

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

In the Matter	Of the Resource Management Act 1991
And	Of an appeal pursuant to Clause 14(1) of the First Schedule of the Act
Between	Masterton District Council Appellant
And	Wellington Regional Council Respondent

Notice of Appeal by Masterton 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. Masterton District Council (MDC) appeals against part of the decision of the Independent Hearing Panel appointed by the Wellington Regional Council (“the Regional Council”) in respect of the Proposed Natural Resources Plan for the Wellington Region (“PNRP”).
2. MDC lodged submissions and further submissions against the PNRP.
3. MDC 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 MDC appeal relates to:
 - 5.1 **Regionally Significant Infrastructure**
 - (a) Definition of “Regionally Significant Infrastructure”;
 - (b) Objective 12;
 - (c) Policies 7, 8 and 12;
 - 5.2 **Drains**
 - (a) Definition of “Drain”;
 - (b) Definition of “Highly modified river or stream”;
 - (c) Rules R121, 122 and 129;
 - (d) Method M14;
 - 5.3 **Wastewater**
 - (a) Definition of “Existing Discharge”;
 - (b) Definition of “New Discharge”;
 - (c) Objectives 49 and 50;
 - (d) Policies 70 and 83;
 - (e) Rules R61, 62, 67, 79 and 80;

5.4 Stormwater

- (a) Objective 48;
- (b) Policies 73, 74, 76 and 77;
- (c) Rules R50, 51 and 53;
- (d) Schedule N.

5.5 Other

- (a) Objective 24/Table 3.1;
- (b) (New) Rule R36B;
- (c) Rule R45;
- (d) (New) Rules R48A (Permitted Activity) and 52A (Restricted Discretionary Activity);
- (e) (New) Rule R99(e) and (New) Rule R100 (c);
- (f) Rule R112 (h); and
- (g) Schedule E5 - Historic Bridges

Regionally Significant Infrastructure

- 6. The definition of ‘Regionally Significant Infrastructure’ does not recognise the district road network as a key infrastructure asset within the region given the essential role it performs in providing access throughout the region. District roads provide a critical lifeline to rural communities and townships.
- 7. The decision to delete Policies 7 and 8 mean that there is no longer policy recognition within the PNRP of the benefits and appropriateness of the maintenance and use of existing structures such as bridges. Such structures are often related to Regionally Significant Infrastructure and have an operational or locational requirement for their functioning. Given the structures are existing, their ongoing use and maintenance is beneficial and more economical.

Relief sought:

- (a) Amend the definition of “Regionally Significant Infrastructure” to include the following:

Local Authority Roads, including culverts, bridges, and any other support structures or ancillary infrastructure.

- (b) Amend Objective 12 as follows:

The social, economic, cultural and environmental and health and safety benefits of regionally significant infrastructure, and renewable energy generation activities, the utilisation of mineral resources, and roads are recognised and provided for.

- (c) Add new Objective 12A as follows:

Recognise that some regionally significant infrastructure has a functional need and/or operational requirement to be located and/or operated in a particular environment.

- (d) Retain Policy 7 and amend as follows:

Policy 7: Uses of land and water

The cultural, social and economic benefits of using land and water for:

- (a) aquaculture, and*
- (b) treatment, dilution and disposal of wastewater and stormwater, and*
- (c) industrial processes and commercial uses associated with the potable water supply network, and*
- (d) community and domestic water supply, and*
- (e) electricity generation, and*
- (f) food production and harvesting, and*
- (g) gravel extraction from rivers for flood protection and control purposes, and*
- (h) irrigation and stock water, and*
- (i) firefighting, and*
- (j) contact recreation and Maori customary use, and*
- (k) transportation, including along, and access to, water bodies; and*
- (l) regionally significant infrastructure shall be recognised.*

- (e) Retain Policy 8.

- (f) Amend Policy 12 as follows:

Policy P12: Benefits of regionally significant infrastructure and renewable electricity generation facilities, and roads.

The benefits of roads, regionally significant infrastructure and renewable energy generation activities are recognised by having regard to:

...

- (d) the functional need and operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure, ~~and~~ renewable energy generation activities in the coastal marine area and the beds of lakes and rivers, and roads.*

- (g) Any consequential amendment required to give effect to the relief sought above.

Drains

8. The Rules relating to Council's management of its stormwater network are unclear and confusing. It is not clear from the PNRP provisions relating to drains what is captured by Rules R121 and 122 and how those rules relate to water races drains, highly modified streams and the Councils' stormwater networks. In particular, it is not clear which Rules are intended to apply to Council's maintenance of its stormwater network, which includes routine vegetation clearance and sediment removal of drains and modified streams. This work is essential in the Masterton urban area where there is an integrated system of drains, streams and water races to prevent flooding.
9. While clarity has been introduced into the definition of 'drain' as excluding open swales that only convey water during or immediately after rainfall events, Rule R121 excludes any drain or highly modified stream or river managed as part of a stormwater network or a water race. It is also restricted to maintenance within an individual property, leaving uncertainty as to how that limitation would apply in practice, given Council has many properties. Are road reserves deemed 'individual properties'?
10. Removing vegetation from rivers is a permitted activity under Rule R122, but this excludes drains and highly modified streams, and does not include sediment removal.
11. It appears that Council's maintenance is caught by the default Rule R129, which it is understood was not the intention, and imposes significant and unreasonable costs on Councils. Rule R50, which specifically captures Council's stormwater networks only relates to discharges.
12. Even if Rules R121 or R122 did apply, these Rules contain conditions that are unreasonable, often impracticable or unnecessary: for example, the conditions relating to fish protection and the retention of vegetation retention.
13. The definition of 'highly modified river or stream' now excludes stream managed as part of a stormwater network. It also requires such watercourses to be straightened.
14. Method 14a has been amended to include a timeframe (30 June 2019) by which the WRC will develop a map layer identifying drain and highlighting modified streams to assist with the implementation of Rules R121 and 122. To date, this mapping has not been provided, adding further to the uncertainty.

Relief sought:

- (a) Clarify the provisions relating to the maintenance of Council managed drains, water races and highly modified streams to

enable vegetation clearance and sediment removal to be permitted activities. Either delete the conditions applying to vegetation clearance, fish removal and sediment removal or amend to be more workable and practicable

- (b) Provide mapping to clarify those watercourses to which the Rules apply.
- (c) Any consequential amendment required to give effect to the relief sought.

Wastewater

- 15. It is unclear from the PNRP provisions relating to wastewater whether an upgrade to an existing wastewater system is a “new” or “existing” discharge.
- 16. Under Rule R61 existing wastewater discharges to freshwater are a discretionary activity provided that the volume of the discharge is reduced (Rule R61 (b)(i)) and that the range of contaminants is not increased (Rule R61(b)(iii))
- 17. This rule does not provide appropriately for projected town growth, which in the Wairarapa currently sits at around 3% per year and also stops the combining of wastewater, which is a real concern for some areas. It also fails to recognise that some contaminants entering the wastewater system (for example, pharmaceuticals) are outside District Councils to control or limit.
- 18. Any new discharge or existing discharge that does not meet the requirements of Rule R61 (b) is a non-complying activity under Rule R62. Policy P83 confirms that new discharges to water are to be avoided.
- 19. The practical impact of the PNRP provisions relating to the discharge of wastewater from a wastewater network onto land (a restricted discretionary activity status under Rule R80) is that District Councils will have to own all land intended for use for wastewater disposal.
- 20. MDC is concerned that if the Regional Council’s motivation is to get wastewater out of waterbodies, the current Rules do not make this a realistic option within the Masterton District as the Council does not have access to the amount of land required.
- 21. Under Rule R67, discharges into water or onto land where it may enter a site or habitat identified in one of the listed Schedules in a non-complying activity.
- 22. Henley Lake is listed within Schedule C5 as a Site of Significance to Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa.

23. A non-complying activity status under Rule R67 has the potential to significantly limit future use of Henley Lake (Schedule C) and the associated wetland (Schedule F3) for future stormwater management and recreation.

Relief sought:

- (a) Amend the definitions of “Existing Discharge” and/or “New Discharge” to confirm that the upgrade of an existing wastewater network is an “Existing Discharge”; and/or
- (b) Amend Rule R61 (b) to confirm that the requirement to reduce the volume of wastewater discharge to freshwater is on a per capita basis and that the range of contaminants must be under the control of the Council; and/or
- (c) Amend Rule R67 to exclude discharges to Henley Lake (or Schedule C water bodies generally) and the associated wetland from being a non-complying activity. A discretionary activity status is better suited (Rule R68) in the circumstances.
- (d) Amend Rule R80 to provide for discharges of treated wastewater from a wastewater network onto or into land as a permitted or controlled activity (subject to permitted activity standards or matters of control).
- (e) Any consequential amendment required to give effect to the relief sought.

Stormwater

24. The PNRP Stormwater provisions (principally, Objective O48, Policies P74 and P75, and Rules R50 and R51) establish a two-stage consenting framework for discharges of stormwater from a local authority network.
25. As a framework, these provisions will impose a significant work programme on Territorial Authorities over a short timeframe and do not integrate well with Method 15 (which is specific to local authority stormwater management).
26. The approach in the PNRP is to require all local authority stormwater networks to require resource consent under Rule R50 as a controlled activity where that resource consent application is lodged within six months of the rule becoming operative. This is an unduly restrictive timeframe, particularly given the work programme imposed.
27. The requirement to apply for a Restricted Discretionary resource consent as “Stage 2” (under Rule R51) effectively encapsulates an assessment of all effects, including both temporary or minor ones. Only effects of significance should be relevant as matters over which discretion is restricted.

Relief sought:

- (a) Amend Rule R50 to provide (a) as follows:

the resource consent application is received within ~~six~~ 12 months of this Rule becoming operative.

- (b) Amend Rule R51 to clarify that effects which are temporary or minor are not matters over which discretion is restricted.
- (c) Any consequential amendment required to give effect to the relief sought.

Other matters

New Rule R36B

28. The inclusion of new Rule R36B means that District Councils will now require a restricted discretionary resource consent for roadside drain spraying. Drain spraying is necessary to ensure stormwater drains remain clear and do not cause/contribute to potentially very serious road safety and/or road maintenance issues.

Relief sought:

- (a) Amend Rule R36B to clarify that mechanical spraying of roadside drains is a permitted activity.

Rule R45 - Potable Water - permitted activity

29. It is not clear from the current wording where the 0.3g/m³ limit for the concentration of free or combined residual chlorine in the discharge is measured from (Rule R45 (c)).

Relief sought:

- (a) Amend Rule R45 to clarify that the chlorine content of the discharge is measured from the when it enters the water, rather than the discharge point.

New Rule R48A - Stormwater from new subdivision and development

30. Under the proposed rule, stormwater discharge from new urban subdivision and development over a certain size is permitted, provided that it complies with Rule R48, except Rule R48(c).
31. If the discharge cannot comply with the requirements of Rule R48, it is proposed under new Rule R52A that the stormwater discharge will require a Restricted Discretionary Activity consent.

32. Under Rules R50 and 51, District Councils are already required to get stormwater discharge consents for existing and new stormwater networks and will need to improve management of new subdivisions.
33. It is therefore unnecessary and overly cumbersome for the Regional Council to become involved in setting requirements for stormwater quality at development level. This will be costly and confusing to developers and landowners.

Relief sought:

- (a) Delete new Rules R48A and 52A.

New Rules R99 (e) and 100 (c)

34. Rules R99 (e) and 100 (c) impose new requirements that earthworks and vegetation clearance shall not occur within 5 m of a surface waterbody. This makes the maintenance of river banks by District Councils very difficult. Some flexibility is required to enable District Council staff to carry out work (without consents) for example to remove tree at risk of falling into the watercourse and blocking culverts/bridges.

Relief sought:

- (a) Delete new Rules R99 (e) and 100 (c) or amend to clarify that work carried out by District Councils within 5 m of a surface waterbody to manage flood risk is a permitted activity.

Rule R112 (h)

35. Rule R112 (h) provides that any maintenance of the function of a structure must be undertaken within 5 metres of the structure and result in the disturbance or excavation of bed of no more than 10m² as a permitted activity.
36. Rule R112 (h) is a new addition introduced following decisions on the PNRP.
37. Where removal of flood debris from bridges is concerned, the limits set out in Rule R112 (h) are too restrictive, particularly in the event of a large storm. Some flexibility is required to enable District Councils to carry out work (without consent) to remove flood debris from the bed of a lake or river.

Relief sought:

- (a) Delete Rule R112 (h) or increase the limits provided for in Rule R112 (h)(ii) and (iii) to allow greater flexibility to District Councils in carrying out flood clearance works.

Schedule E5

38. MDC opposes the listing of the Tauweru Bridge in Schedule E5 as a Historic heritage freshwater site on the basis that any historic value that the bridge has is low and does not justify such listing. MDC is also concerned that the listing of the bridge within Schedule E5 will mean that it is unable to carry out important maintenance and/or improvement works necessary to ensure the ongoing safety and usability of the bridge as a point of connection between Masterton and Castlepoint.

Relief sought:

- (a) Delete Tauweru Bridge from Schedule E5.

Rule R.R.1

39. It is unclear from Rule R.R1 whether the condition relating to take and use of water below the minimum flow or minimum water level in Table 7.1 or 7.2 (Condition (a)) is excluded from applying to water required for the operation of water races, or is limited as not applying to water races for the specific purpose of taking and using drinking water for people and animals.
40. MDC seeks clarity as to the extent to which the Rule R.R1 applies or does not apply to the take and use of water for water races.

Relief sought:

- (a) Amend Rule R.R1 to clarify the extent to which it applies to the take and use of water for the operation of water races in the Ruamāhanga Whaitua.
41. In line with the Environment Court's Decision of 26 July 2019 ([2019] NZEnvC 126) MDC attaches copies of the submission and further submission made in relation to the PNRP.

Date: 18 September 2019



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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