

Before Hearing Panel – Proposed Natural Resources Plan for the Wellington Region

Under The Resource Management Act 1991 (the Act)

In the matter of Proposed Natural Resources Plan for the Wellington Region: Hearing Five – Beds of Lakes and Rivers, Wetlands and Biodiversity, & Discharges to Land

Between Greater Wellington Regional Council

Local Authority

And Masterton / South Wairarapa District Council

Submitter S367 and Further Submitter FS30

Statement of Lawrence Glen Stephenson

Dated 19 September 2018

Qualifications and Experience

- 1 My full name is Lawrence Glen Stephenson.
- 2 For my qualifications and experience and other introductory comments, please refer to paragraphs 1 to 3 of my statement of evidence for Hearing Stream Four, dated 4 May 2017.
- 3 My statement on behalf of South Wairarapa District Council ("**SWDC**") is given in support of Masterton District Council's ("**MDC**") submission on the Proposed Natural Resources Plan for the Wellington Region ("**PNRP**"), specific to the issue of Water Quality (Hearing Four) and the Memo discussed in Minute #57.

Context

- 4 Specific to Hearing Stream Four, the Panel has given leave to SWDC and MDC to file further legal submissions and evidence in relation to Policy 71 and the officer's recommended P71A and the reason given by the officer for the changed recommendation. (In particular the oral evidence from Ms Arnesen that the policy is necessary in order for GW to manage wastewater discharges.)
- 5 SWDC submitted that P71 should be amended to provide more flexibility. Its concern was that in the form notified, it was unnecessarily restrictive and would be difficult for most discharges of wastewater to comply. This appears to have been acknowledged by the officers in their s42A report dated 12 January 2018 where Ms Conland recommended that the policy be amended so that it would not apply to discharges of stormwater and wastewater. She stated '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' SWDC agreed with that recommendation and accordingly (wrongly) thought that it was unnecessary to provide evidence on P71.

- 6 Subsequently, in their right of reply the officers, reversed their original recommendation. Ms Conland recommended that a revised and more flexible P71 which excluded stormwater and wastewater point source discharges be retained but that there be a new P71A specific to wastewater discharges, which reintroduced the prescriptive set of water quality standards that all discharges of wastewater to rivers had to meet 'as a minimum' at all times. There were also some additional recommendations as to the details of the proposed standards.
- 7 The purpose of my statement is to provide background information to assist the hearing panel in understanding the difficulties with Policy 71 (and recommended Policy 71A) as it applies to wastewater discharges. This statement should be read in association with those of Ms Pauline Whitney, Mr Keith Hamill and Mr David Hopman.

SWDC concerns with P71

- 8 SWDC has a number of concerns in relation to P71:
- a) The policy (and suggested p71A) would, in conjunction with the definition of "new discharges", Rule 62 and P83 have the effect of making it very difficult if not impossible to obtain any consent for a wastewater discharge, including upgraded discharges such as that proposed at Featherston.
 - b) The policy is highly directive and contains no flexibility.
 - c) Although the policy seems to be based in part on a desire to quantify section 107 of the RMA, it does not provide for the exemptions in section 107(2) (temporary and exceptional circumstances and maintenance and emergency discharges).
 - d) There are problems with the specific standards if they are to be used as a "bottom line" rather than guidance. (This will be addressed by Dr Hamill in more detail.)
 - e) There seems to be an assumption that if any of the proposed standards are breached even on an interim or temporary basis, that this will equate to significant and unacceptable adverse effects. This (one size

fits all) approach fails to take into account the sensitivity of the receiving environment and the frequency, duration, endurance and reversibility of any adverse effects.

- f) The approach also assumes that a water quality effect (for example, conspicuous change to clarity) translates to an ecological or amenity effect.

Policy 71

9 In my original evidence I removed any references to Policy 71, based on the Officer's s42 report recommendation to amend Policy P71 to make it more flexible and at paragraph 855 to include the phrase '*excluding discharges from the stormwater network and wastewater networks*'.

10 I agreed with the conclusion of the officer in paragraph 854 that:

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.

11 The officer's amended recommendation in the right of reply placed reliance on a presentation by Ms Arnesen on 4 May 2018 which included the following points:

P71- as notified

- *gave effects interpretation at a local scale (s107)*
- *PNRP needs to help 'pull effects up' to acceptable levels (s107, P71)*

P71- as proposed

- *makes it very difficult to improve water quality – leads to legal arguments*
- *need to ensure no 'degrade down to' situation – not likely now but possible in future*

P71 – issues with recent WWTP applications

- *Martinborough and Greytown – had no policy guidance –*

problematic

• *Featherston example*

- 12 I strongly disagree with the suggest that P71 is necessary in order for GW to manage wastewater discharges. To the contrary, P71 (or the suggested P71A) would make it very difficult to obtain consent for many discharges of wastewater to fresh water including overflow and maintenance related discharges and interim discharges during upgrade.
- 13 The latter is illustrated by the difficulty which this policy is currently causing SWDC in relation to its application for long term consents for Featherston. In its present form, the policy is being interpreted by GW officers (in conjunction rule 62 and P83) as requiring that consent be declined.
- 14 If the policy had been in place when the Martinborough and Greytown consents were granted (in 2016) I consider similar difficulties would have arisen.
- 15 Ms Arnesen is the reporting officer for SWDC's current application for consents for the long-term upgrade of the Featherston wastewater plant and discharges. She was also the processing officers for SWDC's applications for Martinborough and Greytown. Accordingly, she is well aware of the consequences of applying Policy 71 to the Featherston application.
- 16 In Hearing Four, I outlined the strategic approach of SWDC to change to discharge wastewater to land, and the successful consent applications of Martinborough and Greytown. I also referred to the current application for Featherston Wastewater Treatment Plant ("**FWWTP**") which had been lodged, I raised the issue around notified Policy P71, 33% decrease in clarity in Donald Creek and the difficulty this was creating in achieving SWDC's strategic goal of 100% discharge to land.
- 17 The council strategy of 100% wastewater discharge to land is in line with objective 50, '*Discharges of wastewater to fresh water are progressively reduced*' and seeks to improve water quality of surface water bodies which is the overall intent of the PNRP. (see also P81).

- 18 The application for FWWTP as outlined in points 53-54 of my original written evidence, is for staged change of the discharge from water to land over a 20-year period. This has recently been modified so that stages will be completed over years 2-13 with the final stage of deferred storage and near full discharge to land completed in 13 years. Discharges to Donald Creek and low flows (below median) will be eliminated by the end of year 2.
- 19 Monitoring based on the current discharge has indicated that the clarity will regularly exceed greater than 33% reduction at flows less than median during the first stage. By the end of year 2, discharge will exceed the clarity standard on average on at least some of the day on around 30 days per year. Stage 1B is proposed for 8 years. Even at stage 2A there will be some days on which the proposed clarity standard will be exceeded for at least some of the day.
- 20 Based upon this, the clarity standard cannot be achieved until year 13.
- 21 Similar issues arise with the QMCI standard. It will be met by year 13 and will probably be met by year 10; however, we cannot guarantee compliance during stage 1B (8 years) and cannot achieve compliance during stage 1A (the first 2 years).
- 22 Accordingly, the proposed upgrade would be contrary to the policy in its current form or the recommended Policy 71A. This will make it very difficult to obtain consent for the upgrade, particularly if it is classified as a non-complying activity as a result of the problems with the definition of new discharges. Even if the upgraded discharge is classified as a discretionary activity as recommended in the Right-of-Reply by Ms Legarth (paragraph 91) the policy would cause difficulties because it is worded in a directive manner.
- 23 GW officers/advisors have indicated that they consider that application is for a “new discharge” and therefore Rule 63 applies. This is because they interpret the proposed definition of new discharges as including any discharge which is “altered”, even though the changes result in reduced adverse effects. (In the present case from the end of year 2 there will be significant reductions in the frequency and volume of the discharge and

contaminant loads to the stream and downstream environments, particularly at times of low flow.).

24 The problem is compounded by Policy 83 which is highly directive and (like Policy 71 and proposed Policy 71A) makes no allowance for the upgrade situation or for residual, or maintenance discharges. The associated difficulty is that Policy 81 does not apply to “*new discharges*”. That leads to a situation where:

- Upgrading is encouraged by P81 and P63
- But P81 does not apply if the discharge is “altered” because the existing discharge becomes a new discharge.
- The effect of P83 and P71 will mean that consent has to be declined for the upgrade unless the effects are no more than minor.
- During the interim period while the upgrade is being progressively implemented the overall effects of the discharge are likely to be more than minor until at least year 8.
- This would seem to have the effect that consent cannot be granted for the upgrade even though the upgrade (and a move to land discharge) is encouraged by other provisions.
- The continuation of the existing situation is contrary to P71 and P83

25 This leaves SWDC in a Catch 22 situation.

26 In the case of the Featherston application, the problems caused by these related provisions, has led SWDC and GW to seek a delay to the hearing until March next year (which has been granted). SWDC is hoping that this Panel can resolve the issues with all of these associated provisions in a sensible manner before a final decision is made on the current application.

27 I note that the problems identified above are not unique to the Featherston situation. They would apply to any wastewater upgrade or any change of location of an existing discharge.

Specific issues with P71

28 The origins of P71 are referenced in the paragraph 835 of the s32 report:

Policy P71 provides direction on managing individual (but not cumulative) point source discharges to water in respect to their impacts on aquatic ecosystem health and mahinga kai.

29 It seems to also be intended to be a quantification of the general standards in section 107 of the RMA. That section contains various exceptions which are set out in s (2). Part of the difficulty with P71 is that it does not contain the same flexibility as s107 with its exceptions.

30 The problems that this causes are illustrated by the Featherston WWTP upgrade situation. There will be a temporary and unavoidable period where the QMCI and clarity standards cannot be met at all times of the year at until year 13. These short duration non-compliances could be consented under section 107 as either temporary or exceptional or both so as to achieve the desired outcome of progressively removing the discharge from the stream and putting it to land. Unfortunately, P71 does not contain the same flexibility and is worded in a directive manner.

31 SWDC does not have a difficulty with the PNRP having guidelines or targets. Its difficulty is with the P71 approach of having inflexible standards as “bottom lines”. I do not agree with Ms Arnesen that this is necessary or desirable to “pull effects up” While it could be contended that this is policy guidance only, in my experience with the consenting process, strict adherence to such specific standards is often taken. The Council has been advised that recent case law makes “directive” policies have effect similar to rules.

32 I also note that the Policy will be problematic in terms of other discharges of wastewater such as overflow and maintenance discharges.

33 Dr Hamill will provide more specific evidence regarding each of the proposed standards. I will make some general points on some of the problematic standards.

Clarity

- 34 The proposed clarity standard seems to be intended to reflect the section 107 requirement for “*no conspicuous change*”. There seems to be an assumption that if there is a greater than 33% change that this will be conspicuous. The s42A report reference Ausseil (2013)¹⁷¹ 3.5.3.2 refers to a range of 33% - 50% for other waters then recommends the stricter 33% for all other water, while acknowledging that the original definition was for the protection of aesthetic values. However, it is certainly not correct that exceedance of the suggested limit will necessarily result in any more than minor, let alone significant adverse effects on the environment.
- 35 Again, the Featherston application provides a useful example. At stage 1B there may be on average around 29 days per year of non-compliance with the 33% change standard for those 8 years. However, there is no evidence that the non-compliance will cause significant adverse effects on amenity values (which are very low for other reasons) or on ecology. In my view, the question of whether the effects of the discharge are acceptable should be a question for the consent process. The difficulty we have is that the Regional Council officers and advisors seem to be adopting the view that the 29 days of non-compliance per year during stage 1B is of itself a significant adverse effect.
- 36 Whether change causes ecological or amenity problems will very much depend upon the sensitivity of the receiving environment and other factors such as the frequency, duration, degree and extent of the change in clarity and the nature and longevity of any resultant effects on ecology. The suggested standard does not allow for any of these matters to be factored in. For example, in the Featherston WWTP situation, there is no public access to the part of the stream where the standard is breached. Furthermore, by the end of year 2 the standard will only be breached on around 29 days a year and only for a distance of around 650m. Again, Policy 71 and recommended Policy 71A make no allowance for these factors.

QMCI

- 37 The same issues arise with QMCI. It assumes that a 20% change to QMCI equates to a significant adverse effect. The standard makes no allowance for the sensitivity (or not) of the receiving environment or the frequency, duration, degree and extent of the exceedance. Nor does it allow for consideration of whether the changes to QMCI will endure or be reversed after a flushing even or when the discharge ceases for a period.
- 38 In the Featherston situation, the QMCI standard cannot be achieved during the first stage (2 years) and may not be achieved in some months at the second stage. (8 years). Whether or not this gives rise to significant adverse effects on aquatic life is a matter for evidence at the hearing. The problem is that P71 does not allow for that determination. Even if the standard is only breached for a month or so a year during stage 1B, there would be non-compliance with the policy. If the policy is then translated into a consent standard (if consent can be granted) then SWDC could not comply.

The pH standard

- 39 The pH standard is also problematic. The current wording means that where there is acidic water of say pH 6, and this discharge causes this to rise to pH 7 (neutral) there would be a breach of the standard, even though there would be no adverse effects (in fact, it would be a positive effect).

General

- 40 A more pragmatic approach is monitoring of the parameters for trigger points requiring further investigation. A good example of effective use of standards is the condition for Greytown WWTP, shown in Appendix A.

Conclusion re P71 and Recommended P71A

- 41 I support the s42A reports recommendation to ensure that P71 in its proposed form does not apply to stormwater and wastewater. Alternatively, if the Panel considers it appropriate for there to be some guidelines applying to wastewater, then I believe that the modified form of P71

recommended by the officers would be more appropriate because it is not so directive and provides the flexibility which SWDC requested.

42 SWDC strongly opposes the recommended P71A which simply transfers the current problems with P71 to make those problems specific to wastewater discharges.

43 If the Panel were to uphold the current parameters in P71 then in my view they need to be redrafted so that they are less directive and more in the nature of guidelines rather than a bottom line. There are also technical changes required to the individual guidelines which Dr Hamill will discuss.

Relationship of P71 to other provisions

44 As discussed above P71 is problematic on its own. The problems are exacerbated by the definition of *new discharge* and by the prescriptive wording of p83 (which like P71 and recommended P71A) makes no allowance for upgrades or temporary discharges of wastewater.

45 SWDC submitted on the effect of the definition of 'New (wastewater) discharge' and I discussed this in my original evidence (63.6). At that time, I only raised concerns about the impact that the definition (and rule 63) may have on new developments or population growth.

46 At the time of the hearing, I understood that the Featherston application would be an existing discharge and would be a discretionary activity considered against Policy 81 *Minimising and improving wastewater discharges*.

47 As discussed, subsequently the Regional Council has advised that it considers the FWWTP is a 'new' discharge due to the fact that by discharging to land and reducing the discharge, SWDC is *altering* the discharge to water. If this is correct, the application is non-complying and P81 will not apply and P83 will apply with obvious consequences from its "avoid" approach.

48 This is despite the fact, that at all stages there will be an improvement to the overall discharges to water, leading to a significant improvement to the environment which is in line with P81. 2 years after commencement, there

will be a significant reduction in discharge frequency and volumes and resultant improvements for Donalds Creek and the downstream environment. By year 13 the discharge will be almost entirely removed. If the definition and related provisions including P71 are not amended to resolve these issues, then there is a risk that the upgrade could be declined based on technicalities rather a considered assessment of effects and benefits in accordance with Part 2 of the RMA. I understand from our legal counsel, that recent case law means that once the plan provisions become operative there may not be any ability to argue that the grant of consent is consistent with Part 2 if it is inconsistent with directive policies.

- 49 I understand that the Council officers have, through the Right-of-Reply, accepted the problem with having a non-complying activity status and is recommending existing and upgraded discharges be made a discretionary activity, which I fully support. Ms Whitney has, however, identified some problems with the recommended manner of achieving that.
- 50 I appreciate the opportunity to give evidence about SWDC's concerns around the PNRP as notified and the recommended Policy 71A and associated provisions.

Lawrence Stephenson

19 September 2018

Appendix A

Extract from Greytown consent - example of guidelines for further investigation

2. The following monitoring parameters shall be used to assist with assessing the effects of the wastewater discharge to the Papawai Stream during Stages 1B, 2A and 2B:
 - a) The discharge should not cause the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - b) The discharge should not cause bacterial and / or fungal slime growths visible to the naked eye as plumose growths or mats;
 - c) The annual concentration of total ammoniacal nitrogen should not exceed 0.24 mg/l;
 - d) The concentration of total ammoniacal nitrogen should not exceed 0.400 mg/l;
 - e) The visual clarity should not be reduced by more than 30% between upstream and downstream of the discharge; and
 - f) The QMCI should not be reduced by more than 20% between upstream and downstream of the discharge.The monitoring parameters shall apply at the GWRC monitoring site located 50m downstream of the Greytown WWTTP discharge, as shown on Schedule 6: Figure 1.
3. If monitoring undertaken under the conditions of these consents demonstrates any of the Schedule 2: Condition 2 monitoring parameters are exceeded then the Consent Holder shall undertake an investigation into the effects of the discharge from the Greytown WWTP, taking into account the likely effects of upstream contamination. The findings shall be reported in the annual report required by Schedule 1: Condition 26.

Advice Note 1: The exceedence of any of the Schedule 2: Condition 2 monitoring parameters will be part of the information used by the Wellington Regional Council when deciding whether or not to undertake a review of consent conditions under Schedule 1: Condition 41.