

**Before Greater Wellington Regional
Council**

IN THE MATTER OF

**Of the Proposed Natural
Resources Regional Plan for the
Wellington Region**

And

**Submissions by South Wairarapa
and Masterton District Councils**

**Memorandum of Counsel to the Hearings Panel and request for
directions
19 June 2018**

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1. I have recently been instructed to act on behalf of South Wairarapa DC, and Masterton DC in relation to the PNRRP. I wish to raise two issues with the Panel. The first relates to the recommended policy 71A and the process by which that recommendation has been made and the lack of opportunity for submitters to comment on that recommendation. The second relates to whether there should be an “integration” or other form of final hearing and if so the form and scope of that hearing.

Policy 71 and recommended policy 71A

2. The Councils are concerned with the process leading to the final recommendations by officers in relation to policy 71 and the suggested new policy 71A. Those recommendations which were not signalled to submitters prior to the stream 4 hearing, reverse the officers’s s42A report position on the applicability of p 71 to wastewater discharges and mean that the less directive P71 recommended in the section 42A report would no longer apply to wastewater discharges.
3. The Wairarapa Councils submitted on policy 71 as follows:

“There are ambiguities within these proposed policies which may result in interpretation being particularly, and unnecessarily, restrictive.

In addition, the water quality standards will generate significant monitoring costs. Whilst the Councils acknowledge that reasonable monitoring is required, Policy P71 introduces significant costs, in particular with regards to QMCI monitoring. QMCI monitoring is very expensive to undertake, and the policy will effectively force this monitoring upon every individual discharge. The Councils consider this could more reasonably be provided on a catchment basis, undertaken by WRC as part of its wider general reporting and State of the Environment reporting, rather than on each individual discharge.”

The specific relief sought was to amend the policy as follows (shown as underlined text):

“ Policy P71: Quality of discharges

The adverse effects of point source discharges to rivers shall be minimised by the use of measures that, as far as reasonably practicable, result in the discharge meeting the following water quality standards in the receiving water after the zone of reasonable mixing:

(a) 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 change in pH of no more than ± 0.5 , and

(iii) a decrease in water clarity of no more than:

1. 20% in River class 1, or

33% in River classes 2 to 6, and

(iv) a change in temperature of no more than:

1. 2°C in River classes 1 or 2, or

2°C in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or

3°C in any other river, and

(b) a 7-day mean minimum dissolved oxygen concentration of no lower than 5mg/L, and

(c) a daily minimum dissolved oxygen concentration of no lower than 4mg/L.

All water quality standards apply at all flows except (a)(iii) which applies at less than median flows, (a) applies at all times of the year, (b) and (c) apply only between 1 November and 30 April each year.

Standard (a)(i) above is a target only to be used in State of the Environment Monitoring on a catchment basis by WRC on a catchment basis, and will not be applied as a condition of consent to individual discharges, or used specifically for enforcement purposes."

4. The section 42A report on Water Quality dated 12 January recommended changes to policy 71. (Ms Conland). The relevant parts of the report are as follows:

840. For most discharges the limits in Policy P71 will be too lenient, while for other discharges, the limits will be too stringent. **I consider that at this time it is more appropriate that the limits be set on a case by case basis through the consent process, taking into account the objectives and policies in the proposed Plan, and those that give effect to the higher order documents which seek to maintain or improve water quality.** Furthermore, s69 of the RMA states that regional councils 'shall not set standards in a plan which result, in a reduction of the quality of the water in any waters...unless it is consistent with the purpose of this Act to do so'.

841. As such, I agree with the submission of the Minister of Conservation (S75/087) that the standards are not appropriate for maintaining instream values and I recommend that they be deleted. As noted in section 5.3 of this report, the whitua process, through future plan changes or variations, will set freshwater objectives and limits for each freshwater management unit in accordance with Section C of the NPS-FM 2017. The process and timeframes for this will be in accordance with Policy E1(c) of the NPS-FM.

Minor change - Stormwater and wastewater network discharges

854. I recommend amending the policy to exclude stormwater and wastewater network discharges. The Section 32 report: Discharges to water, states that this policy was to provide guidance to the few point source discharges to water in the Wellington Region, and that global stormwater discharges were not meant to be subject to this policy. I agree that the policy requirements for stormwater and wastewater are more specific and stringent than what is included within P71 as notified, and consider that it is illogical for those types of discharges to be managed by this policy. I consider that excluding stormwater and wastewater network discharges from this policy will not alter the meaning or any outcome of the proposed Plan. This amendment is considered to have only a minor effect and can be made pursuant to RMA Schedule 1 clause 16.

5. The Section 42A report recommended a number of other changes to the P71 which are in that report and which were acceptable to the Councils. The recommended changes to P71 made it general in nature rather than directive and excluded its application to discharges from the *stormwater network and wastewater network*. Those recommendations were acceptable to the Councils.
6. The s 42A report was clear that the P71 should not apply to discharges from the wastewater network. The s 42A report also recommended amending the definition of wastewater network as follows:

Definition of 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 discharge wastewater.

7. The Councils understood this to mean that the recommended version of p71 would not apply to discharges from the wastewater network including from treatment plants. In any event, they concurred with the other recommended changes to P71 which made it much less prescriptive and directive.

8. There was no suggestion within the Section 42A report, that a new wastewater specific policy based upon the original P71 should be inserted as was subsequently recommended. Furthermore, Ms Legarth's Section 42A report (Wastewater to water) of 12 January which deals specifically with wastewater discharges, does not make any reference to P71 or suggest that a new wastewater specific version of P71 be introduced.
9. The Wairarapa Councils presented evidence via Ms Whitney dated 26 January 2018. The evidence did not specifically address policy 71 as notified because Ms Whitney understood based on the section 42A reports, that the recommendation was that the policy should not apply to wastewater discharges and because this and the other changes made to the policy were acceptable to the Councils.
10. At the hearing stream 4 hearing the reporting officers did not indicate any intention to introduce a new policy P71A. The recommended new policy P71A was introduced via the Right of Reply dated 4 May 2018 and appears to be a response to GW's own concerns rather than those of submitters. The most relevant sections are as follows:

112. The planning evidence of Ms Wratt 58 states that WWL supports the simplification of Policy P71 and the exclusion of stormwater and wastewater network discharges. Mr David Cameron⁵⁹ for WWL, in a memo to Ms Wratt, noted that Policy P71, as notified, applies to point source discharges to rivers and, in the case of continuous discharges, appears to provide reasonably balanced guidance. He states that it is less helpful, however, when addressing an intermittent discharge which, in the case of process water for instance, might only operate for 10 minutes in every hour, or in the case of stormwater run-off, two or three times each week. In these cases, the standards for water clarity and water temperature become overly protective.

114. Ms Nicola Arnesen, Senior Policy Planner, Environmental Regulation, GWRC, provided evidence at the hearing in relation to the use of the standards in Policy P71 when processing and determining resource consent applications for wastewater discharges in the Wairarapa. Ms Arnesen explained that Policy P71 is a critical policy for processing existing wastewater treatment plant (WWTP) discharges to water. She noted that the existing WWTP discharges are to water and all are having significant adverse effects on the receiving water bodies. Ms Arnesen said that Policy P71 enables Council's Environmental Regulation department to manage effects to an acceptable level and meet, in combination with other policies, the intent of the proposed Plan to discharge to land in preference to water, and reduce discharges of wastewater to water. She noted that Policy P71 helps 'pull effects up' to acceptable levels. However, Ms Arnesen also noted that the wording of the policy needed to ensure that discharges did not 'degrade down to' these standards.

116. Ms Whitney, for MDC and the SWDC⁶², noted the councils' support for the proposed amendments to this policy, but said that it was unclear if the intent of the amendments is to also apply to discharges from wastewater treatment plants.

118. Issue 9.3 of the Section 42A report: Water quality sets out my concerns in relation to the discharge standards of Policy P71, and that for most point source discharges to rivers, the limits for QMCI, and dissolved oxygen in particular would be too lenient. **My concern was that for wastewater discharges the limits would be too stringent, and potentially not particularly relevant to wastewater discharges given the other policies in the proposed Plan that directly deal with these discharges. However, based on the evidence of Ms Arnesen, I now understand that this is not the case.** 119. Policy P81 relates to minimising and improving existing wastewater discharges to fresh and coastal water. As such, Policy P71 does not need to provide for this aspect. Furthermore, as new wastewater discharges to freshwater are to be avoided, Policy P71 cannot conflict with this policy. I recommend that Policy P71 be split into two policies – Policy P71 which provides for general point source discharges to fresh water, and Policy P71A which would provide specific guidance to existing wastewater discharges to fresh water.

11. The Councils have a number of concerns with the process leading to this recommendation.

Jurisdiction

12. The first is a query as to whether there is jurisdiction to introduce this new policy and the resulting disparity between how wastewater and other point source discharges are treated. It seems that the change of approach as compared to the s42A report derives from a change of view by Council officers rather than from any particular submission. I accept that the range of submissions may be sufficient to provide jurisdiction for this unequal approach, however this is something that Panel will require assurance on, and I suggest should accept submissions on.

The status of the evidence relied upon by GW officers

13. The Councils are unclear as to the basis on which Ms Arnesen was presenting to the Panel. GW was entitled to call expert evidence in support of the changes proposed in the section 42A report or to respond to submitter evidence. However, Ms Arnesen's evidence (at least as reported in the Right of Reply) was not in support of the recommended changes and resulted in the significant change of position recommended in the s 42A reports.

14. Ms Arnesen is not a member of the team processing the PNRRP. She is the officer who has been dealing with SWDC's current application for long term consents for the Featherston wastewater treatment plant (ultimate discharge to land with interim discharge to water). With respect, there is an obvious need for caution give Ms Arnesen's dual role.
15. Compliance with the notified version of P71 or the recommended P71A guidelines/standards (if applicable to wastewater discharges) will be a critical issue for the hearing. The, new policy 71A as recommended would disadvantage SWDC as compared to what was recommended in the s42A report and indeed as compared to the as notified version of P71. The recommended new policy does not address the concerns or requests made by the Councils.

Evidence disputed

16. SWDC disputes the suggestion in the Right of Reply (apparently based upon Ms Arnesen's oral comments) that it is essential/necessary that P71 apply to wastewater discharges so as to a guide the consent process. I note that long term consents have been granted for Masterton, Martinborough, and Greytown without the benefit of P71. A long term consent was also granted for the Carterton wastewater discharge in November last year which included consideration against the proposed version of P71.
17. The only existing discharge to be dealt with in the Wairarapa is the Featherston discharge. Section 107 of the RMA upon which P71 appears to be loosely based will apply irrespective of the PNRRP. Furthermore, the panel hearing the application has a full discretion to impose whatever standards they consider to be necessary to achieve Part 2 of the RMA.
18. There are a range of other policies which provide adequate guidance in relation to discharges from wastewater treatment plants, without the need for the recommended P71A.
19. I note that the councils would not have a difficulty if the recommended P71 applied to point source discharges of wastewater, because the policy as recommended is no longer directive. The policy in that form would provide additional guidance for dealing with applications for point source discharges of wastewater.
20. In summary, SWDC agrees with the GW officer's original position on this matter as set out in the s42A report and summarized in the Reply and supports the amendments recommended in that report and reflected in the final recommendation on P71 but not P71A. In particular it agrees with the original position:

“My concern was that for wastewater discharges the limits would be too stringent, and potentially not particularly relevant to wastewater discharges given the other policies in the proposed Plan that directly deal with these discharges.”

Lack of opportunity to challenge Ms Arnesen’s evidence and the suggested new P 71A.

21. The Councils and other submitters such as WWL have not had an opportunity to comment on the proposed additional policy and the significant change from the original recommendation, because that recommendation has been introduced via the right of reply.
22. The altered position of GW officers was not advised to submitters before the hearing. As far as I am aware, the resulting recommended amendment was not signaled by the reporting officer (Ms Conland) at the hearing and only became apparent when the right of reply was made available.
23. The Councils did not call evidence on P71 because they were content with the recommendations in the s42A report and were unaware of the intention of GW officers to seek to reverse/significantly revise their recommendation.
24. The Councils’ original concerns regarding P71 are equally applicable to P71A . They have an additional concern, which is that the recommendation introduces a discriminatory approach which is highly directive and restrictive in terms of wastewater discharges and (appropriately in my submission) non-directive in terms of other discharges.
25. Whilst the proposed form of P71 appears to be partly based upon section 107 of the Act, the notified version and the recommended P71A do not provide for the exceptions which section 107(2) allow for (hence the relief sought by SWDC which would have provided some flexibility.)

The Council’s submissions on P71 have not been addressed by officers

26. I note that neither the s42 A reports, nor the rights of reply directly respond to the Councils’ submissions in relation to the original P71.

Request to be heard in relation to policy 71, policy 72 and recommended policy 71A.

27. SWDC has only this month become aware of this recommended addition and the associated changes to standards within P71A. It seeks (as a matter of natural justice) the

opportunity to make submissions to the Panel and if necessary call evidence on policy 71 and recommended policy 71A and the associated policy 72. I submit that other submitters on P71 and P72 should also be accorded that opportunity.

Should there be a hearing after an interim decision has been made and if so what should the scope be?

28. I understand that that there has been some suggestions that there should be a further “integration hearing”. The Councils consider that would be useful and formally request that this occur.

29. They suggest that the most appropriate approach would be for the Panel to issue an interim revision marked version of the PNRRP showing all amendments which they consider on an interim basis to be appropriate and then reconvene the hearing to provide submitters and officers with a limited opportunity to comment on the recommended changes.

30. I submit that this should include the opportunity to comment on:

- internal consistency and linkages
- consistency with statutory provisions and higher level documents
- consequences which may not have been foreseen by the Panel.
- omissions or errors
- any changes which the submitter has not had an opportunity to comment on because it was not signalled prior to the relevant hearing.

31. Given the interlinked nature of many of the provisions in the PNRP and given that recommended changes at the later hearings have impacted on recommended changes at earlier hearings, the opportunity for both officers and submitters to be able to review and comment on these matters would be beneficial in terms of the final form of the plan.

32. I also note that submitters have not had an opportunity to comment on recommended changes which have arisen via the officers’ rights of reply. A final hearing after an interim decision is released will potentially allow an opportunity for submitters to comment on changes which they have not previously had an opportunity to comment on.

33. In my submission, this approach is desirable from a natural justice and practical perspective. It is also an approach which would likely reduce the number and/or scope of any appeals. I respectfully request that if there is such a hearing, that submitters be provided with 20 working days week between the release of the interim decision and the final hearing.

A handwritten signature in black ink, appearing to read 'Philip Milne', with a long horizontal flourish underneath.

Philip Milne

**Counsel for South Wairarapa and Masterton District Councils
19 June 2018**