

Proposed Plan Change 1 to the Regional Land and Water Plan Hearing: Questions from the panel (in Black) and the reporting Officers Response (in Red, with suggested text changes highlighted in yellow) – 15 June 2018

DR Reference (if Applicable)	Regional Land and Water Plan reference Comments and questions
DR 1.11	<p>Miscellaneous Change D: 17.3 Definitions – Slope Ratios</p> <p>While the changes proposed are really only for clarification purposes, the NES for Plantation Forestry is now in place and will override earthwork and riparian margin rules for forestry activities.</p> <p>Do staff have any comment about this and is there an opportunity through this plan change to highlight the NES rules?</p>
	<p>Implementation of the NES for Plantation Forestry (NESPf) is underway. The operative Land and Water Plan is presently being reviewed against the NESPf by Councils' planning, consents and compliance staff, to identify what changes are needed to the Plan. Any changes that need to be made to the Plan to implement the NESPf will be completed following the resolution of any appeals on Plan Change 1.</p>
DR 1.17	<p>Miscellaneous Change F: Rule 20</p> <p>Condition (a) "...does not result in effects that are greater ..." How can this be assessed before the building extension is constructed if it is a permitted activity?</p> <p>The effect may not be apparent until then.</p>
	<p>We have discussed this with the Council's consents staff, and understand that a landowner or occupier will need to consider and assess the likely effects of the activity, and consider whether the activity is likely to require consent or not, before they undertake the activity. If the landowner is unsure about complying with condition (a), they can contact the Council for advice. Rock protection works for the purpose of managing changing river patterns are common on the West Coast, so the most likely effects from increasing a structure by 10% are generally known by most landowners who have rivers adjoining their property and existing protection works. I also spoke to the Council's river engineers and they both state that increasing a structure by 10% once will not result in effects that are greater in character, scale or intensity, compared to the effects occurring before the alteration is done. Based on this information, we believe that the effects can be assessed before the extension is constructed.</p>

DR 1.25 and 1.26	<p>Miscellaneous Change H: Rule 34</p> <p>(1) Are staff completely confident this rule will work as envisaged in conjunction with the tables in schedule 17? Table 1 does not appear to list specific stands so they are not “<i>listed in Tables and 2</i>” as the rule suggests.</p> <p>(2) In reality, what is the administration/cost difference between controlled and restricted discretionary status?</p>
	<p>(1) Having reviewed Rule 34 in response to this question, we note that the opening sentence to this rule as it presently reads is incorrect. It gives the impression that all whitebait stands are listed in Tables 1 and 2 of Schedule 17. Rather, Tables 1 and 2 list the rivers permitted to have whitebait stands. Therefore, the opening sentence of the rule should be amended to read:</p> <p>“The erection of whitebait stands <u>in the rivers listed in Tables 1 and 2 of Schedule 17</u> is a restricted discretionary <u>controlled activity</u>.”</p> <p>The whitebait stands are not listed in Tables 1 and 2 as there are 600+ of them. Including all stands in the Plan would take up considerable space for no benefit. Staff are confident that this rule will work with Tables 1 and 2 in Schedule 17 because the Council has a set of aerial photographs showing the GPS location of every stand, and these are updated every year to accommodate river bank changes. The aerial photos are also used when consents are renewed, and for investigating non-compliance.</p> <p>(2) In regards to the administration/cost difference between a controlled activity and a restricted discretionary activity, we understand that there is little difference due to staff needing to write a staff report, and draft conditions, under both activity statuses. Many of the consent conditions are now based on standardised templates as consents staff have processed applications three times between 2002-2017. The benefits of making whitebait stands a controlled activity are also outlined in the Section 32 Report.</p>
DR 1.35	<p>Miscellaneous Change N: Glossary – Vegetation Disturbance</p> <p>The Landcare Research’s recommendations do not all appear to have been carried across into the permitted activity rule.</p> <p>For example,</p> <p>(1) the % criteria in recommendation 5;</p> <p>(2) the heavy vehicle weight distribution ratio of 3.5psi in recommendation 6;</p> <p>(3) and the monitoring condition q(a) does not seem to reflect recommendation 7, and is not clear in its purpose.</p> <p>What are the reasons for this?</p>

	<p>We have chosen to not include these conditions as none of the parties at the workshop on 12 November 2017, nor the Council's consents and compliance staff, requested for these conditions to be included in the permitted rule. Specific reasons for not including these conditions are:</p> <p>(1) Regarding recommendation 5, the workshop group of representative submitters (DOC, Forest & Bird and harvesters) agreed that having a condition in the draft rule only allowing a small area of a wetland (either a particular sized area or a percentage of the wetland) to be harvested is impractical. Moss of harvestable size is generally found in parts of the wetland, not throughout the entire wetland, and not all wetlands have moss. Therefore, having a condition limiting harvesting to a size area or a percentage may be difficult to calculate when harvestable moss does not grow evenly throughout a whole wetland. We understand that not all moss is necessarily harvested at one time, and a proportion of sphagnum moss will be left within the wetland.</p> <p>(2) Regarding recommendation 6, we understand that harvesters use different machinery to crush the moss, which could potentially make it difficult to get a ground pressure limit that is achievable by all types of machinery. We anticipate it is unlikely that harvesters will use heavy machinery because this will damage the moss. If a harvester uses heavy machinery then the moss strands will be more compressed when undertaking crushing than if the harvester uses a lighter machine. This could affect the quantity of moss that a harvester could pick. Also, heavy machinery will likely get bogged in the wetland.</p> <p>(3) Regarding recommendation 7, planning staff have discussed various options for undertaking long term monitoring of harvested sites. The most feasible option could be non-regulatory monitoring processes outside of the Regional Land and Water Plan, due to the potentially significant time and cost involved with ongoing monitoring of harvested sites. We are considering the possibility of applying for Envirolink funding to investigate this option.</p>
DR 1.41	<p>Miscellaneous Change N: Glossary – Vegetation Disturbance</p> <p>The reasons states that “the changes sought are inappropriate for these reasons” yet no reasons are given. Is this referring to the reasons in the further submission?</p>
	<p>The reason provided under this DR number is incorrect. The correct reason is as follows:</p> <p>We agree with the points made by the further submitter. The change sought by the submitter is inappropriate for the reasons given in the further submission, and the relief does not directly relate to activities that come under the Plan definition of “vegetation disturbance”.</p>

	This has been added to the List of Errors and put on Council's Plan Change 1 hearings website page.
DR 2.7 and 2.53	<p>General Submissions on Schedule 1 and 2 Wetlands and Schedule 2 wetland MAIP004 Giles Creek</p> <p>The discussion in the reason highlights the difference between the Permit Area and the resource consent process in terms of assessing values.</p> <p>(1) Is there any difference in the activity status of mining activities if it includes an area of scheduled wetland?</p> <p>(2) There is a suggestion in the submission that some of these areas are already being mined – can you clarify the position on that?</p> <p>(3) If this is shown to be the case, can they be removed through this process?</p>
	<p>(1) All mining is a discretionary activity regardless of whether it is within a Schedule 2 wetland or not. The only difference between mining within a Schedule 2, and outside of a Schedule 2 wetland, is that within a Schedule 2 wetland a Schedule 3 Ecological Assessment will need to be done as part of the application for consent. Mining within a Schedule 1 wetland is non-complying, making it very difficult for consent to be granted as an ecological assessment would be needed and the applicant will also be required to show that the effects of the mining activity will not affect the ecological values of the Schedule 1 wetland. This is potentially more difficult in a Schedule 1 wetland as they have confirmed significant ecological values.</p> <p>(2) I am confident that all areas within Schedule 2 wetlands that the submitter is mining, or has developed, are already proposed to be removed. The Council's Wetland Coordinator reviewed all consents within scheduled wetland areas and recommended any areas that had consent to be removed. The areas proposed to be removed from wetland MAIP004 Giles Creek are areas which have consent and have been developed.</p> <p>(3) If Birchfield Coal Mines Limited have evidence showing that additional areas of designated wetland have consent to be developed or mined, then we can consider removing the designation through this hearing process.</p>
DR 2.35	<p>Schedule 2 wetland FOUP014 Okari Lagoon</p> <p>The Reason refers to access being denied to assess wetland areas requested for removal.</p> <p>(1) Has that position changed?</p> <p>(2) Where does this leave the Panel in terms of making a robust decision on the submission?</p>

	<p>(1) The situation has not changed.</p> <p>(2) I believe the hearing Panel will only be able to make a robust decision on the area that we are proposing to remove. This is because Council and DOC staff have been unable to undertake additional site visits to the remaining designated area to obtain more information about whether the area has wetland values or not.</p> <p>On 12 November 2013 the Council's Wetland Coordinator met with the submitter and undertook a site visit to the area of wetland on his property. He found that the submitter has 23.5ha of Schedule 2 wetland on his property, of which approximately 11.7ha has been developed into pastureland and is no longer functioning as a wetland due to the number of drains running through this area and into the Lagoon. This is the area we are proposing to remove through the Plan Change. We are comfortable that this area does not have wetland values. The Wetland Coordinator considered that the remaining designated area has some wetland vegetation and so concluded that a more thorough assessment of this area would need to take place. In the file note, he states that he had a follow up conversation with the submitter on 3 February 2014, where he concluded that a revisit by the Council or DOC appeared to be "unlikely" to happen.</p> <p>Following submissions, planning staff sent a letter to the submitter requesting additional information on this remaining area, and that a site visit may be needed. I then phoned the submitter explaining that a letter would be sent to him and that we would be interested in doing a site visit to the area. The submitter replied stating that he believes what Council is doing is illegal and so he will not meet with us. On 25 January 2017 the submitter's lawyer sent a letter to the Council stating that the Council cannot undertake a site visit to the submitter's property. The Planning Team Leader at that time, Sarah Jones, sent a letter back outlining how we have tried to work with the submitter. In the last week of May, I phoned the submitter to confirm whether he wished to be heard or not at the hearing. The person I spoke with stated that the submitter is presently overseas and will be gone for a few months, and so will not be heard at the hearing.</p>
DR 2.61	<p>Schedule 2 wetland HOKP018 Whiley Creek</p> <p>Reference is made to an "unformed road portion".</p> <p>(1) Is this a legal road?</p> <p>(2) And if so, will it not be owned by the relevant District Council rather than DoC?</p> <p>(3) What are the rules around the formation of legal roads in this context?</p>
	<p>(1) This is legal road reserve.</p> <p>(2) Westland District Council have confirmed that they own this legal road reserve.</p>

	(3) As the wetland designation over the part of the legal road is recommended to be removed, the formation of this road in this context is a Westland District Council matter.
DR 2.63	<p>Schedule 2 wetland HOKP086 Ross</p> <p>The staff comment that a further site visit has not been undertaken. Would it be prudent for the Panel to visit this site?</p>
	Staff are willing to try and arrange a site visit for the Panel. However, I believe it is unlikely that we would be able to undertake a site visit to this area because I have not heard anything from the submitter since they sent their submission in. Following submissions, a letter was sent to Phil McKinnel, who was representing the submitter, to request additional information about the area they mention in their submission. From my understanding, Mr McKinnel never heard back from Kauri Limited about whether they wanted to provide more information. I also phoned Mr McKinnel a few weeks ago to confirm whether Kauri Limited wanted to be heard at the hearing or not, and Mr McKinnel never responded.
Section 32AA Report on permitted sphagnum moss harvesting rule, Page	The document repeatedly explains at the end of the Environment Court process, and unintended outcomes, the parties agreed that the council would not enforce the requirement for harvesters to obtain resource consent when harvesting within scheduled wetlands. As there is no reference to this agreement within the Environment Court decisions, was this agreement made after the court had concluded or actually during the actual court hearing?
	There is considerable reference to a permitted activity rule for sphagnum moss harvesting in Schedule 2 wetlands, and an amendment to the vegetation disturbance definition, in the last two Consent Memorandum documents that the appeal parties provided to the Court in 16 May and 6 July 2012. The Consent Memorandum record that the appeal parties agreed to, and drafted, a permitted rule, and a change to the vegetation disturbance definition. For a reason unclear to us, the Court further amended the vegetation disturbance definition in its final Decision (6 August 2012) which had the effect of requiring consent for harvesting in Schedule 2 wetlands. As a result, the WCRC publically stated that they would not enforce this new provision in the Plan, and would work with the industry and DOC to design a sensible permitted activity rule.