

**BEFORE THE ENVIRONMENT COURT**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of appeals under  
clause 14 of the First  
Schedule to the Act

**BETWEEN** **FEDERATED FARMERS  
OF NEW ZEALAND**  
ENV-2010-WLG-148

**AND** **DEPARTMENT OF  
CONSERVATION**  
ENV-2010-WLG-150

**AND** **WANGANUI DISTRICT  
COUNCIL**  
ENV-2010-WLG-156

**AND** **WELLINGTON FISH &  
GAME COUNCIL**  
ENV-2010-WLG-157

**AND** **WATER AND  
ENVIRONMENTAL  
CARE ASSOCIATION  
INCORPORATED**  
ENV-2010-WLG-160

**Appellants**

**AND** **MANAWATU-  
WANGANUI REGIONAL  
COUNCIL**

**Respondent**

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**STATEMENT OF EVIDENCE BY ANDREW DAVID BASHFORD  
FOR PALMERSTON NORTH CITY COUNCIL**

**DATED: 16 April 2012**

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## **1. INTRODUCTION**

**1.1** My name is Andrew David Bashford. I am a Planning Consultant at Good Earth Matters Consulting Limited and have held this position since May 2011. Prior to that I was a Planning Officer employed by Palmerston North City Council (**PNCC**).

**1.2** I hold the tertiary qualification of Bachelor of Resource and Environment Planning from Massey University. I am a Graduate member of the New Zealand Planning Institute and an Associate member of the New Zealand Institute of Forestry. I have six years planning experience, of which over three years have been with the PNCC and two years with Civic Corporation Ltd based in Queenstown.

**1.3** I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2011. I agree to comply with this Code of Conduct. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

**1.4** My involvement with the Proposed One Plan started with co-ordinating the preparation of evidence in support of the PNCC submission in relation to the water chapters of the Proposed One Plan. I have also assisted PNCC in relation to its interest in these appeals, and have attended mediation on PNCC's behalf.

## **2. SCOPE OF EVIDENCE**

**2.1** The primary purpose of this statement is to provide evidence supporting PNCC's position in relation to the proposed water quality parameters referred to in Chapter 6 and contained within Schedule D of the Proposed One Plan. In particular, my evidence will support the use of the term "numerics" as a more appropriate and neutral term, as opposed to "standards", "limits" or "targets".

### **3. CITY COUNCIL'S SUBMISSION AND CURRENT POSITION**

**3.1** PNCC's original concerns are outlined in its submission, and included concerns about the appropriateness and implications of including water quality standards in Chapter 6 and Schedule D of the One Plan.

**3.2** The Regional Council's decision on PNCC's submission largely resolved PNCC's concerns, and PNCC lodged section 274 notices conditionally opposing appeals that sought to change relevant parts of the decision. PNCC's main concern now lies in the terminology used for the proposed water quality parameters within Schedule D and the potential problems that may arise through their implementation.

**3.3** As a result of discussions held and agreements reached through the appeals process, the current position as I understand it is that:<sup>1</sup>

(a) All parties agree that the water quality parameters set out in Schedule D of the One Plan were not formulated to operate as standards for the purpose of section 69 of the Resource Management Act 1991 (**RMA**).

(b) All parties except Fish and Game and the Minister of Conservation agree to use the word "numerics" to describe the Schedule D parameters.

(c) Fish and Game and the Minister of Conservation do not oppose the term numerics but seek to use the word "limits" instead.

**3.4** I support the use of the word "numerics" and the addition of a statement reflecting that the numerics are not standards for the reasons I will now discuss.

### **4. NUMERICS IN THE ONE PLAN**

**4.1** The Proposed One Plan labelled the Schedule D parameters as "standards". PNCC's submission raised concerns regarding this terminology and evidence was presented to the Regional Council that supported the term "targets" as being preferable to "standards". The Regional Council's decision reflected the views of PNCC and the term

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<sup>1</sup> 6 October 2011 Memorandum regarding Policies 6-1, 6-2, 6-3 and Table 6.2 in POP, paragraph 3.

“targets” is used in the current decisions version (dated August 2010) of the One Plan. The term “numerics” was developed through the appeal mediation process to the One Plan and is recorded in paragraph 3 of the Memorandum regarding Policies 6-1, 6-2, 6-3 and Table 6-2 in POP dated October 2011.

- 4.2** Section 69 of the RMA requires that if a plan states that water bodies are to be managed for any of the purposes specified in Schedule 3 of the RMA and the plan includes rules relating to the quality of those water bodies, then the rules must observe the standards in Schedule 3 (or may state standards that are more stringent or specific).
- 4.3** The One Plan contains values and management objectives of which some correspond to the water quality classes outlined in Schedule 3 of the RMA while others do not. The One Plan also contains specific parameters, currently labelled as “targets”, within Schedule D.
- 4.4** The One Plan uses the Schedule D targets in varying ways. Some rules require compliance with the targets as if they are standards, e.g. Rule 13-9, 13-24 and 13-26, whilst other rules retain, as a matter of control or discretion, any measures required to comply with or to maintain the targets, e.g. Rules 13-17 and 13-21. Other rules do not specifically require compliance with the targets at all.

#### **Status of the numerics**

- 4.5** The 6 October 2011 *Memorandum regarding Policies 6-1, 6-2, 6-3 and Table 6.2 in POP* states that (emphasis added):

***"Policy 6-2 and Policy 6-3 both refer to 'numerics'. All parties agree to that terminology except the Minister of Conservation and Wellington Fish and Game who advocate for the term 'limits' instead of 'numerics'. The Plan as notified referred to the Schedule D numerics as standards and there were a number of submissions by parties in relation to that terminology with the consequence that the hearing panel changed the term to 'targets'. All parties agree that the position reached at mediation was that the Schedule D numerics were not formulated to operate as standards in the sense in which that term was used in Section 69 RMA***

*and that some numerics are unsuitable for use as standards in the sense that term is used in s.69 and were not derived for that purpose. It is agreed that a footnote to Schedule D can make that plain. Horizons considers that the term 'numerics' better describes the scientific nature and function of these numerics in Schedule D and a better fit with the overall policy framework on which POP was notified. All parties agree that those numerics were designed that if met would achieve the LSC Values in Schedule AB. Wellington Fish and Game and the Minister of Conservation consider the way in which the numbers are used in the One Plan is in the same way as intended by the NPS Freshwater. Wellington Fish and Game and the Minister of Conservation don't intend to change the way Schedule D is used in the One Plan. The Minister of Conservation and Wellington Fish and Game are not wedded to the terminology and do not oppose the term numerics but consider that 'limits' better gives effect to NPS."*

- 4.6** Based on the above agreement, I understand that Schedule D is not intended to establish standards in terms of section 69 or section 128(1)(b) of the RMA. That is a key reason why the neutral term "numerics" was chosen rather than "standards". Likewise, as I discuss below, the term "targets" is potentially unclear in light of the National Policy Statement for Freshwater Management 2011 (**NPS**) and "limits" could potentially be interpreted as some form of standard.
- 4.7** The current tracked version of the Proposed One Plan<sup>2</sup> does not include a footnote in Schedule D clarifying that Schedule D is not intended to establish standards in terms of section 69 (or section 128(1)(b)) of the RMA. Given the agreement from all parties that a footnote be included I suspect that this is an accidental omission. In my opinion, this footnote should be inserted to reduce any uncertainty.

#### **National Policy Statement for Freshwater Management**

- 4.8** I understand that consistency with the NPS is the reason why Fish and Game and the Department of Conservation prefer the term "limits". I am familiar with the NPS and am aware that it uses the terms "limits" and

"targets". I understand that the term "limits" in the NPS refers to the maximum amount of resource use available to allow an objective to be met. I note that regional councils are required to make or change regional plans to ensure that they establish objectives and set quality limits for all bodies of freshwater in their regions. This is to be completed no later than December 2030.

- 4.9** In my opinion it is not clear whether "limits" means "standards" or something else, and I consider that using "limits" could leave it open for future argument that the Schedule D parameters are actually standards in the sense envisaged by RMA sections 69 and 128(1)(b). Given that this outcome is not the intent of the One Plan (as noted above), in my opinion it would be more accurate and more appropriate to use the term "numerics" in conjunction with a clear statement in the One Plan that the numerics are not standards for the purposes of sections 69 and 128 of the RMA.
- 4.10** As stated above, regional councils are required to set quality 'limits' on freshwater bodies within their region. If there is an over allocation, e.g. the limits are not complied with or freshwater objectives are not being met, then "targets" must be set, with compliance to be achieved within a defined timeframe. The One Plan does not differentiate between limits and targets within the Schedule D parameters as they are used in different ways in the various rules, as described above.
- 4.11** The term "targets", as is used in the current decisions version of the One Plan, is potentially confusing, especially since the release of the NPS which also uses the term. The numerics are not necessarily 'targets' as that term is used in the NPS. Likewise, the term 'limits' as used by the NPS does not reflect how the numerics are always used in the One Plan. The term "numerics" is neutral and does not conjure up expectations that the Schedule D parameters are something that they are not. In my opinion the term provides a good fit to the flexible nature and use of the Schedule D numerics.
- 4.12** In my opinion, to attempt to give effect to the NPS by renaming the numerics as limits through the current appeals would be inappropriate. Such an approach lacks the analysis of benefits and costs as required

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<sup>2</sup> As circulated to parties by the Regional Council on 14 March 2012 and as attached to the memorandum of counsel for PNCC dated 22 March 2012.

under section 32 of the RMA and, at this late stage in the formulation of the One Plan, excludes full and proper public participation in the planning process. Policies A1 and A2 of the NPS indicate that regional councils must change regional plans to give effect to the NPS and Clause E provides the timeframes for this to occur. It is clear from Policy A4 that the process under Schedule 1 of the RMA will need to be adhered to (aside from the step of inserting the interim policy set out in Policy A4) and, under the Schedule 1 process, a full analysis of costs and benefits will need to be carried out when giving effect to the NPS.

### **Practical impact of change of terminology**

- 4.13** PNCC has invested in the provision of infrastructure for water based services and sanitary works, including two wastewater treatment plants within Palmerston North City. PNCC has significant investment in the wastewater treatment plant for the City and currently holds resource consents expiring in May 2028 for this plant authorising discharges to water. PNCC has based its infrastructure investment on the operational security of being able to rely on those resource consents for their duration.
- 4.14** The provisions of the One Plan will affect the way PNCC operates and uses these water services. If the parameters set out in Schedule D of the One Plan were either expressed or deemed to be standards in terms of section 69 of the RMA, that would be problematic for PNCC because:
- (a) if section 69 applies, then the One Plan must require compliance with the standards in Schedule 3 of the RMA or those more specific or stringent standards expressed in the Plan; and
  - (b) PNCC's existing discharge permits could be reviewed under section 128(1)(b) of the RMA and be required to meet the new standards, at potentially significant cost to PNCC and its ratepayers.
- 4.15** Using the term numerics still leaves it open for consented discharges to be reviewed in accordance with the relevant resource consent conditions, but existing consented discharges would not necessarily be

required to meet all of the numerics immediately. Instead, incremental improvements could be made over time, especially upon re-consenting at the expiry of the existing consents, allowing for major upgrades to be budgeted for over reasonable timeframes.

## **5. CONCLUSION**

- 5.1** In my opinion the term 'numerics' better reflects the intention of Schedule D and provides more clarity and certainty to resource and plan users than alternative terms such as targets or limits. For the same reason, it is also important that the One Plan includes a clear statement that the numerics are not standards for the purposes of sections 69 and 128 of the RMA.
- 5.2** I consider that it would be inappropriate to rename the numerics as limits through these appeals in order to give effect to the NPS. If that option is to be considered in the future as part of the process under Schedule 1 of the RMA it would need careful consideration at that point, including an analysis of benefits and costs under section 32 of the RMA.



Andrew Bashford  
Planning Consultant  
16 April 2012