



THE WEST COAST  
REGIONAL COUNCIL

**SUMMARY OF SUBMISSIONS**

**ON THE**

**PROPOSED COASTAL PLAN CHANGE 2 – REGIONAL  
COASTAL PLAN FOR THE WEST COAST**

**ARRANGED BY SECTION NUMBERS**

**The West Coast Regional Council**

**February 2009**



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## **BACKGROUND**

Under the Resource Management Act 1991 (the "RMA") Regional Councils have (amongst other functions) the function of developing a Regional Coastal Plan, reviewing the plan, and making any necessary changes.

When the Regional Coastal Plan was reviewed in 2006 to assess its efficiency and effectiveness under section 35 of the RMA, it was identified that the Plan did not adequately provide for unblocking river or creek mouths in the coastal marine area. The Plan is silent on this activity as it is not listed as a permitted or controlled activity. At the Council meeting in October 2006, Council resolved to notify a plan change to the Coastal Plan to address the matter of clearing blocked river mouths.

Proposed Plan Change 2 seeks to add a rule to the Coastal Plan permitting clearing of blocked river and creek mouths in the coastal marine area, where the blockage is causing a backwater flooding hazard or erosion of adjoining land or infrastructure, subject to compliance with conditions. The Proposed Plan Change also seeks the deletion of Method 9.6.1.3 which is to establish protocols with other agencies with roles related to unblocking river mouths.

The Proposed Plan Change was publicly notified in accordance with the First Schedule of the RMA, on 10 April 2008. A total of 14 submissions were received. This report summarises the decisions requested from those 14 submissions. Further submissions can be made by any person and lodged with the West Coast Regional Council in support of, or opposition to, any of the decisions requested in this report.

When a person makes a further submission, that person must, within five working days, serve a copy of that further submission on the person who made the original submission. Names and addresses of the submitters are appended to this report.

Following the close of further submissions, the submissions and further submissions will be incorporated into a Staff Report, which will include recommendations to Council. The submitters who requested to be heard will then have the opportunity to participate in Council hearings, where they may speak to the decisions they have requested. Following Council deliberations, a report will be released outlining Council decisions on the submissions received.

## SUBMITTERS

<b>Submitter Number</b>	<b>Organisation</b>	<b>Abbreviation</b>	<b>Wish to be heard</b>
1	New Zealand Energy Limited	NZENGY	Yes
2	West Coast Commercial Gold Miner's Assn Inc	WCCGM	No
3	Haast Branch, West Coast Whitebaiters Assn	HAASTW	No
4	West Coast Whitebait Association	WCWA	No
5	Federated Farmers	FEDF	No
6	Department of Conservation	DOC	Yes
7	Inta, Frida	INTA	Yes
8	Royal Forest and Bird Protection Society	F&B	Yes
9	Te Runanga o Ngati Waewae	TRONW	Yes
10	Hart, Dr Deirdre	HART	No
11	West Coast ENT Inc	WCENT	Yes
12	Friends of Shearer Swamp Inc	FOSS	Yes
13	Grey District Council	GDC	Yes
14	Westland District Council	WDC	Yes



**INDEX OF DECISIONS REQUESTED IN SUBMISSIONS**

<b>Submitter Number</b>	<b>Abbreviation</b>	<b>Decisions requested</b>	
1	<b>NZENGY</b>	R2	
2	<b>WCCGM</b>	GS1	
3	<b>HAASTW</b>	GS2	M1
4	<b>WCWA</b>	GS3	
5	<b>FEDF</b>	GS4	
6	<b>DOC</b>	GS5	M2
7	<b>INTA</b>	R4	M3
8	<b>F&amp;B</b>	GS6	M4
9	<b>TRONW</b>	GS7	R5
10	<b>HART</b>	GS8	R6
11	<b>WCENT</b>	GS9	M5
12	<b>FOSS</b>	GS10	R1
13	<b>GDC</b>	R3	R7
14	<b>WDC</b>	GS11	

## GENERAL SUBMISSIONS TO THE PLAN CHANGE

### Decision Requested: GS 1

**Submitter** 2 WCCGM

We support the proposed amendment to the Plan. There are alluvial gold mining operations working close to the foreshore that could be affected if normal drainage patterns become blocked. The disturbance rule will allow remedial work to be undertaken if necessary without long delays awaiting consent.

### Decision Requested: GS 2

**Submitter** HAASW

The Haast Branch of the West Coast Whitebaiters Association support the proposed change 2 to the Regional Coastal Plan by the addition of Rule 9.5.3.1A as proposed and written.

### Decision Requested: GS 3

**Submitter** WCWA

We support your changed proposal.

### Decision Requested: GS 4

**Submitter** FEDF

Federated Farmers supports Proposed Plan Change 2. This change would allow for unblocking of river and creek mouths in the Coastal Marine Area as a permitted activity under certain conditions. The Plan is currently silent on this activity which makes a resource consent necessary (by default under Rule 9.5.3.7 of the Plan) as a discretionary activity.

As you are aware, in most instances blockages at river and creek mouths need to be cleared quickly in order to restore flow. If debris and/or build-up cannot be removed quickly then flooding, erosion, and ponding can occur. This can result in flooding and damage to property. In these circumstances applying for a resource consent is not practical.

This rule change will eliminate the necessity to apply for resource consent in those circumstances and allow landowners to unblock river and creek mouths when necessary.

Federated Farmers fully supports the proposed rule change.

### Decision Requested: GS 5

#### **Submitter**

DOC

I oppose the proposed new rule, which involves permitting the unblocking of river mouths in the Coastal Marine Area. I consider that the proposed new rule is not in accordance with Part II of the Resource Management Act, the relevant policies from the New Zealand Coastal Policy Statement, or the existing regime for coastal management in the Regional Coastal Plan.

River mouths are naturally dynamic environments, often forming estuaries or lagoons in the coastal environment, which provide a great abundance and diversity of species and habitats. Alterations to the foreshore can adversely affect these ecosystems, the surrounding terrestrial environment, the natural character, public amenity, natural coastal and/or hydrological processes, heritage items, and can exacerbate or shift erosion problems.

The proposed new rule provides no guidance on managing the effects on the environment of such activities, and has inadequate controls over the scale, location, frequency, and/or timing of permitted river mouth openings, nor do the conditions of the rule provide any certainty as to the circumstances under which this rule will be utilised. As such, the rule would permit activities with potentially significant effects on the environment. The effects of these types of activities vary greatly and as such, need to be assessed on a on a case-by-case basis through the RMA consents process, with specific consent conditions to manage the specific effects at each location.

Delete the proposed new rule in its entirety.

### Decision Requested: GS 6

#### **Submitter**

F&B

Forest and Bird understands the duties that the Council has under section 35 of the RMA. We also appreciate the Council's intention to improve the efficiency and effectiveness of its Regional Coastal Plan. However, Forest and Bird is concerned that once the Proposed Change 2 is approved, any unblocking of creeks or river mouths will go ahead without appropriate management and control. This is inconsistent with the RMA, the New Zealand Coastal Policy Statement, and the duties that the West Coast Regional Council has under the Regional Policy Statement. If the activities in the Proposed Change 2 are *permitted*, the potential adverse effects of these activities will be very hard to control.

Creek and river mouth flooding is a natural process. The fluctuation of watercourse can provide habitat for native species, especially fish and birds. In the long term, these floods may develop natural wetlands and coastal lagoons which are critical habitat for native flora and fauna. Uncontrolled unblocking will disturb this natural ecological processing.

The application is contrary to Part II of the RMA, and in particular section 6 and 7, for the following reasons:

- A. The application does not justify the setting aside of matters of national importance such as protecting the natural character of the coast and protecting indigenous species of flora and fauna.
- B. Section 6(a) requires *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development as a matter of national importance.*
- C. Section 7 requires that particular regard be given to *other matters* such as the intrinsic value of ecosystems, maintenance and enhancement of amenity values and maintenance and enhancement of environmental quality.

A Regional Coastal Plan should not be contrary to the NZ Coastal Policy Statement. Apart from the common principles of sustainable management, matters of national importance and other matters with the RMA, the NZ Coastal Policy Statement specifically set aside Policy 1.1.4 as:

*"It is a national priority for the preservation of natural character of the coastal environment to protect the integrity, functioning, and resiliences of the coastal environment in terms of:*

- (a) the **dynamic processes and features arising from the natural movement** of sediments, **water** and air;*
- (b) natural movement of biota;*
- (c) natural substrate composition;*
- (d) natural water and air quality;*
- (e) natural biodiversity, productivity and biotic patterns; and*
- (f) intrinsic values of ecosystems."***

The application is contrary to these policies.

In accordance with the RMA, the West Coast Regional Policy Statement clearly states in its policies:

#### POLICY 9.1

*Preserve the natural character of the West Coast's wetlands, lakes and rivers and their margins and protect them, and outstanding natural features and landscapes, from inappropriate subdivision, use and development.*

#### POLICY 10.1.1

*Preserve the natural character of the West Coast's coastal environment and protect it, and outstanding natural features and landscapes, from inappropriate subdivision, use and development.*

#### POLICY 10.2.1

*To avoid, remedy or mitigate the effects of activities which have the potential to reduce whitebait habitats including:*

- a) Further inappropriate subdivision, use or development of relevant rivers, streams and wetlands and their margins;*
- b) drainage, impoundment, reclamation or diversion of water; and*
- c) Discharge of contaminants into water.*

The proposed change to the Regional Coastal Plan is adversary to the Regional Policy Statement.

We seek the Proposed Change 2 be **declined**.

In consideration of consent efficiency under urgent circumstances, such as life threatening flood hazard, the Council may need to develop an efficient procedure to grant consent in that case, instead of changing the Plan.

### **Decision Requested: GS 7**

#### **Submitter**

TRONW

Te Runanga o Ngati Waewae opposes the Plan Change 2. The assessment of any blockage needs to be subject to a resource consent to be consistent with sections 6(c), (e), (f), section 5(2)(c), and provide effective monitoring. Without this the potential for abuse will be rife.

Tino Rangatiratanga: This proposed variation is viewed as an assault on our ability to engage the local authority re the RMA with respect to the proposal of allowing near unfettered interference with nga awa in an adhoc uncontrolled way, and as such is viewed as an assault on nga kaitiakitanga, the ability of Ngati Waewae to exercise guardianship over their waters, rivers and coasts on Te Tai o Poutini.

#### **Values associated with the AWA of Te Tai o Poutini**

Ngati Waewae considers the nga awa to possess a range of significant cultural values. By way of illustration, it is evident from a section of Schedule 1C of the West Coast Water Management Plan that tangata whenua have a real and valid interest in what happens to our rivers and their estuarine areas.

*(Note: This submission contains a copy of Schedule 1C from the West Coast Water Management Plan. If you wish to view this Schedule, there is a copy of the Water Management Plan on the West Coast Regional Council's website: [www.wcrc.govt.nz](http://www.wcrc.govt.nz).)*

Ngati Waewae reaffirm that all nga awa are significant to tangata whenua. Nga awa are more than mere drains to the sea and are protected under te tiriti o Waitangai, RMA, Conservation Act and Ngai Tahu Treaty Settlement Act for their myriad of values to communities but tangata whenua in particular. Many of the awa mouths are in Statutory Acknowledgement Areas, many contain nohoanga sites, spawning and kohanga for fish and manu, some are wahi tapu.

Waewae have always advocated the protection of the nga awa and that any such activities as proposed be fully consented via a resource consent to enable the exercise of our manawhenua right over our rohe – tribal area. We need a resource consent to erect a sign alongside the main road, we should require one to modify any awa, especially in the CMA.

Waewae has worked towards and advocated management plans on some awa to permit clearances subject to necessary strict guidelines and triggers, this needs to continue to be supported by our local authorities in a quality way, not via adhoc planning instruments overly open to abuse by those with a vested interest in dry land pastoralism adjacent to our CMA.

The outstanding concerns that Ngati Waewae have about the proposal are:

- The impacts on the mauri of nga awa as a result of unconsented unblockage to the waters, mata, tuna. Waewae contends that the WCRC is abdicating its responsibilities to the tangata, people of the West Coast, in favour of a select few land users, if this plan change is enabled.
- Loss of significant mahinga kai habitat and species: Ngati Waewae is concerned that the uncontrolled unblocking will interfere in some cases with natural processes and tidal zone morphology.
- Use of Cultural Health Index (CHI): Ngati Waewae would like the many awa of te Tai o Poutini assessed in their current state using this regime prior to granting consents. This is a recognised method by both tangata whenua and MFE. The many awa are frequented by gatherers and fishers in the estuarine area and using the CHI needs to be undertaken in order to satisfy section 6 of the RMA prior to issuing consents.
- Te Ahauatanga o Papatuanuku – Natural Character: Ngati Waewae has concerns that the natural character of the nga awa will be altered in an adhoc way in many places should this plan change proceed.

1. In relation to section 5, the proposed plan change as it presently stands will:

- Not manage the use, development or protection of natural and physical resources in way, or at a rate, which enables the people and communities of Te Tai o Poutini to provide for their social, economic and especially their **cultural wellbeing**. The test for what constitutes meeting the proposed rule 9.5.3.1A conditions e.g. notifying the Regional Council prior to works being undertaken, is open to abuse and lack of quality management currently required via the consent process, including tangata whenua and community consultation, and as such the rule will:
  - Result in the inability of nga awa to sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
  - Result in the inability to effectively safeguard the life-supporting capacity of air, water, soil, and ecosystems;
  - Result in the failure to effectively avoid, remedy or mitigate the adverse effects on the environment.

2. It is the view of Ngati Waewae that, at present, WCRC via this rule change has not satisfactorily recognised and provided for:

- The preservation of the natural character of Nga Awa and its margins affected by the adhoc approach to planning and compliance monitoring into the coastal zone and the protection of it from inappropriate use and development;
- The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, taonga species;
- The relationship of Ngati Waewae and their culture and traditions with their ancestral lands, water, sites, cultural materials, wahi tapu and other taonga;
- The protection of historic heritage from inappropriate use and development.

Ngati Waewae seeks that the proposed plan change be terminated and WCRC enable such land management to continue to occur, as it has on many awa, via the quality process of resource consent application, consultation and management planning.

## Decision Requested: GS 8

### **Submitter**

HART

The proposed plan change in its present form would likely lead to significant adverse effects of the coastal environment and river mouth wetland ecosystem diversity, natural character and indigenous food-resource values over time. I do not support this Coastal Plan change as above but believe that it could be amended to deal with the identified issue of blockages and flooding in ways which would have significantly less potential for adverse effects on coastal and river mouth environments at the same time as alleviating the frequency of emergency works and need for multiple resource consent applications per site. I have provided some suggestions and critique of the proposed plan change in an effort to encourage a better planning outcome.

My objection comes primarily from the recognition that blockage of these creek and river mouths systems, and the accompanying flooding and erosion, are in fact natural processes. That is, these events are part of the natural range of dynamics of these systems, a range which is important in maintaining the natural geomorphic character of these environments and the ecosystem functioning of adjacent hydraulically-connected wetlands.

Under natural circumstances, many of the outlets of these rivers and creeks become offset from the main fluvial channel creating a lagoon between the beach and hinterland. These lagoons undergo cycles including stages:

- With an open lagoon outlet to sea;
- Where all outlets to the sea are blocked by longshore drift of beach sediment, and
- Where a river flood naturally breaches an opening from lagoon to sea, or
- Where the hydraulic head of the lagoon becomes great enough that the lagoon waters breach an outlet out to sea.

These natural cycles include a large range of natural water levels – a range which could be substantially dampened if artificial openings were to become a frequent activity, with a reduction in the length of lagoon offsets and habitat area, and a change in the flooding regime of any hydraulically-connected wetlands. These wetlands include plant and animal species which have evolved under and rely on natural frequencies of flood events to maintain their distributions, life cycles and diversity.

*(Note: This submission contains a diagram outlining the cycle of lagoon formation. If you wish to view the diagram, you can request a copy of the submission from the West Coast Regional Council.)*

Ref: Todd, D.J. (1992) River mouth and coastal processes of the Ashburton River mouth. In T. Dons and D. Stringer (eds) *Natural Resources of the Ashburton River and Catchment*. Canterbury Regional Council Report 92(36) pp208-234.

Artificially breaching openings to alleviate river and creek mouth flooding is not a natural process and cannot, by definition, enhance the natural functioning of these systems. Single, infrequent artificial breaches to alleviate extremely prolonged flooding may have relatively minor adverse effects on these environments. However,

any substantial increase in the frequency of artificial breaches and flood alleviation has the potential to have significant and cumulative, negative effects on these systems.

I recognise that a balance must be struck in Westland between areas where habitation, farming development, and the alleviation of flood hazard must take priority versus other areas where natural character, ecosystem and indigenous values are the greater priority. I do not see that the proposed plan change, in its current form, can help to strike this balance since it applies a blanket rule across a diverse range of river mouth and creek settings. It would likely lead to more sustainable resource management outcomes and less adverse effects if the river and creek mouths of Westland were classified according to the competing values listed - that is, areas where the mitigation of current flooding and erosion hazards was a priority and other areas where natural system values were a priority.

Furthermore, I believe that, in its present form, this plan change would encourage inappropriate subdivision and development of the coastal environment where that environment is naturally very dynamic and prone to flood hazard but has high natural character and ecosystem values. In such circumstances, it would be better to encourage development and landuse patterns that included buffer zones to mitigate against flooding hazard impacting new infrastructure, property and land uses. As the plan change is, people would be likely to interpret shorelines and river banks incorrectly as static/controllable features and then rely on artificial breaches to maintain such boundaries in artificially-fixed positions. A classification of river mouths with high infrastructure and habitation values versus those where natural character and ecosystem values were more important could help avoid this inappropriate development as would the suggested modifications to the plan change explained below.

I seek either:

- (A) that the proposed section is deleted and replaced by a rule designating the opening of blocked river and creek mouths a **controlled activity**, with specific trigger conditions for backwater flooding elevation, minimum duration of flooding at trigger level, and maximum depth and width of the new channel created, minimum distance from main creek or river channel, and minimum allowable level of lagoon drainage, to be determined for individual river or creek mouths, OR
- (B) that the proposed section is deleted and replaced by a rule designating the opening of blocked river and creek mouths a **discretionary activity** and that applications are made for ongoing resource consents for each river and creek mouth where backwater flooding is a known problem. These ongoing consents would alleviate the need for emergency works and retrospective resource consents, and allow the cumulative effects of river mouth opening activities on ecosystem diversity, natural character and indigenous food resource values to be weighed against the level of risk to property and farmland for each site and be monitored over time. In each consent specific trigger conditions for backwater flooding elevation, minimum duration of flooding at trigger level, and maximum depth and width of the new channel created and minimum level of lagoon drainage should be determined.

Under both these options, the rule needs to have clearer and less subjective definitions of what 'backwater flooding hazard', 'erosion of adjoining land and

infrastructure' and 'blockage' means.

## **Decision Requested: GS 9**

### ***Submitter***

WCENT

West Coast ENT Inc (the society) is opposed to this plan change, in particular to the insertion of Rule 9.5.3.1A.

First a word on nomenclature. The New Shorter Oxford English Dictionary definition of the verb "block" is "obstruct, hinder", and for "blockage" is "a blocked up state; an obstruction". The use of the words "unblocking" and "blockage" is pejorative; it suggests that the creek or river is in an abnormal or undesirable state. In fact, as the result of predominantly natural processes, the state of a creek may be that it does not flow directly to the sea for significant periods. In many cases this may be the preferred state for the creek or river. The society opposes this terminology and submits that more accurate and less pejorative terminology is preferred, and suggests "opening the creek or river mouth so that it flows to the sea".

The rule would permit the "unblocking" of any creek or river, so long as the conditions in the rule were followed. The logic being that if the conditions are followed, no adverse environmental impact would result.

The WCRC has provided a RMA section 32 report on the proposed Plan Change 2 to the Regional Coastal Plan. In that report, WCRC provides some examples of "clearing blockages", namely "Granity houses from blocking up of Granity Creek, flooding around the Paroa pub and school, and the Poerua River", and goes on to state (without providing evidence): "These situations were resolved by undertaking minor earthworks with no adverse effects".

The society has insufficient evidence to hand to debate whether adverse effects occurred in those situations or not. However, logically, it is sufficient for the society to provide just one counter-example, where an adverse effect has occurred and where the conditions imposed by the rule would not have prevented that adverse effect.

The counter-example which the society has chosen is Shearer Swamp and the opening of Waikoriri Lagoon direct to the sea in January 2004. While further research may expose other counter-examples (which the society may explore later) one is sufficient. To demonstrate the validity of this counter-example, the society will show (a) there was an adverse environmental impact, and (b) the imposition of the rule would not have avoided that adverse impact.

### *Adverse environmental impact*

The environmental impact from the retrospectively consented opening of Waikoriri Lagoon includes, but is not limited to:

1. stranding of fish and other wildlife in the 'beheaded' section of Waikoriri Lagoon, and
2. the loss of indigenous vegetation and erosion of sand-dunes as the new opening migrated northwards towards the location of the opening before the

- cut was made;
3. impacts around the margins of the associated Shearer Swamp.

These impacts are documents in the evidence put before the WCRC in the two resource consent hearings associated with the incident.

*Application of proposed rule conditions*

1. The stranding of fish and other wildlife is not mentioned by the conditions of the rule. Therefore this impact would not be managed by the rule.
2. The loss of indigenous vegetation and erosion of sand-dunes is not mentioned by the conditions of the rule. Therefore this impact would not be managed by the rule.
3. Impacts on associated wetlands are not mentioned by the rule.

While the proposed rule would not have allowed the lagoon to be opened at the location that it was, these impacts would still have occurred if the lagoon had been opened at the location allowed under condition ©.

*Conclusion*

It is clear that in the case of Shearer Swamp/Waikoriri Lagoon, the adverse environmental impact would not be adequately managed by the conditions of the proposed rule. For the rule to adequately manage the impacts of the opening of creeks and rivers to the sea it must manage these impacts in all situations. As the impacts would not have been adequately managed in this counter-example the rule fails to manage the impacts of the opening of creeks and rivers to the sea, and must therefore be rejected.

The society submits further that there is no other set of conditions that would adequately manage the impacts of opening creeks and rivers to the sea, and that the issue is best dealt with on a case-by-case basis, through the resource consent process; *the status quo*. The plan change must be rejected.

**Decision Requested: GS 10**

***Submitter***

FOSS

Friends of Shearer Swamp Incorporated Society (FOSS) believes that the proposed Plan Change 2 to the Regional Coastal Plan would be a backward step in the management of coastal marine areas and that the resource consent process is at present the appropriate way to manage openings of creeks and rivers under the RMA. In this submission we will assess appropriateness of the plan change by considering the impact that the plan change would have had on the opening of Waikoriri Lagoon in early 2004 had it been in force then, and the impact that the plan change would have in the future management of the Shearer Swamp/Waikoriro Lagoon wetland complex.

We also oppose this Plan Change on general grounds that it is inconsistent with Council's Policy Statement on the management of coastal environment, the preservation of wetlands, and the maintenance of indigenous biodiversity etc.

### ***Shearer Swamp/Waikoriri Lagoon wetland complex***

Shearer Swamp, at the northern edge of South Westland, is approximately 135 hectares in area, and is one of the largest relatively intact lowland coastal wetlands in the region. The Department of Conservation lists it as internationally significant.

The swamp was originally a tidal bay that gradually became a large saltwater lagoon and later closed off to become the swamp of today. It has a peat-forming dome at its centre, and drains via Waikoriri Creek (known as Black Creek), and Pearn Brook to the south and another creek (previously Waikoriri Creek) to the north. It is rimmed to the east by mixed podocarp forest and south by original and regenerating kahikatea forest with rare remnants of silver pine. It is enclosed from the Tasman Sea by low sand dunes, Granite Creek and the coastal Waikoriri Lagoon.

### **Friends of Shearer Swamp Inc**

Friends of Shearer Swamp Inc is a local community group concerned with the protection and management of the Shearer Swamp/Waikoriri Lagoon wetland complex. It is a member.....

### ***Opening of the coastal lagoon***

In 2004 the coastal lagoon was opened directly to the sea by local landowners after the West Coast Regional Council mistakenly gave its approval under the emergency works provisions of the RMA, not realising that the emergency works provisions apply only to network utility operators and that, as a foreseeable event, the situation was not an emergency. Retrospective resource consent was applied for by the Westland District Council (although they did not authorise the work) and, somewhat surprisingly, granted. The Westland District Council also pursued another resource consent application, applied for two years earlier, which would allow the ongoing management and opening of the lagoon. This consent was granted, but the conditions appealed by the Westland District Council (ENVC 28/05). The Department of Conservation and Katherine Gilbert joined the appeal. The Environment Court decisions (No. C98/2005, C125/2005 and a later correction) included 41 conditions covering methods, monitoring and reporting, review of conditions, and complaints and non-compliance.

### ***Plan Change 2: resource management***

We now consider the conditions of the resource consent, which were finalised by the Environment Court, and whether the outcome of a rigorous resource management process can be covered by the conditions in the proposed new rule in the plan change. Note that FSS does not consider that these conditions are sufficient to avoid adverse impacts on the environment, but rather considers that the best management of the Shearer Swamp/Waikoriri Lagoon wetland complex is to let natural processes take their course. High water levels increase the amount of aquatic habitat, prevent destruction of wetland systems and reduce the incursion of weed and pest species.

The proposed rule has 8 conditions. The resource consent has 41 conditions. It is clear that the proposed rule would result in a significantly weaker management regime for the Shearer Swamp/Waikoriri Lagoon wetland complex than the result of a rigorous resource consent process. The question of whether the plan change can be accepted hinges on whether the proposed rule could result in any adverse effects on the environment. We now explore the most important of those adverse effects.

***No monitoring, objective assessment or reporting of water levels***

The monitoring and reporting of water levels is a key part of ensuring that the management of wetlands and coastal lagoons does not entail adverse environmental effects. Without regular monitoring it is not possible to assess how observed water levels relate to historic levels and trends. Especially when some property owners prefer lower water levels but higher water levels are desirable for recreation and conservation values, monitoring and reporting of water levels are critical to ensure that objective decisions are made which are less open to challenge.

It's possible that a landowner undertaking the works has little interest in or knowledge of wildlife, significant natural character or iwi preferences. This plan fails to allow interested parties with competing or differing views an opportunity for involvement in the decision making process. The RMA in comparison allows all interested parties to have input in a fair, reasonable and legal manner.

Resource consent decisions can establish a set of conditions that may not be entirely acceptable to all parties but they can, as in the case of the Waikoriri Lagoon, establish management mechanisms where interested and conflicting parties are involved in future lagoon opening decisions. The Waikoriri Lagoon Management Group annually assesses recorded data and has the power to co-opt or consult specialists where necessary. The proposed new plan change fails to recognise that the specific hydrological situation in any one area may be complex and not yet clearly understood. As new (including historic) information becomes available more objective assessments will be made provided appropriate management mechanisms are in place.

***No limitation on time of year of opening***

In the case of the opening of Waikoriri Lagoon and other rivers and creeks in the coastal marine area, it is important that the impact on wildlife at the site is kept to a minimum. An aspect of this is ensuring that works do not take place in the season where, for example, birds are nesting and whitebait are spawning and migrating.

***No recovery of stranded fish and other wildlife***

The rapid reduction of water levels as a result of opening of creeks and rivers to the sea can have disastrous effects on aquatic wildlife that live in extensive shallow areas that are quickly drained. Whether this occurs or not depends on the particular configuration of the creek or river that is opened, as well as the timing, location and manner of opening. In the case of Waikoriri Lagoon the opening was made in an inappropriate position, and hectares of shallow water habitat was lost in hours. If the opening was made at the last location of stream flow, as required by the proposed rule, the adverse impact may have been reduced, but it would not have been avoided. This is why the condition on the resource consent requires the recovery of stranded fish even though it is envisioned that the opening would be at a site allowing slower release.

***No avoidance of pest plant/weed incursions or remedying any incursions***

The proposed rule makes no mention of pest plant/weed incursions. The threat of didymo spreading by machinery for example is not addressed. There is no requirement to clean machinery before accessing the work area, no requirement for monitoring to see whether such an incursion occurs, and no requirement to remedy any such incursion. As many of the openings would be in predominantly natural areas, which may have few existing pest plant species, the proposed rule is deficient.

### ***No recognition or assessment of upstream effects***

The proposed rule takes a narrow view of adverse impacts and does not recognise that creeks and rivers are hydrologically connected, often to upstream wetlands. In the case of Shearer Swamp, the level of the water in the wetland is controlled to some extent by the location and height of the opening of Waikoriri Lagoon. High water levels in Shearer Swamp are important to increase the size and value of aquatic habitat, protect wetland vegetation, bird species and reduce the incursion of pest species around the margins of the swamp. Lowering the water levels is an adverse environmental effect that is not controlled by the proposed rule.

The Shearer Swamp/Waikoriri Lagoon opening is a very good example where the landowner reported the "blocked" mouth to the Regional Council over the phone and was granted permission to unblock it. The effect was that the water levels upstream over many acres were lowered. Tons of mud and gravel were flushed out of the lower creeks over the following months, creek edges channelled and the 4km of coastal lagoon completely destroyed. We can show photographs of the continuing impact. The same scenario could well be repeated under this plan resulting in acres of drier farmland in the surrounding area.

### ***Concern for legal precedence***

Legal precedence is a well-recognised part of the New Zealand legal system. The proposed plan could allow previous Environment Court decisions to be overruled. This has serious implications for common law practice and the legal rights of all citizens. It also implies that the Council could in the future change other policies and hence override decisions of the Environment Court or common law practice.

The identification of Significant Natural Areas and wetlands that are not yet protected by the proposed variation to the Land and Riverbed Management Plan need to be protected by this Plan. Since the Council only needs to be notified of the opening there is no requirement for any dialogue or assessment of whether the activities will impact on Significant Natural Areas.

### ***No recognition of natural cycles and history***

It is a strong possibility that the plan change could result in a creek mouth to be virtually fixed at a permanent location without any consideration of past resource consent decisions, past human actions, illegal acts or the huge variance that occurs by natural processes over many years.

The vague simplicity of this plan denies any consideration for historic events or natural cycles nor their impacts on ecosystems, indigenous biodiversity and the protection of vulnerable species. It would allow individuals the ability to take action as they see fit reducing lengthy (eg 100 year) natural cycles to possibly zero.

At the Waikoriri Lagoon the mouth can naturally move over a distance of about four kilometres and can divide into two mouths up to six kilometres apart.

### ***Plan Change 2: implications for current and future management***

If Plan Change 2 were to be accepted, the resource consent and Environment Court process that has been completed with respect to the Shearer Swamp/Waikoriri Lagoon wetland complex would be superceded, and replaced with a much weaker regime. While the existing regime provides limited protection for the wetland complex, the proposed rule would provide almost no protection.

### ***Conclusion***

The proposed plan change imposes a significantly weaker regulatory regime on the opening of creeks and rivers to the sea than the existing resource consent process. We have demonstrated that this weaker regime would have significant environmental impacts in the case of Shearer Swamp/Waikoriri Lagoon.

FOSS considers that a more robust set of conditions on the attached rule would not be sufficient to protect against adverse environmental impacts because many of the conditions in the resource consent, while having general applicability, are designed to avoid adverse effects in the context of Shearer Swamp/Waikoriri Lagoon only. A case-by-case basis assessment is required, one which is best provided through the resource consent process. The case of Shearer Swamp shows that because of the foreseeable nature of any periodic flooding resulting from the natural operation of these systems a robust regime can be put in place, which allows swift action when required.

In other situations where a small regular opening is a realistic option and where no adverse environmental effects are possible then a resource consent application would be a simple, fast and inexpensive process. No Plan Change is therefore necessary.

As the proposed rule must be robust enough to avoid adverse environmental impacts in all situations, it only takes one situation where it is not robust for the rule to be ineffective in its role of avoiding, remedying or mitigating adverse effects on the environment. It is clear that the rule is insufficient and the plan change should be abandoned.

### **Decision Requested: GS 11**

#### ***Submitter***

WDC

Westland District Council currently holds resource consents to periodically open and maintain blockages on a number of rivers and lagoons, where the blocking and associated ponding poses a risk to public infrastructure and local housing. Council supports the inclusion of a rule that allows this ongoing maintenance without consent.

Westland acknowledges that the movement of river mouths (currently in a northerly direction) and the blocking and burst out of lagoons is a natural process, with associated ecological benefits in some cases. Caution should be taken to ensure that the rule provides for engineered solutions to prevent hazard, as opposed to maintaining a preferred course through a farm or aid the whitebaiting season, and that the rule is utilised to unblock rivers rather than shift mouth positions.

Westland District Council seeks that the Regional Council incorporates the rule into the Regional Plan.

Westland District Council also seeks that the Regional Council provides as much guidance as possible, either through definitions in the Coastal Plan, or internal policy documents, to allow consistent application of this rule in situations of erosion and hazard.

## **RULE 9.5.3.1A**

### **Decision Requested: R1**

***Submitter***

FOSS

***Vague terms lead to various interpretations***

The words/phrases used in the rule are vague and open to leave a wide variation in interpretation. Of most concern are: "the last actively flowing channel", "prior to becoming blocked", "backwater flooding hazard", "notified prior to works being undertaken", "little flow", "flood risk".

At Waikoriri Lagoon the determination of the mouth being "blocked" or "at risk" of becoming blocked in 2004 was questionable. As a consequence it is estimated that it will take around 20 years for the lagoon to full re-establish itself. As an example approximately two kilometres of vegetated sand dunes have so far been destroyed. The opening was not necessary as one of the feeder creeks had changed course naturally resulting in no prospect to property from flooding. The extensive environmental damage could have been avoided. It is likely that this situation will repeat itself under the proposed plan change. Photographs in our possession illustrate the point.

The various interpretations of the condition of this plan are likely to jeopardise the Council's ability to management the region in accordance with the law and with their own Regional Policy Statement. The vague wording also encourages unilateral action in opening creeks where there might be conflicting opinions on the best course of action.

Withdraw the proposed plan change altogether.

### **Decision Requested: R2**

***Submitter***

NZENGY

NZ Energy own and operate the Haast Power System. Power is reticulated throughout the greater Haast area, from Snapshot Creek in the north east to Jackson's Bay in the south west.

The proposed rule change has particular interest to NZ Energy as the power line that feeds south from Hannah's Clearing to the settlements of the Waiatoto, Arawhata, Neil's Beach and Jackson's Bay are under constant threat from erosion caused by river mouth activity.

The proposed plan change was proposed by the Council following a five year review in 2006 that identified that the plan did not adequately provide for the unblocking of river mouths in the coastal plan. In particular it identified that this was an issue when erosion, flooding or ponding resulted in adverse effects on adjoining private land, public amenity land and infrastructure.

*(Note: This submission contains photos. If you wish to view the photos, you can request a copy of the submission from the West Coast Regional Council.)*

In our case it is very evident that river mouth activity on both the Waiatoto and Arawhata rivers has created extensive damage to infrastructure and serious interruptions to the power supply to the adjoining outlying areas. As you will be well aware the supply of power to our communities is an essential service and must be maintained and remain viable.

The proposed amendments to the plan do not provide adequately for the protection of these infrastructural assets in all circumstances. We believe that if you are going to go to the extent to change the plan to protect these very assets from these very precise causes then you need to ensure the plan covers this completely and not in part as is proposed.

The proposed amendments will adequately provide for the protection of assets effected by the activity of a river mouth. They are also practical and workable conditions. In particular, a condition that prohibits the refuelling of machinery within a coastal marine area is unworkable. For example, it takes 2 hours to walk a digger down to the Arawhata alone. The issue here is the procedures that must be adopted when refuelling.

Finally, we wish to make the decision makers aware of the fact that the activity and actions of a river mouth is a naturally occurring event. Therefore the environmental effects caused by artificially altering a river mouth are the same as those created naturally providing suitable conditions are imposed.

NZ Energy seek to have the following conditions amended to read:

- (a) "The blockage or the river mouth location is causing a backwater flooding hazard or erosion or threat or danger to adjoining land or infrastructure; and...."
- (b) "The disturbance is limited to the extent necessary to remove the effects of a) above;"
- (c) "The river mouth shall be reinstated within its naturally occurring zone;"
- (f) "Refuelling or lubrication or any mechanical repairs within the coastal marine area must be undertaken using best trade practices and a emergency spillage kit must be on hand at all times; and".

### **Decision Requested: R3**

#### ***Submitter***

GDC

The reasons why I support the parts of the rule outlined above are that they will assist in achieving the primary purpose of the Resource Management Act 1991, that is Section 5.

By way of example I have attached Figure 1 which is superimposed aerial photographs from 1995 and 2005 of the combined New River mouth and Saltwater Creek lagoon outlet to the sea. Two features to note are as follows:

1. This outlet to the sea has moved north. Between 1995 and 2005 it has moved progressively north by 1.5 kilometres. Today (2008) it is even further to the north of the 2005 location.
2. From time to time the outlet to the sea becomes blocked.

*(Note: This submission contains an aerial photo. If you wish to view the aerial photo, you can request a copy of the submission from the West Coast Regional Council.)*

Sometimes the mouth re-opens naturally, other times it has to be opened mechanically.

What is occurring is that when the river and lagoon mouth is blocked, Saltwater Creek backs up. Localised flooding has occurred around the Paroa Hotel, Paroa store and Paroa School.

The aerial photographs and above observations are supported by my own observations given that while not directly affected by the river and lagoon blockages I live in the area and from time to time inspect the areas and see what is occurring or has occurred.

I am also involved on behalf of my employer in relations to Council's role with respect to the management and maintenance of urban watercourses.

Therefore the initiative of allowing the unblocking of the outlets to the sea when they do not occur naturally is supported.

I support conditions a), b), d), e), f), g), h).

I oppose condition c). As the outlet to the sea has moved progressively north the frequency of flooding has increased. This is not only due to the mouth being blocked but also due to the effect of New River. If New River is running in flood, Saltwater Creek backs up as well even if the outlet to the sea is open.

The increased frequency is occurring because New River has moved north. There is less distance and time for Saltwater Creek to discharge further to the south before backup flooding occurs.

The key issue then is the location of the outlet.

If the permitted activity rule goes through as proposed it will do nothing to mitigate the problem as the stipulation is that you can only reinstate the river mouth to where the channel was last actively flowing prior to becoming blocked.

The issue is that with the mouth moving progressively north, reinstating the outlet to its most recent location is not doing anything to alleviate the more significant problem of backwater effects created by New River.

That is the Rule as written for this particular combined Saltwater Creek and New River catchment will not achieve what the other parts of the rule as outlined in condition a) and paragraph 1 of the Note are trying to achieve.

It will commit people who have to fund the opening up of outlets to unnecessary and repeated expenditure, be they members of flood scheme rating districts, ratepayers or individual property owners.

For these reasons I do not consider that as written this part of the proposed Rule achieves the purpose of the RMA 1991.

It is also noted that the above example is not unique.

I submit that a better approach is to change condition c).

My recommended change to condition c) is:

**“The sea outlet shall be reinstated where the channel was last actively flowing prior to becoming blocked provided that this location is not contributing to increasing flooding problems and erosion or committing funders to significant and repeated expense. If this situation is occurring the Regional Council and the funders shall agree on the best practical option for the relocation of the sea outlet which avoids, remedies or mitigates flooding and minimises future expense on funders.”**

It is noted that in many situations reinstating sea outlets to the last actively flowing channel is appropriate, however the example for New River and Saltwater Creek is not unique. While there is no combined river mouth, Watson Creek in the Karoro area, can progressively move north over time. In consultation with the Regional Council the mouth has been reinstated to the south to avoid flooding to Domain Terrace (road), properties in the area, and the Marist Rugby Grounds.

#### **Decision Requested: R4**

##### ***Submitter***

INTA

I wish to make an amendment to condition (g):

All openings should be notified to Council before work starts, unless an emergency exists (e.g. after hours), where at such times a set timeframe for reporting should be instated, with submission of photo evidence for the need for the work.

I wish to make an amendment: Control on machinery size – as small as practicable machinery should be used – large machinery can be very destructive in the fragile coastal environment with respect to ecology, especially so where there is no decent access.

I seek the Council consider my recommendations.

#### **Decision Requested: R5**

##### ***Submitter***

TRONW

The test for what constitutes meeting the proposed rule 9.5.3.1A condition (g): notifying the Regional Council prior to works being undertaken, is open to abuse and

lack of quality management currently required via the consent process, including tangata whenua and community consultation, and as such the rule will:

- Result in the inability of nga awa to sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
- Result in the inability to effectively safeguard the life-supporting capacity of air, water, soil, and ecosystems;
- Result in the failure to effectively avoid, remedy or mitigate the adverse effects on the environment.

#### Decision Requested: R6

##### *Submitter*

HART

Regarding the notification condition (g), the information that is required to be supplied to the Council should include specifics regarding the actual flood-water elevation reached, its duration at this elevation, the exact location and depth of the new outlet that is artificially breached, the timing and date of the flooding event and artificial-breaching activity and descriptions of the observed effects on any lagoon, wetland or beach ecosystems present before the artificial breach was initiated.

This detailed information would assist the Council in the future analysis of the effects of its plan change activity on river mouth lagoon, wetland and coastal systems.

#### Decision Requested: R7

##### *Submitter*

GDC

I support paragraphs 1 and 3 in the Note. The reasons why I support the parts of the rule outlined above are that they will assist in achieving the primary purpose of the Resource Management Act 1991, that is Section 5.

(See further explanation under Decision Requested R3).

I oppose paragraph 2 (see explanation under Decision Requested R3). I submit that a better approach is to change paragraph 2 of the Note.

Paragraph 2 of the Note is recommended to be changed to:

**“This rule only allows the opening of a sea outlet (for a river, creek, or lagoon) through the last main channel that was flowing before it became blocked. In determining the location of the last main channel, the regional council will take into account historic natural movements in the location of sea outlets and determine the best practical location of the sea outlet that will actually avoid, remedy and mitigate flooding and will minimise the costs to funders who pay for the opening of sea outlets. Relocating a sea outlet to a location beyond that known natural movement of outlets requires a resource consent.”**

### **METHOD 9.6.1.3**

#### **Decision Requested: M1**

***Submitter*** HAASTW

Support deletion of Method 9.6.1.3 if the proposed plan change goes ahead.

#### **Decision Requested: M2**

***Submitter*** DOC

I oppose the deletion of Method 9.6.1.3, and support consultation and the development of protocols with other interested parties for managing the blockages of river mouths.

Retain Method 9.6.1.3 as it is written.

#### **Decision Requested: M3**

***Submitter*** INTA

Method 9.6.1.3 should not be deleted. Liaison between these agencies is desirable, so the best information possible is being shared and understood by the concerned parties.

#### **Decision Requested: M4**

***Submitter*** F&B

The proposed deletion of Method 9.6.1.3 is inconsistent with the RMA. Participation of interested parties in sustainable resource management is one of the principles of the RMA. The participation from the Department of Conservation, Fish and Game and Ministry of Fisheries is consistent with this. In particular, DOC has its role under the RMA, including approving regional coastal plans; determining coastal permit applications for restricted coastal activities; monitoring the effect and implementation of the New Zealand Coastal Policy Statement and coastal permits granted by the Minister of Conservation. The Department can also participate in proceedings under the RMA in its role as an advocate for conservation on private land. Based on the reasons above, the Method 9.6.1.3 in the Regional Coastal Plan should not be removed.

#### **Decision Requested: M5**

***Submitter*** WCENT

Method 9.6.1.3 should be retained.

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