

WAIRARAPA COMBINED DISTRICT PLAN

PROPOSED PLAN CHANGE 3 - MUNICIPAL WASTE WATER
TREATMENT PLANT AND DWELLING SETBACK STANDARDS
- RULE 4.5.2

DECISION OF COMMISSIONER

1. The hearing of submissions on this proposed Plan Change proceeded at Masterton on 30 April 2012.
2. Two preliminary issues were raised at the commencement of the hearing:
 - 2.1 Both the Carterton District Council and the South Wairarapa District Council sought to be heard but neither had lodged a submission;
 - 2.2 Sustainable Wairarapa Inc, while having made a submission, sought to address a point about the wording of the proposed rules that was not covered by their submission because they (Sustainable Wairarapa) had assumed, wrongly as it turned out, that the wording concerned was a typographical error when in fact it was not.
3. I am afraid that the answer to both of these points is clear as a matter of law: the position is that unless a submission has been lodged and the ambit of that submission includes the relief the would-be submitter contends for, there is simply no jurisdiction to entertain that relief. There is no discretion or power of waiver that the local authority (or a Commissioner) can bring to bear in a spirit of benevolence and pragmatism, and accordingly I have declined to hear either of the two Councils and I cannot entertain the Sustainable Wairarapa request regarding the wording it thought was a typographical error.
4. I turn now to the substantive issues.

5. It became evident that an issue that had featured significantly in the submissions disappeared altogether as a matter of contest following the s.42A report. It was this: a number of submissions (perhaps not unreasonably) had raised concerns as to whether all the setback distances for permitted standards operated within the boundary of the property of the wastewater treatment operator/disposer. A detailed reading of the proposed rules demonstrates that they do.
6. Several other relatively discrete topics appeared to be unchallenged at the hearing and I will address those next. They were as follows:
 - 6.1 The proposed definitions (and/or the need for them) of “Municipal Treatment Plant”, “Effluent Storage Pond” and “Oxidation Pond” were put in issue through the submissions of Sustainable Wairarapa and the Homebush Neighbours Group. In short, after those submission the s.42A report recommended amendments to those definitions which, following my inquiry at the hearing, seem to now meet with approval.
 - 1.1 The removal of the words “where the effluent is treated to” and “treated to” in Rule 4.5.2 were in the same position.
 - 1.2 The removal of the words ‘effluent distribution or’ from Rule 4.5.2(k)(i)(4) was also recommended in the s.42A report, although in that case it was more a matter of rendering the proposed rule more consistent with the Regional Plan. Nonetheless, it was similarly not opposed by submitters at the hearing.
7. I uphold the submissions of Sustainable Wairarapa and the Homebush Neighbours Group to the extent that the above recommended amendments are to be made.
8. There are then three remaining matters that were the real issues of contest:
 - 8.1 The use of a median as a standard in the rule.



- 8.2 The wind speed maximum.
- 8.3 The various setback distances.
9. I propose to address the first issue discretely, but then to address the second and third issues together.
10. With regard to the use of a median as a standard, the submitters whose submissions were concerned with the degree to which their residential or neighbouring amenities might be affected, raised concerns about the impacts of discharges that fall outside that median.
11. Mr Martin quite properly made the point that the use of a median potentially allows a considerable latitude for occurrences that are well outside the median number because, of course, a median is simply the middle number, and not an average. He is unquestionably correct about that and the top end measurements could be much higher than the median. (As it happens, the Municipal Wastewater Treatment Plant performance figures are within a relatively tight span, but that is not determinative here necessarily because these rules would apply to all wastewater treatment operators/disposers.)
12. However, the problem that then arises is what other standard should be used in lieu of a median. What then emerged was that a median is a standard used not only by the Regional Council, which is the body charged with the jurisdiction for all water/discharge issues for the entire region, but also apparently other parts of New Zealand. In other words, it is a standard methodology for this issue used throughout the country.
13. It would obviously be inappropriate here (particularly in the absence of expert evidence) for me to attempt to pioneer some alternative. I am satisfied that the use of a median still enables a workable rule, remembering of course that limitations on maxima can still be imposed and may well be appropriate as conditions in the context of the site specific resource consent that would still be needed. And that is where, for example, appropriate buffer distances from identified water bores



can and should be addressed with site appropriate conditions that might well impose greater setback distances than the proposed rule contemplates. Similarly, monitoring detail, such as how often and any other limits, would be fixed in resource consent conditions for the specific site.

14. With regard to the wind speed parameter, Sustainable Wairarapa and the Medical Officer of Health (Dr Palmer) sought a higher wind speed maximum and thus greater liberalisation of that parameter in favour of any wastewater treatment operator/disposer. Unsurprisingly, the submitters whose neighbouring amenities might be affected opposed that and supported the figure as notified, and in respect of the various setback distances, sought greater distances.
15. On the evidence the wind speed and setback distance issues can be considered together.
16. On both these topics the hearing was greatly assisted by the evidence of Dr Hewitt who was able to explain the science involved in these factors and to answer questions posed by a variety of parties.
17. It is clear from Dr Hewitt's evidence that the modelling work of the international study group known as the "Spray Drift Task Force" that is the foundation for his conclusions, addresses and inter-relates wind speed and set back distances (and, for that matter, other factors such as droplet size, spray release height, air temperature and relative humidity, temperature inversions and spray trajectory). In short, he concluded that the modelling allowed a 25 metre buffer for 0.1% of the application rate at wind speeds up to 63 km per hour, but nonetheless advised a maximum wind speed of 43 km per hour as a practical upper limit based on modelling for best application or management practice (ie low pressure, low boom sprinkler systems without end guns).
18. Armed with that advice, the Council has proposed a rule with a much more conservative maximum of 14.4 km per hour for wind speed. As noted earlier, that conservative approach has actually triggered

submissions that advocate a relaxation of that standard, no doubt on the grounds of affordability, amongst other factors.

19. Mr Martin offered the suggestion that there be two standards, one for residential buffers and one for the farming community. Generous and well meant though this suggestion was, I accept the Council's response to this which is that it would be complex to differentiate between the two communities and in any event the farming community still has residential amenities to protect – as is evident from the submissions received from Mr Perry and the Homebush Neighbours Group. Indeed those submitters emphasised the desirability of increasing the setback distance in order to protect the amenities of neighbouring properties and they urged the need for recognition of a margin of error and/or a buffer before the setback distances are measured.
20. Submitter 7 (Mr and Mrs Scarlett) sought an independent professional study to assess risks to public health and safety of allowing effluent discharge as close to neighbouring property boundaries as proposed, and urged that impact on the amenities of those properties be considered in fixing setback distances. In my view Dr Hewitt's evidence addresses the setback distances quite authoritatively and I am comforted that the Medical Officer of Health, Dr Palmer, considered that the setback distances are adequate to minimise human health risks from spray drift. I am satisfied that amenity values will not be compromised.
21. Weighing all those factors, I have come to the conclusion that the Council has got the balance right on these two topics in the proposed rules. It has taken the expert evidence of Dr Hewitt, who had incorporated a margin of error in his advice, and then it has applied a further margin to reach a conservative threshold. In my view, that is a responsible approach and it may be that its inherent conservatism has not been completely understood by all.



22. For the above reasons, the provisions of the proposed Change 3 are fixed by this decision as per the annexed schedule.

DATED the 9th day of May 2012



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R J B Fowler
Hearings Commissioner

SCHEDULE

New Rule 4.5.2(d)

Rule 4.5.2 Standards for Permitted Activities

- (d) Minimum dwelling setback
 - (i) 10 metres from the front road boundary of sealed roads.
 - (ii) 25 metres from the front boundary of unsealed roads.
 - (iii) 25 metres from all other boundaries except, that if the Certificate of Title for the site was issued before 29 March 2008, or resource consent to subdivide was granted for the site before 29 March 2008 then the setback can be 10 metres.
 - (iv) 25 metres from any Significant Waterbody listed in Appendix 1.9.
 - (v) In the South Wairarapa District, 20 metres from the banks of any river and stream whose bed which has an average width of 3 metres or more. (Note: for the purposes of this rule “bed” is the definition applied in section 2 of the Resource Management Act for a “bed” in relation to any river for the purposes of esplanade reserves).
 - (vi) 5 metres from any other waterbody.
 - (vii) 35 metres from the edge of a plantation forest under separate ownership.
 - (viii) 300 metres from a boundary with untreated agricultural effluent disposal areas.
 - (ix) 300 metres from an oxidation pond.
 - (x) 150 metres from the perimeter of a spray disposal area with e-coli concentrations of less than a median of 2,000cfu/100ml.



- (xi) 75 metres from the perimeter of a surface disposal area with e-coli concentrations of less than a median of 2,000cfu/100ml.
- (xii) 25 metres from the perimeter of a spray disposal area with e-coli concentrations of less than a median of 100cfu/100ml using low pressure (<1.4 bar), low boom (<1.52 metres) sprinkler systems without end guns, at a wind speed of 4 metres per second (14.4km per hour) including sustained gusts.
- (xiii) 25 metres from the perimeter of a surface disposal area with e-coli concentrations of less than a median of 100cfu/100ml.
- (xiv) 500 metres from an intensive farming activity under separate ownership.

New Rule 4.5.2(m)

- (m) Disposal of Wastewater from a Municipal Wastewater Treatment Plant shall comply with the following setback distances:
 - (i) Wastewater with e-coli concentrations of less than a median of 2,000cfu/100ml:
 - (a) 125 metres from the property boundary for spray irrigation, eg Centre Pivot.
 - (b) 50 metres from the property boundary for surface irrigation, eg Border Strip.
 - (c) 5 metres from the property boundary for any subsurface disposal.
 - (ii) Wastewater with e-coli concentrations of less than a median of 100cfu/100ml:
 - (a) 25 metres from the property boundary for spray irrigation, eg Centre Pivot using low pressure (<1.4 bar), low boom (<1.52 metres) sprinkler systems without end



guns, at a wind speed of 4 metres per second (14.4km per hour) including sustained gusts.

- (b) 25 metres from the property boundary for surface irrigation, eg Border Strip.
- (c) 5 metres from the property boundary for any subsurface disposal.

Note: where the treated effluent exceeds a median of 2,000cfu/100ml resource consent for a Restriction Discretionary Activity will be required unless the wastewater disposal is authorised by an existing consent or designation.

Consequential change to Rule 4.5.2(k)(i)(4)

Rule 4.5.2(k)(i)

- (4) No effluent holding pond shall be located within 300 metres of an existing dwelling that is under separate ownership.

Note: It should be noted that the Exception listed in the existing Rule 4.5.2(d) shown as (x) has been incorporated into Rule 4.5.2(d)(iii).

Definitions

Municipal Wastewater Treatment Plant:

A municipal Wastewater Treatment Plant is a facility designed to treat municipal wastewater by reducing contaminants from wastewater and household sewage, both runoff (effluents) and domestic. It includes physical, chemical and biological processes for reducing contaminants. Its objective is to produce environmentally safe fluid waste stream (or treated effluent) and a solid waste (or treated sludge) suitable for disposal or re-use.

Effluent storage pond:

Effluent Storage Ponds are ponds built to store untreated effluent before it is applied to land, eg dairy effluent.

Oxidation Pond:

A man-made (anthropogenic) body of water in which waste is consumed by bacteria, or a pond that contains partially treated wastewater which is then left to grow algae and bacteria which decompose the rest of the waste.

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