

**BEFORE INDEPENDENT HEARING PANEL
OF AUCKLAND COUNCIL**

IN THE MATTER

of s88 of the Resource Management Act 1991

AND

IN THE MATTER of

Application DIS60069613 by, Auckland Council (Healthy Waters department) for a resource consent authorising diversions and discharges of stormwater to the environment through the existing and future public stormwater network.

SUBMISSION ON BEHALF OF STOP AUCKLAND SEWAGE OVERFLOWS COALITION

22 November 2018

Introduction

1. My name is Dirk Hudig. I reside in Herne Bay, and have done so for many years. I am co-convenor of the Stop Auckland Sewage Overflows Coalition (SASOC) and present this submission on its behalf.
2. In this submission I will address:
 - (a) SASOC's history and objectives in relation to water quality;
 - (b) SASOC's position on this application;
 - (c) The effects of this application in terms of stormwater contamination;
 - (d) Perceived gaps in the application;
 - (f) Amendments to proposed conditions;
 - (g) Other submissions; and
 - (h) Concluding remarks.

SASOC's history and objectives in relation to water quality

3. SASOC is a coalition of community organisations (currently numbering 20) situated in the central Auckland isthmus, extending around the Waitemata Harbour from Mission Bay in the east to Whau creek in the west, as well as adjacent inland areas. It was formed in March 2017 to advance a community demand for clean water in our harbours and beaches, watercourses and aquifers.
4. SASOC is a voluntary organisation. Its work is limited to raising issues – it is for Council to apply the resources to address them. Its mission statement is:

“To lobby for immediate upgrade of the drainage infrastructure of the central Auckland isthmus to stop untreated wastewater and stormwater discharges into the environment”.
5. SASOC seeks to achieve its objectives by advocating the development of coherent, complementary and separate stormwater and wastewater systems, within a framework of financial sustainability. The specific steps that it advocates include:
 - (a) Reducing stormwater flows into drainage networks, so that discharges are eliminated or, at least, substantially reduced.

This includes removing stormwater from wastewater sewers and treating the stormwater locally, wherever practical. This will result in less water to treat, and consequently fewer contaminants to dispose of in the wastewater treatment.

- (b) Spreading the load of stormwater reduction and discharge measures across the catchments in the Auckland isthmus – by identifying local projects appropriate to the area.
 - (c) Implementing financial policies and practices to provide and protect the funds needed to ensure the future sustainability of the stormwater and wastewater systems (such as prudent asset management, depreciation and creation of reserves).
 - (d) Designing, building and monitoring the systems so as to ensure their long-term practical sustainability.
6. Relevant to this application, SASOC seeks separation of stormwater from wastewater, at source, as an underlying principle, and for this to be achieved through identified processes for collection, treatment and disposal of the separated flows, and within set timeframes (which allow for development of appropriate solutions e.g. wetland development).

SASOC's position on this application

7. SASOC does not oppose consolidation of consents in principle. It accepts that there is merit in some measure of uniformity, but says that consents need to be tailored for individual catchments (with appropriate targets, timeframes and performance measures).
8. Its primary concerns about this application are the adverse effects (present and potential) of discharges of stormwater into the natural environment, due to the presence of sewage and other contaminants in those discharges. Its concern is increased by the prospect of increases in stormwater discharges due to climate change and urban intensification. SASOC considers it vital that the best appropriate risk management processes are built into any consent so as to avoid, mitigate or remedy adverse effects from these discharges.
9. In particular SASOC seeks terms and conditions on any consent that provide
- publicly-reviewable performance measures to achieve the outcomes that the public expects, and
 - clear mechanisms for delivering those outcomes, through monitoring and enforcement process(es) that will ensure compliance with the performance measures.
10. SASOC also supports the Code of Practices guides to ensure vested assets are of good quality based on sound engineering and hydraulic practice.

Stormwater contamination - the existing position and the effects that this application needs to address

General

11. All of Healthy Waters' environmental experts cite a deterioration in water quality over recent years. Healthy Waters states in its Asset Management Plan (AMP) that one of its key challenges is to reduce environmental degradation. Mr McIlroy states in his evidence that

Healthy Waters has the vision of a “water sensitive community”. These aspirations will require a change in approach and strong Key Performance Indicators (KPI’s) and attendant timelines.

Status of asset management plan and condition of existing assets

12. There is no current Asset Management Plan. The latest version publicly available is dated October 2015. Healthy Waters has provided SASOC with a copy of a draft dated January 2018, and has said that the new version will be available end November 2018¹. Without an updated AMP there is no indication of KPI’s outcomes and timelines for specific projects or for maintenance.
13. Healthy Waters does not have a good idea of the condition of its existing infrastructure².
14. The condition of assets is an important matter. Assets in poor condition cannot function well. Council was surprised, after its (excellent) Safeswim programme was instituted, by the extent of human faecal pollution outside the Combined Sewer System, that is in areas serviced by a separated system (e.g. Takapuna, East Coast Bays, Whangaparaoa, Howick, etc.). This has been attributed to wastewater/sewage entering the stormwater network either by infiltration or incorrect sewer connections.
15. Given the lack of visibility on asset condition and/or obsolescence Healthy Waters cannot know the cost of repairing/upgrading the existing networks to functional best practice. If Healthy Waters does not know this then the Governing Body too is unaware of this. For future and long term budgeting purposes it important to have a good idea of the current state of stormwater assets and the improvements required to meet best practice standards.
16. Audit New Zealand (the Auditor General) has developed a recommended asset management plan for guidance of local authorities.³ This publication is based on the international standard ISO 55000. It is clear from the 2015 AMP (the most recent AMP currently available) that Healthy Waters does not comply with a number of the recommended measures. It is accepted that international best practice standards are important. In this case we recommend

Relief required: a. A condition to be imposed that Healthy Waters comply with the Auditor General’s recommendations to maintain assets to best advantage (including cost).

b. A further condition to be imposed that Healthy Waters prepare a plan for the bringing its stormwater network up to acceptable modern standards, including a budgeted cost for doing so, in time for presentation to Council for inclusion in time for its 2021 long term plan.

Inadequate compliance

17. Human faecal contamination of the stormwater network (as distinct from the combined pipe network) has two sources - infiltration and incorrect sewer connections. In rural areas

¹ Email from Nina Sardareva dated 9 November 2018

² See pg 68 draft AMP dated January 2018

³ “Asset management and long-term planning”, March 2017.

animal faecal contamination is also an issue in stormwater discharges. Infrastructure limiting farming run-off and pollution will be necessary.

18. To date compliance with stormwater control measures has been patchy. Mr McIlroy has informed SASOC⁴ that historically there is no specific unit of Council responsible for monitoring compliance. This has led to an increasing number of incorrect connections to both stormwater and wastewater networks by errant plumbers etc. and deliberate action by do-it-yourself property owners taking the easy way out (by for instance discharging wastewater into the stormwater network and/or vice versa).
19. In addition, stormwater infrastructure on private land, such as ponds, soak pits and detention tanks, needs to be checked regularly for efficiency. Ponds and soak pits, for instance, will lose soakage effectiveness if silt is not removed. Council has not been checking that stormwater infrastructure on private land is being maintained correctly.
20. Mr Chin in his evidence advises a compliance monitoring regime is being established.

Relief required: Conditions to be imposed requiring a compliance monitoring regime, and timeframes for implementing it, to be completed within 6 months.

Stormwater treatment

21. Stormwater contains a range of pollutants. Much of the pollution is from motor vehicle use (tyre and brake pad wear, hydrocarbon emissions etc.). Stormwater collected from urban arterial roads will have the highest concentration of these pollutants. Currently there is very little direct stormwater treatment.
22. Logically, when considering treatment of stormwater, priority needs to be given to areas producing the most pollution. We would expect these would be arterial roads and shopping facilities.
23. The application provides no specific proposals for stormwater treatment – it merely makes aspirational statements.

Relief required: Condition to be imposed requiring Council to produce a policy and criteria for stormwater treatment, together with a timeframe for implementing, within 12 months.

Stormwater discharges into the combined network

24. Overflows from the Combined Sewer system are notorious for the pollution caused. These overflows are caused by stormwater entering the Combined Sewer system. Much of that stormwater originates in the Healthy Waters' network in the Auckland western isthmus and elsewhere. If these stormwater inflows into the Combined System were to be reduced then overflows from that system would also reduce.

Perceived gaps in the application

25. In SASOC's view, the application does not address (either satisfactorily or at all):

⁴ At community workshops in 2017.

- (a) The quality of the water to be discharged
- (b) Relevant statutory obligations under the Hauraki Gulf Marine Park Act 2000 (HGMPA);
- (c) All sources of the stormwater being discharged;
- (d) The differing needs of Auckland's catchments;
- (e) The standards needed to provide a yardstick for the desired improvement in water quality;
- (f) Effective monitoring and enforcement of the performance criteria; and
- (g) Realistic public input through the 35 years of the consent.

Water quality of discharges – prospective and current

- 26. The application and the expert evidence provided by Healthy Waters do not specify the content of the discharges for which consent is sought. This seems an extraordinary situation because without this information the applicant is unable to provide definitive Assessment of Environmental Effects (AEE) information. Nor can it provide evidence of how these Environmental Effects are to be mitigated or eliminated. The current policies are not working but the applicant is asking, nevertheless, for a 35 year consent without a workable AEE.
- 27. Normally some evidence of future plans would be available from Healthy Waters' AMP, but this is not available. Nor will it be available until after the conclusion of this hearing.
- 28. Nor has Healthy Waters supplied accurate information on the nature and pollutant content of the actual discharges over the entire network. It is to be expected that the pollutant content will vary depending on the siting of the discharge location (e.g. rural, urban etc.) and the catchment.
- 29. Without accurate information on the make-up of the present discharges it is impossible to assess the improvement required to achieve compliance with the sustainability provisions of the RMA and HGMPA.
- 30. In addition there is no accurate assessment(s) of the maximum amount which can be discharged merely to have a neutral environmental effect (i.e. to neither improve nor deteriorate the environment). We would expect these assessments to differ for different catchments.
- 31. This information is important for assessment of the conditions required for this application. No such information is available from the expert evidence provided by the applicant.
- 32. The application is short on environmental specifics; it contains only aspirational statements. There is no substance: no environmentally based KPIs, no KPI timelines, no currently applicable AMP and no substantive conditions. In our view for these reasons the application is premature.

Relief required: Condition to be imposed requiring the applicant to review current policies to come up with policies and specific criteria for measurement of discharges within 12 months.

Statutory obligations

33. The Hauraki Gulf Marine Park Act prohibits any increase in pollution levels in the Hauraki Gulf⁵ (i.e. at the least they are to be kept at 2000 levels) and where possible are to be improved. This requirement has not been complied with over the time since the passing of the HGMPA. The evidence presented to this hearing indicates continuing environmental degradation.⁶
34. If Healthy Waters is serious about its vision of a water sensitive community SASOC submits that it must demonstrate compliance with these statutory obligations as a priority.

Relief required: Conditions to be imposed requiring the applicant to measure compliance within 6 months from granting of consent.

Source of stormwater being discharged

35. Mr Vigar has stated in his evidence that issues relating to the Combined Sewer network are beyond the scope of this consent.
36. SASOC accepts (as Mr Vigar states) that the Western Isthmus Quality Improvement Programme (WIWQIP) is a separate initiative for the western isthmus and should be treated as a separate issue. However, the Combined System covers more than just the western isthmus and in those areas the discharges and mitigation possibilities are Healthy Waters' responsibility.
37. Additionally, where the stormwater network discharges into the Combined System it is demonstrably the responsibility of Healthy Waters up to the point of discharge. Indeed only Healthy Waters can reduce these discharges by a variety of means available to it. Reducing these inflows will reduce Combined Sewer Overflows.
38. Further, there are other parties who collect and discharge stormwater in the Auckland region, namely Auckland Transport and New Zealand Transport Agency. It seems an exercise in futility to attempt to assess the effects on the environment of discharges from Healthy Waters' stormwater network without knowing and factoring in the effect of discharges under consents held by these other agencies.

Relief required: Condition to be imposed that the applicant develop a plan to reduce stormwater discharges from its stormwater network into the Combined Sewer System. That plan to be completed within 12 months.

Different needs of different catchments

39. The Auckland region is not served by one contiguous network of stormwater assets. Healthy Waters has identified 10 different Consolidated Receiving Environments (catchments), covering a range of urban, rural, Greenfield and Brownfield development, and residential and business zones. It can reasonably be anticipated that each will have matters to be considered, potentially requiring different conditions to be imposed. The stormwater effects in each will differ, as will be the performance standards, capital requirements, asset

⁵ Part 1 of the Act generally.

⁶ Refer paras 1.3(b) and (c) of the opening submission of counsel for the applicant.

maintenance and KPI's. One size does not fit all. Healthy Waters has provided no information on how the differing requirements for the CRE's are to be handled.

40. This is a similar point to conditions being carried forward from legacy consents – these need to be identified before any consent is granted. At this point those specific variants have still to be identified.

Relief required: Conditions to be adapted to the different catchments with details to be included within a revised management plan to be provided within 6 months and be available for public review within 12 months.

Standards/measurement of performance, monitoring and enforcement under the consent

41. Reference has already been made to statutory requirements that the environment must not be worsened by the granting of a consent. This statutory requirement cannot be met unless there is a measurement of present outfall volumes (quantity) and content (quality) as starting point for measuring performance under the consent.
42. Similarly, the consent is meaningless unless it provides clear and enforceable performance standards to be achieved, and timeframes for doing so. This in turn requires the existing state of the assets to be identified now, including any maintenance deficits.
43. There are no standards capable of use as a starting point for evaluation of performance SASOC believes that benchmark standards should be stated explicitly, and apply from the outset with a mechanism for public review.
44. As currently framed the conditions do not provide any real rights of review or meaningful consultation. The applicant proposes that it be left to develop standards during the lifetime of the consent via a series of consultation processes and reviews. This will leave Healthy Waters under no performance tension. It will set its own timetable and agenda for the consultation sessions and reviews. Under this process Healthy Waters also becomes the sole judge as to what (if any) of the public submissions it accepts/implements. This methodology basically is a means to limit public participation as it bypasses the scrutiny of the Environment Court.

Relief required: Conditions to be imposed for realistic public input through the 35 years of the consent, including public input to the 3 and 6 yearly review mechanisms on best practicable option - to respond to technical and social changes – and a process for resolving responsibility issues as between agencies (Auckland Council (Healthy Waters), Watercare, Auckland Transport and NZTA).

Future stormwater assets

45. Healthy Waters seeks a consent applied for all new stormwater discharges for the next 35 years. It is proposed that the Council Regulatory Section (the "Manager") be given oversight for approvals of new discharges.
46. There may be merit in a process for streamlining consent for new discharges as suggested. However, that can only apply if the starting standards are clear and have been thoroughly tested by public input. The application does not provide substantively for such starting standards. The standards by which the Manager will assess any new application would have to be stated clearly.

Relief required: Terms of the consent to be amended to require variation as proposed by the regulator.⁷

Why is the consent required now?

47. Healthy Waters states that it has made a compliance audit of all existing NDCs but has provided no details (or even a summary of that audit) to submitters and the Schedule 7 draft contains no information. Having this information would have been helpful insofar that SASOC and other submitters would have a far better idea of the starting point for this application.
48. Healthy Waters has operated with the existing consents for 8 years. No compelling reason has been given why Healthy Waters could not continue with the existing patchwork of consents until a more comprehensive AEE can be produced, so as to allow public input on the extent of compliance with existing discharge consents and the other issues raised in this submission.

Proposal to set parameters via reviews and consultation sessions

49. The applicant wishes to fill in the gaps in its application by consultation at some time in the future. As demonstrated above, there are far too many critical aspects left to this process for the suggestion to be taken seriously.

Relief required: Conditions to be imposed requiring measurement standards from the outset.

Amendments to proposed conditions

50. SASOC has the following suggestions to make on the proposed conditions produced by the regulator at the start of the hearing (additional to the changes proposed under the various aspects of relief being sought):

- Clause 11k Add phrase “compliance with Council’s policy to improve on the environmental degradation”.⁸
- Clause 11 New condition (l) to be added: “The applicant to provide a report on contaminants discharged from outfalls near popular swimming beaches”.
- Clause 11 New condition (m) to be added: “The plan to be subject to an independent peer review by a university academic nominated by the Community Liaison Group”.
- Clause 22 The Technical Reference Group should be expanded to include an academic with knowledge of environmental science. The appointment to be made by the CEO of Auckland Council after consultation with the Community Liaison Group.
- Clause 24 Add bullet point (5): "Engage with the Community Liaison Group".
- Clause 25 Replace subclause (h) with: "Report on compliance with Council's policy to improve on the existing environmental degradation”.
- Clause 32 Sub-clause g to be removed. New sub-clause (i) to be added: “Regional environmental stakeholders including Stop Auckland Sewage Overflows Coalition (SASOC)”

⁷ Refer comments on pgs 50 and 112 of s.42A report (Hearing Agenda).

⁸ Refer comment by counsel for applicant (clause 1.3(b) of opening submission: “...management is critical to reducing existing adverse effects...”.

- Clause 38 Retain "six months". Add: "Compliance with Council's policy to improve on existing environmental degradation."
- Clause 41 Should be retained.
- Clause 42 The information should be publicised on the Council website.
- Clause 42A New clause to be added: "No later than six months after the commencement of the consent, the consent holder shall invite stakeholders including SASOC to establish in association with the consent holder a Community Liaison Group".
- Clause 42B New clause to be added: "Within twelve months of the commencement of this consent the consent holder shall prepare and implement a Community Engagement strategy. The purpose of the strategy is to ensure the Community Liaison Group is involved in the ongoing implementation of consent conditions, including (but not limited to) the monitoring Strategy, the triennial Stormwater Network Review and Report and the 6 yearly Stormwater Network Discharge Review".

- Schedule 2 Outcomes 2.5 and 2.6 should be removed.

- Schedule 3 Clause b): Remove "maintained and". Item should read "stream, groundwater and coastal water values are enhanced....."

- Schedule 6 Should be reinstated.

Other submissions

51. SASOC speaks today on behalf of its member organisations. It also supports generally the individual submissions of SASOC members The Herne Bay Residents Association Inc., The St Mary's Bay Association Inc., and the Western Bays Community Group as well as the submissions of other environmental groups seeking improvement of water quality in the region, in particular The St Lukes Environmental Society Inc. and The Manukau Harbour Restoration Society Inc.

Concluding remarks

52. It is for the applicant to satisfy you, the hearing commissioners, that a consent should be granted.
53. SASOC wishes to see the common goal of an improvement in water quality in the Auckland region achieved in a sustainable and effective way.
54. SASOC asks that the application either be declined or that a decision be deferred unless and until the issues raised in this submission have been addressed satisfactorily.

Dirk Hudig
For Co-convenors
SASOC

23 November 2018

Appendix: Summary of relief sought other than amendments to conditions in para 50

<u>Submission (para)</u>	<u>Relief sought</u>
16	<p>a. A condition to be imposed that Healthy Waters comply with the Auditor General's recommendations to maintain assets to best advantage (including cost).</p> <p>b. A further condition to be imposed that Healthy Waters prepare a plan for the bringing its stormwater network up to acceptable modern standards, including a budgeted cost for doing so, in time for presentation to Council for inclusion in time for its 2021 long term plan</p>
20	Conditions to be imposed requiring a compliance monitoring regime, and timeframes for implementing it, to be completed within 6 months.
23	Condition to be imposed requiring Council to produce a policy and criteria for stormwater treatment, together with a timeframe for implementing, within 12 months.
32	Condition to be imposed requiring the applicant to review current policies to come up with policies and specific criteria for measurement of discharges within 12 months.
34	Conditions to be imposed requiring the applicant to measure compliance within 6 months from granting of consent.
38	Condition to be imposed that the applicant develop a plan to reduce stormwater discharges from its stormwater network into the Combined Sewer System. That plan to be completed within 12 months.
40	Conditions to be adapted to the different catchments with details to be included within a revised management plan to be provided within 6 months and be available for public review within 12 months.
44	Conditions to be imposed for realistic public input through the 35 years of the consent, including public input to the 3 and 6 yearly review mechanisms on best practicable option - to respond to technical and social changes – and a process for resolving responsibility issues as between agencies (Auckland Council (Healthy Waters), Watercare, Auckland Transport and NZTA).
46	Terms of the consent to be amended to require variation as proposed by the regulator.
49	Conditions to be imposed requiring measurement standards from the outset.