

**Before the Hearings Panel
At Wellington**

Under the Resource Management Act 1991

In the matter of Proposed Natural Resources Plan for the Wellington Region
(Hearing Stream 4)

**Legal Submissions on behalf of Wellington Regional Council
Hearing Stream 4: Right of Reply - Scope to Amend Rule 61**

Date: 5 June 2018



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MAY IT PLEASE THE PANEL

1 The Panel requested at the HS4 Right of Reply hearing that it be provided with advice on whether any submissions provide scope for a change in activity status for untreated wastewater discharges to the coast. In particular, a change from a discretionary activity to a non-complying activity.

2 We consider that whether there is scope or not is a finally balanced assessment in this situation. However, to assist the Panel, we have reached a view that there is not scope for such a change, and set out the reasons for this below.

3 As notified, the discharge of:

3.1 Wastewater (treated and untreated) into coastal water was a discretionary activity under Rule R61 of the proposed Plan.

3.2 Wastewater into freshwater was a discretionary activity under Rule R61 of the proposed Plan, if it was an 'existing discharge'.

3.3 Wastewater into freshwater was a non-complying activity under Rule R62 of the proposed Plan, if it was a 'new discharge'.

4 A number of submitters sought changes to Rule R61 of the proposed Plan.

5 We have considered each submission that sought relief in respect of Rule R61 in the table at **Appendix 1**.

6 We have extensively addressed the Panel on the law on scope in respect of making decisions on the proposed

Hearing Stream 1 submissions, 20 April 2017 at [105]-[115], Hearing

Plan and we do not repeat those submissions here, other than to note that the test is whether any amendment made to the proposed Plan as notified goes beyond what is fairly and reasonably raised in submissions.¹ Accordingly, for an amendment to be within scope, typically there would be a relationship between a submission and an amendment, such that the amendment 'can fairly be said to be a foreseeable consequence of any change directly proposed in the reference'.

Stream 4 submissions, 8 December 2017 at [41]-[42]; and the Memorandum of Counsel regarding scope, 22 December 2017 at [5]-[8].

Westfield (New Zealand) Ltd v Hamilton City Council [2004] NZRMA 556 (*Westfield*) at [73] and [74].

7 As set out in the table at **Appendix 1**, the submissions on Rule R61 did not specifically seek a change in the activity status for discharging wastewater into coastal water.

8 While the table discusses each of the relevant submissions, the ones that need some further consideration are Ngā Hapū o Ōtaki, Rangitāne o Wairarapa Inc and Fish and Game.

9 The Ngā Hapū o Ōtaki submission is somewhat unclear. It separates its submission out with a heading of 'Wastewater to freshwater' and then more generally says that the discharge of wastewater to water 'should be prohibited in P62'. It is clear from the layout of the submission and the paragraph heading that the reference to P62 was meant to instead be a reference to Rule R62.

S309 - at 5.2.6 of the submission

10 However, as Rule 62 is a freshwater rule and the heading in the submission does indicate that the submission relates to discharges to freshwater, in our view, changing Rule R61 to non-complying for coastal water is not a reasonably foreseeable consequence of

¹ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (IIC) at 174.

that submission.

- 11 The specific part of the Rangitāne o Wairarapa Inc submission says that the discharge of wastewater to water should be 'phased out' in order to address adverse effects, including adverse effects on Maori cultural and spiritual values. It states in the discussion: S279 - at page 91.

To promote the phasing out of existing discharges to freshwater, this rule should be time bound, with the activity status changing to non-complying at a 'date no later than 2030'.

- 12 In terms of relief sought, it states:

Amend the rule to apply to existing discharges up until an appropriate date not later than 2030. Insert a new non-complying activity for existing discharges to freshwater after the date specified above.

- 13 It is submitted that this focusses on existing discharges to freshwater and does not address discharges to coastal water. Again, in our view, changing Rule R61 to non-complying for coastal water is not a reasonably foreseeable consequence of this submission.

- 14 The Rangitāne submission also includes a general submission seeking any consequential amendments to the rules required to give effect to any changes proposed to the objectives and policies. We have considered the changes sought to the objectives and policies (particularly policies P17, P63, P67 and P68(a)) in the Appendix below, and consider that no changes sought provide scope for an amendment to non-complying for untreated discharges to the coast. At page 83

- 15 The Fish & Game submission said that Rule R61 must give effect to the National Policy Statement for Freshwater Management 2014 (NPSFWM) and sustainable management under the Resource Management Act 1991 (RMA), and be consistent with S 308 - at 58.

achieving the freshwater objectives set out in the section 3 tables. In its relief sought it stated:

Amendment the rule so that existing activities are required to achieve the freshwater objectives in section 3 tables...

Insert a new rule that makes existing discharges non-complying after 2030 where freshwater outcomes in section 3 tables are not achieved.

16 It is submitted that this focusses on existing discharges to freshwater and does not address discharges to coastal water. Again, in our view, changing Rule R61 to non-complying for coastal water is not a reasonably foreseeable consequence of this submission.

17 It is submitted that no submission provides scope for the amendment of Rule R61 from a discretionary to a non-complying activity for discharges of untreated wastewater to the coast.

Date: 5 June 2018



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K Anderson/K H Rogers
Solicitor for Greater Wellington
Regional Council

APPENDIX 1 - SUMMARY OF SUBMISSIONS ON RULE R61

Submission No	Submitter	Summary of submission on Rule R61	Reference	Relevance to scope
S 309/035	Ngā Hapū o Ōtaki (NHoO)	R61 & 62: Wastewater to freshwater. NHoO are opposed to the discharge of wastewater to water. It is known to be culturally and socially unacceptable and should be prohibited in [R] ² 62. [Rule] 61 does not state to what criteria that discretion will be administered. NHoO recommend that any discharge of sewage to water is undertaken at the discretion of mana whenua values, and our relationship with those waters ³ .	Paragraph 5.2.6	This appears to be seeking a prohibited activity status for the discharge of wastewater to freshwater with the reference to R62 and under the heading 'wastewater to freshwater'. We do not consider that this change in activity status can be extended to Rule 61 - ie, coastal water. In terms of R61, the submission seeks an additional criteria for the discretionary status. This does not give the Panel scope to amend the activity status of Rule R61.
S 32/037	Wellington Recreational Marine Fishers Association	Seeks the amendment of the Rule to address the discharge of endocrine chemicals from Council waste water pipes. Concern that there are 'chemicals in wastewater that are not being managed or covered by a Rule'. Seeks amendment to the Rule because 'at present there is no requirement to measure or set an acceptable level of endocrine chemical being discharged from council waste water pipes. As there is no rule describing the discharge of endocrine chemical to land or the sea the Plan must recognise this is a major issue and address it with a standalone rule ⁴ .'	Page 22	This does not give the Panel scope to amend the activity status of Rule R61.
S 130/003	Liam Knight	Supports Rule R61.	Page 4	This does not give the Panel scope to amend the activity status of Rule R61.
S 135/147	Wellington Water Ltd	Considers that 'the rules need to distinguish between different scale of effects between continuous high volume	Page 65	This does not give the Panel scope to amend the activity status of Rule R61.

² The body of the submission refers to policy 61 and 62. However, in the context of the submission it is clear this is a reference to the rules (it in under the heading 'Rules' and sits with its submissions on other rules) - ie, it appears to be a typo. We consider the submission intended to refer to Rule 62.

Submission No	Submitter	Summary of submission on Rule R61	Reference	Relevance to scope
S 163/095	Porirua City Council	<p>wastewater treatment plants and overflows from pump stations; and different scale of effects of duration between continuous WWTP discharges and occasional (wet weather) temporary discharges from pump station constructed overflows'.</p> <p>Seeks the re-drafting of the rules to distinguish between the nature of environmental effects between different scale of effects of continuous high volume wastewater treatment plants and occasional (wet weather) temporary discharges from pump station constructed overflows that have a minor and temporary effect only.</p> <p>Seeks the amendment of Rule R61 to 'clarify' it 'in terms of new discharges to coastal water.' 'Either the word 'existing' needs to be removed from the title of the rule...' (because subclause (a) seems to include both new and existing discharges into coastal water, as there is no other rule governing new discharges to coastal water) '...or a new rule needs to be added regarding new discharges to coastal water'.</p>	Page 21	This does not give the Panel scope to amend the activity status of Rule R61.
S 279 /177	Rangitāne o Wairarapa Inc	<p>Sought any consequential amendments to the rules in section 5 of the Plan to 'ensure that they will, individually and collectively, implement the objectives and policies, as retained or amended by the Rangitāne submission'.</p> <p>Rangitāne sought amendments to:</p> <ul style="list-style-type: none"> - Policy 17 - that the mauri of fresh and coastal water be sustained and enhanced by 'avoiding, remedying and mitigating', rather than managing the adverse effects of activities. - Policy 63 - be amended to ensure that the water quality of all water bodies in improved over time. - Policy 67 - that the adverse effects of discharges be avoided, remedied or mitigated, rather than minimised. 	Page 83	<p>The changes sought to the policies do not require a consequential amendment to Rule 61 to change the activity status of an untreated wastewater discharge to coastal water. A change from a 'minimise' or 'manage' policy to an 'avoid, remedy or mitigate' policy does not require a non-complying activity status. We do not consider this is a reasonably foreseeable consequential amendment arising from the submissions on Policy 17 and 67. We also do not consider that requiring improvement to all water bodies does not necessarily result in a non-complying status for untreated wastewater discharges to coastal water.</p> <p>In terms of seeking a policy that requires untreated wastewater discharges to coastal water to be avoided - again, we do not consider this is enough to put other submitters on notice that one consequence may be a non-complying activity status. We consider something more specific is required to make that outcome</p>

Submission No	Submitter	Summary of submission on Rule R61	Reference	Relevance to scope
		<p>- Policy 68(a) - remove the exception for avoidance of untreated wastewater to fresh and coastal water, except as a result of extreme weather related overflows or wastewater system failures so that untreated wastewater to fresh and coastal water is avoided, except from recreational boating activities.</p>		<p>reasonably foreseeable from the submission on a policy.</p> <p>The changes sought to these policies certainly indicate that more weight should be given to water quality and that constraints should be placed on these discharges. However, in our view, the changes sought are not sufficiently specific to provide scope for the status change from discretionary to non-complying.</p>
S 279 /177	Rangitāne o Wairarapa Inc	<p>Opposes Rule R61. Considers that discharging wastewater to water should be phased out in order to address adverse effects, including adverse effects on Maori cultural and spiritual values. It says that to promote the phasing out of existing discharges to freshwater this rule should be time bound with the activity status changes up to non-complying at a date no later than 2030. It seeks amendment to Rule R61 so that it applies to existing discharges 'up until an appropriate date not later than 2030', and the insertion of a new non-complying activity rule for existing discharges to freshwater after that date.</p>	Page 91	<p>Relevant to the Panel's question regarding scope to amend the activity status of Rule R61, but ultimately, our view is that the proposed amendment is not a foreseeable consequence of the relief sought as the submissions relates to existing discharges to freshwater and not discharges to coastal water (see discussion in submissions above) and in any event, suggests it should be at a later date.</p>
S 308/088	Fish & Game	<p>Says that Rule R61 must give effect to the NPSFWM and sustainable management under the RMA, and be consistent with achieving the freshwater objectives set out in the section 3 tables. It seeks amendment to the rule so that existing activities are required to achieve those freshwater objectives, and the insertion of a new rule that makes existing discharges non-complying 'after 2030 where freshwater outcomes in section 3 tables are not achieved'.</p>	Page 58	<p>Relevant to the Panel's proposed amendment to Rule R61, but ultimately, our view is that the proposed amendment is not a foreseeable consequence of the relief sought by F&G in its submission (see discussion in above submissions) as it is seeking changes in relation to freshwater and not coastal water.</p>
S 366/108	South Wairarapa District Council	<p>Wishes to 'retain the intent of Rule R61, with an amendment to include provision for all wastewater to fall within this Rule, as follows (definitions in strikethrough):</p> <p><i>Rule R61: Existing Discharge of wastewater - discretionary activity</i></p> <p><i>The discharge of wastewater:</i></p>	Page 36	<p>This does not give the Panel scope to amend the activity status of Rule R61.</p>

Submission No	Submitter	Summary of submission on Rule R61	Reference	Relevance to scope
S 367/108	Masterton District Council	<p><i>(c) into coastal water, or</i> <i>(d) that is an existing discharge into freshwater</i> <i>is a discretionary activity.</i></p> <p>As above: wishes to 'retain the intent of Rule R61, with an amendment to include provision for all wastewater to fall within this Rule, as follows (definitions in strikethrough):</p> <p><i>Rule R61: Existing Discharge of wastewater - discretionary activity</i></p> <p><i>The discharge of wastewater:</i></p> <p><i>(c) into coastal water, or</i> <i>(d) that is an existing discharge into freshwater</i> <i>is a discretionary activity.</i></p>	Page 36	This does not give the Panel scope to amend the activity status of Rule R61.
FS54	Federated Farmers	<p>Supports WWL's submission that the rule should be re-drafted 'to distinguish between effects of continuous high volume wastewater discharges to water, and occasional (wet weather) temporary discharges that have a minor and temporary effect only'.</p>		This does not provide scope to amend the R61. There is nothing else in the submission on discharges to water or wastewater more generally that provides scope for the proposed change to Rule R61.

