

SOUTH WAIRARAPA DISTRICT COUNCIL

19 NOVEMBER 2014

AGENDA ITEM D3

WELLINGTON REGIONAL COUNCIL DRAFT NATURAL RESOURCES PLAN

Purpose of Report

To briefly outline the most significant provisions of the Draft Natural Resources Plan Regional Plan potentially affecting Council recommend issues to be commented upon in a submission.

Recommendations

Officers recommend that the Council:

1. *Receive the information.*
2. *Approve the lodgement of a written submission by officers with the regional council covering the topics and concerns outlined in section 3.2 of this report.*

1. Executive Summary

Wellington Regional Council have been developing a new regional plan over the past 3 or so years. The process has involved extensive consultation, technical work and policy development.

The draft Natural Resources Plan is the outcome of this process and has been released by the Regional Council for public feedback and comment, up until 30 November 2014.

While the 30th is specified as the cut-off date for submissions this is not an absolute deadline, as the Regional Council have indicated a willingness for on-going discussions with territorial authorities and opportunities to continue to forward comments for consideration by that Council.

This paper therefore outlines what are seen to be the key issues arising from the new draft plan for comment back to the Regional Council. There are numerous other areas of the Plan that could be questioned, challenged or even opposed, but these in the main do not directly affect Council's interests as a public authority.

The commentary in the report has largely been presented to Council in informal meetings and discussed already. The information is therefore not

new, but this is the first occasion where it has been formally considered by Council.

At the conclusion it is recommended that Council lodge formal written comments by way of a submission with the Regional Council to ensure our concerns are further considered before a new Natural Resources Plan is publicly notified and enters legal process.

2. Background

2.1 Framework for Regional Plans

2.1.1 National Structure

In New Zealand our environment is managed through the Resource Management Act 1991. This act sets out a range of “tools” that are to be used to implement the act.

At a national level the Act itself provides guidance in terms of the principles of sustainable management and matters of significance that Parliament requires any person or body operating under the act to consider and take into account, whether in forming a planning document or exercising any other power e.g. issuing a Resource Consent.

The Act provides the government through the Minister for the Environment with two means to achieve the purposes of the Act. This is through National Policy Statements (NPS) and National Environmental Standards (NES).

A NPS stands above any other document prepared under the Act. The provisions (policies) contained in an NPS must be given effect to by both Regional and Territorial Authorities through their planning documents.

This includes the Regional Policy Statement (RPS), and any regional plan(s) and district plans. How the policies contained in an NPS are specifically implemented (e.g. through local policies and rules) is largely for a Local Authority to determine although whatever is done must seek to implement the NPS policies and be consistent with them.

A NES must also be given effect to in a similar way, but an NES contains rules not just policy directives. The rules in an NES have effect everywhere and must be applied when making a plan or as part of “daily” administration (e.g. they apply to otherwise permitted activities as well as activities requiring a resource consent) and any other statutory processes undertaken by Local Authorities.

2.1.2 Regional Structure

The Regional Policy Statement (RPS) is the primary policy document at local government (for regions and territorial authorities) level for all matters under the Resource Management Act 1991.

The RPS provides policy direction for all other plans prepared in a region. This includes a regional plan or plans, and district plans (the WCDP). These documents must give effect to the policies contained in the RPS.

A regional plan therefore, holds the same status as a district plan. It cannot direct what is in a district plan nor can its provisions direct decisions made under a district plan. The opposite also holds true. They are equal documents legally.

The RMA clearly defines the matters that both a district plan and a regional plan can encompass and while there are several areas where it is possible to have parallel provisions, in the main, district and regional plans each deal with discrete issues, but hopefully in a complementary manner.

If both are consistent with the policies contained in the RPS that should automatically occur, as this document states that duplication of regulations in region and district plans should be avoided.

2.2 Approach taken to develop new Regional Plan

The Regional Policy Statement for the Wellington region was reviewed by WRC and became operative on 23 April 2013. This makes the RPS an extremely relevant document in relation to the current process of developing a new regional plan. The new RP must give effect to the RPS.

Prior to the current process of developing a new regional plan, WRC had followed most other regions when the RMA was introduced and produced a series of regional plans by topic.

This meant that besides the RPS, WRC administered a suite of plans as follows; Discharges to Land Plan, Soil Plan, Freshwater Plan, Coastal Plan and Air Quality Plan.

The new Regional Plan is a step change from this approach. The HBRC first (a combined RPS / RP) and subsequently MWRC (The One Plan) pioneered a more integrated planning approach for regions by bringing the plans together into one document.

This change enabled

- much better integration of policies and rules (no holes in system),
- consistency in the provisions (all created at the same time through the same process, common language throughout) and
- improved user friendliness (in effect users go to one place to find out the policies and rules applicable to a proposal).

It also results in a single format and style of document and the removal of the need to duplicate provisions, which was previously the case to ensure readability/legibility between the separate plans.

It does however make the new documents sizeable and on the surface at least, more complex. The draft reflects this latter point.

In its current finished form it comprises 456 pages of text and maps.

2.3 Process to date

The Wellington Regional Council began developing the new Regional Plan (RP) under the provisions of the Resource Management Act 1991 around 3 years ago.

The writing of this document has throughout been intertwined with a consultation process that has engaged the public, stakeholders and statutory agencies (such as Council) at a technical/professional level.

The process was designed to be iterative insofar as most provisions in the Plan started (sometimes loosely) with what currently exists. These provisions have then been rewritten / restructured / expanded / reduced as feedback on the provisions has been received.

New parts were also required to be included over and above of the existing provisions to satisfy "national" directives (e.g. relating to catchment management of freshwater such as is intended through the Whaitua concept).

This process has meant the Draft which was released in late September has evolved and will in response to submissions evolve further into what will eventually be the "publicly notified plan" to be released sometime next year.

Since the draft was released "consultation" has been taking place around the region and as part of this staff will be meeting (Friday 14th Nov) with regional council staff, to discuss the plan (in respect of relevant parts) in some detail to build a deeper understanding of its intent and workings.

While most of the provisions of the draft document have been tested, queried, commented on through a series of topic based stakeholder meetings and seminars, they are complex in places and need further evaluation at this time.

The Regional Council in releasing the draft for consultation purposes and comments hopes to avoid future debate and criticism of the plan. Unlike the earlier discussion documents, the draft has been fully considered and adopted at a political level by the WRC.

Consideration of comments made on the "final" draft is also likely to be undertaken at a political level.

Therefore the "draft" phase holds a significant position, as a strong degree of political "ownership" is implicit and it is the last opportunity to influence what goes into it before formal legal process commences.

In addition, these plan processes are closely connected to the Whaitua process which has now commenced in the Wairarapa. The draft RP has set out many of the baseline parameters which the Whaitua process will now take and use to develop potentially additional and specific catchment based policies and rules.

From a legal perspective, the production of a "draft" plan is not required; it is however seen as good practice. From a technical perspective, this

process (a draft plan), at least (in theory) reflects the technical feedback received on the WDFD but also the scientific information that must underpin such a plan.

The debate from here will inevitably focus more on the “values” that the community think should surround that technical assessment (e.g. environment vs economic development or community costs).

The draft as released is now in my view leaning toward greater environmental protection and therefore more cost and potentially less development.

Because the draft is still a “work in progress”, Council cannot however be sure as to the exact contents of the document. It can be sure that it is quite different in many areas to the current plans.

3. Discussion of Contents of Draft

3.1 Context

The draft document to date has been reviewed mainly in respect of Council’s interests. Questions were identified which should be commented on. These will also be the subject of the officer discussions.

However Council needs to remember that such plans are invariably the outcome of consultation not just with local government but with community groups and other resource users who can have quite different perspectives on many issues.

The WRC must also take these other views into account. These plans are also driven by national requirements which the WRC must also satisfy such as the NPS for Freshwater which direct certain actions to be taken by WRC (e.g. catchment

3.2 Headlines

For Council, the Regional Plan can have significant consequences. The RP is the tool that regulates discharges (usually by requiring a resource consent) to the environment and takes, it controls damming and diversion of water, manages gravel extraction, allocates freshwater, controls discharges to air.

The operation of wastewater and stormwater infrastructure by necessity involves those matters because they generate discharges. The provision of water to communities by necessity involves takes.

3.2.1 Wastewater policies and rules

- The draft provides new policies for the removal of discharges of wastewater from water within the duration of a consent. This is new but is consistent with the provisions of S.107 of the Act. It should be noted that this implies a shorter timeframe than what was proposed in Council’s wastewater treatment strategy for the 3 townships.
- WRC has moved from its original proposal for a quite straightforward rule relating to discharges from community wastewater treatment systems. A discharge was treated as a Controlled Activity and the

matters for control were "*the adequacy of the design, construction, operation and maintenance of the system*". Consent had to be granted subject only to (reasonable) conditions relating to the matters of discretion.

- If it was established that the discharge may enter water (even if first discharged to land) the default status was Discretionary Activity. This remains the same in the updated provisions and is the same as the current Freshwater Plan.
- However for treated wastewater discharges to land, things have changed in a way that is less beneficial for Council. The draft provisions make the discharge a Restricted Discretionary Activity. This rule allows for consent to be declined.
- At the same time a new range of conditions have been proposed and the matters for discretion have been greatly extended, which are likely to make a consent process more difficult and add time and cost to it.
- Conditions cover an exclusion from a community drinking water supply area (*mandatory under the Drinking Water NES*); an exclusion of any discharge **direct** to water and application to land **only** when soils are in water and nutrient deficit.
- Matters for discretion now cover the *infiltration rate; subsurface drainage; field capacity of soil; nature of contaminants discharged and extent of treatment; background soil contaminant levels; storage period and volumes in prolonged wet weather; odour and spray drift control; public access restrictions; effects on ground and surface water; setbacks from gullies, surface water or coast; monitoring and maintenance requirements of treatment and disposal system*.
- As noted, the difficulty and costs associated with obtaining consent could rise in consequence of the changes, however the activity was a Discretionary Activity in the current Freshwater Plan and all such matters may have arisen in any event.

3.2.2 Stormwater policies and rules

- Under the current Freshwater Plan the discharge of stormwater is a permitted activity, certainly this is how it has been treated in terms of Council's stormwater systems, as no consents have been required by WRC.
- There is provision for a stormwater discharge to be classed as a Controlled Activity if the standards for permitted activity status are proven to be exceeded. However, even in that situation the conditions which must be addressed to obtain consent, are reasonably straight forward (as compared to what they might be) and of course a Controlled Activity must be granted.

- WRC now proposes that all such discharges become a Controlled Activity, but only for the 2 years following the date of notification of the new RP. After those 2 years the status changes to a Restricted Discretionary Activity.
- In both cases the requirements to obtain consent has been greatly expanded. These provisions represent a substantial new regulatory requirement for Council to meet and introduce extra, long term costs around monitoring of discharges.
- WRC originally proposed for a Controlled Activity application received within 2 years of notification of the RP, that the following matters of control be addressed; *monitoring and reporting requirements; maximum term of consent (5 years); timeframes for development of a Stormwater Management Plan, degree of compliance with fresh water outcomes (Sch H - a series of environmental parameters).*
- All these requirements were time bound even though the provisions may be subject to contest and could change through such processes, especially the maximum timeframe.
- As a Restricted Discretionary Activity (after the initial 2 year period), a "Stormwater Management Plan" must be provided. The matters for discretion in relation to such a plan were extensive.
- The draft Plan has added even more requirements to these provisions (particularly around the production of a "Stormwater Management Strategy").
- A stormwater strategy must now include extensive information covering the following aspects; *Strategic Actions (requires specific catchment/sub-catchment specific plans); Management Objectives (identification of objectives, limits, targets, discharge standards of plan or whaitua outcomes and how Council intends to meet them); Catchment Characteristics (full information on network, landuse impacts – future, and Management Options (require standards to be placed on development etc).* Monitoring is still required as well.
- These strategies are an undue and complex requirement for Council to meet and in many respects are completely unnecessary in terms of the degree of environmental consequence/risk our townships pose through the existing stormwater discharges.
- The lack of evidence of harm to the environment, the small reticulated networks which Council operates, the small population and area of development serviced, all suggest that the provisions are an overkill.
- In addition the proposed provisions allow WRC to interfere in how Council operationally chooses to manage its infrastructure and I consider go well beyond its statutory brief of managing a discharge.

- Consequently these provisions should be vigorously opposed. If they are adopted they will impose extensive and in my view unreasonable requirements upon Council that will cost the community dearly for little actual environmental gain.

3.2.3 Water take/allocation policies and rules

- The draft has changed much of the previous provisions relating to taking of water. New minimum flow and allocatable volumes have been incorporated into the plan. Links between surface and ground water have been recognised. For groundwater new allocatable volumes have been established.
- These changes mean that many water sources in the Wairarapa are now deemed to be over allocated. Much of this has come about with the advance of scientific knowledge about the natural water cycle in this area, along with the need to implement new national policy and standards.
- Importantly the draft like earlier discussion documents proposes to leave allocation as it exists even where there is an identified over allocation of water.
- The ability to take water for municipal supplies is protected to a reasonable extent (refer Policies LW.P111, P.112 and P.115) where the use of that water is for the health needs of people. There are however changed expectations in consequence of that protection.
- Ensuring that the water used by our municipal water supply systems is, in times of water shortage, used as efficiently as possible is mandatory. The health needs of people does not include other urban uses either e.g. food manufacture or other production.
- How (only making water available for the health needs of people) this can be achieved within the context of a single water supply network is unclear but it assumes an ability to terminate supply to a site at any time.
- The plan also seeks that water conservation and efficient use will be promoted and implemented, not only at times of shortage, but generally. Consent renewals will also be affected by this provision, as on renewal actual demand for water and efficiency of use, will be significant factors considered in the process.
- Unless water supplies literally dry up however, the volume of water needed to sustain human health needs will be available. Consenting requirements for Council would not change under this regime, except that Council would be required to show how water use efficiency is to be achieved in more detail than at present and justify more exactly the volumes proposed to be taken / being taken, for municipal use.

3.2.3 Gravel extraction policies and rules

- Council has to seek consents from WRC to take gravel from water courses and the coast. This gravel is a critical element in road construction and maintenance. Obtaining these consents has been both time consuming and expensive for Council with a quite short duration (10 years) for the consents being given.
- The draft sets out three management aims for gravel which if applied literally would make obtaining consent very difficult.
- For instance an aim is to ensure that sediment and gravel reaching the coast is not reduced to the extent that it would contribute to coastal erosion. It is literally impossible to prove such a proposition in any meaningful and scientific way. All sediment in a river (well most) invariably reaches the coast, that is the way of nature. If material is intercepted before then, it reduces the sediment supply and is a contributing cause of erosion.
- While there is a permitted activity rule in the plan for gravel extraction, the quantities allowed to be taken are minor and unable to meet the requirements of Council.
- Usually another rule would be included in the plan to specify how quantities beyond those permitted to be taken (Rule LW.R122) are to be handled along with the use status applied to those activities.
- At the time of drafting this report no such provisions could be located in the document. Officers have a meeting with Regional Council staff scheduled to look at technical components of the draft and this will be raised at that meeting (Friday 14 November) so their explanation should be available to Council at its meeting.
- Regardless, the issue of reasonable access to gravel, given its' important role in road construction and maintenance, deserves attention.
- In other regions the need for "consents" is minimised to the extent that it is a semi-automatic process administered not by the consents sections of those regional councils', but through their river management teams. This change makes the process much cheaper and allows for a far quicker and effective process. It should be followed here.
- These other regions rely on the river managers identifying where gravel needs to be taken from for river management purposes and then they issue permits to parties such as Council, to take the excess material. Both parties achieve a win-win this way. The aggrading

gravel is removed so assisting with flood control, while gravel users have a fast and affordable means of obtaining gravel.

- Such extraction is not without appropriate environmental controls, but these are standardised and apply wherever extraction takes place, much like permitted activity standards used to manage other activities. Guidelines are also used to set various “alert” criteria for abstractors in terms of protecting special features or wildlife at different times of the year (e.g. native bird nesting sites). Failure to follow guidelines can mean cancellation of the right to abstract and in serious cases, future rights. This incentivises good performance.
- Council should ask Wellington Regional Council to look to introduce such streamlined processes and resultant cost reductions.

3.2.4 Damming and Diversion policies and rules

- A technical issue has arisen in recent months with the interpretation of the current land and water plans of the regional council.
- This issue has resulted in the imposition of significant costs on council to undertake road works necessary to raise the existing road at Tutumuri above the flood level of the river and so maintain access to the community in adverse weather conditions.
- Council has been forced to obtain consent for this work at considerable cost. This is because of the way the existing plans are structured and the effect of Section 14(2) of the RMA 1991 in relation to those provisions.
- Essentially regional consents staff insisted that the current damming and diversion rules in the WRC plans apply to the road work, even though the purpose of the work is not to dam or divert a water course and the work is outside the active river channel, in fact around 100 metres distant and out on the flood plain.
- The draft plan continues this anomaly even though it has been raised with WRC more than once. Management of activities on the flood plain (land) is recognised in the RPS as a territorial authority function.
- If the current rule is continued with respect to the new draft plan many questions are raised, not the least of which is that it is completely inconsistent with the Regional Policy Statements provisions around managing hazards (a flood).

- A new rule needs to be incorporated into the draft to overcome the Section 14(2) driven anomaly and to give proper effect to the RPS as is required in law.

3.2.4 Flood Control policies and rules

- Within the regional council there appear to be divisions between the different groups undertaking regional activities, to the extent that river management has become subject to quite onerous controls. Again this is at odds with what happens in other regions where for regional purposes (under the RMA1991) these activities are treated as both significant infrastructure and permitted activities.
- While this does not affect directly any Council works, it does affect Council's, our communities and the responsible regional council staffs ability (and Council is a partner in such processes) to develop and implement flood protection measures, for instance with the Waiohine.
- In the case of the Waiohine, costs are driven up by this set-up such that \$250,000 has had to be allowed for obtaining (regional) consents. This is in my view an indefensible situation, flood control works are essential if Greytown is to be a safe community. Flood control works should be given far better recognition (as permitted activities) and the process to implement such works should be drastically simplified.

4. Conclusion

The draft Natural Resources Plan is currently available for comment and Council should take this opportunity to reinforce its concerns about the contents in areas which have the potential to affect Council.

Wellington Regional Council stated at the beginning of the review process that its goals for the new Natural Resources Plan were to

- Manage land and water in catchments
- Improve its ability to manage water
- Provide more certainty for users
- Identify values and places for protection
- Support economic wellbeing

These goals are very appropriate and should have been carried through into the document in a much more certain and deliberate way.

Reading through the new plan it seems that they have fallen short on these as a whole, even if they may argue or be able to point to individual parts that might alone suggest that they have been met.

If however you look at the totality of the document and consider it as an integrated whole, these goals have not been met other than in minor and generally meaningless ways.

The permitted activities fall short of actually permitting anything meaningful to happen and previous permitted activities have become subject to complex consenting requirements.

As a general statement it might therefore be argued that these “desirable” terms have been reinterpreted by staff of WRC to mean regulate.

In conclusion therefore it is arguable that the new plan has;

- taken a “one size fits all” approach to some matters.

What this means for Council is that provisions designed to manage the scale and impacts of municipal systems of much larger Councils are being equally applied to systems installed in our districts townships. This is particularly so in respect of the stormwater provisions.

- significantly ramped up expectations in terms of water quality.

For wastewater the new framework, while in some aspects superficially similar to past policies and rules, is now more difficult to satisfy. This is not wholly being driven by WRC as the National Policy Statement for Freshwater and national regulations have forced much of this repositioning.

The stormwater network will become subject to extensive new consenting requirements. Whether this change is necessary is in my view subject to considerable doubt for our townships. A secondary regulatory framework should be included in the plan to deal with small systems in a more flexible and less stringent way.

- taken a control focussed and regulatory path.
- become more complex and difficult to interpret and use.
- introduced new layers of rules and consenting requirements.
- lacks a strong local evidential basis for the proposed regulatory structure

The science around water quality is advancing quickly around NZ and the new draft as previously observed, reflects this increased knowledge. I still doubt however that the science of WRC is as advanced or as well informed as it should really be in terms of supporting the policies and rules being proposed in the plan from a local knowledge base perspective.

The Section 32 analysis which must be produced prior to notification of a proposed plan will hopefully provide more local information to justify the policy and rules.

Regardless of cause or justification, the changes to the document from previous plans, do have quite significant ramifications for Council.

The current wastewater strategy may not at the end of the day be accepted and Council may be forced to advance its plans to deal with wastewater discharges, this would have significant financial implications for Council.

Council will be forced to expend considerable sums obtaining consents for stormwater discharges and through those consents (and plan policies) will be faced with new ongoing monitoring costs where none existed previously.

Elements of the plan could be significantly liberalised with a little imagination, these including the gravel extraction provisions, flood control and the damming and diversion/hazard management provisions.

There are numerous other provisions that could be improved to (from the perspective of an integrated approach to the 5 principles outlined by the WRC at the start of the review process so as to take more advantage of permitted activity rules which would provide more certainty, reduced costs and opportunities for our community to develop the Wairarapa.

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