

**Before The Independent Hearings Commissioners  
for Gisborne District Council as Consent Authority**

**IN THE MATTER**

**of the Resource  
Management Act 1991**

**AND**

**An application from  
Gisborne District Council  
(the Applicant)**

**FOR**

**Overflow Discharges from  
the municipal wastewater  
network**

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**SUPPLEMENTARY STATEMENT OF EVIDENCE (PLANNING)**

**Todd Whittaker (MNZPI)**

**For Consent Authority**

**14 July 2021**

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11. I do wish to make the following observations;

- In my opinion, the Applicant has presented a comprehensive bundle of evidence and this will assist the Commissioners in understanding and determining the nature and scope of effects associated with the wastewater discharges. That said, the inherent nature of the network modelling and how this responds to rainfall events is complex and this presents challenges for defining and monitoring network improvements over time,
- Overall, there is a large degree of consensus between the technical experts engaged by the Applicant and the independent reviews which have been presented through the S.42A report and the technical evidence in relation to the wastewater network modelling, and human health and ecology,
- Where there are matters of disagreement, these are more directed to the interpretation of the technical material and how this should be translated and incorporated into the conditions of consent rather than a fundamental difference of opinion on nature and scope of adverse effects arising from the wastewater discharges,
- The Applicant has presented further discussion on the protocols and response mechanisms that are currently adopted in response to DWO<sup>1</sup>. The Applicant advises that;

*Council's view is that all practical steps are being undertaken to minimise the risk of DWO's and it has adopted best practice<sup>2</sup>.*

- The Applicant has committed to consent and conditions framework for DWO's that seeks to minimise DWO's however it rejects the proposition that an eradication strategy can be adopted into the consent<sup>3</sup>,
- The Applicant has presented further evidence in relation to their engagement with tangata whenua and their endeavours to address the outstanding cultural issues<sup>4</sup> which have been presented in the KIWA Engagement Report and submissions. While recognising the adverse cultural effects inherent in the nature of the wastewater discharges, the Applicant considers that they have

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<sup>1</sup> Neville West, EIC, para. 40 and 58 – 64.

<sup>2</sup> Ibid, para 64.

<sup>3</sup> Ibid, para 82.

<sup>4</sup> Wolfgang Kanz, EIC, para. 58 - 68

provided appropriate measures to mitigate these effects through consent conditions and through the ongoing engagement and partnership with tangata whenua<sup>5</sup>,

#### **4 Submitters Evidence**

12. One submitter statement of evidence was pre-circulated prior to the hearing. This is from Mr Zane Gibson who has previously been a GDC Manager of the Inflow Infiltration Programme.
13. Mr Gibson presents material on the source of the surcharge within the network in wet weather events and is critical of some of the modelling and assumptions which have been adopted by the Applicant in identifying inflow from private property as the primary source of excess flow.
14. Mr Gibson's evidence has been addressed in the statement from Mr Atiken. As discussed in the S.42A report and also in Mr Atikens technical review, there are some valid questions regarding the modelling of the network, how the network responds to wet weather events and how effective the Drainwise Programme will be. .
15. The Applicant has clearly set out their expectations that a reduction in direct overflow will be targeted in the first instance to achieve the targeted reduction of no overflows within a 50% AEP event by year 10 for WWO. However, if the DrainWise programme does not show improving outcomes, then the Applicant will need to develop a programme of alternative upgrades and remedial actions to achieve the 50% AEP target. In my opinion, the Applicants has accepted and promoted this target and will be responsible for achieving this outcome either through the DrainWise programme or through other infrastructure solutions.
16. Mr Gordon Webb also provided written evidence/submissions which were pre-circulated.
17. Mr Webb refers to the upgrades at the Seymore Road/Turenne St discharge location and supports the proposed works to remove this as a primary overflow point. Mr Webb is however critical of the conditions and wording promoted by the Applicant.

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<sup>5</sup> Ian Mayhew, EIC, para 5.44 – 5.49, 7.56 and 7.57

18. Mr Webb is also critical of the Council process that has led to the current application for overflow discharges and considers that Council has not given this issue due priority of action. Mr Webb only supports a 10 year consent and considers that the Applicant's performance targets are 'less than specific'.
19. These matters have been canvassed in the evidence and I address the term and conditions further in this statement of evidence.

## **5 Matters Arising from Hearing**

20. Specific matters arising from the hearing include;

### Unbundling of Applications

21. The Commissioners have expressed concerns about the activity status and the ability of the application to pass the S.104D gateway tests for non-complying activities. The Applicant has provided further evidence and material to support the unbundling of the applications. I do not have any objection to this approach.
22. It occurs to me that if the applications are unbundled, then additional planning evidence will be required in terms of an assessment of the RDA criteria. This could perhaps be presented as a joint planning statement.

### WWO 50% AEP Performance Target

23. It is apparent from the evidence presented to the hearing that there is not a reliable correlation between rain events and WWO which raises a question in relation to the key performance measure of no overflows in a 50% AEP event. This is further discussed in Mr Aitken's evidence. In my opinion, alternative measures will need to be developed to embed this key quantitative standards into the consent. The definition of what counts as an overflow and whether this accommodates multiple overflows as part of a single overflow events needs clarification.
24. Mr Mayhew has discussed this morning the opportunity to provide indicators of network improvement to work around the issues with using an AEP metric. The variability of climatic events and the performance of the network under different rainfall events, including rain intensity variation across the network is certainly complex. We can engage with the Applicant to examine the conditions however there

must be a transparent measure of network improvement to support any decision to grant consent.

25. I support the concerns raised with an averaging approach given that this is time dependent and it will be difficult to provide a meaningful analysis of whether network improvements are achieving positive outcomes and reduction in overflow discharges at any particular time.

#### CMA Application

26. If the application is unbundled, then the need for and scope of any discharge to the CMA needs to be considered. In my view, the provisions of the Tairāwhiti Plan are not abundantly clear. There are two mechanism available to address any potential for discharge to the CMA when this occurs across land or from an intermediary storm water medium. Either a stand-alone consent with very defined parameters or using the WWO and DWO consents and incorporating measure to address the *potential* discharge into the CMA are both available to the Applicant in my opinion.

## **6 Consent Term**

27. The clear difference in the respective positions of the Applicant's evidence and application and my opinion as the S.42A reporting planner is in relation to the term of consent for DWO. The Applicant is seeking a 20 year consent term for both the WWO and DWO whereas I have recommended a 10 year term for DWO.
28. The Applicant's case for an extended term for both overflows is based on the regional significance of the wastewater network as essentially community infrastructure and that long term responses and funding is required to achieve the most appropriate environmental and community outcomes<sup>6</sup>.
29. I have considered the legal submissions and additional evidence presented by the Applicant and while I do not disagree with much of what has been said, I remain of the view that a 10 year term is more appropriate. In this regard, and as set out in my S.42A report, I consider that the following matters are relevant to the term issue;

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<sup>6</sup> David Wilson, EIC, para 55 and Ian Mayhew, EIC, para 7.79

- The Tairāwhiti Plan assigns a non-complying status to DWO. This in my opinion is significant as it signals a higher planning threshold for such overflows and an intentional differentiation on the policy direction for DWO,
- A 10 year term will maintain a focus on these overflow events and the need to achieve progressive improvements and responses to these overflows. In my opinion, the Applicant has demonstrated a genuine and effective regime to manage DWO however an extended term of 20 years could, even it was unintentional, enable a business as usual approach,
- Opposition from tangata whenua remains with specific concerns raised with respect to the term of both WWO and DWO,
- As discussed in the S.42A report, the Applicant would be able to apply for a further consent for DWO based on actual monitoring data of the network and improvements over the term of the consent, and
- The NPS-Freshwater establishes a new policy direction for freshwater management and in my opinion the Applicant should be held account for all foreseeable discharges which can be mitigated or avoided through rigorous maintenance and preventative upgrading programmes.

30. I acknowledge that there is a limited frequency of DWO and that the effects of a DWO will depend on the location and volume of any specific overflow event. In some cases, the effects may be relatively minor with a limited volume of discharge which can be remedied through clear up and response action. In other cases, it is apparent that a DWO overflow can have more significant, albeit localised, effects on the ecology and environmental conditions of smaller waterways as discussed in the evidence by Ms Milne<sup>7</sup>.

31. I do however consider the issues for DWO are discrete from WWO and there is an opportunity to establishes separate and robust measures and objectives for DWO that achieve greater certainty and more appropriate outcomes that what is promoted by the Applicant. While there is common direction in terms of the need to manage and mitigate the effects of DWO, it is my opinion that a more robust framework of conditions is required.

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<sup>7</sup> Juliet Milne, Evidence Statement, pg 5

## **6 Consent Conditions**

32. In my opinion, there has been some constructive discussion and work on the consent conditions from the initial conditions proposed by the Applicant, the comments and recommendations presented in the S.42A report and the further revision of conditions proposed by the Applicant in evidence.
33. The final term of consent will have a significant bearing on the framing and scope of conditions. This will affect the performance targets and timeframes for a reduction in WWO and how any progressive improvement regime is set and monitored over the term of consent. Clearly, if the Commissioners decide on a shorter term of 5 years, as requested by iwi and hapu and other submitters, then the year 5 and year 10 review conditions will not be required and the performance targets will need to be reset in terms of a 5 year term.
34. In my opinion, the conditions of consent are a work in progress and will necessarily require further refinement and amendment based on the matters which have been raised through the hearings process.
35. I have prepared the following summary to highlight the matters of significance in terms of the conditions and the areas which I consider require further review;
- (a) The term of consent is a live issue and has been addressed in evidence,
  - (b) The Applicant is not proposing any progressive improvement targets across years 10 - 20 and has proposed a review condition at year 10 to set these targets. In my opinion, it would be preferable to have quantitative targets set in the consent, even if these were indicative, such that they could be confirmed or amended through any review process. If it is not possible to adopt quantitative targets, even on an indicative basis, then more qualitative direction should be incorporated into the consent conditions to give more definition to the concept of progressive improvement,
  - (c) The nature and appropriateness of setting the WWO target to a AEP event needs to be revisited, including how an overflow event/occurrence is defined,
  - (d) The condition for the Tangata Whenua Cultural Monitoring Plan (TWCMP) is reliant on third party input/action which is outside the control of the Applicant.

This can therefore present some difficulties in terms of holding the consent holder responsible for compliance.

Condition 12 acknowledges that agreement may not be achieved on the TWCMP and provides for the consent holder to proceed with the preparing the TWCMP. This is appropriate however it would be preferable for steps to be identified on how any differences may be reconciled, ie hui, independent mediator/facilitator. If agreement is not achieved, then this could be a basis for a review process to be considered –condition 32.

- (e) Conditions should be reframed to adopt an eradication strategy for DWO in all circumstances under the control of the consent holder. In my view, the conditions should not accommodate discharges from foreseeable events involving blockages/mechanical breakdowns where these can be managed through preventative action and monitoring. An alternative objective is recommended as follows;

*'To adopt and implement an eradication strategy for dry weather overflows in accordance with best practice methods and preventative action protocols while recognising that there may be unforeseen events outside the control and/or management of the consent holder which lead to overflow events '.*

- (f) Given that the average number of DWO was 7.2 p.a. for years 2015 to 2020 and the highest number of DWO in any year was 12 (2015/16), it is not clear why the consent should make allowance for 15 from commencement of the consent. This would appear to provide more latitude for DWO than is necessary or appropriate,
- (g) Where a dry weather discharge incident occurs, preventative action should be undertaken to identify cause and to address risk of same incident repeating. A second incident with same cause should be escalated to require remedial action,
- (h) In addition to performance targets on the number of private properties inspected for inflow issues, performance targets should be developed for the proportion of properties with completed works over time,



- (i) I recommend that the five year reporting process involves a presentation to a review panel as part of a public meeting process. This could potentially occur through the Wastewater Management Committee, noting the role and membership of this committee in the evidence of Mr Dave Wilson. This could then be taken into account as part of any decision to proceed with a S.128 review process at that stage,
- (j) In my view, it would be appropriate to ensure that any review process at year 10 is a public process and that this should be mandated into the consent. I had considered that this could be subject to an augier condition, however if this is not possible, then an advice note to state that it is anticipated that any such review process will be a publicly notified and that the Applicant is not supports this intent may suffice. From the legal submissions by the Applicant, it also appears that the review may be subject to the S.127 review process instead,
- (k) A metric on fish kills could in my opinion be developed which emphasises the need to avoid this outcome from occurring but framed in such away where there is recognition that events may occur outside the control and management of the Applicant,
- (l) Calls for independent review can be accommodated with a S.127 and/or S.128 process, however this still necessarily involves GDC acting as consent authority which may then allow some concerns to permeate about the degree of independence that any such process offers,
- (m) The framing of the conditions relating to the Tangata Whenua Reference Group requires further consideration in terms of the scope and partnership model of the group. Input from tangata whenua will be necessary in this regard,
- (n) Funding is an issue which has a direct bearing on the implementation and progressive with the DrainWise programme and other upgrade initiatives. In my opinion, the Applicant should report on what alternative funding sources have been pursued and that this be reported at least at the 5 year review,

- (o) Where documents are to be submitted to the Consents Manager for certification in, guidance is needed in the condition on whether this is purely a process to acknowledge that the document has been prepared or whether it has been certified as satisfying a particular consent condition as to the contents of the document,
- (p) The Seymore Road conditions can be made more prescriptive,

36. The statements of evidence from Mr Aitkin and Ms Milne also identify other specific amendments which should be considered and adopted into the consent conditions.

## 7 Conclusion

37. As set out in my S.42A report, I support the granting of the overflow discharge consents.

38. The Applicant has presented a large body of technical information and assessment to support the application and has also demonstrated a genuine commitment to working with the community and tangata whenua to reach an acceptable solution and approach to managing and resolving these discharge issues.

39. From the submissions to the hearing, there is no doubt that the wastewater discharges are wholly opposed by tangata whenua and that the only acceptable outcome will be no discharges.

40. The term of consent is a live issue and in my opinion, the conditions of consent must be critically examined and revised to provide more certainty and robustness to the implementation of the progressive improvement regime promoted by the Applicant. The conditions are a work in progress however I consider that there is scope for the Applicant and the consent authority to work constructively on the conditions with a view to reaching some consensus.



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14 July 2021.