

Proposed Natural Resources Plan for the Wellington Region

Supplementary Right of Reply

For Hearing Stream 4

Report dated:

14 June 2018

Topic: Wastewater Discharges to Water

Report prepared by:

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on behalf of Wellington Regional Council

1. Introduction and scope

1. My name is Yvonne Legarth. I prepared the RMA section 42A Officer's Report: Wastewater Discharges to Water that was released in advance of Hearing Stream 4. My qualifications and experience are set out in the RMA s42A report: Natural Form and Function.

2. This Supplementary Right of Reply responds to matters raised by the Panel at the Hearing Stream 4 Right of Reply hearing. In Appendix A, recommendations made in the RMA section 42A report were shown in ~~red or red strike-out~~. Where I included recommendations in my original Right of Reply, they replace the recommendations made in the RMA section 42A Officer's Report, and are shown in the red line version of the proposed plan in ~~blue or blue strike-out~~. I have highlighted the changes recommended in this supplementary right of reply in Appendix A.

2. Code of conduct

3. I confirm that I have read the Code of Conduct for Expert Witness contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

4. Where the views of the council differ from my own these are identified, and the conclusions that I draw are my own.

5. I am authorised to give this evidence on the Council's behalf.

3. Matters raised by the Panel

6. The following questions arose out of the questions arising during the Hearing Stream 4 Right of Reply hearing:

3.1 Does the proposed Plan give effect to NZCPS Policy 23(2) managing discharges of human sewage directly to coastal water

7. NZCPS Policy 23(2) is:

In managing discharge of human sewage, do not allow:

- a) discharge of human sewage directly to water in the coastal environment without treatment; and*
- b) the discharge of treated human sewage to water in the coastal environment, unless:
 - i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and*
 - ii) informed by an understanding of tangata whenua values and the effects on them.**

8. Legal advice is that 'do not allow' means the same as 'avoid'.

9. In my opinion 'avoid' when used in a policy in a regional plan is consistent with implementation by a non-complying or prohibited activity rule.

10. I did not identify any submission points on Rules R61 or R62 that provide scope to include a non-complying activity rule for the discharge of untreated wastewater to coastal water.

11. In my RMA section 42A report I recommended an objective be added: Objective O50A is "The discharge of wastewater to coastal water does not reduce water quality and reflects mana whenua and community values." The discharge of untreated wastewater to water has been identified as a concern to mana whenua. The recommended objective is implemented by Rule R61 in the proposed Plan which requires a resource consent to discharge wastewater to coastal water as a discretionary activity.

12. As notified, discretionary activity rule R61 in the proposed Plan controls the discharge of both treated and untreated wastewater to coastal water. A

discretionary activity rule enables a decision maker to consider and control the effects of the wastewater discharge through conditions, and provides the ability to decline an application. The objectives and policies, particularly those that require appropriate water quality standards to be met, are an important part of the decision making framework for discharges to coastal water.

13. In my opinion, the plan needs to be read as a whole to determine if the provisions give effect to NZCPS Policy 23(2). This is because the activity specific wastewater discharge rules always require that a resource consent be obtained, all effects can be considered; and an application may be declined.
14. I do not consider that it is essential to distinguish between treated and untreated wastewater discharges in order to give effect to the NZCPS, provided that there are water quality requirements that apply, and which are robust. To give effect to NZCPS Policy 23(2), the proposed Plan must contain water quality objectives that are set at a level that requires the treatment of wastewater discharges in order to achieve the water quality outcomes. I consider that requirements to achieve sound water quality outcomes are more pertinent to water quality and environmental outcomes, than specifying that wastewater is treated or untreated. This is because the methods and water quality achieved by wastewater treatment can vary.
15. Both treated and untreated discharges are addressed in Objectives O3 (Mauri of water is sustained and enhanced); Objective O24(a) and (b)(ii) which includes contact recreation and Māori customary use objectives; and Objective O25 which includes aquatic ecosystem health and mahinga kai objectives.
16. Objective O24 would apply to applications to discharge of human sewage into coastal waters; and the water quality objectives in Table 3.3 are:

Table 3.3 Contact recreation in coastal water			
Coastal water type	Pathogens Indicator bacteria/100mL 95 th percentile ⁴	Māori customary use	Shellfish quality
Estuaries ⁵	≤ 540 <i>E. coli</i>	Coastal water is safe for primary contact and supports Māori customary use	Concentrations of contaminants, including pathogens, are sufficiently low for shellfish to be safe to collect and consume where appropriate
Open coast and harbours ⁶	≤ 500 enterococci		

17. Policy P81(b) applies to untreated wastewater discharges to coastal water occurring “ ... during or following rainfall events ..”; and requires the frequency and volume to be reduced. Policy P81(b) and Policy P68(a) would need to be read together, and in light of the water quality objectives to be considered to give effect to NZCPS Policy 23.
18. As notified Policy P68 in the proposed Plan identifies the discharge of untreated wastewater to fresh and coastal water is to be avoided, “ ... except as a result of extreme weather-related overflows ...”.
19. The submission made by Rangitāne o Wairarapa Inc S279/120 is to delete the exception in Policy P68 for the discharge of untreated wastewater to fresh and coastal water; seeking the following change to Policy P68(a):

“ ... (a) untreated wastewater, ~~except as a result of extreme weather related overflows or wastewater system failures~~ or from recreational boating activities, and ...”
20. If the Panel are of a mind to accept the submission point by Rangitāne o Wairarapa Inc to delete the exception of extreme weather events, Policy P68 would clearly identify that untreated discharges of wastewater to coastal water are to be avoided; which would be considered by decision makers when applications are made under Rule R61. The recommendation to amend Policy

P68 only partially accepts the submission point made by Rangitāne o Wairarapa Inc¹.

21. Rule R61 also provides an ability to consider and assess an application to discharge wastewater to coastal water against the water quality and wastewater discharge objectives and policies, particularly those in Objective O24 Table 3.3 of the proposed Plan.
22. I have drawn the following from my reading of the proposed Plan (version with the recommended redline changes):
 - a) Objective O24 Table 3.3 controls water quality for wastewater discharges to the coast (as above).
 - b) A recommended change to Policy P68 is that untreated discharges of wastewater (sewage) is to be avoided “ ... except as a result of heavy rainfall event overflows ...”.
 - c) Policy P81(b) is that “in the case of existing discharges to fresh water or coastal water from wastewater networks during or following rainfall events, the frequency and/or volume of discharges shall be progressively reduced.”
 - d) Rule R61 requires a consent to be obtained to discharge either treated or untreated wastewater to coastal water.
23. There are other policies managing non-point discharges to coastal water that focus on the water quality objectives in O24 and O25, and which are intended to ensure improvements are made:

¹ The RMA section 42A Report: Water quality considered submissions on Policy P68 in Issue Issue 9.1 Policy P68: Inappropriate discharges to water; and assessed submissions on ‘avoiding inappropriate discharges at paragraphs 761 to 764 and ‘extreme weather’ at paragraphs 765 to 775; stating at paragraph 772 that “*I consider that an exception for untreated wastewater discharges as a result of wastewater system failures is inappropriate and unnecessary*” The recommendation at paragraph 785 is “ (a) untreated wastewater, except as a result of ~~extreme weather related~~ heavy rainfall event overflows ~~or wastewater system failures or from recreational boating activities~~, and

- a) Policy P63 is to improve discharges over time to meet coastal Objective O24 Table 3.3.
- b) Policy P70 manages point source discharges (including wastewater discharges to the coast), and references the water quality objectives in Objective O25, and where O25 Table 3.8 is not met, establishes requirements for improvements to existing discharges; and that new discharges are inappropriate where these might cause a decline in coastal water quality.

24. The proposed Plan provides a consenting process that requires improvements to be made (Policy P70) and frequency of untreated wastewater discharges from wastewater networks to be reduced (Policy P81(b), and water quality outcomes to be met or a programme to meet them. I have therefore concluded that the proposed Plan has provisions that give effect to NZCPS Policy 23(2), by requiring that a resource consent be obtained for the discharge of untreated wastewater to coastal water, and because an application may be declined where the objectives and policies in the proposed Plan are not met. The linkage between controlling discharges of untreated wastewater discharges from the wastewater network and NZCPS Policy 23(2) might be made clearer through an amendment to Policy P68 identifying such discharges as inappropriate.

25. Further to the Panel's specific question, I did not identify any submissions made on Rule R61 (coastal and freshwater) and Rule R62 (freshwater) that provide scope to change the activity status to non-complying for the discharge of untreated wastewater to coastal water. The memorandum from legal counsel addresses this issue in more detail.

3.2 If 'existing discharge' is deleted from the proposed Plan are there unintended consequences?

26. The term 'existing discharge' is used in Policies P70 and P81, and Rule R61.

27. As notified, non-complying activity rule R62 implements Objective O50 and applies to 'new discharges' (as defined in the proposed Plan²) of both treated and untreated wastewater to freshwater because the definition is " ... from a wastewater treatment plant or a wastewater network ...".
28. My recommended changes to both Rules R61 and R62 in this supplementary Right of Reply removes the reference to 'new discharges' and 'existing discharges'. Non-complying activity rule R62 applies to all discharges of untreated wastewater to freshwater, and also to the discharge of treated wastewater to freshwater that does not meet the conditions in Rule R61.
29. The wastewater objective, policies and rules distinguish between proposals to continue a wastewater discharge through an application that replaces existing resource consents for a wastewater discharge; and an application for a wastewater discharge that has not been the subject of any previous consideration through the consenting process, and which is occurring in breach of the operative plan and RMA.
30. I consider that the definition of 'existing discharge' (as recommended for amended through my section 42A report) improves certainty about how proposals to discharge wastewater to coastal water are to be addressed, and removes the potential for unconsented overflows and untreated wastewater discharges from the wastewater network to coastal and freshwater to be considered as part of the existing receiving environment.
31. If the term 'existing discharge' was deleted from Policy P81, the wording in Policy P81(a) and (b) would imply that all wastewater discharges can be applied for with the intention of making improvements over time. The policy approach in the proposed Plan is that investment should be made to ensure 'new

² Definition of "New discharge: *A discharge of wastewater from a wastewater treatment plant not previously authorised by resource consent. In the context of wastewater discharged to fresh water from a wastewater treatment plant or a wastewater network means a discharge not authorised by resource consent at the time of application for a resource consent, or a discharge that was authorised by a resource consent at the time of application for a new consent but is to be increased or otherwise altered by a new resource consent.*

discharges' meet the water quality requirements and do not add to the quantity of wastewater being discharged to water.

32. I have concluded that 'existing discharge' should not be deleted from Policies P81 or Policy P83; but I do recommend that the rules R61 and R62 be simplified by deleting references to 'existing discharge' and 'new discharge' so that they operate in a more intuitive way.

3.3 Recommendation on Rule R61

33. If the recommended alternative R61(b) is deleted, are there consequences for the rule?

34. My recommended changes to Rule R61 controls the discharge of treated wastewater to freshwater, and includes conditions. The consequences of deleting alternative rule R61(b) can be addressed with an amendment to rule R62. There are no consequences for rule R61.

35. I recommend that alternative R61(b) be deleted (and R61(c) becomes (b)); and the words "into freshwater that is a new discharge" be deleted from Rule R62; so R62 becomes a default rule for discharges to freshwater when the recommended conditions in Rule R61 are not met.

36. The option in my supplementary right of reply changes the category of the rule controlling the 'existing discharge' of wastewater to freshwater from a discretionary activity rule to a non-complying activity rule when the conditions are not met. Where a discharge of wastewater has been completely removed from freshwater; a consent to discharge wastewater to freshwater would not be required under Rule R62.

37. Where a replacement consent is sought for a discharge to freshwater, and the proposal has no change in the quality of the discharge, or a reduction in amount being discharged, the status quo is maintained. As notified, the status quo is subject to a discretionary activity rule in the proposed Plan, the recommendation in my RMA section 42A report is that the status quo be subject to a non-complying activity rule. Maintaining the status quo would not implement the objectives and policies in the proposed Plan. Objective O50 is to remove the

discharge of wastewater to freshwater, allowing time to do so. The policies include clauses that require a reduction in the amount of a discharge of wastewater.

38. The option partially accepts the submissions made by Fish and Game S308/088, Rangitāne o Wairarapa Inc S279/177 and Ngā Hapū o Ōtaki S309/035 on Rule R61; and Rangitāne o Wairarapa Inc S279/178 and Ngā Hapū o Ōtaki 309/053 on Rule R62.
39. I also recommend that the term 'new' be deleted from alternative rule R61(c) (as shown in the redline version³), because the reference to 'existing resource consent' already limits the scope of the rule to replacement consents. If a proposal to discharge wastewater to freshwater has not been the subject of a previous resource consent, then the proposal would be to a new location and would not comply with R61(c)(i)⁴; or that is an untreated discharge of wastewater to freshwater; then Rule R62 would apply. If a proposal to discharge wastewater to freshwater has been the subject of a previous resource consent, and the proposal does not comply with any of the sub-clauses in R61(c)⁵, then rule R62 would apply.
40. I also recommend that the words "into freshwater that is a **new discharge**" be deleted from Rule R62, so that it is more clearly applicable as a default rule for discharges to freshwater. All discharges of wastewater to freshwater that do not comply with Rule R61(c)⁶ become a non-complying activity. This is a consequential change arising from the recommendation on Rule R61. The heading to Rule R62 would also need to be amended to better describe the scope of the non-complying rule.

Attachment: revised redline incorporating revised recommendations to Rule R61.

³ amended as Rule R61(b) in this version of tracked changes

⁴ Amended as Rule R61(b) in this version of tracked changes

⁵ Amended as Rule R61(b) in this version of tracked changes

⁶ Amended as Rule R61(b) in this version of tracked changes

Appendix A: Revised redline and clean version

5.2.6 Wastewater

Alternative Rule R61⁷: ~~Existing w~~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~~

~~(b)(e)~~ that is a new discharge of treated wastewater into freshwater 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

(ii) the volume of the discharge is reduced from that which was authorised by a condition on an existing resource consent, and

(iii) the volume or concentration of contaminants is reduced from that which was authorised by a condition on an existing resource consent, and

(iv) The range of contaminants in the discharge is not increased,

is a discretionary activity.

Notification⁸

Any resource consent application arising from Rules R61 and R62 may be publicly notified; but shall be notified to the relevant rūnanga iwi authority⁹ where their written approval has not been obtained¹⁰.

Alternative Rule R62¹¹: New dDischarges of wastewater to fresh water – non-complying activity

⁷ Recommended that the submissions of South Wairarapa District Council S366/108, Masterton District Council S367/108 Hutt City Council S84/023, Carterton District Council S301/059, and Porirua City Council S163/096 be accepted in part

⁸ Recommended that the submission of Ngā Hapū o Ōtaki S309/035 be accepted in part

⁹ Verbal recommendation responding to a question from the Panel Hearing Stream 3 Right of Reply

¹⁰ Recommendation to accept in part the submission from Ngā Hapū o Ōtaki S309/035

¹¹ Consequential amendments for alternative Rule R61, and recommendation to accept in part the submissions of Carterton District Council S301/059, Masterton District Council S367/109 and South Wairarapa District Council S366/109

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

Clean

5.2.6 Wastewater

Alternative Rule R61¹²: Wastewater discharges to coastal and freshwater–discretionary activity

The discharge of wastewater:

- (a) into coastal water, or
- (b) that is a discharge of treated wastewater into freshwater 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
 - (ii) the volume of the discharge is reduced from that which was authorised by a condition on an **existing resource consent**, and
 - (iii) the volume or concentration of contaminants is reduced from that which was authorised by a condition on an **existing resource consent**, and
 - (iv) The range of contaminants in the discharge is not increased,

is a discretionary activity.

Notification¹³

Any resource consent application arising from Rules R61 and R62 may be publicly notified; but shall be notified to the relevant iwi authority¹⁴ where their written approval has not been obtained¹⁵.

¹² Recommended that the submissions of South Wairarapa District Council S366/108, Masterton District Council S367/108 Hutt City Council S84/023, Carterton District Council S301/059, and Porirua City Council S163/096 be accepted in part

¹³ Recommended that the submission of Ngā Hapū o Ōtaki S309/035 be accepted in part

¹⁴ Verbal recommendation responding to a question from the Panel Hearing Stream 4 Right of Reply

¹⁵ Recommendation to accept in part the submission from Ngā Hapū o Ōtaki S309/035

Alternative Rule R62¹⁶: Discharges of wastewater to fresh water – non-complying activity

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

¹⁶ Consequential amendments for alternative Rule R61, and recommendation to accept in part the submissions of Carterton District Council S301/059, Masterton District Council S367/109 and South Wairarapa District Council S366/109