

BEFORE THE MANAWATU-WANGANUI REGIONAL COUNCIL

UNDER Resource Management Act 1991

IN THE MATTER of submissions on the Manawatu-Wanganui Consolidated Regional Policy Statement, Regional Plan, and Regional Coastal Plan by the Horowhenua, Manawatu, Rangitikei, Ruapehu, Tararua, and Wanganui District Councils

AND

IN THE MATTER of hearings by the Manawatu-Wanganui Regional Council in respect of the Manawatu-Wanganui Consolidated Regional Policy Statement, Regional Plan, and Regional Coastal Plan – Water Matters

EVIDENCE OF DAVID JAMES FORREST

**BROOKFIELDS
LAWYERS**
A M B Green / A F Cameron
Telephone No. 09 379 9350
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND, MANUKAU & WELLINGTON

INTRODUCTION

1. My name is David James Forrest and I reside in Palmerston North. I am the Principal Planner of Good Earth Matters Consulting Limited, an environmental engineering, asset management, planning and resource management consultancy practice based in Palmerston North.
2. I hold the degrees of Bachelor of Arts (Hons) in Geography and Master of Science (Resource Management) and I am a full member of the New Zealand Planning Institute.
3. I have been engaged in planning and resource management practice for over 30 years. In particular, I have been involved in the provision of planning and resource management advice for the preparation and administration of a number of District Plans in both the North and South Islands.
4. I have been requested by the Collective of Territorial Authorities ("the TAs") (comprising the Horowhenua, Wanganui, Rangitikei, Ruapehu, Manawatu and Tararua District Councils) to prepare evidence in relation to the Proposed One Plan ("the POP") and water matters at a 'big picture', structural and 'coherence of provisions' level.
5. I have read the Code of Conduct for the Expert Witnesses (Section 5 of the Environment Court's Consolidated Practice Note 2006) and agree to comply with this Code of Conduct in relation to these proceedings. This evidence is within my area of expertise and represents, to the best of my ability, my understanding of the matters at hand.
6. In the evidence which follows, I shall comment, in so far as I am able at the current time, on the following matters:
 - (a) Rules 13-10 to 13-12 regarding discharges of domestic sewage to land; and
 - (b) Proposed Plan provisions with respect to 'water matters' and their structural integrity and coherence and their ability to meet the requirements of the Resource Management Act 1991 ("RMA" or "the Act").

DOMESTIC SEWAGE DISCHARGES TO LAND

7. Rules 13-10 to 13-12 of the POP are concerned with domestic sewage discharges to land. The TAs submitted on the POP with a view to clarifying these rules (13-10 to 13-12) and their application. Given the TAs' responsibilities under the Building Act and the Health Act (amongst others), they are concerned to avoid any administrative overlap or uncertainty around what RMA consents are required from whom and for what, in a typical situation for example, a dwellinghouse being erected in a rural location. The TAs seek a clear regional policy statement on this matter that will provide the clarification and certainty of action required.

8. In her Officer's Report, Ms Barton (at pages 218 - 219), has recommended that the submissions from the TAs be rejected. Ms Barton states (at page 219):

"Section 13.4 clearly outlines what needs to be achieved in relation to wastewater disposal and the removal of this section would mean the Regional Council would be abdicating its functions in terms of dealing with the issues associated with the disposal of wastewater. No change is recommended."

9. The TAs' submission is not seeking the removal of the section in its entirety and it is certainly not seeking the abdication, by the Regional Council, of its functions in terms of the disposal of wastewater.

10. The TAs want Section 13.4 of the POP replaced with a clear regional policy statement as to who does what, when and how, so as to avoid any duplication or overlap in respect of the respective roles and responsibilities of the TAs and the Regional Council. By way of example, one of the matters raised in the TAs' submissions was:

"If Rule 13-12 applies and a resource consent is required from both the Regional Council and the District Council, are these consents to be sought concurrently or should the regional consent be sought before a subdivision or land use consent or building permit is sought from the District Council?"

11. This question does not appear to have been answered in Ms Barton's Officers Report. It is one of the questions that goes to the heart of how these rules are to be administered in a manner which avoids duplication and is cost effective. Rejecting the submission does not provide the clarification being sought by the TAs.

12. I am unclear as to how "Condition/Standards/Terms" (f) in Rule 13-12 will be interpreted and applied. Does this mean that, having sought and been granted a restricted discretionary resource consent for a discharge of domestic wastewater into or onto land, and commenced the activity, if koiwi remains are discovered, the activity then becomes non-complying? This seems more appropriately dealt with by way of a condition of consent. Alternatively, it could be a matter (restriction) that applies universally across the region with respect to any activity involving ground/land disturbance.
13. The recommended tracked changes version of Rule 13-11 (p 13-17) appears to have a word missing in the 'activity' column of the rule. Rule 13-11 applies to new and upgraded discharges of domestic wastewater. The activity provided for is stated as "*The discharge of domestic wastewater into or onto land from a new or upgraded on-site wastewater treatment and disposal system that is controlled by Rule 13-10*". Rule 13-10 applies to discharges existing at the time the rule becomes operative. This being the case Rule 13-11 should apply to a "... new or upgraded on-site wastewater treatment and disposal system that is **not** controlled by Rule 13-10".
14. The word "not" needs to be added to Rule 13-11 otherwise, the relationship between Rules 13-10 and 13-11 does not make sense.
15. Also, in Rule 13-11 (d) (ii) the last line appears to have a word missing. It reads "... or an improved primary (septic tank and outlet filter)". The word "system" or similar appears to be missing after the brackets.

SCHEDULE D

16. The TAs, amongst others, have requested that Schedule D be used as a guide to the achievement of objectives and policies, not as a set of de facto rules. Ms Barton, at page 25 of her Officer's Report, states as follows:

"I understand the intent of Schedule D is that it sets out the values of importance which signals that adverse effects on those values need to be assessed through a consent application process. I will work through the particulars in terms of how these values and assessments are triggered in the rule framework with the submitters and return to this issue in my Supplementary Report. I will be providing the Hearing Panel with some worked examples of how a resource consent application will work in relation to the values of Schedule D."

17. I understand from this statement that Ms Barton sees validity in the TAs' request, but that there is work yet to be done on how Schedule D is to operate as a guide in the context of the proposed rule framework of the POP. I expect that Ms Barton will provide some examples of how Schedule D will be used in relation to resource consent applications and that the outcome of that exercise will inform the need to alter the provisions in the RPS and the plan, or fill any 'policy' gaps that will have been identified as a consequence of this work.
18. As outlined in my evidence to the Hearing Panel at the beginning of the hearing process, I am most concerned to ensure that provisions in the POP are clear, coherent and consistently interpreted and applied. In this regard, the relationship between environmental outcomes being sought, objectives, policies, and rules needs to be made explicit.
19. Unfortunately, I am unable to assess this, or to provide any constructive comment for the Panel, until such time as Ms Barton completes her own assessment.

STRUCTURE, LINKAGES AND COHERENCE

20. As outlined above, my concerns as a planning practitioner are that the POP and its operative provisions end up being clear, coherent and workable. In reading Ms Barton's comments at page 22 of her Officer's Report I sense that she may share my desire to see a coherent and workable RPS and Regional Plan put in place for the Manawatu-Wanganui Region. She states as follows:

"I consider that there are a number of policies, after Policy 6-7 contained within Chapter 6, which are better placed within the relevant Chapters in Chapters 13, 15 and 16. These policies are more specific to a consideration of a resource consent application. **I have not at this stage undertaken the shift in the track changes version of the Plan provisions because the whole sale removal of these policies has implications for how the Part I matters in the Plan will hang together as a coherent whole. This is a matter I will return to in the Supplementary Report.**

I note that I have yet to provide the linkage statements within each policy to the relevant and applicable objective. I will provide these linkage statements within the Supplementary Report."

(emphasis added)

21. Ms Barton's reference to the shifting of policies and the provision of linkage statements is, in my view, a tacit acknowledgment that the TAs' concerns around the structure and coherence of the POP are valid.
22. In respect of the 'water' chapters, in particular, it is essential that the provisions are as clear and coherent as possible, so as to avoid unnecessarily contentious, protracted and costly resource consent application processes.
23. However, as with Schedule D, I am unable to consider, or give any constructive comment on, the policy shifts and the sufficiency of linkages between the objectives, policies and rules, until such time as Ms Barton provides the linkage statements.
24. The 'tying together' of the proposed provisions to make them coherent and workable, is critical to the outcome of this submission determination process and the development of an effective Plan. It is disappointing to me that the process followed has left me in a position of being of no assistance to the Panel at this time on issues of fundamental importance to the operation of this Plan.

David Forrest
19 October 2009