

Before the 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 Stream Four:
Water quality & Stormwater

Between Greater Wellington Regional Council
Local Authority

And Masterton District Council
Submitter S367 and Further Submitter FS30

 South Wairarapa District Council
Submitter S366 and Further Submitter FS26

Supplementary Statement of Evidence of Pauline Mary Whitney

In response to Minute #57 Panel Direction in response to Issue Raised by
Counsel for Masterton District Council and South Wairarapa District Council

Dated 20 September 2018

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Qualifications and Experience

1. My full name is Pauline Mary Whitney.
2. For my qualifications and experience and other introductory comments, please refer to paragraphs 1 to 4 of my statement of evidence for Hearing Stream One, dated 4 May 2017.

Primary Issue

3. Specific to Hearing Stream Four, the primary issue for Masterton District Council (**MDC**) and South Wairarapa District Council (**SWDC**) which is the subject of my supplementary evidence relates to the provisions for the management of the discharge of treated wastewater to freshwater: in particular, Policy P71 and the suggested Policy P71A (as recommended in the officer right of reply) and the inter-relationship with the relevant rules and definitions relating to changes to wastewater discharges to freshwater.
4. The Councils have five associated concerns in relation to P71 and recommended P71A:
 - 4.1 Policy P71 or the suggested Policy P71A would, in conjunction with the current definition of “new discharges”, the non-complying activity status under Rule 62, the inapplicability of policy 81 to “new discharges” and the avoidance approach of Policy P83 to “new discharges” to freshwater, have the effect of making it very difficult if not impossible to obtain any consent for wastewater discharges including upgraded and/or relocated discharges.
 - 4.2 Irrespective of the non-complying activity status issue above, the policy is problematic because it is highly directive and contains no flexibility, particularly relevant in terms of the *King Salmon* and *Davidson* decisions. It does not allow for the almost inevitable situation with upgrades, where there will be non-compliance with the proposed standards during the interim period between consent being granted and full upgrade being in place (this runs contrary to P81).
 - 4.3 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) or any other recognition of the need for flexibility.

- 4.4 There are problems with the actual application of the very specific standards in practice if they are to be used as a “bottom line” rather than guidance.
 - 4.5 There seems to be an assumption that a breach of the suggested standard will equate to significant and/or unacceptable adverse effects – this ‘one size fits all’ approach fails to take into account the sensitivity of the receiving environment and the nature, importance (significance), intensity, frequency, duration reversibility and “endurance” of any adverse effects.
5. Because of the interrelationship between Policy P71 (and suggested P71A) and the rules and definitions, it important to consider all of these issues in an integrated manner. Accordingly, my evidence will refer to the provisions to which P71 relates.

Scope of Evidence

6. My evidence is largely confined to the issue raised by the legal counsel for Masterton and South Wairarapa District Councils (**‘the Councils’**) in a memorandum to the PNRP Hearing Panel dated 19 June 2018, and will address the following:
 - 6.1 A brief outline of the primary issue in relation to the management of point source discharges from upgraded wastewater treatment plants under the PNRP and the relief sought by MDC and SWDC;
 - 6.2 The Regional Council’s Right-of-Reply regarding the definitions of ‘new discharge’ and ‘existing discharge’ and the consent status of wastewater discharges from upgraded treatment plants; and
 - 6.3 The Regional Council’s Right-of-Reply regarding Policy P71 and, specifically, the recommended new Policy P71A.
7. In addition, I briefly address the interrelationship between Policy P71 and the definition of “new discharge” and Policies 81 and 83. This is necessary in order to illustrate the one of the key difficulties caused by Policy P71.
8. My evidence is consequential to the evidence I gave to “Hearing Stream Four: Water Quality & Stormwater” on behalf of the Councils.
9. My evidence should be read in conjunction with the statements by Mr Lawrence Stephenson (Assets and Operations Manager from South Wairarapa District Council)

and Mr Hopman (Assets and Operations Manager from Masterton District Council) and Mr Hamill (Environmental Scientist). Legal submissions are also provided.

Overview – Management of Wastewater Discharges to Water under the PNRP

10. As the Panel are aware, the three Wairarapa District Councils have long-term strategies for improving the quality and reducing the quantity of treated town wastewater being discharged into local streams and rivers, with the ultimate objective of fully discharging onto land. The Councils have been progressively upgrading their wastewater treatment plants to reduce their historical reliance on discharging into freshwater (local rivers and streams) by both improving the treatment process and by discharging, as much as practicable, onto land.
11. However, for practical and financial reasons, none of the towns' wastewater treatment plants can fully discharge onto land at all times, and therefore will still need to discharge into freshwater for the interim and in some cases at times when discharge to land is impractical. This situation has been accepted by the Regional Council in all recently consented upgrades, including the Carterton Wastewater Treatment Plant last year. The latest WWTP to be upgraded is the Featherston Wastewater Treatment Plant, with the resource consent applications currently before the Regional Council, scheduled to be heard later this year.
12. In relation to the notified PNRP, one of the concerns which the Council have is that discharges of treated wastewater into freshwater from upgraded wastewater treatment plants are being caught by the definition of 'new discharges', which were classified as a non-complying activity under Rule R62, even though –
 - the quantity of discharges would be reduced, and
 - the upgraded treatment would improve the quality of the discharges, and
 - the consents being sought are to replace existing discharges from existing wastewater treatment plants through proposed upgrades to those plants.
13. The Councils consider this management approach to be anomalous with the objectives and policies of the PNRP which seek –
 - 13.1 To promote the discharges of wastewater to land over discharges to freshwater and or coastal water, unless the discharge to land is not the best practicable option (Objective O49, Policy P62); and

- 13.2 To progressively reduce the discharges of wastewater to freshwater and improve the quality of freshwater over time (Objective O50, Policies P63, P67, P81).
14. The concern with classifying upgraded wastewater discharges as non-complying is compounded by the prescriptive approach of Policy P71 as notified, which set out water quality thresholds for point source discharges of wastewater that would be impractical to fully achieve, as outlined in Mr Stephenson's and Dr Hamill's statements.
15. The Councils submitted that a highly restrictive outcome could result from this prescriptive based policy (and P83). This is even more critical if the upgrades are treated as new discharges which is the consequence of the current definition of "new discharges". This is because one of the gateway tests for non-complying activities is not to be contrary to the objectives and policies of the Plan or Proposed Plan and given discharges of wastewater will usually have more than minor adverse effects at least in the interim.
16. Even if existing upgraded or relocated discharges are not treated as new discharges the Council concerns about the overly restrictive nature of P71 are still applicable because of its highly directive and inflexible approach.
17. The Councils were also concerned about the monitoring costs that Policy P71 would impose, contending that a catchment-wide monitoring would be more efficient and effective.
18. Within this context, the Councils accepted and supported the Officer's s42A recommendation to remove the prescriptive water standards and to exclude wastewater networks from Policy P71. They agree with the s42A report that the other objectives and policies in the PNRP provided sufficient guidance for a decision-maker to thoroughly consider the effects from proposed discharges from upgraded wastewater treatment plants. However, their concerns with having such discharges classified as a non-complying activity remained.
19. Before turning to Policy P71A, I first address the Right-of-Reply presented to the Panel in regard to the definition of 'existing discharge' and 'new discharge' and the consent status for upgraded wastewater discharges. I note that, because this recommendation arose through the Right-of-Reply, I did not have an opportunity to address this Right-of-Reply recommendation in my earlier evidence.

Response to the Right-of-Reply on the Management of Improved Wastewater Discharges

20. The Councils submitted on the definition of “new discharge”, and both Mr Stephenson and I addressed this in our earlier evidence in terms of how the definitions would potentially be applied and how upgraded discharges could be considered. The interpretation as to what constitutes a new or existing discharge has become apparent over the last few months within the context of the Featherston WWTP upgrade application. I understand that the officers are of the view that it is necessary to apply a literal approach to the word “altered”.
21. Mr Stephenson’s evidence illustrates the difficulty caused by the combination of:
- The definition of “new discharge” capturing upgraded wastewater discharges
 - Rule 62 (non-complying activities)
 - Policies P83 and P71
22. As illustrated by the Featherston WWTP example, the current proposed wording of these provisions has the illogical consequence of having a proposed upgraded discharge to replace an existing discharge be classified as a non-complying activity, consequently removing the application of Policy P81 and applying Policy P83, directing that no new discharges to freshwater be allowed. The result could be to make it almost impossible to obtain consents for upgrades. That situation runs counter to Objective O50, Policies P63, P67, P81. If upgraded discharges are classified as “new discharges” simply because they are altered by way of a reduction in volumes and/or change in location, it effectively renders P81 redundant.
23. Fortunately, this situation has now been recognised by the reporting officers. In her Right-of-Reply in relation to Wastewater Discharges to Water (dated 4 May 2018), Ms Yvonne Legarth addressed the concerns of some submitters, including SWDC and MDC, that applications to improve the quality and/or reduce the volume of treated discharges, and hence the quality of the receiving environment, were classified as ‘new discharges’ to water and hence were non-complying activities¹ (and Policy 81 does not apply to new discharges).

¹ Right-of-Reply for Hearing Stream 4, Topic: Wastewater Discharges to Water, Report date 4 May 2018, Report Author Yvonne Legarth, pages 21-29

24. In summary, after consultation with the Environmental Regulation Team, Ms Legarth largely accepted the concerns of the Councils, and recommended two alternative ways to resolve this issue: either –
- 24.1 To amend the definition of ‘new discharges’ to enable the Regional Council to use its discretion to determine whether an altered wastewater discharge to freshwater is changed for the better/ improves the receiving environment; or
- 24.2 To both simplify the definition of ‘new discharge’ and amend the rules to remove from the non-complying activity rule any proposal to discharge wastewater to freshwater that already has ‘existing consents’ and will be improving water quality and reducing volumes; and to classify those proposals as full discretionary activities.
25. Ms Legarth preferred the second option, rather than rely on a discretion to determine the consent status of such applications. However, in my opinion, neither approach is consistent with Part 2 of the RMA or the provisions in the plan encouraging upgrades of discharges to water. In my view, the preferable resolution is to change the definition of ‘existing discharge’ of wastewater to include the replacement discharge of an existing authorised discharge of treated wastewater rather than introduce complexities into the definition of ‘new discharge’ that could generate future interpretation issues. This approach appropriately allows the consent process to determine upgrade applications in accordance with Policy 81 and related provisions.
26. An amendment of ‘existing discharge’ would then align the definitions of existing and new discharges with the policies; in particular –
- 26.1 It would align an application for the proposed discharge from an upgraded treated wastewater with Policy P81 (to progressively improve the quality of discharges from wastewater treatment plants and reduce the quantity of such discharges), a policy which, as currently worded, does not apply to new discharges; and
- 26.2 It would prevent the application of Policy 83 (to avoid new discharges to freshwater) to upgraded discharges of existing treated wastewater, and thereby prevent the very restrictive implications of this ‘avoidance’ policy and the consequences arising from the *Davidson* case.
27. Amending the definition of ‘existing discharge’ would also circumvent the need for the convoluted solution that Ms Legarth recommends in terms of amending the definition of

'new discharge' to cover the situations of replacement discharge consents for upgraded wastewater treatment plants.

28. My recommendation would be to add the following words (shown in green) to the definition of *existing discharge* (provided in the latest redline version of Chapter 2):

In the context of **wastewater** discharged into fresh **or coastal** water from a wastewater treatment plant or a **wastewater network**, **or any point source discharge**, means a discharge **already** authorised by **an existing resource** consent (or by section 124), including a discharge of treated wastewater into freshwater to replace a wastewater discharge authorised by an existing resource consent or section 124.

29. In my opinion, there is no need to build in any conditions or standards into the definition: those conditions can be incorporated into the rules if necessary. However, in my view, the best approach is to leave the determination of such applications the consent process to be guided by policies. In my view, non-complying activity status should only be used for applications for discharges which are considered to be generally inappropriate. It is clear that upgrades should not be in that category.
30. In terms of the consent status of upgraded discharges, Ms Legarth's recommendation was to amend both Rules R61 and R62 as follows (her recommended changes in blue):

Rule R61: ~~Existing~~ wastewater discharges to coastal and freshwater – discretionary activity

The discharge of wastewater:

- (a) into coastal water, or
- (b) that is an existing discharge into fresh water; or
- (c) that is a new discharge of treated wastewater into fresh water that was authorised by an existing resource consent at the time of application for a new consent and meets the following conditions:
 - (i) the location of the discharge was authorised by an existing resource consent at the time of application for a new consent
 - (ii) the volume of the discharge is reduced from that which was authorised by a condition on an existing resource consent
 - (iii) the volume or concentration of contaminants is reduced from that which was authorised by a condition on an existing resource consent

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

The discharge of **wastewater** into fresh water that is a **new discharge** into fresh water that does not comply with Rule R61(c) is a non-complying activity.

31. While I support the general thrust of the recommended amendment, I prefer the approach I have outlined above in paragraph 28. Also, I have a concern that the condition regarding the location of the discharge could be interpreted in an overly restrictive manner, meaning that any change in the location of the discharge point would make the whole discharge a non-complying activity, even if the change was minor or proposed for practical purposes (for example, to avoid erosion points or sensitive receiving waters). To my knowledge, there are often minor changes to the location of discharge points as part of WWTP upgrades (for example, a move to discharge to land may also involve some new discharges to water or moving the discharge point may be desirable to achieve better mixing or to avoid sensitive locations).
32. If the Panel prefers this approach to that outlined above in paragraph 28 (amendments to the definition of existing discharge), then in order to address the concerns above, and some of what I consider to be unnecessary and convoluted language, I recommend the following changes (in green):
- Rule R61: ~~Existing~~ wastewater discharges to coastal and freshwater – discretionary activity
The discharge of wastewater:
- (a) into coastal water, or
- (b) that is an existing discharge into fresh water; or
- (c) that is a new discharge of treated wastewater into freshwater from a wastewater network to replace a discharge that was authorised by an existing resource consent at the time of application for a new consent and meets the following conditions:
- (i) the location of the discharge was authorised by an existing resource consent at the time of application for a new consent and it involves no more than a minor change in location; and
- (ii) it reduces the volume of the discharge is reduced from that which was authorised by a condition on an existing resource consent; and
- (iii) it reduces the average volume or concentration of contaminants is reduced from that which was authorised by a condition on an existing resource consent.
33. However, this rewording would involve some discretion to determine whether a revised discharge point is a ‘minor’ change which is not ideal. A simpler and, in my opinion, preferable approach is to simply exclude any reference to location (i.e., exclude condition (i)) entirely on the basis that if the discharge is being upgraded then there is no need to make the change of location non-complying. As a fully discretionary activity, the Regional Council has ample discretion to ensure that inappropriate locations are avoided.
34. I now turn to the issues associated with Policy P71 and recommended Policy P71A.

Origin and Rationale for Policy P71

35. The section 32 report addressing water quality and discharges to water² briefly outlined the reasoning for Policy P71, stating that –

Policies P70 and P71 provide direction with respect to managing water quality for aquatic ecosystem health... (page 19)

36. The stated intention of Policy P71 was to set water quality standards in relation to the adverse effects of individual point source discharges to achieve the objectives of safeguarding aquatic ecosystem health and mahinga kai (emphasis added):

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. This policy establishes receiving water quality 'standards' for variables important for safeguarding aquatic ecosystem health that should not be exceeded as a result of an individual point source discharge after reasonable mixing. ...

Although there are few point source discharges to water in the Wellington Region, having water quality standards is a useful, and therefore efficient, tool for the management of consented point source discharges to achieve [stet] proposed Objective O25 (page 40)

37. In regard to wastewater in particular, the section 32 report stated that the proposed Plan includes one objective specific to wastewater discharges to water (Objective O50), which requires wastewater discharges to fresh water to be progressively reduced³. In respect of policies to achieve that objective, the report notes that (emphasis added)–

Policy P81 is to minimise and progressively improve existing discharges of wastewater to water. In particular, there must be progressive improvement of the quality of existing discharges to fresh water from treatment plants and reduction of the amount of wastewater going to fresh water. (page 20)

38. The report then notes that –

Policy P83 is to avoid new discharges of wastewater to fresh water. Because such discharges are new, planning for them can proceed on the basis that discharges should be to land rather than water (page 20)

39. Thus, the overall policy direction is clearly to have existing discharges from wastewater treatment plants progressively improved, while avoiding new discharges into freshwater. Policy P71 in its current form (or recommended P71A) runs counter to that because they potentially thwart upgrades.

² Section 32 report: Discharges to Water for the Proposed Natural Resources Plan for the Wellington Region, July 2015

³ Ibid, page 20.

Submissions on Policy P71

40. There were a number of submissions on Policy P71 and in particular:

- Dairy NZ/Fonterra
- Wellington Water Limited
- Masterton District Council
- Carterton District Council
- South Wairarapa District Council
- Royal Forest and Bird Protection Society
- Federated Farmers
- Hutt City and Upper Hutt City
- Fish and Game

41. The positions of these submitters ranged from support through to opposition. The Masterton and South Wairarapa District Councils opposed Policy P71 for the following reasons:

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 s42A Report and Recommendation on Policy P71

42. In her s42A report, Ms Michelle Conland addressed the concerns of submitters in regard to Policy P71, concluding that:

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.”⁴

⁴ S42A Report for Hearing Commencing 12 February 2018, Report dated 12 January 2018; Paragraph 840, page 221

43. In response, Ms Conland recommended simplifying Policy P71 by removing the standards and listing the types of measures by which water quality has to be measured against. She also acknowledged the problems associated with applying these standards to stormwater and wastewater and recommended excluding these sources of discharges from application under Policy P71. It was also recommended to remove specific water quality standards and have the policy direct decision-makers to have specific regard to a range of water quality attributes when determining measures to maintain that water quality within the objectives of Table 3.4.
44. The Councils agreed with both aspects of that recommendation and therefore did not adduce any evidence on the matter at the Hearing for Stream 4.

Evidence to the Panel on Policy P71

45. The Panel received evidence on Policies P70 and P71, particularly from the Minister of Conservation and Fish and Game. Most of the evidence was in general support of the standards proposed, with a lot of technical evidence produced addressing the nature and application of water quality standards.
46. In specific regard to Policy 70 and P71, the Minister sought to retain the water quality standards, but to introduce better recognition of non-point sources of discharges:

As argued in respect of P70, it is important for the achievement of the PNRP's water quality Objectives that P71 obliges consideration of the point source discharge in combination with other discharges, diffuse and point-source. This is consistent with the direction in s70 and s107 of the RMA, and the policy direction in the PNRP that seeks to achieve integrated management of land and water resources.⁵

47. The Minister recommend retaining the water quality standards in Policy P71, but rewording it so that the effects of other sources of discharges could be taken into account, as well as adding additional water quality standards. It appears that the Minister intended the standards to be more than 'guidance' (emphasis added):

Mr Percy's amendments, relying on the technical evidence, will assist in achieving a framework where the water quality objectives are clear in the first instance; a discharge applicant knows what standards he or she must meet; and cumulative effects are considered.⁶

⁵ Joint Planning Evidence of Phillip Harry Percy and Lucy Elizabeth Cooper on behalf of Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa, the Minister of Conservation and Wellington Fish and Game Council, 2 February 2018, paragraph 237

⁶ Legal submissions on behalf of the Minister of Conservation: Hearing 4: Water Quality

48. In addition to the evidence, there was a verbal presentation from Ms Nicola Arnesen, Senior Policy Planner, Environmental Regulation, GWRC (supported by a brief PowerPoint presentation), who provided verbal 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. In her presentation, she referred to the Carterton, Martinborough, Greytown and Featherston wastewater treatment plant upgrades, stating that “all have significant adverse effects on waterbodies and Section 107 issues”. She considered that the “PNRP needs to help ‘pull effects up’ to acceptable levels” and referred to both s107 RMA and Policy P71, the latter she stated to be a “critical policy for processing existing WWTP discharges to water”. Ms Arnesen also referred to the rules relating to discharges from wastewater treatment plants, noting that the definition of new discharge says ‘...or otherwise altered by a new resource consent’ so that all ‘altered’ discharges are non-complying activities.

Right-of-Reply on Policy P71

49. Included within the Council’s Right-of-Reply were written replies from Yvonne Legarth (referred to above) and Michelle Conland, the latter addressing Policy P71.
50. In her Right-of-Reply, Ms Conland referred to the presentation by Ms Arnesen:

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.

51. Ms Conland noted the problems with including water quality standards within Policy P71:

In relation to the inclusion of water quality standards in Policy P71, I maintain that there remains a risk of discharging down to these standards, that the standards may bear no relation to the type of discharge (as the policy applies to any point source discharge to a river that is not stormwater or wastewater) and therefore may not be appropriate, especially if the discharge is into a river

and Stormwater, dated 19 February 2018, paragraph 21.

where the water quality objectives are met. Furthermore, if the point source discharge is new, then it is difficult to predict whether the discharge will meet the standards, prior to the discharge occurring.

52. On that basis she again recommended that Policy P71 should not include water quality standards, but in response to the evidence of Ms Arnesen she also recommended reintroducing the water quality standards through a new Policy P71A that applied only to existing wastewater discharges to freshwater, noting that (emphasis added) –

Given that recommended Policy P71A will mostly, or perhaps only, apply to wastewater discharges that have previously been consented, the relative measures and monitoring required in order to determine compliance with the policy should be able to be undertaken prior to applying for a resource consent application. (paragraph 120)

53. I note that I do not consider P71A only applies to existing discharges as it is silent on whether it is existing or new.

Discussion on Policy P71/71A

54. I largely support the changes proposed to Policy P71 in the Council's s42A report and in the Right-of-Reply, for the reasons outlined by the reporting Officer. However, I do not agree that it is necessary or appropriate to introduce the much more directive P71A for wastewater discharges. In particular, I do not agree with the suggestion that this is necessary in order to manage wastewater discharges. Nor do I agree that P71A would mostly apply to previously consented discharges. P71A is not limited to existing discharges so it would capture new discharges, however those are defined.
55. I agree that the PNRP needs to help 'pull effects up' to acceptable levels⁷. However, the reintroduction of the standards from the notified P71 into a new Policy P71A "to aim higher than the bottom lines in the National Objectives Framework in the National Policy Statement for Freshwater Management"⁸ and that applies only to point source discharges of treated wastewater is not appropriate, reasonable or justified in my opinion.
56. The evidence of Mr Stephenson explains the technical problems associated with applying these standards to upgrades of wastewater treatment plants. While the standards may describe a desirable end state, the evidence of Mr Stephenson indicates

⁷ Right-of-Reply presentation by Ms Nicola Arnesen.

⁸ Right-of-Reply for Hearing Stream 4, Topic: Water Quality, Report date 4 May 2018, Report Author Michelle Conland, paragraph 124, page 42.

that some are unachievable in the short to medium term, and thus a resource consent application is likely to be inconsistent with this policy.

57. The evidence of Mr Hopman describes the difficulties caused for an existing recently upgraded discharge by a condition based around the QMCI standard.
58. The evidence of Mr Hamill describes technical difficulties with the various proposed standards, specifically QMCI and Dissolved Oxygen.
59. The Councils are particularly concerned that the current wording of notified P71 and the recommended Right-of-Reply wording of P71A make no allowance for temporary or minimal non-compliance. Thus, for example, if the discharge causes say 40% change to clarity (compared with 33% in the standard) for say 30 days per year, the policy (and any resultant consent conditions) would be breached, even though this may have little if any adverse effect on ecology or amenity values.
60. The Councils have the same concern regarding the proposed QMCI standard. It is accepted that if there are long term and sustained changes to QMCI of more than 20%, this may well be indicative of significant adverse effects on aquatic life which may need to be addressed.
61. I agree that these are valid concerns. The difficulty is that notified Policy P71 and recommended P71A do not make any allowance for interim (during upgrade) or short duration changes to QMCI, clarity or the other parameters.
62. Furthermore, by imbedding QMCI in the policy, a plan change would be required to remove or amend the perspective standards should new techniques or standards be found to be more efficient and effective.
63. I support the s42A reports recommendation to ensure that P71 in its proposed form does not apply to stormwater and wastewater. However, if the panel considers some guidance would be appropriate, I could support Policy P71 applying to wastewater discharges if it were kept in the general 'guidance frame' currently recommended by the Council officers in the Right-of-Reply, and the reference to "where all of the objectives in Table 3.4 of Objective 25 are met" is removed. I note the alternative changes outlined in the evidence of Mr Hamill (to reduce the Dissolved Oxygen standards should they be retained within a policy and move the QMCI to Objective 25 in the form of guidance as opposed to an absolute). However, my preference is the removal of the specific standards from the policy framework, particularly in light of the significant officer recommended amendments

to Objective O25 and uncertainty as to what form the objective will take, and lack of certainty as to what forms a new or existing wastewater discharge.

64. There appears to be an underlying assumption that if any of the P71 parameters are breached for even a short time that this equates to significant/unacceptable adverse effects on the environment. In my view, that is untenable. Whether or not there is a significant adverse effect will depend upon a range of factors including:
- The sensitivity of the particular receiving environment and species affected
 - The frequency and duration of the non-compliance and any resultant ecological effects
 - The degree of non-compliance (21% change or 60% change?)
 - The nature and extent of any flow on ecological or other effects
 - Whether such effects endure after the non-compliance ceases
 - The reversibility of any ecological effects after non-compliance ceases
65. Policy P71 and recommended Policy P71A make no allowance for these factors and thereby (given their directive nature) largely remove the discretion of decision-makers on applications for such discharges.
66. Furthermore, as recommended, Policy P71A is inconsistent with Policies P63 and P81 in that it provides no recognition of the need to enable the improvement of wastewater discharges over time. It is simply a blanket requirement, with no recognition of the need to allow for interim or temporary situations. For example, there is no equivalent of s 107(2) RMA in terms of recognising circumstances when adherence to the prescribed standards may not be practicable or desirable.
67. In my opinion, there is sufficient policy guidance elsewhere in the PNRP to assist decision-making in relation to upgraded wastewater discharges, including –
- Policy 4: Minimising adverse effects
 - Policy P62: Promoting discharges to land
 - Policy P63: Improving water quality for contact recreation and Māori customary use
 - Policy P66: National Policy Statement for Freshwater Management requirements for

discharge consents

- Policy P67: Minimising effects of discharges
- Policy P71 in its recommended amended form if that more flexible wording was applied to wastewater discharges

68. In addition, the objectives of the PNRP provide clear direction on the outcomes to be sought in considering discharges from upgraded wastewater treatment plants, including:

- Objective O23 – Maintaining or improving water quality
- Objective O24 – Rivers, lakes, natural wetlands and coastal water are suitable for contact recreation and Māori customary use
- Objective O25 – Safeguarding biodiversity, aquatic ecosystem health and mahinga kai in fresh water bodies and the coastal marine area
- Objective O30 – The habitat of important trout fishery rivers and spawning waters is maintained or improved
- Objective O49 – Discharges of wastewater to land are promoted over in preference to discharges to fresh water and coastal water, unless the discharge to land is not the best practicable option.
- Objective O50 – Discharges of wastewater to fresh water are progressively reduced removed

69. As a discretionary activity, the adverse effects of proposed discharges from upgraded wastewater treatment plants can be fully considered against these objectives, Policy P81, and the NPSFM, and appropriate standards can be applied via conditions regarding the management and monitoring of effects on downstream water quality.

70. Finally, I do not agree with Ms Arnesen's opinion (as summarised in her Right of Reply presentation) that:

....that Policy P71 is a critical policy for processing existing wastewater treatment plant (WWTP) discharges to water.

71. The Masterton, Carterton, Martinborough and Greytown wastewater treatment plant upgrades have already been processed without the need to rely on this Policy. The Featherston application is the only remaining wastewater treatment plant upgrade to be processed and, as discussed by Mr Stephenson, P71/71A has the potential to thwart the

upgrade rather than assist in the processing of the application. There are no other wastewater plant discharges in the Wairarapa which are still to be processed and accordingly, it cannot be said that recommended P71A is necessary. Indeed, there is no need to have standards or guidelines which are specific to wastewater discharges.

Conclusion

72. My supplementary evidence is given in support of MDC's and SWDC's submissions on the PNRP in relation to water quality and wastewater discharges.
73. Having considered the Right-of-Replies from the two reporting planners on this matter (Ms Legarth and Ms Conland), I have reached the following conclusions:
 - 73.1 While I support changing the status of wastewater discharges from upgraded wastewater treatment plants from non-complying to discretionary activity, I consider the proposed approach is overly convoluted and problematic, and recommend an alternative approach involving a simple amendment of the definition of 'existing discharge' rather than of the definition of 'new discharge', and amending the conditions attached to such discharges as a discretionary activity. These amendments would be in better alignment with the policy framework of the PNRP and recognise that such discharges are to replace existing discharges with improved discharges and are therefore not 'new'. They would also ensure that Policy 81 is applicable to upgraded discharge even where the location of the discharge changes; and
 - 73.2 The recommended Policy P71A is overly prescriptive, and unnecessary in order to give effect to the objectives of the PNRP.
74. Based on my conclusions, I consider amendments should be made on the following plan provisions to give effect to the relief sought by the Councils:
 - Applications for wastewater upgrades of existing discharges should be a discretionary activity, provided that the volume and therefore total contaminant loads of the discharge are to be reduced over time.
 - The definition of 'existing discharge' be amended rather than the definition of 'new discharge';

- Any conditions applying to upgraded wastewater discharges should not preclude changes to the location of the discharge or should at least provide scope for minor changes in the location of discharges;
- If P71 is amended to provide for guidance and flexibility rather than inflexible bottom lines (as outlined in the S42A report), then it could be applied to discharges from wastewater treatment plants; and
- Policy P71A should not be accepted.

75. In my opinion, the relief sought through my evidence would appropriately accord with provisions of Part 2 of the RMA, will help to achieve sustainable management of natural and physical resources and would be a more effective and efficient way of achieving the relevant objectives in the PNRP.

Pauline Mary Whitney
20 September 2018