharge to water is necessary and the best practicable option.

(d) ***Relief Sought:***

- (i) Amend the definition of ‘New Discharge’ to exclude potential operational changes that might result in beneficial improvements as requested in Submission Point S301/021; and
- (ii) Amend the definition of ‘Existing Discharge’ to integrate with the amendments requested above to ‘New Discharge’; and
- (iii) Amend Rule R62 to provide for all discharges of treated wastewater from a wastewater network as discretionary

activities, including where the discharge is found to be necessary and the best practicable option; or

- (iv) Such further or other relief as will achieve the same outcomes.

## 5.5 Mapping of Community Groundwater Supplies

### ***Appeal Point 10: Mapping of Community Groundwater Drinking Water Supplies***

(a) ***PNRP Sections:***

- (i) Section 12: Schedule M2: Groundwater Community Drinking Water Supply Abstraction Points
- (ii) Section 13: Map 27a and Wellington Regional Council's on-line GIS mapping of Schedule M2 and Map 27a

(b) ***Decision Appealed:***

One of CDC's community drinking water groundwater supply bores is identified in Schedule M2 and on Map 27a but is not identifiable on the on-line GIS map.

(c) ***Reasons:***

All map information needs to be accurate, to protect CDC's groundwater drinking water supply.

(d) ***Relief Sought:***

- (i) Amend the on-line GIS map to clearly identify all four of CDC's community drinking water bores identified in Schedule M2.

6. In line with the Environment Court's Decision of 26 July 2019 ([2019] NZEnvC 126) Carterton DC attaches copies of the submission and further submission made in relation to the PNRP.

Date: 18 September 2019



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Solicitor  
For Carterton District Council

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## Advice to recipients of copy of notice of appeal

### How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, –

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

The copy of this notice served on you does not attach a copy of any other documents necessary for the adequate understanding of the appeal (of which there were none), or a list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request, from the appellant.

### Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

List of names and addresses of persons to be served with a copy of this notice:

Wellington Regional Council  
By email: [RegionalPlanAppeals@gw.govt.nz](mailto:RegionalPlanAppeals@gw.govt.nz)