

BEFORE GREATER WELLINGTON REGIONAL COUNCIL

UNDER the Resource
Management Act 1991

IN THE MATTER OF the Proposed Natural
Resources Plan for the
Wellington Region

AND
IN THE MATTER OF Submissions by the
**Kapiti Coast District
Council**

**STATEMENT OF EVIDENCE OF EMILY THOMSON
ON BEHALF OF THE KAPITI COAST DISTRICT COUNCIL**

**Planning
Hearing Group 3
21 August 2017**

INTRODUCTION

- 1.1 My full name is Emily Jane Thomson. I am a Senior Policy Planner at the Kāpiti Coast District Council (**District Council**). I have held this position since October 2004. My qualifications are Master of Resource and Environmental Planning, Bachelor of Landscape Architecture with honours, and a Bachelor of Science.
- 1.2 I have 14 years of experience in local government resource management. My main role is to prepare and process District Plan changes and to give advice for resource consents sought under the Kāpiti Coast District Plan. Since 2004, I have written planning evidence for 10 plan changes and have been involved in the preparation or processing of 16 further plan changes. I have recently been a section 42A author for parts of the review of the Kapiti Coast District Plan.
- 1.3 I prepared the District Council's submissions on the Proposed Wellington Regional Policy Statement and the Proposed New Zealand Coastal Policy Statement (**NZCPS**) (now operative) and presented the submissions at the hearing for the Proposed Regional Policy Statement (now operative) and Board of Inquiry for the NZCPS. I also attended consultation sessions and provided feedback for the review of the Wellington Regional Plans at the early stages of development of the plans and assisted in the preparation of the District Council's submission on the Draft Regional Plans. In addition I provided evidence for the District Council to the Boards of Inquiry for the Transmission Gully Regional Freshwater Plan Change, the Transmission Gully Motorway Project and MacKays to Peka Peka Expressway Project.
- 1.4 I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2. OUTLINE OF EVIDENCE

- 2.1 My evidence is organised under the following headings:

- (a) Executive summary.
- (b) Background / context
- (c) Statutory matters
- (d) Response to Section 42A report
- (e) Recommended changes to rules
- (f) Conclusion.

3. EXECUTIVE SUMMARY

- 3.1 The Kapiti Coast District sits at the northern end of the Wellington Region and includes land north of the Pukerua Bay to north of Otaki.
- 3.2 The Kapiti Coast District Council made a submission, in relation to matters being considered in this hearing, the submission supported the Proposed Regional Plan in part and sought amendments relating to dewatering activity rules.
- 3.3 My evidence focuses on outstanding matters in relation to the District Council's submission, following the release of the Regional Council's Section 42A report. This includes outlining recommended amendments to rules in the Proposed Regional Plan and the implications of these rules for the maintenance and development Council's infrastructure including roads, water supplies, wastewater treatment and stormwater management.

4. BACKGROUND / CONTEXT

- 4.1 The Kapiti Coast District sits at the north western end of the Wellington Region with a population of approximately 49,000 and provides water, stormwater, wastewater and transport infrastructure and a range of community facilities serving five separate urban areas and a wider rural hinterland. The Kapiti Coast District has three separate water supplies with reticulated networks, two waste water treatment plants with associated reticulated piped networks and an extensive network of piped and open drains for stormwater management.

- 4.2 The Kapiti Coast District Council made a submission on the Proposed Natural Resources Plan (PNRP) stating that it supported the PNRP in part, but has concerns about specific aspects of the PNRP relating to effects on the construction, upgrading and maintenance of regionally significant infrastructure particularly in terms of dewatering rules. The issues for the development of regionally significant infrastructure are addressed in more detail in the evidence of Rita O'Brien, Stormwater and Coastal Engineer from the Kapiti Coast District Council's Infrastructure Group.
- 4.3 The District Council's submission supported the majority of the PNRP provisions including objectives and policies. The core concern the District Council has, with a small number of rules in the PNRP is that they are overly onerous, poorly drafted and will result in significant unnecessary costs, for resource consents for the development of transport, water, stormwater and wastewater infrastructure, to the District Council and its ratepayers.
- 4.4 I consider that Proposed Rules 140, a permitted activity rule for dewatering, and the related permitted activity rule (Proposed Rule 42), for discharges from dewatering need to be amended in response to the District Council's submission or an alternative rule framework be provided for the dewatering required for regionally significant infrastructure. I note that Rule 42 is not being considered until hearing group four however the interlinked nature of the rules is critical to the Council's submission therefore this evidence addresses both rules together. The rules as notified were:

R140 Dewatering – permitted activity

The take of water and the associated diversion and discharge of that water for the purpose of dewatering a site, including but not limited to, maintenance, excavation, construction or geotechnical testing, is a permitted activity, provided the following conditions are met:

- (a) *The take continues only for the time required to carry out the work but does not exceed one month; and*
- (b) *The take and diversion and discharge is not from, onto or into contaminated land; and*
- (c) *The take does not cause ground subsidence; and*
- (d) *The take does not deplete water in a water body; and*
- (e) *There is no flooding beyond the boundary of the property.*

Note: Discharges to water, or onto land where it may enter water related to dewatering are provided for in rule 42

Rule 42 – Minor Discharges – permitted activity

The discharge of contaminants into water, or onto land where it may enter water that is not permitted, controlled, restricted discretionary, discretion, non-complying or prohibited by any other rule in this Plan is a permitted activity provided the following conditions are met:

- (a) Where the discharge may enter groundwater, the discharge is not located within 50m of a bore used for water abstraction for potable supply or stock water, and*
- (b) Where the discharge enters a surface water body or coastal water, the concentration of total suspended solids in the discharge shall not exceed:*
 - (i) 50g/m³ where the discharge enters a site of habitat identified in Schedule A (outstanding water bodies), schedule F1 (rivers/lakes), schedule F3 (significant wetlands), or Schedule F4 (Coastal sites), except when the background total suspended solids concentration in the receiving water is greater than 50g/m³ in which case the decrease in water clarity after the zone of reasonable mixing shall not exceed 20%, or*
 - (ii) 100g/m³ where the discharge enters any other water, except when the background total suspended solids concentration in the receiving water is greater than 50g/m³ in which case the decrease in water clarity after the zone of reasonable mixing shall not exceed 33%, and*
- (c) If the discharge is from dewatering, the discharge is not from contaminated land, and*
- (d) The discharge shall not cause any erosion of the channel or banks of the receiving water body or the coastal marine area, and*
- (e) The discharge shall not give rise to the following effects after the zone of reasonable mixing:*
 - (i) A change in the pH of +/- 0.5 pH unit, or*

- (ii) *The production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials, or*
- (iii) *Any conspicuous change in the colour or visual clarity, or*
- (iv) *Any emission of objectionable odour, or*
- (v) *The freshwater is unsuitable for consumption by farm animals, or*
- (vi) *Any significant adverse effects on aquatic life.*

4.5 The District Council's submission included three options for Rule 140. These were:

- a) to either delete the timeframe from clause (a) of Rule 140, or
- b) to provide for dewatering required for the construction of regionally significant infrastructure via a new specific permitted activity rule, that has the same conditions as rule 140, without the 'one month timeframe', or
- c) provide a new controlled activity rule for dewatering required for the construction of regionally significant infrastructure which does not meet permitted conditions in Rule 140.

4.6 In relation Rule 42 the submission offered two options. These were:

- a) a new permitted activity rule specific for "minor discharges from dewatering activities for regionally significant infrastructure" which has the same conditions as Rule 42 without the suspended solids conditions; or
- b) a new controlled activity rule for "minor discharges from dewatering activities for regionally significant infrastructure" to allow for discharges not meeting the permitted conditions in Rule 42.

4.7 The reason for these requests is that dewatering, both take and discharge, are frequently required for the construction of regionally significant infrastructure for the reasons outlined in Ms O'Brien's evidence and dewatering activities were previously predominantly (prior to the PNRP) carried out as a permitted activity.

4.8 The construction, upgrade and maintenance of regionally significant infrastructure is a necessity for health and safety of people and communities within urban areas. Therefore, these dewatering rules (140 and 42), and their default to a discretionary activity (Rule 142), if the permitted conditions are not met, are potentially significant impediments to the efficient development of critical regionally significant infrastructure.

4.9 Ms O'Brien's evidence is that infrastructure projects can occur over a range of time frames from a few days to over a year. However most commonly upgrade works on pipe networks occur for approximately six weeks. The works dewatering required can be continuous or intermittent, depending on the soils, depth of excavation and other site specific considerations. The District Council has successfully carried out these activities on a regular basis without adverse effects occurring beyond the site and therefore I consider that the PNRP approach to dewatering to be overly onerous.

5. STATUTORY MATTERS

5.1 In my opinion, unless significant changes are made to the proposed rules related to dewatering, the provisions do not meet the purpose and principles of the RMA.

5.2 It is my opinion that these 'dewatering' rules need to be amended to ensure that sustainable management of natural and physical resources is achieved. This is particularly important given that the purpose of the RMA requires enabling the wellbeing of people and communities to provide for their health and safety while:

- (i) Sustaining the potential of resources to meet the foreseeable needs of future generations and
- (ii) safeguarding the life supporting capacity of water, soil and ecosystems

5.3 I consider that the provision of regionally significant infrastructure is an important component of enabling the wellbeing of people and communities while safeguarding the life supporting capacity of water, soil and ecosystems. The core reticulated water, wastewater and stormwater services provided by District Councils to urban areas within their districts is vital in ensuring that

the needs of people are provided for while maintaining environmental standards.

5.4 The reticulated potable water supply, and wastewater network and treatment are critical sanitation services and the stormwater network manages flood risk within urban areas. I consider that these provisions are particularly relevant and I have considered them because dewatering is carried out regularly in the Kapiti Coast District in urban areas for the purpose of providing services to residents and businesses. In my opinion the life supporting capacity of water, would be significantly compromised if the networks of piped water, stormwater and wastewater were not provided or fall into disrepair.

5.5 In relation to other matters in Section 7 of the RMA it is my opinion that amendments are required to the rules and their conditions to address concerns related to the maintenance and enhancement of the quality of the environment.

5.6 In my opinion the amendments and further conditions proposed in section 7 of this evidence would better achieve the purpose of the RMA and more adequately address these matters. This is because with my recommended changes, the rules and conditions would provide more guidance and clearer requirements about how the section 6 matters will be recognised and provided for, and about how particular regard has been given to the section 7 matters.

5.7 In terms of section 32 (and section 32AA) analysis I do not consider that the rules as recommended in the section 42a report are the most efficient and effective method of giving effect to the objectives of the plan. In particular I consider that the provisions, recommended in the section 42a report, do not implement Objectives 8 and 12 relating to the use of water and benefits of regionally significant infrastructure which state:

Objective 8

The social, economic, cultural and environmental benefits of taking and using water are recognised and provided for within the Plans allocation framework.

Objective 12

The social, economic, cultural and environmental benefits of regionally significant infrastructure and renewable energy generation activities are recognised.

5.8 I consider that Rules 140 and 42 also do not adequately recognize the social, economic, cultural and environmental benefits of regionally significant infrastructure and the necessary functions required for it as set out in Policies 7 and 12 below.

Policy 7: Uses of land and water

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

...

(b) Treatment, dilution and disposal of wastewater and stormwater, and

...

(d) Community and domestic water supply, and

...

Shall be recognised.

Policy 12: benefits of regionally significant infrastructure and renewable electricity generation facilities

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

- (a) The strategic integration of infrastructure and land use, and*
- (b) The location of existing infrastructure and structures, and*
- (c) The need for renewable energy generation activities to locate where the renewable energy resources exist, and*
- (d) the functional need for port activities to be located within the coastal marine area, and*
- (e) operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure and renewable energy generation activities.*

5.9 I consider that Rules 140 and 42 do not currently recognise and provide for the 'operational requirements' of regionally significant infrastructure. Therefore they do not implement the objectives or the policies. The District Council's submission included options for these rules which would specifically provide for regionally significant infrastructure and implement these

objectives. Recommended amendments to the provisions are provided in section 7 of this evidence.

The National Policy Statements

5.10 I consider that in addition to the National Policy Statement for Freshwater Management, identified in the section 42A report, that the National Policy Statement for Urban Development Capacity (2016)(NPSUDC) is particularly relevant to this hearing.

5.11 The NPSUDC is identified in the Part A Section 42A report, provided for Hearing 1. The Hearing 1 Section 42a report considers that none of these are *“directive as to the as to amendments required to the proposed plan, the Council must progress any necessary amendments through the normal RMA Schedule 1 process”*. I agree that any amendments to comply with the NPSUDC that are not within the scope of submissions will need to be undertaken via the Schedule 1 process however consideration of the NPSUDC in relation to submission requests is relevant as part of this hearing.

5.12 The Wellington Region is identified as a Medium Growth Area in the NPSUDC and therefore all the objectives and policies PA1-4, PC1-4 and PD 1-2 must be given effect to as soon as practicable. The District Council needs to provide for a growing population within the District under these objectives and policies, which means that the infrastructure to provide for new urban areas and intensification in existing urban areas to accommodate growth is a nationally mandated activity. The PNRP rules which hinder the development of this regionally significant infrastructure are in my opinion not giving effect to this NPS. The recommended amendments in Section 7 of this evidence seek to give effect to the NPS by enabling infrastructure development.

6. RESPONSE TO THE SECTION 42A REPORT

6.1 I have read the section 42A reports dated 4 August 2017 and I will focus my comments on Section 4.2 of the ‘Water Allocation’ report which considers the District Council’s submission in relation to Rule 140. For completeness I also provide comments on the related discharge rule 42 which is not addressed in the section 42A report as it will be addressed in a future hearing. Section 7 of

my evidence will focus on recommended changes to the rules relating to dewatering activities. I note that the Council's submission in relation to dewatering rules has been rejected in this Section 42A report.

Requested amendments to rules

6.2 It is disappointing that the section 42A report rejects the District Council's submission in relation to dewatering. The report recommends some amendments to the rule as set out below:

Rule 140 (as recommended in s 42a report)

The use of land, take of groundwater and the associated diversion and discharge of that water for the purpose of dewatering a site, including but not limited to, maintenance, excavation, construction or geotechnical testing, is a permitted activity, provided the following conditions are met:

- (a) *The take continues only for the time required to carry out the work but does not exceed one month; and*
- (b) *The take and diversion and discharge is not from, onto or into contaminated land; and*
- (c) *The take does not cause ground subsidence; and*
- (d) *The take does not deplete water in a water body; and*
- (e) *There is no flooding beyond the boundary of the property; and*
- (f) *A discharge to water, or onto or into land where it may enter water meets the conditions of Rule 42*

~~Note: Discharges to water, or onto land where it may enter water related to dewatering are provided for in rule 42~~

6.3 If dewatering does not meet these conditions it is a discretionary activity under Rule 142. There are no controlled or restricted discretionary activity rules for dewatering recommended by the Section 42a report author.

6.4 One of the options proposed in the District Council's submission is to add a controlled activity rule for 'dewatering for regionally significant infrastructure which does not meet permitted conditions' and a corresponding controlled activity rule for the discharge from dewatering for regionally significant infrastructure that does not meet permitted activity conditions'. If controlled activity rules were added the concerns the section 42A author has regarding potential adverse effects could be included as matters of control and addressed as conditions of consent.

- 6.5 Regionally significant infrastructure has tight functional requirements in relation to the location, size, depth and design of the systems. Rules 140 and 42 do not leave flexibility to enable the necessary infrastructure works and do not provide for regionally significant infrastructure functional needs. The inclusion of new permitted or controlled rules, specific to regionally significant infrastructure as suggested in the District Council's submission would recognise the functional requirements of the infrastructure development in accordance with Objective 12 and Policy 12. These functional requirements mean that an infrastructure project is not optional and therefore the dewatering to install it, or upgrade it, is also not optional and must be enabled to proceed as efficiently as possible.
- 6.6 The use of a discretionary activity rule (Rule 142) is therefore irrelevant in relation to regionally significant infrastructure as there is no actual capacity to decline the application for dewatering, as the infrastructure works must be undertaken and due to the functional needs of the infrastructure it cannot occur at another location where dewatering would not be required. Therefore requiring dewatering for regionally significant infrastructure activities to apply for the discretionary activity consent is a waste of resources for the infrastructure provider. Controlled activity rules would enable matters of concern to be addressed and conditions applied to a resource consent but would also give certainty to the infrastructure provider about the Regional Council's requirements, through any controlled activity conditions and a clearly stated list of matters of control.
- 6.7 Dewatering for the installation, upgrade or maintenance of infrastructure is not a new activity therefore the matters of control can be easily identified. A start point for this could be the effects identified in the section 42a report and the permitted activity conditions in rules 42 and 140.

Clarity about conditions to be used

- 6.8 I consider that Rule 140 as recommended in the Section 42a report lacks the clarity and specificity necessary for a permitted activity rule. The use of the term 'one month' in standard a) could, for example, be interpreted in several ways. One month could refer to a calendar month, or any consecutive 28-31 day period. The clause "*the take continues only for the time required to carry out the work but does not exceed one month*" This condition is therefore unclear whether a dewatering activity which occurs for 14 days in September and then 18 days in October is a permitted activity. It is also ambiguous as to whether

the dewatering take is continuous or intermittent. For example if a pipe network is being laid and one section is finished each working week with no dewatering occurring over the weekends would this activity be a permitted activity (as it is only continuous for five days at a time) or a discretionary activity if it occurred for six weeks in one location.

6.9 The section 42a report's stated reasons for retaining the one month limit are concerns that longer duration dewatering could result in '*potential effects on the surrounding land, groundwater users in the area and nearby surface water users of a sustained lowering of the groundwater table*'. The report acknowledges that the location of the dewatering will have a bearing on effects specifically in relation to urban or rural locations. Ms O'Brien's evidence explains the dewatering processes used for infrastructure projects and that they result in a water take and discharge at the same rate in close proximity to each other. The take is always from relatively shallow groundwater but the discharge can be to ground, a water body, the stormwater network or if necessary, such as the presence of contaminants to the waste water network. The District Council was recently required to monitor the effects from a long duration dewatering activity.

6.10 Ms O'Brien's evidence provides examples of recent infrastructure projects carried out by the District Council which involved dewatering. These examples include projects, such as pipe repairs lasting a few days to complex deep well pump stations requiring dewatering to occur over a period of 18 months. Ms O'Brien's evidence is that dewatering is carried out to improve ground stability around trenches and is very localised.

7. RECOMMENDED CHANGES TO RULES

7.1 The amendments to the dewatering rules that the Council seeks to amend are only those relating to the development of regionally significant infrastructure. The District Council submission sought that either that the timeframe of 1 month be removed from Rule 140 or that a separate rule cascade be provided for dewatering for regionally significant infrastructure. I consider that an amendment to Rule 140, to improve clarity and the provision of a new controlled activity rule for dewatering for regionally significant infrastructure (and a controlled activity for the related discharge) would be the most appropriate method of balancing managing water allocation effects with supporting regionally significant infrastructure.

7.2 The new rules I recommend would provide a more nuanced cascade of dewatering rules from permitted, through controlled to discretionary rather than a blunt, permitted to discretionary cascade. For this reason the District Council's submission proposed a controlled activity rule although I note that other submitters have proposed a restricted discretionary rule.

7.3 I therefore recommend the following amendments to Rule 140 and two new rules as set out below:

1 Amend Rule 140 (black as recommended in s 42a report, **red my further amendments**)

Rule 140

The use of land, take of groundwater and the associated diversion and discharge of that water for the purpose of dewatering a site, including but not limited to, maintenance, excavation, construction or geotechnical testing, is a permitted activity, provided the following conditions are met:

- (a) *The take continues only for the time required to carry out the work but does not exceed **31 consecutive days of dewatering one month**; and*
- (b) *The take and diversion and discharge is not from, onto or into contaminated land; and*
- (c) *The take does not cause ground subsidence; and*
- (d) *The take does not deplete water in a water body; and*
- (e) *There is no flooding beyond the boundary of the property; and*
- (f) *A discharge to water, or onto or into land where it may enter water meets the conditions of Rule 42*

~~Note: Discharges to water, or onto land where it may enter water related to dewatering are provided for in rule 42~~

2 Add a new controlled activity rule to the discharges rules:

Rule xa: Discharges from dewatering activities for regionally significant infrastructure – controlled activity

The discharge of contaminants into water, or onto land where it may enter water from dewatering activities for the construction, upgrading or maintenance of regionally significant infrastructure that is not permitted, controlled, restricted discretionary, discretionary, non-complying or

prohibited by any other rule in this Plan is a controlled activity provided the following conditions are met:

- (a) the discharge is not from contaminated land, and*
- (b) The discharge shall not cause any erosion of the channel or banks of the receiving water body or the coastal marine area, and*
- (c) The discharge shall not give rise to the following effects after the zone of reasonable mixing:*
 - (i) The production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials, or*
 - (ii) Any conspicuous change in the colour or visual clarity, or*
 - (iii) Any emission of objectionable odour, or*
 - (iv) The freshwater is unsuitable for consumption by farm animals, or*
 - (v) Any significant adverse effects on aquatic life.*

Matters of control

Management of acute effects of contaminants

Monitoring of the discharge

Method and duration of dewatering activity

- 3 Add a new controlled activity rule to the water allocation rules

Rule xx: Dewatering required for the construction of regionally significant infrastructure

The take of groundwater and the associated diversion and discharge of that water for the purpose of dewatering a site, for the construction, upgrading or maintenance of regionally significant infrastructure, is a controlled activity if it does not meet the conditions in rule 140 and the groundwater take is not from contaminated land.

Note the discharge must comply with the conditions of either Rule 42 or Rule xa.

Matters of control

Method and duration of dewatering
The potential effects of contamination

8. CONCLUSION/RECOMMENDATIONS

- 8.1 In conclusion, I recommend that rule 140 be amended and two additional controlled activity rules be provided as set out in section 7 of this evidence. I consider that these amendments to the provisions, or similar amendments, will better implement the Objectives of the Plan than the notified provisions and the amendments recommended in the section 42a report.



Emily Thomson
Senior Policy Planner
Kapiti Coast District Council
21 August 2017