



**DECISIONS REPORT**

**ON THE**

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

**ARRANGED BY SECTION NUMBERS**

**The West Coast Regional Council**

**May 2010**



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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.

The Proposed Plan Change 2 sought 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 sought 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 2 was publicly notified in accordance with the First Schedule of the RMA, on 10 April 2008. A total of 14 submissions were received. The Summary of Submissions was publicly notified on 27 February 2009, and four further submissions were received in support of, or in opposition to, decisions sought in the original submissions.

A Council Hearing was held on 3 February 2010. Seven submitters presented further evidence to support their submissions. The Hearing was adjourned to allow discussions between Council and submitters to continue, on the matter of excluding some river and creek mouths from the permitted rule. The Hearing was reconvened and closed on 13 April 2010.

This Decisions Report sets out:

- The decisions requested by the submitters and further submissions in support of or opposition to those; and
- Decisions by the Hearing Panel on whether to accept or reject submissions and further submissions; and
- Reasons for the Hearing Panel's Decisions; and
- Revised text as a result of the Decisions.

## SUBMITTERS

<b>Submitter Number</b>	<b>Organisation/Name</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

## FURTHER SUBMITTERS

<b>Submitter Number</b>	<b>Organisation/Name</b>	<b>Abbreviation</b>	<b>Wish to be heard</b>
7	Inta, Frida	INTA	Yes
5	Federated Farmers	FEDF	Yes
15	West Coast Tai Poutini Conservation Board	WCTPCB	No
6	Department of Conservation	DOC	Yes

## READER'S GUIDE

### 1. Sections of this Report

This report follows the order of the proposed new rule, and the individual decisions requested by submitters are grouped according to the relevant parts of the rule.

### 2. Decisions Requested

Each decision requested by a submitter has been assigned a decision number. The decisions are numbered sequentially. For example:

- Decision GS4 is the 4<sup>th</sup> decision requested for General Submissions;
- Decision R2 is the 2<sup>nd</sup> decision requested for Rule 9.5.3.1A.

The following shows the format of this Decisions Report:

Section of Plan Change on which submission is made	→	<b>Rule 9.5.3.1A</b>
Decision Number	→	<b>Decision Requested: R2</b>
Who made submission	→	<b>Submitter</b> NZENGY
Submission/Change sought	→	The proposed amendments to the plan do not provide adequately for the protection of these infrastructural assets in all circumstances....NZ Energy seek amendments to the following conditions:....
Further submission reason for support or opposition	→	<u>Further Submitter (INTA)</u> I do not support alteration or relaxation of conditions for the proposed permitted rule.
Hearing Panel decision	→	<b>DECISION</b> Reject
Hearing Panel reason for decision	→	<b>REASON</b> Our response to the submitters proposed conditions are: Condition (1): It is considered not appropriate to include reference to the river mouth location in the permitted rule.....

The decisions each submitter to Plan Change 2 requested can be found by referring to the table *Index of Decisions Requested in Submissions*, which follows below. The letters and number assigned refer to the relevant part of the Plan Change, that is, General Submission (GS), the Rule (R), or Method (M), and the number of the individual decision. This is described in the example above as the Decision Requested.

### 3. Decisions

There are three types of decisions:

Accept:

This means that the decision requested by the submitter is accepted.

Accept in part:

This means that part of the decision requested by the submitter is accepted. The part of the decision accepted should be clear from the reasons and additionally will be outlined in the revised text.

Reject:

This means that the decision requested by the submitter is rejected.

#### **4. Revised Text**

Text that is to be added to the Plan is shown by bold, italic, underlined text. Text to be removed from the Plan is shown with a line through it. Any change to the text also has a decision number with it, which refers to the submission that requested a change. In this Decisions Report, changes to the rule are shown at the end of the report. An example of revised text looks like this:

Note:

The purpose of this rule is to ***minimise a hazard risk by enabling*** enable [GS11] the re-opening of river or creek ~~mouths~~ ***outlets*** which are ~~blocked~~ ***become closed***, where there is little or no surface flow to the sea, and where the ~~blockage~~ ***closure*** may be ***is*** [GS11] creating either a flood risk ~~or causing erosion~~. [GS5, GS9]

## INDEX OF DECISIONS REQUESTED IN SUBMISSIONS

Submitter Number	Abbreviation	Decisions requested	
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	



## INDEX OF DECISIONS REQUESTED IN FURTHER SUBMISSIONS

Submitter Number	Abbreviations	Decisions Requested		
5	<b>FEDF</b>	GS1	GS2	GS3
		GS5	GS6	GS7
		GS8	GS9	GS10
		GS11	R1	R2
		R3	R4	R5
		R6	R7	M1
		M2	M3	M4
		M5		
6	<b>DOC</b>	GS1	GS2	GS3
		GS4	GS6	GS7
		GS8	GS9	GS10
		GS11	R1	R2
		R3	R4	R5
		R6	R7	M1
		M3	M4	M5
7	<b>INTA</b>	GS5	GS8	
15	<b>WCTPCB</b>	GS5	GS6	GS7
		GS8	GS10	

## GENERAL SUBMISSIONS TO THE PLAN CHANGE

### Decision Requested: GS 1

<b><i>Submitter</i></b>	2	WCCGM
<b><i>Support</i></b>	5	FEDF

#### Submission

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.

#### Further submission (FEDF)

Agree that the disturbance rule will allow remedial work to be undertaken if necessary without long delays awaiting consent.

### **DECISION**

Accept in part

### **REASON**

The support is acknowledged. The submitter should note that as a result of further assessment of the values and hazards around coastal river and creek mouths, Council has decided to exclude some river and creek mouths from the permitted rule which have values around them where there might be more than minor adverse effects. An amendment is made to the rule, so it applies to river and creek outlets listed in Schedule A attached to the rule (see revised text at the end of this report). Also refer to GS5 and GS6 for further explanation about this decision.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

### Decision Requested: GS 2

<b><i>Submitter</i></b>		HAASTW
<b><i>Support</i></b>	5	FEDF

#### Submission

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.

#### Further submission (FEDF)

Agree with the proposed change.

### **DECISION**

Accept in part

### **REASON**

The support is acknowledged as whitebaiters may be indirectly positively affected by any

clearing of a closed river or creek mouth, which is cleared for the purposes of the permitted rule, that is, where backup is causing a flooding hazard to land, buildings, infrastructure, on any river or creek that the permitted rule applies to. It should be noted that a closed creek mouth cannot be cleared under the permitted rule for the purposes of maintaining or enhancing whitebait passage. A consent is required for this on any coastal river or creek mouth.

The submitter should note that as a result of further assessment of the values and hazards around coastal river and creek mouths, Council has decided to exclude some river and creek mouths from the permitted rule which have values around them where there might be more than minor adverse effects. An amendment is made to the rule, so it applies to river and creek outlets listed in Schedule A attached to the rule (see revised text at the end of this report). Also refer to GS5 and GS6 for further explanation about this decision.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

### Decision Requested: GS 3

<b>Submitter</b>		WCWA
<b>Support</b>	5	FEDF

#### Submission

We support your changed proposal.

#### Further submission (FEDF)

Agree with the proposed change.

### **DECISION**

Accept in part

### **REASON**

The support is acknowledged as whitebaiters may be indirectly positively affected by any clearing of a closed river or creek mouth, which is cleared for the purposes of the permitted rule, that is, where backup is causing a flooding hazard to land, buildings, infrastructure, on any river or creek that the permitted rule applies to. It should be noted that a closed creek mouth cannot be cleared under the permitted rule for the purposes of maintaining or enhancing whitebait passage. A consent is required for this on any coastal river or creek mouth.

The submitter should note that as a result of further assessment of the values and hazards around coastal river and creek mouths, Council has decided to exclude some river and creek mouths from the permitted rule which have values around them where there might be more than minor adverse effects. An amendment is made to the rule, so it applies to river and creek outlets listed in Schedule A attached to the rule (see revised text at the end of this report). Also refer to GS5 and GS6 for further explanation about this decision.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

**Decision Requested: GS 4*****Submitter***

FEDF

**Submission**

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**

Accept

**REASON**

The support is acknowledged.

The submitter should note that as a result of further assessment of the values and hazards around coastal river and creek mouths, Council has decided to exclude some river and creek mouths from the permitted rule which have values around them where there might be more than minor adverse effects. An amendment is made so the rule applies to river and creek outlets listed in Schedule A attached to the rule (see revised text at the end of this report). Also refer to GS5 and GS6 for further explanation about this decision.

Some creek and river mouths don't need to be managed under the permitted rule because the mouths aren't prone to closing. The land around some outlets is steeply sloping, and/or the river or creek usually has enough water flowing to keep the mouth open.

Other outlets close but the backup doesn't adversely affect adjoining land, or only to a minor degree for a short time as identified by respective landowners.

For some outlets there is an existing consent to manage effects of openings on conservation values, and it is appropriate that openings continue to be done under the consent.

Small creeks and streams which are unnamed on the NZ topographical maps tend to have smaller flows and less than minor effects, and do not need to be managed under the permitted rule.

**Decision Requested: GS 5*****Submitter***

DOC

***Support***

7

INTA

***Oppose***

5

FEDF

***Support***

15

WCTPCB

### Submission

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 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.

### Further submission (INTA)

It is obvious from reading these submissions that the opening of river mouths along the coast, due to coastal action closing the river mouth, needs to be assessed on individual bases, as each has an individual character. In these particular circumstances it would be imprudent to create a permitted rule that covers all rivermouths in the region.

A proper consent process would address concerns raised by several submitters where the proposed new rule would not cover different aspects related to individual cases.

District Councils are one of the foremost bodies concerned with reinstating rivermouth flows, especially in residential areas. As such they are very often aware of the extant situation with regards to these rivermouths. Therefore it would be rare that the emergency procedure for clearing these mouths **needs** to be adopted, along with retrospective consent. The consent process is still the best option in these cases, as it will give greater assurance that the intent of the RMA is being adhered to.

It is mentioned in the initial paper for this plan change, that contractors and operators often forget to inform the WCRC of intention to clear rivermouths. There is a very easy solution to this – prosecute one or two of them, and the rest will get a clear message that it is not acceptable or lawful to “forget” to inform WCRC of intentions, and work done. This “forgetfulness” of these contractors etc can often be intentional i.e. the less the council knows the more they can get away with. I have seen this mindset in operation at a ubiquitous level, temporally and spatially, in this region. In this regard there is no such thing as “good publicity”. These operators have been doing this practice forever, and only prosecution now will reverse the trend.

The fact that some rivermouths are probably being cleared without consent is no excuse to relax the rules regarding that activity. However it is known that even when consent conditions are in place there is often inadequate adherence, and often policing, of the consent conditions. This is also no reason to relax the rules regarding this activity.

Creating a permitted rule for reinstating rivermouths would leave the process open to abuse, where rivermouths could end up being cleared for any number of reasons other than that for

which the rule specified (contrary to the reasoning stated in the original WCRC paper on the plan change).

With regard to coastal subdivisions, a thorough assessment needs to be done of rivermouth capacity to block up, and included in initial subdivision consents appropriate attention needs to be given to these rivermouths.

Further submission (FEDE)

We do not agree that the proposed rule is contrary to Part II of the RMA, the NZ Coastal Policy Statement or the existing regime for coastal management in the regional coastal plan.

We do not agree that the conditions on the rule provide no certainty or that the rule provides no guidance on managing the effects on the environment. Rather, the conditions are set out to minimise potential adverse effects on ecological, cultural, landscape or recreational values and on natural character. Further, a permitted activity will decrease or eliminate unauthorised openings. This will benefit the environment as conditions must be complied with (or resource consent will be necessitated). Further, it will provide the Council more information about how to manage coastal and freshwater hazard risk.

Finally, it is not anticipated that alterations to the foreshore will adversely affect ecosystems to the extent envisaged by the submitter.

Further submission (WCTPCB)

The Board supports the thread of argument which is common to these submissions (opposing the rule). This is:

- The outlets of West Coast rivers change their positions and levels in a process which is entirely natural.
- Heavy rainfall, with its consequential transport of gravels and rock, interacts with wave action of the Tasman Sea in a dynamic equilibrium to produce changes in the river outlets.
- As a result, the habitats in the estuarine area upstream of the outlet exist in harmony with natural variations in water levels.

The proposed plan change does not include appropriate management and control of the likely environmental effects of the mechanical interference with naturally formed river outlets. Neither is there any requirement for physical measurement of water levels before and after intervention nor any requirements to verify what variations in water levels constitute the natural range.

**DECISION**

Accept in part

**REASON**

At the Hearing, the Department of Conservation changed their decision sought from deleting the rule to accepting opening of certain river and creek mouths listed in a Schedule, and they suggested some changes to the wording of the permitted rule. The Department provided a revised Schedule while the Hearing was adjourned which is agreed to by Department and Council staff.

Having considered the information from the staff investigations and hearing evidence, Council agrees to amend the rule to permit opening of river and creek mouths listed in the Department's revised Schedule A. We have also made some minor changes to the wording of the permitted rule to give more clarity.

The amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup

has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment.

In response to wording changes to the rule sought by the Department at the Hearing:

The term "mouth" is replaced with "outlet" because the RMA has a definition of "mouth" which is different to how the term is used in the permitted rule. Using the term "outlet" will avoid confusion over definitions.

Generally, we do not consider it necessary to exclude braids and tributaries that discharge into a river as the rule only applies to outlets of named rivers and creeks in the Coastal Marine Area. An exception is made with the description of the Mikonui River and Flowery Creek at the Department's request.

References to blockage are replaced with closure or closing.

References to erosion caused by outlet closures are removed. Outlet closures generally don't cause erosion beyond natural channel migration effects.

We disagree that the Rule should only apply where "serious damage to property" occurs. This is already dealt with under the rule by having a Schedule with rivers and creeks where there is a flood hazard risk.

We accept the suggested changes to conditions b) and d) which clarify the intent of the conditions.

The changes suggested to conditions e), f), and g) are rejected because:

e): The condition is intended to deal with the spoil, which needs to be left tidy; the aim is not for the channel to be filled in again to the state that it was in, that is, closed.

f): The matter is dealt with under Condition d). Clearing work would be done on freshly thrown up gravel, so there is unlikely to be any vegetation on it.

g): Requiring information on flood elevation reached, and before and after photos of the opening is unnecessary. We have an agreed Schedule for the works to be permitted, on the basis that opening these outlets will have no more than minor effects. Requiring further monitoring conditions in the Rule is unnecessary as the Council will have been made aware of any opening and can monitor it accordingly. The trigger points indicate the flood water elevation at which the Karamea, Porarari, and New River outlets can be opened. Condition b) limits the depth that the cut can be made to, and condition c) determines the location where the outlet can be cleared. The amended condition g) requires the operator to advise when the outlet will be opened.

The suggested new condition is unnecessary as an operator working under the permitted rule wouldn't be putting material into the waterbody because it may obstruct flow and cause the outlet to narrow or close up again.

The reference to requiring a concession from the Department is removed, as the Department has clarified that it is not always necessary for a person to obtain a concession in order to proceed with a river mouth opening.

We further consider it unnecessary to add a new discretionary rule for outlet openings which don't comply with the permitted rule. This is already covered by the existing discretionary rule 9.5.3.7 in the Coastal Plan.

Similarly, it's unnecessary to include further explanation in the Plan about permitted and discretionary activities. This is explained at the start of the Coastal Plan. The purpose of the permitted rule is already stated in the Note.

We respond to the submitters concerns about consistency with resource management policies as follows:

#### Sections 5-7 of the RMA

Permitting closed outlets to be cleared on rivers and creeks with only minor effects reflects the balance provided for in section 5 of the RMA. Sections 6 and 7 of the Act are principles of varying importance intended to give guidance as to the way in which the purpose of the Act is to be achieved. Caselaw confirms that section 5 has greater weight than sections 6 and 7, and preservation of the natural character of the coastline in section 6(a), and other section 6 and 7 matters are subordinate to section 5 (refer to caselaw decisions (NZ Rail Ltd v Marlborough DC AP169/93; Pigeon Bay Aquaculture Ltd v Canterbury Regional Council C179/03 8 NZED 649; Minister of Conservation v Western Bay of Plenty District Council A071/01 6 NZED 732; Auckland Volcanic Cones Society Inc v Transit New Zealand AP123-SW02 8 NZED 393).

The approach taken is considered to be consistent with sections 6 and 7 of the RMA. Small-scale openings under the conditions of the rule will have no or minor effects on natural character or amenity values. The river and creek outlets listed in Schedule A are near adjoining urban areas, dwellings, farmland, or infrastructure, where the coastline is already modified, and generally does not have as high natural character compared to outlets surrounded by virtually all DOC land. This is consistent with the "degree of naturalness" approach taken by the Environment Court (refer to caselaw decision Rahotia Marine Farms Ltd v Marlborough District Council W015/07, 2007).

The landscape and hydrological functioning of the river and creek outlets in Schedule A are unlikely to be significantly affected, as the rule does not permit relocation of mouths. Minor impacts on coastal landscape from mechanical openings are likely to be temporary, as the landscape can change again within a relatively short time given the dynamic nature of the coastline. Effects on public access will be no different to before the mouth became blocked.

Section 7(i) of the Act requires Councils to have particular regard to effects of climate change. Permitting clearing of coastal outlets with a reasonable risk of a flooding hazard is consistent with section 7. The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan.

#### NZCPS

As with the RMA, Policy 1.1.4 must also be balanced with other policies, for example, Policy 1.1.1 which encourages appropriate use in areas where the natural character has already been compromised. Principle No 2 is: "The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places. Policy 1.1.4 was not intended to completely override other NZCPS policies or the ability of people and communities to provide for their wellbeing. Policy 1.1.1 and the Chapter 3 policies clearly intend for appropriate use to be able to occur in the coastal marine area, and the amended permitted rule is consistent with this.



With respect to Policy 1.1.3, clearing coastal mouths will not diminish the functioning or resilience of coastal processes. The rule permits a minor pre-empting of the mouth opening itself naturally, and will not substantially increase the frequency of openings.

#### RPS and Coastal Plan

Our comments on the RMA provisions and NZCPS policies in relation to natural character and appropriate use also apply to the submitters comments on the Regional Policy Statement Policies 9.1, 10.1.1, and 10.1.2, and the Coastal Plan provisions.

The revised rule and Schedule A are consistent with natural hazard policies in the Regional Policy Statement for recognising risks to existing development and promoting measures to reduce this risk to an acceptable level.

#### Measuring water levels

Clearing closures according to the permitted rule should not result in permanent lowering of the water level. The time and cost of opening a closed river mouth can be a significant disincentive, along with the costs of non-compliance.

### **Decision Requested: GS 6**

<b>Submitter</b>	8	F&B
<b>Oppose</b>	5	FEDF
<b>Support</b>	15	WCTPCB

#### Submission

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.

Further Submission (FEDF)

Federated Farmers does not agree that the proposed rule is contrary to Part II of the RMA, the NZ Coastal Policy Statement or the West Coast RPS.

Further Submission (WCTPCB)

The Board supports the thread of argument which is common to these submissions (opposing the rule). This is:

- The outlets of West Coast rivers change their positions and levels in a process which is entirely natural.
- Heavy rainfall, with its consequential transport of gravels and rock, interacts with wave action of the Tasman Sea in a dynamic equilibrium to produce changes in the river outlets.
- As a result, the habitats in the estuarine area upstream of the outlet exist in harmony

with natural variations in water levels.

The proposed plan change does not include appropriate management and control of the likely environmental effects of the mechanical interference with naturally formed river outlets. Neither is there any requirement for physical measurement of water levels before and after intervention nor any requirements to verify what variations in water levels constitute the natural range.

## **DECISION**

Reject

## **REASON**

The submitter did not provide written or oral evidence at the Hearing on whether they support or oppose the change to the rule that was recommended in the staff report, to exclude some river and creek outlets from being opened under the permitted rule.

We can therefore only respond to the submitter's original submission, which sought that the proposed permitted rule be declined. We disagree with this view, and our reasons are listed later in this decision.

The submitter should note that in response to submissions raising concerns about the proposed permitted rule, Council staff undertook discussions with Department of Conservation staff regarding specific coastal river and creek mouths. As part of their Hearing evidence, the Department provided a revised Schedule of river and creek outlets that could be opened under the permitted rule. This Schedule is agreed to by Department and Council staff.

Having considered the information from the staff investigations and hearing evidence, Council agrees to amend the rule to permit opening of river and creek mouths listed in the Department of Conservation's revised Schedule A. Refer to GS5 for further explanation about this decision.

We have also made some minor changes to the wording of the permitted rule to give more clarity.

The amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland, and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment.

We respond to the submitters concerns about consistency with resource management policies as follows:

### Sections 5-7 of the RMA

Permitting closed outlets to be cleared on rivers and creeks with only minor effects reflects the balance provided for in section 5 of the RMA. Sections 6 and 7 of the Act are principles of varying importance intended to give guidance as to the way in which the purpose of the Act is to be achieved. Caselaw confirms that section 5 has greater weight than sections 6 and 7, and preservation of the natural character of the coastline in section 6(a), and other section 6 and 7 matters are subordinate to section 5 (refer to caselaw decisions (NZ Rail Ltd v Marlborough DC AP169/93; Pigeon Bay Aquaculture Ltd v Canterbury Regional Council C179/03 8 NZED 649; Minister of Conservation v Western Bay of Plenty District Council A071/01 6 NZED 732; Auckland Volcanic Cones Society Inc v Transit New Zealand AP123-SW02 8 NZED 393).

Protecting *all* coastal river and creek mouths, lagoons and wetlands with flora and fauna, and all natural character is not consistent with the RMA, as section 6 requires the protection of *significant* indigenous flora and fauna. This is achieved by excluding coastal river and creek mouths where ecological values will be affected to a more than minor degree.

The approach taken is considered to be consistent with sections 6 and 7 of the RMA. Small-scale openings under the conditions of the rule will have no or minor effects on natural character or amenity values. The river and creek outlets listed in Schedule A are near adjoining urban areas, dwellings, farmland, or infrastructure, where the coastline is already modified, and generally does not have as high natural character compared to outlets surrounded by virtually all DOC land. This is consistent with the "degree of naturalness" approach taken by the Environment Court (refer to caselaw decision Rahotia Marine Farms Ltd v Marlborough District Council W015/07, 2007).

The landscape and hydrological functioning of the river and creek outlets in Schedule A are unlikely to be significantly affected, as the rule does not permit relocation of mouths. Minor impacts on coastal landscape from mechanical openings are likely to be temporary, as the landscape can change again within a relatively short time given the dynamic nature of the coastline. Effects on public access will be no different to before the mouth became blocked.

Section 7(i) of the Act requires Councils to have particular regard to effects of climate change. Permitting clearing of coastal outlets with a reasonable risk of a flooding hazard is consistent with section 7. The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan.

### NZCPS

As with the RMA, Policy 1.1.4 must also be balanced with other policies, for example, Policy 1.1.1 which encourages appropriate use in areas where the natural character has already been compromised. Principle No 2 is: "The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places. Policy 1.1.4 was not intended to completely override other NZCPS policies or the ability of people and communities to provide for their wellbeing. Policy 1.1.1 and the Chapter 3 policies clearly intend for appropriate use to be able to occur in the coastal marine area, and the amended permitted rule is consistent with this.

With respect to Policy 1.1.3, clearing coastal mouths will not diminish the functioning or resilience of coastal processes. The rule permits a minor pre-empting of the mouth opening itself naturally, and will not substantially increase the frequency of openings.

### RPS and Coastal Plan

Our comments on the RMA provisions and NZCPS policies in relation to natural character and appropriate use also apply to the submitters comments on the Regional Policy Statement Policies 9.1, 10.1.1, and 10.1.2, and the Coastal Plan provisions.

The revised rule and Schedule A are consistent with natural hazard policies in the Regional Policy Statement for recognising risks to existing development and promoting measures to reduce this risk to an acceptable level.

#### Measuring water levels

Clearing closures according to the permitted rule should not result in permanent lowering of the water level. The time and cost of opening a blocked river mouth can be a significant disincentive, along with the costs of non-compliance.

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

<b>Submitter</b>	9	TRONW
<b>Oppose</b>	5	FEDF
<b>Support</b>	15	WCTPCB

#### Submission

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 overtly 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.

#### FurtherSubmission (FEDF)

Federated Farmers believes that the permitted activity status will decrease or eliminate unauthorised openings. A relationship between Council and those needing to undertake the work that allows for trust will lead to better results than mandating resource consents. Further, monitoring by Council will ensure that any breach of conditions will necessitate resource consent.

#### Further Submission (WCTPCB)

The Board supports the thread of argument which is common to these submissions (opposing the rule). This is:

- The outlets of West Coast rivers change their positions and levels in a process which is entirely natural.

- Heavy rainfall, with its consequential transport of gravels and rock, interacts with wave action of the Tasman Sea in a dynamic equilibrium to produce changes in the river outlets.
- As a result, the habitats in the estuarine area upstream of the outlet exist in harmony with natural variations in water levels.

The proposed plan change does not include appropriate management and control of the likely environmental effects of the mechanical interference with naturally formed river outlets. Neither is there any requirement for physical measurement of water levels before and after intervention nor any requirements to verify what variations in water levels constitute the natural range.

## **DECISION**

Accept in part

## **REASON**

During this Plan Change process, staff met and liaised with Te Runanga o Ngati WaeWae to clarify their concerns. Since their submission was lodged, the Runanga have indicated that they understand the rule is intended to facilitate opening river and creek outlets to minimise flooding threats, and generally support this provided a strict monitoring system is put in place to oversee work being carried out.

Their support is acknowledged, and we comment on monitoring later in this decision.

In response to submissions raising concerns about the proposed permitted rule, Council staff undertook discussions with Department of Conservation staff regarding specific coastal river and creek mouths.

The submitter did not attend the Hearing, but should note that as part of Hearing evidence, the Department of Conservation provided a revised Schedule of river and creek outlets that could be opened under the permitted rule. This Schedule is agreed to by Department and Council staff.

Having considered the information from the staff investigations and hearing evidence, Council agrees to amend the rule to permit opening of river and creek mouths listed in the Department of Conservation's revised Schedule A.

We have also made some minor changes to the wording of the permitted rule to give more clarity.

The amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland, and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment.

We respond to the submitters concerns about consistency with the Resource Management Act as follows:

#### Sections 5-8 of the RMA

The proposed approach to allow closed outlets to be cleared on rivers and creeks with only minor effects reflects the balance provided for in section 5 of the RMA.

Protecting *all* coastal river and creek mouths, lagoons and wetlands with flora and fauna, and all natural character is not consistent with the RMA, as section 6 requires the protection of *significant* indigenous flora and fauna. This is achieved by excluding coastal river and creek mouths where ecological values will be affected to a more than minor degree. Since most coastal mouths only need to be opened infrequently when a hazard risk occurs, minor adverse effects on aquatic species will be short-term and temporary, and populations generally recover.

The approach taken is considered to be consistent with sections 6 and 7 of the RMA. Small-scale openings under the conditions of the rule will have no or minor effects on natural character or amenity values. The river and creek outlets listed in Schedule A are near adjoining urban areas, dwellings, farmland, or infrastructure, where the coastline is already modified, and generally does not have as high natural character compared to outlets surrounded by virtually all DOC land. This is consistent with the "degree of naturalness" approach taken by the Environment Court (refer to caselaw decision *Rahotia Marine Farms Ltd v Marlborough District Council* W015/07, 2007).

The landscape and hydrological functioning of the river and creek outlets in Schedule A are unlikely to be significantly affected, as the rule does not permit relocation of mouths. Minor impacts on coastal landscape from mechanical openings are likely to be temporary, as the landscape can change again within a relatively short time given the dynamic nature of the coastline. Effects on public access will be no different to before the mouth became blocked.

With respect to section 6(e) and section 8 of the Act, excluding some of the river and creek mouths from the permitted rule because of adverse effects on ecological values also addresses some of the Runanga's concerns in their submission. Coastal outlets in Statutory Acknowledgement Areas are also excluded from being opened under the permitted rule.

Section 7(i) of the Act requires Councils to have particular regard to effects of climate change. Permitting clearing of coastal outlets with a reasonable risk of a flooding hazard is consistent with section 7. The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan.

#### Monitoring openings

Condition g) of the rule requiring that Council be notified of openings enables a record to be kept, and Council will investigate complaints about non-compliance with the rule. Requiring further monitoring conditions in the Rule is unnecessary as the Council will have been made aware of any opening and can monitor it accordingly.

#### **Decision Requested: GS 8**

<b><i>Submitter</i></b>	10	HART
<b><i>Support</i></b>	7	INTA
<b><i>Oppose</i></b>	5	FEDF



### Submission

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.

#### Further Submission (INTA)

I support this submission.

#### Further Submission (FEDE)

Federated Farmers supports the plan change as notified. The plan change (permitted activity status) will decrease or eliminate unauthorised activities and build a culture of trust to encourage reporting and enable the Council to gather more information to protect the Coast adequately. This will not be accomplished through imposing resource consent requirements.

### **DECISION**

Accept in part

### **REASON**

In response to submissions raising concerns about the proposed permitted rule, Council staff undertook discussions with Department of Conservation staff regarding specific coastal river and creek mouths.

The submitter presented further evidence at the Hearing as a witness for the Department of Conservation.

At the Hearing, the Department of Conservation changed their decision sought from deleting the rule to accepting opening of certain river and creek mouths listed in a Schedule, and they suggested some changes to the wording of the permitted rule. The Department provided a revised Schedule while the Hearing was adjourned which is agreed to by Department and Council staff.

Having considered the information from the staff investigations and hearing evidence, Council agrees to amend the rule to permit opening of river and creek mouths listed in the Department's revised Schedule A. We have also made some minor changes to the wording of the permitted rule to give more clarity.

The recommended amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment.

Although the submitter supported the addition of a Schedule listing river and creek outlets that can be opened under the permitted rule, in her Hearing evidence she also sought that consent be required for outlets where the existence of flooding hazards are presently well known, to alleviate the need for emergency works. We do not accept this because it defeats the purpose of the plan change, to manage flood hazard risks according to standardised conditions which promote good practice with opening closed outlets. The permitted rule will alleviate the need for emergency works for those outlets listed in Schedule A, which are known to have a flood hazard risk.

Section 7(i) of the Act requires Councils to have particular regard to effects of climate change. Permitting clearing of coastal outlets with a reasonable risk of a flooding hazard is consistent with section 7. The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan.

We respond to other concerns raised by the submitter:

#### Effects on natural rivermouth dynamics

The hydrological functioning of the river and creek outlets in Schedule A are unlikely to be significantly affected, as the rule does not permit relocation of mouths. Minor impacts from mechanical openings are likely to be temporary, as the beach formation can change again within a relatively short time given the dynamic nature of the coastline. Effects on public access will be no different to before the mouth became closed.

#### Effects on upstream wetlands

There are three creek outlets in Schedule A which have wetlands nearby. Clearing these creek outlets under the permitted rule should not significantly, permanently adversely affect these wetlands. The West Coast's relatively high rainfall means that these creeks and

wetlands are generally not under stress from a drier climate and heavy allocation demand as are the Canterbury waterways. The Birchfield wetland is a significant wetland in the Land and Riverbed Plan, but is approximately two kilometres from the mouth of Jones Creek. It won't be affected by opening the closed outlet under the permitted rule.

#### Lowering natural water levels

Opening outlets listed in Schedule A according to the permitted rule should not result in permanent, artificial lowering of the water level. The time and cost of opening a blocked river mouth can be a significant disincentive, along with the costs of non-compliance. The rule permits a minor pre-empting of the mouth opening itself naturally, and will not substantially increase the frequency of openings.

Minor adverse effects on aquatic species may occur but will be short-term and temporary, and populations generally recover. Saltwater Creek/New River mouth is a good example of this, where grey duck, little shag, black shag, bittern, inanga, longfin eel, and lamprey appear to have maintained themselves despite the mouth blocking up and being opened approximately every 2-3 years over the last 10-20 years. The recent assessment (2005) of wetland values for the significant wetland process shows that the lagoon still provides excellent habitat for bittern and indigenous fish.

The rule also does not permit clearing outlets to maintain whitebait passage during whitebait season, and abatement and enforcement procedures can be used for non-compliance.

#### Encouraging inappropriate subdivision

We consider the revised permitted rule will not encourage inappropriate subdivision. The time and cost of opening a blocked river mouth can be a significant disincentive. As explained above, river and creek outlets listed in Schedule A are identified as having few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule. Land tenure and existing development around some Schedule A outlets precludes further development. Any new building around other permitted outlets would have to meet hazard avoidance or mitigation standards under the Building Code in the first instance. A consent is required to open outlets not in Schedule A, and this would involve risk assessment of exacerbating and mitigating flooding hazards. Additionally, the West Coast District Councils have minimum setbacks for building near the coastal marine area.

#### Terminology

In response to wording changes to the rule sought by submitters:

The term "mouth" is replaced with "outlet" because the RMA has a definition of "mouth" which is different to how the term is used in the permitted rule. Using the term "outlet" will avoid confusion over definitions.

References to blockage are replaced with closure or closing.

References to erosion caused by outlet closures are removed. Outlet closures generally don't cause erosion beyond natural channel migration effects.

We disagree that the Rule should only apply where "serious damage to property" occurs. This is already dealt with under the rule by having a Schedule with rivers and creeks where there is a flood hazard risk.

We consider the other details suggested by the submitter for recording duration of flood elevation, the timing and date of the flooding event, and descriptions of the observed effects, are not necessary for opening river and creek mouths in Schedule A under the permitted rule. It is agreed that opening the Schedule A outlets will have no more than minor effects. Condition b) limits the depth that the cut can be made to, and condition c) determines the

location where the outlet can be cleared. The amended condition g) requires the operator to advise when the outlet will be opened. Requiring further monitoring conditions in the Rule is unnecessary as the Council will have been made aware of any opening and can monitor it accordingly.

Refer to decision GS5 for our decision on other wording changes to the rule sought by the Department of Conservation.

### Decision Requested: GS 9

<b>Submitter</b>	11	WCENT
<b>Oppose</b>	5	FEDF

#### Submission

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 c).

#### *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.

#### Further Submitter (FEDF)

Federated Farmers supports the plan change as notified. The submitter is particularly concerned about one instance – the Shearer Swamp/Waikoriri Lagoon. The Council has the discretion under the conditions as proposed to ensure that adverse effects will not occur.

#### **DECISION**

Accept in part

#### **REASON**

##### Waikoriri Lagoon

The submitter is opposed to the Waikoriri Lagoon being opened under the permitted rule, and we agree with this point. However, it is unreasonable to extrapolate the Waikoriri Lagoon opening for all other coastal river and creek mouths. The number of consent conditions for the Waikoriri Lagoon appear to be appropriate given the uncertainty of this area, but are not relevant or necessary for all other coastal mouths.

##### Revised Permitted Rule

In their Hearing evidence, the submitter is still opposed to the permitted rule because they consider it provides inadequate ecological protection for wetlands, creeks and rivers. We consider it is not appropriate to require a consent to open all river and creek mouths, as this is impractical when a flooding hazard is imminent.

In response to submissions raising concerns about the proposed permitted rule, Council staff undertook discussions with Department of Conservation staff regarding specific coastal river and creek mouths.

At the Hearing, the Department of Conservation changed their decision sought from deleting the rule to accepting opening of certain river and creek mouths listed in a Schedule, and they suggested some changes to the wording of the permitted rule. The Department provided a revised Schedule while the Hearing was adjourned which is agreed to by Department and Council staff.

Having considered the information from the staff investigations and hearing evidence, Council agrees to amend the rule to permit opening of river and creek mouths listed in the Department's revised Schedule A. We have also made some minor changes to the wording of the permitted rule to give more clarity.

The amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan. Permitting clearing of coastal outlets with a reasonable risk of a flooding hazard is consistent with section 7 of the Resource Management Act.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment.

#### Sections 5-7 of the RMA

The proposed approach to allow blocked mouths to be cleared on rivers and creeks with only minor effects reflects the balance provided for in section 5 of the RMA. The rule permits minimal intervention to clear closed outlets listed in Schedule A enough to minimise the flood hazard risk, and without significant disturbance to conservation or other values.

Protecting *all* coastal river and creek mouths, lagoons and wetlands with flora and fauna, and all natural character is not consistent with the RMA, as section 6 requires the protection of *significant* indigenous flora and fauna. This is achieved by excluding coastal river and creek mouths where ecological values will be affected to a more than minor degree.

We respond to the submitters general concerns about the effects of opening river and creek outlets:

#### Managing effects of opening Schedule A outlets

The hydrological functioning of the river and creek outlets in Schedule A are unlikely to be significantly affected, as the rule does not permit relocation of mouths. Minor impacts from mechanical openings are likely to be short-term and temporary, as the beach formation can change again within a relatively short time given the dynamic nature of the coastline.

Opening outlets listed in Schedule A according to the permitted rule should not result in permanent, artificial lowering of the water level. The time and cost of opening a blocked

river mouth can be a significant disincentive, along with the costs of non-compliance. The rule permits a minor pre-empting of the mouth opening itself naturally, and will not substantially increase the frequency of openings.

Only a small number of outlets in Schedule A have wetlands nearby. Clearing these creek outlets under the permitted rule should not significantly, permanently adversely affect these wetlands. The West Coast's relatively high rainfall means that these creeks and wetlands are generally not under stress from a drier climate and heavy allocation demand as are the Canterbury waterways.

The rule also does not permit clearing outlets to maintain whitebait passage during whitebait season, and abatement and enforcement procedures can be used for non-compliance.

#### Terminology

The term "mouth" is replaced with "outlet" because the RMA has a definition of "mouth" which is different to how the term is used in the permitted rule. Using the term "outlet" will avoid confusion over definitions.

References to blockage are replaced with closure or closing.

#### **Decision Requested: GS 10**

<b><i>Submitter</i></b>	12	FOSS
<b><i>Oppose</i></b>	5	FEDF
<b><i>Support</i></b>	15	WCTPCB

#### Submission

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/Waikoriri 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.

#### ***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.

Further Submission (FEDF)

Federated Farmers supports the plan change as notified. The submitter is particularly concerned about one instance – the Shearer Swamp/Waikoriri Lagoon. The Council has the discretion under the conditions as proposed to ensure that adverse effects will not occur.

Further Submission (WCTPCB)

The Board supports the thread of argument which is common to these submissions (opposing the rule). This is:

- The outlets of West Coast rivers change their positions and levels in a process which is entirely natural.
- Heavy rainfall, with its consequential transport of gravels and rock, interacts with wave action of the Tasman Sea in a dynamic equilibrium to produce changes in the river outlets.
- As a result, the habitats in the estuarine area upstream of the outlet exist in harmony with natural variations in water levels.

The proposed plan change does not include appropriate management and control of the likely environmental effects of the mechanical interference with naturally formed river outlets. Neither is there any requirement for physical measurement of water levels before and after intervention nor any requirements to verify what variations in water levels constitute the natural range.

## **DECISION**

Accept in part

## **REASON**

### Waikoriri Lagoon

The submitter is opposed to the Waikoriri Lagoon being opened under the permitted rule, and we agree with this point. However, it is unreasonable to extrapolate the Waikoriri Lagoon opening for all other coastal river and creek mouths. The number of consent conditions for the Waikoriri Lagoon appear to be appropriate given the uncertainty of this area, but are not relevant or necessary for all other coastal mouths.

### Revised Permitted Rule

In their written Hearing evidence, the submitter is still opposed to the permitted rule although they indicated verbally they would support a schedule of permitted openings if there are no adverse effects, houses at risk, and a history of flooding.

In response to submissions raising concerns about the proposed permitted rule, Council staff undertook discussions with Department of Conservation staff regarding specific coastal river and creek mouths.

At the Hearing, the Department of Conservation changed their decision sought from deleting the rule to accepting opening of certain river and creek mouths listed in a Schedule, and they suggested some changes to the wording of the permitted rule. The Department provided a revised Schedule while the Hearing was adjourned which is agreed to by Department and Council staff.

Having considered the information from the staff investigations and hearing evidence, Council agrees to amend the rule to permit opening of river and creek mouths listed in the Department's revised Schedule A. We have also made some minor changes to the wording of the permitted rule to give more clarity.

The amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan. Permitting clearing of coastal outlets with a reasonable risk of a flooding hazard is consistent with section 7 of the Resource Management Act.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment.

#### Sections 5-7 of the RMA

Permitting closed outlets to be cleared on rivers and creeks with only minor effects reflects the balance provided for in section 5 of the RMA. The rule permits minimal intervention to clear closed outlets listed in Schedule A enough to minimise the flood hazard risk, and without significant disturbance to conservation or other values.

Protecting *all* coastal river and creek mouths, lagoons and wetlands with flora and fauna, and all natural character is not consistent with the RMA, as section 6 requires the protection of *significant* indigenous flora and fauna. This is achieved by excluding coastal river and creek mouths where ecological values will be affected to a more than minor degree. We consider it is not appropriate to require a consent to open all river and creek mouths, as this is impractical when a flooding hazard is imminent.

We respond to submitters general concerns about the effects of opening river and creek outlets:

#### Managing effects of opening Schedule A outlets

The hydrological functioning of the river and creek outlets in Schedule A are unlikely to be significantly affected, as the rule does not permit relocation of mouths. Minor impacts from mechanical openings are likely to be short-term and temporary, as the beach formation can change again within a relatively short time given the dynamic nature of the coastline.

Opening outlets listed in Schedule A according to the permitted rule should not result in permanent, artificial lowering of the water level. The time and cost of opening a blocked river mouth can be a significant disincentive, along with the costs of non-compliance. The rule permits a minor pre-empting of the mouth opening itself naturally, and will not substantially increase the frequency of openings.

Only a small number of outlets in Schedule A have wetlands nearby. Clearing these creek outlets under the permitted rule should not significantly, permanently adversely affect these wetlands. With respect to the New River outlet, as explained below, there appears to be no serious impact from previous mouth openings on these wetland values. The West Coast's relatively high rainfall means that these creeks and wetlands are generally not under stress from a drier climate and heavy allocation demand as are the Canterbury waterways.

The rule also does not permit clearing outlets to maintain whitebait passage during whitebait season, and abatement and enforcement procedures can be used for non-compliance.

#### Monitoring, reporting on water levels

We consider it unnecessary to do this for the coastal outlets permitted in Schedule A. Opening these outlets according to the permitted rule should only need to be done infrequently. Minor adverse effects on aquatic species will be short-term and temporary, and populations generally recover. Saltwater Creek/New River mouth is a good example of this, where grey duck, little shag, black shag, bittern, inanga, longfin eel, and lamprey appear to have maintained themselves despite the mouth blocking up and being opened approximately every 2-3 years over the last 10-20 years. The recent assessment (2005) of wetland values for the significant wetland process shows that the lagoon still provides excellent habitat for bittern and indigenous fish.

#### Timing and manner of opening

It would be impractical and unsafe to restrict clearances in nesting, spawning or migrating

times if a flooding or erosion hazard occurs during these times.

The submitter is concerned that opening coastal mouths according to the permitted rule will result in a quick release of water that will harm aquatic wildlife. However, when a backed up creek or hapua lagoon naturally breaks open a new mouth to the sea, the initial head of water is naturally quickly released under hydraulic pressure until the flow rate eases off to normal levels. Opening the Schedule A outlets under the permitted rule will be no different.

#### Effects on Significant Natural Areas (SNA's)

We consider that the effects on adjoining potential SNA's from opening outlets listed in Schedule A will be no more than minor if done according to the conditions, for reasons already given in this report. It is unlikely that many outlets identified as potential SNA's are in Schedule A.

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

<b><i>Submitter</i></b>	14	WDC
<b><i>Support in part</i></b>	5	FEDF

#### Submission

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.

#### Further Submission (FEDF)

Federated Farmers supports consistent application of the proposed rule so long as it is practical and workable in that circumstance. However, each situation will differ and will require some discretion as to how to best carry out the work. We do not support internal policies or definitions that do not allow for such discretion.

### **DECISION**

Accept in part

### **REASON**

The support is acknowledged.

The submitter should note that as a result of further assessment by Council and Department of Conservation staff of the values and hazards around specific coastal river and creek outlets, Council has agreed to amend the rule to permit opening of river and creek mouths listed in a schedule. We have also made some minor changes to the wording of the

permitted rule to give more clarity.

Schedule A and amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The rule does not permit relocation of outlets; a consent is required for this.

At the Hearing, the submitter clarified their main concern is that the rule doesn't apply to unformed legal road, which is not covered in the RMA definition of "infrastructure". The submitter seeks that "legal road" be added to condition a) of the rule.

We have added a Note at the end of the Rule explaining that for the purposes of this Rule "infrastructure" includes legal road.

A practice note may be prepared to further assist Compliance staff with applying the rule. This is useful when it cannot be succinctly explained in the rule.

## RULE 9.5.3.1A

### Decision Requested: R1

<b>Submitter</b>	12	FOSS
<b>Oppose</b>	7	INTA
<b>Oppose</b>	5	FEDF

#### Submission

#### ***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 fully 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.

#### Further Submission (INTA)

I do not support alteration or relaxation of conditions for the proposed permitted rule.

#### Further Submission (FEDF)

Federated Farmers supports the plan change as notified and believes the words/phrases in the rule are clear and workable.

### **DECISION**

Accept in part

### **REASON**

#### Terminology

Having considered the wording of the rule, the term "mouth" is replaced with "outlet" because the RMA has a definition of "mouth" which is different to how the term is used in the permitted rule. Using the term "outlet" will avoid confusion over definitions.

References to blockage are replaced with closure or closing.

To clarify the terms "backwater flooding hazard" and "flood risk", the level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan. This does not need to be explained in the rule.



Refer to Decision Requested GS5 for our comments on other wording changes sought by the Department of Conservation.

#### Waikoriri Lagoon

The submitters concerns should be addressed in that the Waikoriri Lagoon outlet is excluded from being opened under the permitted rule (refer to Decision Requested GS10). It is unreasonable to extrapolate the Waikoriri Lagoon opening for all other coastal river and creek mouths, as previously explained. What happened at Waikoriri Lagoon would not be allowed under the permitted rule. The adverse effects referred to by the submitter were caused by a deep cut to relocate the mouth in line with the main creek channel, the depth of the cut resulted in the water level lowering too quickly. This is not what the proposed new rule permits.

#### **Decision Requested: R2**

<b>Submitter</b>	1	NZENGY
<b>Oppose</b>	7	INTA
<b>Support</b>	5	FEDF

#### Submission

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 Waitototo, 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 Waitototo 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 (*suggested by the submitter*) 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:

- (1) "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...."
- (2) "The disturbance is limited to the extent necessary to remove the effects of a) above;"
- (3) "The river mouth shall be reinstated within its naturally occurring zone;"
- (6) "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".

#### Further Submission (INTA)

I do not support alteration or relaxation of conditions for the proposed permitted rule.

#### Further Submission (FEDF)

Federated Farmers supports the altered conditions as workable and practical.

### **DECISION**

Accept in part

### **REASON**

The submitter should note that as a result of further assessment by Council and Department of Conservation staff of the values and hazards around specific coastal river and creek outlets, Council has agreed to amend the rule to permit opening of river and creek mouths listed in a schedule. We have also made some minor changes to the wording of the permitted rule to give more clarity.

Schedule A and amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule. Thus, the Arawhata River is listed in Schedule A. The river and creek outlets listed in Schedule A can be opened without the need for an assessment under the resource consent process.

The Waiatoto River/Lagoon outlet is excluded from being opened under the permitted rule. At the Hearing the submitter provided information on the power supply, and referred to the retrospective consent application to relocate and open the River outlet. While we recognise the importance of the electricity supply in the area and the need to protect this infrastructure from being damaged by natural hazards, we consider a resource consent is the most appropriate tool to manage effects of protecting the power lines on the surrounding conservation and recreational values. The rule does not permit relocating river outlets for reasons explained below. The Waiatoto River/Lagoon outlet is a complex system, and the consent process will enable specific assessment of the effects of relocating and opening and how they can be managed to achieve the balance under section 5 of the RMA. If this River outlet was to be opened under the permitted rule, more than minor adverse effects could potentially occur.

Our response to the submitter's suggested conditions are:

Condition (1): It is considered not appropriate to include reference to the "river mouth location" in the permitted rule. If the location of the mouth is causing a hazard effect and needs to be moved, this creates potentially more than minor effects which need to be assessed on a case by case basis through a consent process. Adding the words "threat or danger" don't substantially improve the rule, and the terms are unclear as to what other types of threat or danger are covered by the rule.

Condition (2): The suggested change is unnecessary. The proposed wording keeps the clearance work to a minimum, which is in keeping with the requirements of a permitted activity.

Condition (3): The suggested change gives scope for shifting the location of the river mouth, and this is not the purpose of the rule.

Condition (6): For most of the river and creek mouths that the permitted rule applies to, it should not be necessary to refuel on the beach as the scale of clearance allowed by the rule should not take long, and refuelling can be done as good practice before the digger enters the coastal marine area. Allowing diggers to refuel on the beach is not normally permitted either in rules or on consents because there is a high risk of adverse effects on water quality and aquatic ecosystems from spills.

#### Decision Requested: R3

<b>Submitter</b>	13	GDC
<b>Oppose</b>	7	INTA
<b>Support</b>	5	FEDF

#### Submission

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.

Further Submission (INTA)

I do not support alteration or relaxation of conditions for the proposed permitted rule.

Further Submission (FEDF)

Federated Farmers supports the suggested amendment. We agree that it may not always be practicable to reinstate the river mouth to where the channel was last actively flowing prior to becoming blocked.

**DECISION**

Accept in part

**REASON**

Support for most of the permitted rule is acknowledged.

The submitter should note that as a result of further assessment by Council and Department of Conservation staff of the values and hazards around specific coastal river and creek outlets, Council has agreed to amend the rule to permit opening of river and creek mouths listed in a schedule. We have also made some minor changes to the wording of the permitted rule to give more clarity.

Schedule A and amendments to the permitted rule are shown at the end of this report.

The river and creek outlets listed in Schedule A of the rule are known to block, and backup has inundated infrastructure, farmland and buildings, or threatened to do so. For most of these outlets there are few or no conservation values that would be significantly adversely affected by opening the mouths according to the permitted rule.

The level of hazard risk was assessed according to the likelihood and consequences associated with a flooding hazard from outlet closure, as per criteria in the Draft West Coast Civil Defence Emergency Management Group Plan.

Although the Schedule restricts the number of rivers to which the permitted activity rule applies it is considered that the list reasonably reflects the rivers and creeks that are likely to close and can be opened without the need for an assessment under the resource consent process.

The Karamea, Porarari and New River outlets have both adjoining built areas and multiple sites with a potential flooding risk, and lagoons which the Department has identified as having high conservation values. To minimise the hazard risk and protect ecological values, these three river outlets have trigger points specified in Schedule A which recognise the balance between effects on people and the natural environment. This is consistent with Part 5 of the Act.

This means that the permitted rule can be applied to open the Saltwater Creek/New River mouth at the point where it was last actively flowing if a flooding hazard is imminent.

Refer also to GS5 and GS6 for further comments on our decision on Schedule A and the permitted rule.

At the Hearing, the submitter maintained that the New River outlet should be permitted to be relocated, preferably 1km south to where it previously flowed out, to reduce the flooding risk to adjoining properties.

We consider it is not appropriate to permit relocating the New River outlet or any other river or creek outlet to a different position under this rule. If the location of a river mouth is causing an ongoing hazard effect and needs to be moved, this may create potentially more than minor adverse effects which need to be assessed on a case by case basis through a

consent process. If the Saltwater Creek/New River mouth needs to be relocated to reduce hazard risk, the effects of shifting the mouth on, for example, the lagoon ecological values and river channel stability, need a more detailed assessment.

The condition (c) suggested in the submitter's written submission is not appropriate to have in the permitted rule as it would be difficult to implement and enforce, especially assessing compliance with the parts relating to future expenses on funders. The remedy sought is also ultra vires as it reserves discretion to the council which we are not allowed to do in a permitted activity.

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

<b><i>Submitter</i></b>	7	INTA
<b><i>Support in part</i></b>	5	FEDF
<b><i>Oppose in part</i></b>		

#### Submission

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.

#### Further Submission (FEDF)

Federated Farmers agrees that minimal disturbance should occur to the ecology of the area and that the smallest machinery that is available and practical should be used. However, farmers do not often have a variety of machinery to suit one particular purpose. Therefore, this may not always be practicable.

Federated Farmers does not agree that photographic evidence must be provided to the Council. The Council is aware of most of these sites and has an understanding of the surrounding ecology. A condition to supply photographic evidence seems onerous and unnecessary.

#### **DECISION**

Reject

#### **REASON**

##### Condition g):

Requiring a reporting time and photo for openings done after hours becomes complicated and unnecessary. Council uses an after hours call centre service which forwards messages to on-call staff. The onus is on the person opening the blockage to notify the Council when it is obvious that the mouth is becoming fully blocked and backup is imminent. It can take a few days to reach this hazard state, so there is usually sufficient time to advise the Council that opening the blockage will need to be done in 24-48 hours time if the blockage doesn't clear itself first.

##### Condition on machinery size:

Specifying a maximum size of machinery to be used for clearing blockages could result in delays, extra costs, and increased risk of hazard threats if the right-sized equipment is not

readily available in the area, or under-sized equipment has to be used. Over-sized equipment is unlikely to be used because of the additional cost to the client. It takes considerable time and cost to get a digger onto a beach to clear a blocked creek mouth. The cost can be a significant disincentive, along with the costs of non-compliance. There should be no more than minor, if any, adverse effects on vegetation around the mouth.

#### Decision Requested: R5

<b>Submitter</b>	9	TRONW
<b>Oppose</b>	5	FEDF

#### Submission

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.

#### Further Submission (FEDF)

Federated Farmers does not agree that the condition g) is open to abuse and lack of quality management. A relationship between Council and those needing to undertake the work that allows for trust will lead to better results than mandating resource consents. Further, monitoring by Council will ensure that any breach of conditions will necessitate resource consent.

#### **DECISION**

Reject

#### **REASON**

Council staff will investigate any complaints received about non-compliance with the rule. Abatement and enforcement procedures can be used if the rule is not complied with. The time and cost of opening a blocked river mouth can be a significant disincentive, along with the costs of non-compliance.

Refer to Decision Requested R6 which amends condition g) to require details of which river or creek mouth is to be opened, when, and by whom. This will improve implementation of the rule.

#### Decision Requested: R6

<b>Submitter</b>	10	HART
<b>Oppose</b>	5	FEDF

#### Submission

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.

#### Further Submission (FEDF)

Federated Farmers considers the amount of information requested by the submitter onerous and unnecessary.

#### **DECISION**

Accept in part

#### **REASON**

A minor change is made to condition g) to ensure that persons opening a closed river or creek outlet under the permitted rule advise which river or creek is to be opened, when, and by whom. This information is important for monitoring the location and frequency of coastal hazard management, and will assist with compliance monitoring.

The trigger points in Schedule A for the Karamea, Pororari and New Rivers indicate the flood water elevation at which these outlets can be opened.

The changes are shown at the end of this report.

We consider the other details suggested by the submitter are not necessary for opening river and creek mouths in Schedule A under the permitted rule. It is agreed that opening the Schedule A outlets will have no more than minor effects. Condition b) limits the depth that the cut can be made to, and condition c) determines the location where the outlet can be cleared. Requiring further monitoring conditions in the Rule is unnecessary as the Council will have been made aware of any opening and can monitor it accordingly.

#### **Decision Requested: R7**

<b><i>Submitter</i></b>	13	GDC
<b><i>Support</i></b>	5	FEDF

#### Submission

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.”**Further Submission (FEDF)

Federated Farmers supports the suggested amendments to paragraph 2 as it will allow for some circumstances in which it is not possible to reinstate the river mouth to where the channel was last actively flowing prior to becoming blocked.

**DECISION**

Accept in part.

**REASON**

Support for paragraphs 1 and 3 of the Note to the Rule is acknowledged.

It's not appropriate to permit relocating a blocked river or creek mouth to a previous outlet location. There could be a number of historic main channels formed over time, as is the case with, for example, the Okuru, Haast, and Waitoto Rivers. Permitting a cut under the submitter's suggested wording could allow it to occur anywhere within one or two kilometres of where it had just closed, creating uncertainty of the effects. If the present location of a river mouth is causing an ongoing hazard effect and needs to be moved, this may create potentially more than minor adverse effects which need to be assessed on a case by case basis through a consent process. The remedy sought is also ultra vires as it reserves discretion to the council which we are not allowed to do in a permitted activity.

**METHOD 9.6.1.3****Decision Requested: M1**

<b><i>Submitter</i></b>	3	HAASTW
<b><i>Support</i></b>	5	FEDF

Submission

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

Further Submission (FEDF)

If a permitted activity rule is added to the Plan there is little sense in developing voluntary regional protocols which the Method suggests.

**DECISION**

Noted

**REASON**

The support is acknowledged.

**Decision Requested: M2**

<b><i>Submitter</i></b>	6	DOC
<b><i>Oppose</i></b>	5	FEDF

Submission

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.

Further Submission (FEDF)

If a permitted activity rule is added to the Plan there is little sense in developing voluntary regional protocols which the Method suggests.

**DECISION**

Reject

**REASON**

The content of the permitted rule has similar meaning to protocols as well as having legal weight, so the Method is being implemented through this current Plan Change process, and doesn't need to be repeated in the Plan. The Method is unnecessary duplication now this Plan Change process is underway. The RMA provides for other consultation opportunities through section 35 reviews and consent processes. Council will liaise as and when needed with other agencies about implementation of the rule, and can do so without there needing to be a Method in the Plan.

**Decision Requested: M3**

<i>Submitter</i>	7	INTA
<i>Oppose</i>	5	FEDF

Submission

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.

Further Submission (FEDF)

If a permitted activity rule is added to the Plan there is little sense in developing voluntary regional protocols which the Method suggests.

**DECISION**

Reject

**REASON**

The content of the permitted rule has similar meaning to protocols as well as having legal weight, so the Method is being implemented through this current Plan Change process, and doesn't need to be repeated in the Plan. The Method is unnecessary duplication now this Plan Change process is underway. The RMA provides for other consultation opportunities through section 35 reviews and consent processes. Council will liaise as and when needed with other agencies about implementation of the rule, and can do so without there needing to be a Method in the Plan.

**Decision Requested: M4**

<i>Submitter</i>	8	F&B
<i>Oppose</i>	5	FEDF

Submission

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.

Further Submission (FEDF)

If a permitted activity rule is added to the Plan there is little sense in developing voluntary regional protocols which the Method suggests.

**DECISION**

Reject

**REASON**

The content of the permitted rule has similar meaning to protocols as well as having legal weight, so the Method is being implemented through this current Plan Change process, and doesn't need to be repeated in the Plan. The Method is unnecessary duplication now this Plan Change process is underway. The RMA provides for other consultation opportunities through section 35 reviews and consent processes. Council will liaise as and when needed with other agencies about implementation of the rule, and can do so without there needing to be a Method in the Plan.

**Decision Requested: M5**

<i><b>Submitter</b></i>	11	WCENT
<i><b>Oppose</b></i>	5	FEDF

Submission

Method 9.6.1.3 should be retained.

Further Submission (FEDF)

If a permitted activity rule is added to the Plan there is little sense in developing voluntary regional protocols which the Method suggests.

**DECISION**

Reject

**REASON**

The content of the permitted rule has similar meaning to protocols as well as having legal weight, so the Method is being implemented through this current Plan Change process, and doesn't need to be repeated in the Plan. The Method is unnecessary duplication now this Plan Change process is underway. The RMA provides for other consultation opportunities through section 35 reviews and consent processes. Council will liaise as and when needed with other agencies about implementation of the rule, and can do so without there needing to be a Method in the Plan.

## REVISED TEXT

**9.5.3.1A For the waterbodies set out in Schedule A, [GS5, GS6, GS7, GS8, GS9, GS10] ~~Disturbance of the foreshore or seabed, including in Coastal Hazard Areas, associated with unblocking~~ clearing the outlet of a river or creek a creek or river mouth [GS9] is a permitted activity, provided:**

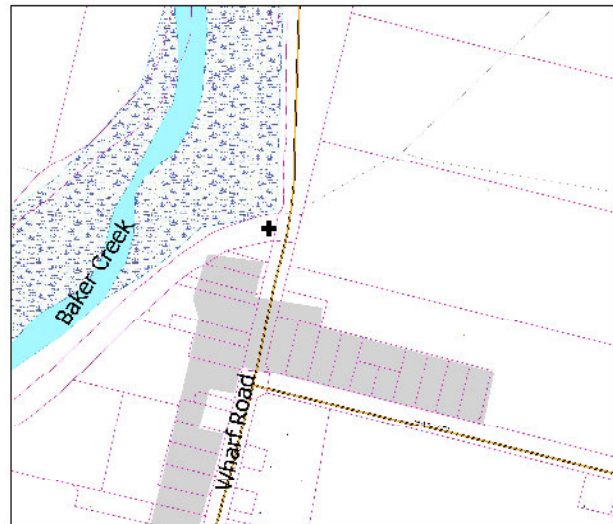
- a) The blockage outlet closure [GS9] is causing a backwater flooding hazard or erosion of [GS5] to adjoining land [GS5, GS6, GS7, GS8, GS9, GS10] or infrastructure; and
- b) The disturbance is limited to the extent necessary to clear the blockage and resume flow and remove the hazard; [GS5] and
- c) The river mouth outlet [GS5, GS9] shall be reinstated where the channel was last actively flowing prior to becoming blocked closure [GS5, GS9] ; and
- d) Where practicable available, an existing access route shall be used and in all cases access shall that minimises [GS5] disturbance to dunes, vegetation, indigenous species' nesting areas or habitat, or sites of importance to iwi; and
- e) The area from which the material is taken is smoothed over and the site is left tidy on completion of the work; and
- f) No refuelling or lubrication or any mechanical repairs shall be undertaken in the coastal marine area; and
- g) The Regional Council is notified of which river or creek outlet is to be opened, when, and by whom, [R6] prior to the works being undertaken; and
- h) All equipment, machinery, and plant is removed from the coastal marine area at the completion of works.

## Schedule A

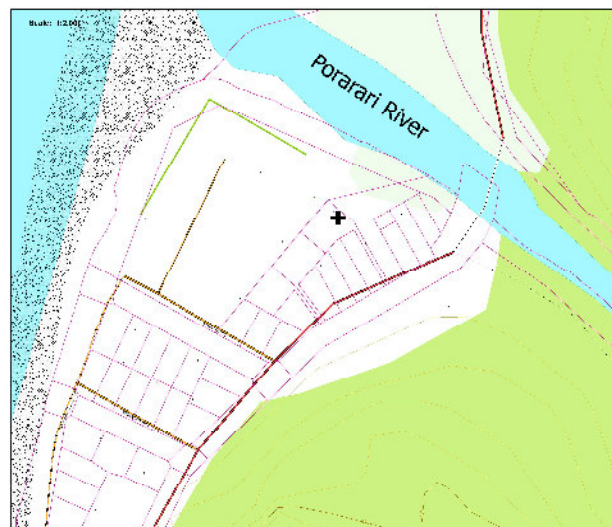
Stony Creek, north of Karamea  
 Candle Creek, north of Karamea  
 Break Creek, Oparara  
 Chatterbox Stream, Nikau  
 Patten Stream, Nikau  
 Dufty Stream, Miko  
 Lamplough Stream, Miko  
 Dean Stream, Miko  
 Ngakawau River, Ngakawau  
 Cooper Stream, Granity  
 Bradley Stream, Granity  
 Granity Stream, Granity Stream  
 Twins Stream, Granity  
 Jones Creek, Birchfield  
 Waimangaroa River, Waimangaroa  
 Deadmans Creek, Fairdown  
 Bull Creek, Cape Foulwind  
 Marris Creek, Cape Foulwind  
 Totara Rivers, Charleston  
 Punakaiki River, Punakaiki  
 Hibernia Creek, North Barrytown Flats  
 Canoe Creek, Barrytown  
 Granite Creek, Barrytown  
 Fagan/Tipperary Creek, Barrytown  
 Barrytown dredge ponds  
 Bakers Creek, South Barrytown Flats  
 Seven Mile Creek, Rapahoe  
 Range Creek, Cobden  
 Watsons Creek, Karoro  
 Mill Creek, South Beach  
 Jacks Creek, Paroa  
 Clough Creek, Paroa  
 Serpentine Creek, Serpentine Bend  
 Acre Creek, Chesterfield (west channel, not the Kapitea/Acre Creek lagoon)  
 Waimea Creek, Awatuna  
 Flowery Creek, Arahura, only where it enters into the Arahura River  
 Little Houhou Creek, north Hokitika  
 Houhou Creek, north Hokitika  
 Mikonui River, Ross, provided it does not adversely affect Mikonui lagoon to the north or Waikoriri lagoon to the south  
 Manakaiaua River, north of Bruce Bay  
 Mahitahi River, Bruce Bay  
 Arawhata River, Jackson Bay

## Schedule A Rivers with trigger points

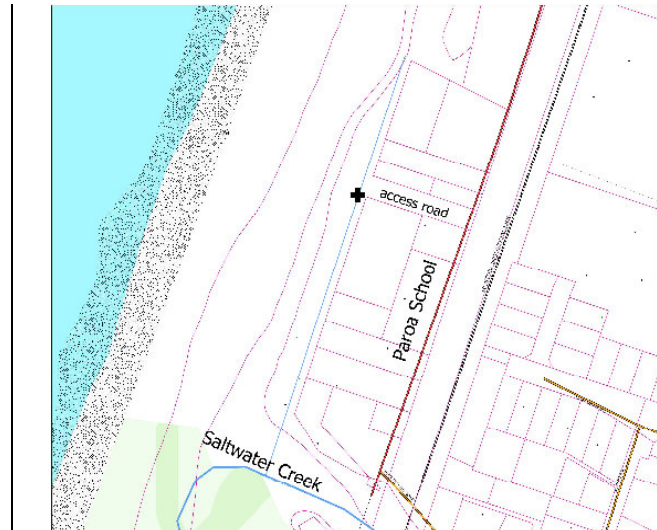
Karamea River, when the water level reaches 0.75m below Wharf Road, measured at the flood gate culvert at the north end of the residential area



Porarari River, Punakaiki, when the water level reaches the nikau palm on the north side of Lot 16, DP 1275, Blk 1, Punakaiki SD



New River, Paroa, when backup reaches the top of the culvert on the beach access road alongside the Paroa School sports field



Note:

The purpose of this rule is to ***minimise a hazard risk by enabling*** enable [GS11] the re-opening of river or creek mouths ***outlets*** which are blocked ***become closed***, where there is little or no surface flow to the sea, and where the blockage ***closure*** may be ***is*** [GS11] creating either a flood risk or causing erosion. [GS5, GS9]

This rule only allows the opening of a river mouth or creek ***outlet*** [GS5, GS9] through the last main channel that was flowing before it became blocked ***closed***. Relocating a river ***or creek*** mouth ***outlet*** requires a resource consent. [GS5, GS9] ***The rule also does not permit clearing outlets to permanently drain lagoons or estuaries, or to allow fish passage.*** [GS11]

***Persons exercising this rule should be aware that permission may need to be obtained, at their own expense, from the legal owner or administering body of the river bed or mouth.*** [GS5, GS6, GS7, GS8, GS9, GS10]

Where practicable, the excavation should be cut to allow release of water immediately after high tide.

***For the purposes of this Rule "infrastructure" includes legal road.*** [GS11]

**TABLE OF SUBMITTER'S ADDRESSES FOR SERVICE**

Mr David Inch NZ Energy Ltd PO Box 113 MOTUEKA 7143	John Wood West Coast Commercial Goldminers Association Inc PO Box 115 HOKITIKA 7842	Charles Boulton Haast Branch West Coast Whitebaiters Association C/o PO Box 38 HAAST 7844
Angela Anderson West Coast Whitebait Association C/o PO Box 42 HARIHARI 7863	Sonia Voldseth Federated Farmers of NZ (Inc) PO Box 1992 Christchurch Mail Centre CHRISTCHURCH 8140	Chris Hickford Department of Conservation West Coast Conservancy Private Bag 701 HOKITIKA 7842
Frida Inta PO Box 463 WESTPORT 7866	Rufei Tang Royal Forest and Bird Protection Society (Inc) PO Box 2516 CHRISTCHURCH 8140	Rick Barber Te Runanga o Ngati Waewae 8 Kowhai Street Karoro GREYMOUTH 7805
Dr Deirdre Hart Department of Geography University of Canterbury Private Bag 4800 CHRISTCHURCH 8140	Dr Brian Anderson West Coast ENT Inc PO Box 261 GREYMOUTH 7840	Kathy Gilbert Friends of Shearer Swamp Inc Boldhead Road, RD1 ROSS 7885
Mel Sutherland Grey District Council PO Box 382 GREYMOUTH 7840	Rebecca Strang Westland District Council Private Bag 704 HOKITIKA 7842	Warren Inwood West Coast Tai Poutini Conservation Board C/o Private Bag 701 HOKITIKA 7842