

**Proposed Natural Resources Plan for the Wellington Region**

**Supplementary Right of Reply**

**For Hearing Stream 5  
Tabled 1 August 2018**

**Topic: Beds of Lakes and Rivers**

**Prepared by:  
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**On behalf of Greater Wellington Regional Council**

## 1. Introduction and scope

1. The Hearing Panel requested additional information during the Right of Reply hearing on 30 July 2018 for Beds of Lakes and Rivers. That being:

- a) *In the definitions for “drain” and “highly modified river or stream:*
- *should the term watercourse be used instead of channel?*
  - *revise the wording of the Notes to provide consistency and should they refer to ‘during or immediately following heavy rainfall’?*
  - *does the amended definition of ‘drain’ still work for stock access and break feeding?*
- b) *Does reference to individual property in Rule R121 have the intended effect, given the recommended amended definition for property? Is further drafting needed to ensure that large scale drain maintenance, e.g. by KCDC, is not covered by R121? What does the term “farm” add to Rule R121?*
- c) *Is a non-complying activity status really appropriate to manage stream reclamation, especially for small streams? What higher order documents support this?*
- d) *In relation to Rule R131, does Policy P45 manage damming or diversion upstream of a Schedule C site or does Policy P45 only relate to activities within schedule C sites?*

2. In addition, this reply includes an updated redline version of the proposed amendments dealt with in Hearing Stream 5 for Beds of Lakes and Rivers.

## 2. Definitions for ‘drain’ and ‘highly modified river or stream’

3. The term ‘channel’ is used in the Notes to refer to features such as a roadside drain that have been constructed to drain water following a rainfall event and that do not flow at any other time. These features are not considered to be a watercourse and for this reason I do not consider an amendment as suggested to be necessary or appropriate.

4. I have discussed my recommended amendments to the term 'drain' with Mr Loe. He does not consider that these changes will result in any unintended consequences for the provisions of the proposed Plan that manage stock access to water bodies or break-feeding.
5. With respect to the Notes, I agree with the importance of consistency as far as possible, and that reference could also be made to 'immediately after' rainfall events. I therefore recommend the following minor changes to definitions for both 'drain' and 'highly modified river or stream'.

<p><b>Drain</b></p>	<p>Any <del>artificial watercourse</del>, open or piped <del>watercourse</del>, designed and constructed for the purpose of land drainage of surface or subsurface water. <del>and for the purpose of Rule R121 only, excluding any device included within the definition of stormwater network. Channels designed and constructed to convey water only during rainfall events and which do not convey or retain water at other times are excluded from this definition.</del></p> <p>Only for the purpose of Rule R121 (drain clearance) a drain also includes a highly modified watercourse or river and is channelled to such an extent that it has the characteristics of a farm drainage canal.</p> <p><u>Note:</u></p> <p><del>For the avoidance of doubt, this definition does not include water races or artificial channels or swales that only convey water during, or immediately after, rainfall events.</del></p> <p><del>Many watercourses that are considered to be drains are actually natural watercourses that have been highly modified, often over many decades, and include channels dug to drain natural wetlands.</del></p>
<p><b>Highly modified river or stream</b></p>	<p>For the purposes of Rule R121 only, means a river or stream that has been modified and channelled <del>for the purpose of land drainage of surface or sub-surface water and has the following characteristics: to the extent that it has the characteristics of (in form or function) an artificial farm drainage canal. For the purposes of this definition, the characteristics of a farm drainage canal are considered to include that:</del></p> <ul style="list-style-type: none"> <li>• it has been channelled into a single flow, <del>and</del></li> <li>• <del>the channel has been straightened is straight, with no 'natural curves', and</del></li> <li>• <del>the channel is mechanically formed with straight or steeply angled banks, and</del></li> <li>• <del>it is maintained to keep the water table at least 0.3m below the root zone of the surrounding pasture, and</del></li> <li>• <del>that it exhibits these characteristics for at least its entire length through the property in which the activity is being carried out watercourse is being assessed.</del></li> </ul> <p><u>Note:</u></p> <p><del>For the avoidance of doubt, Artificial—this definition does not include water races or channels or swales that only convey water during, or immediately after, rainfall events—water races and the stormwater network are not Highly modified rivers or streams.</del></p>

### 3. Application of Rule R121 to an individual property

6. As discussed in my S42A report and Right of Reply, and supported by the evidence of Dr Greer, the intent of Rule R121 is to provide for the removal of vegetation and sediment from farm drains and highly modified rivers or streams on a relatively small-scale, such as associated with a single farm, rather than on a scale as associated with the maintenance of stormwater or water race networks (affecting many kilometres of watercourse at a time). The preamble to Rule R121, in combination with the definitions for ‘drain’ and ‘highly modified river or stream’ is intended to clarify this. Following questioning by the Panel, I have reviewed the definition for ‘property’ with recommended amendments by Mr Denton in his S42A report: Air (Hearing Stream 2).

Property	<p><del>Any contiguous area of land or freehold title in one ownership. Property means any contiguous area of land, including land separated by a road or river, held in one or more than one ownership that is utilised as a single operating unit, and may include one or more certificates of title.</del></p>
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7. I consider that reference in this definition to *more than one ownership* and a *single operating unit* is potentially problematic for the purpose of restraining the application of Rule R121, with the potential for artificial associations between land owners. Officers have been reviewing this definition and think we may have a definition that will work for all parts of the plan; but this is still to be confirmed and will be addressed by Mr Denton in his Supplementary Right of Reply.
8. If the definition for ‘property’ remains as recommended in Hearing Stream 2, then I consider that the definition of ‘Highly modified river or stream’, which applies only to Rule R121, could be amended to clarify that: for the purpose of Rule R121 the definition does not apply to watercourses that form part of a stormwater network. Retention of the term ‘farm drain’ in Rule R121 will also helpfully constrain the application of the term ‘drain’ for the purpose Rule R121 itself. I therefore recommend the following amendments to the title of Rule R121 and to the definition for ‘Highly modified river or stream’:

*Rule R121: Maintenance of drains and highly modified rivers or streams  
within an individual property – permitted activity*

The mechanical removal of vegetation or bed material and associated sediment from any farm **drain** or any **highly modified river or stream**, including any associated:

<b>Highly modified river or stream</b>	For the purposes of Rule R121 only, means a river or stream that has been modified and channelled <u>for the purpose of land drainage of surface or sub-surface water, but does not form part of a stormwater network, and has the following characteristics:</u>
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#### 4. Stream reclamation - Non-complying activity status

7. Policy P102 is to avoid the reclamation or drainage of the beds of lakes and rivers except in certain circumstances... A non-complying activity rule sends a strong message that an activity is generally undesirable. I consider that this is appropriate for stream reclamation as it implements a policy which is to Avoid.
8. Stream reclamation has significant and permanent adverse effects. It is the activity in the region that has the greatest impact on ecosystem health.
9. Review of the FWP concluded the existing policy is too weak a tool against which to assess applications for reclamation and to prevent adverse effects.
10. Continuing loss of streams indicates that the proposed policy and rules structure are not achieving the desired outcomes:
  - o Since notification of the proposed Plan: 2,360m streams piped by 3 subdivisions
11. Most reclamation is associated with urban growth: 180 ha of urban development predicted for period 2016-2025. Therefore I consider the policy exceptions for urban development are inappropriate. It is clear that increased housing capacity does not require stream reclamation.
12. Non-complying activity status should also apply to small streams because piping frequently affects small and headwater streams. These are often seen as “lower value” but have significant ecosystem values, including not only habitat and biodiversity, but also:

- Flow moderation
- Water quality functions
- Natural character
- Cultural and spiritual values

13. These functions are particularly important to provide system resilience in face of climate change.

14. While it is possible to address cumulative effects under a discretionary consent, this is difficult in practice. Cumulative effects are a significant concern because

- individual effects of reclaiming small sections of stream are not necessarily significant on their own, but the cumulative effects of many short reaches of streams being piped across a sub-catchment can be considerable.

15. The Ecosystem services valuation (Greer and Grimmond, 2018) shows that the adverse effects of reclamation significantly outweigh the benefits.

16. The higher-order documents that support the policy approach of Policy P102 include:

- RMA

s5

s6(a), preservation of the natural character of wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

6(c), the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

6(d), the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

6(e), the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

6(h), the management of significant risks from natural hazards.

s7 (b), the efficient use and development of natural and physical resources:

7(c), the maintenance and enhancement of amenity values:

7(d) intrinsic values of ecosystems:

7(f) maintenance and enhancement of the quality of the environment:

7(g) any finite characteristics of natural and physical resources:

- RPS Objectives 3, 7, 13, 16
- RPS Policies 18, 19, 23, and 24
- NPS-FM Objective A1, A2

## 5. Rule R131 – managing effects of dams or diversions on Schedule C sites

17. The Panel asked whether Policy P45 could be used to manage the adverse effects of damming and diversion if this activity occurred upstream of a Schedule C site, or whether it only applies when the activity occurs *within* a Schedule C site. Policy P45 (as amended in the Right of Reply: Areas and sites with significant mana whenua values) is:

### **Policy P45: Managing adverse effects on sites with significant mana whenua values**

*In the first instance, activities in sites with significant mana whenua values identified in Schedule C (mana whenua) shall be avoided.*

*If the site cannot be avoided, more than minor adverse effects on the significant mana whenua values must be evaluated through a cultural impact assessment undertaken by the relevant iwi authority or iwi authorities.*

*“Significant adverse effects on the significant values of the site shall be avoided. Other adverse effects of activities shall be managed in accordance with tikanga and kaupapa Māori as recommended in the cultural impact assessment by: ...*

18. In my opinion, because Policy P45 refers to adverse effects on sites or their significant values (in both the heading and para 3), the application of this policy is not restricted to activities within a Schedule C site. However, to provide further clarity, I recommend a minor amendment to the second paragraph of Policy P45:

“If the site cannot be avoided, or if activities upstream are likely to result in, more than minor ...”

19. This both clarifies the intent of the policy and also links the requirement to prepare a Cultural Impact Assessment effects to any activity which risks having significant adverse effects on the significant values of a Schedule C site. I consider that there is scope for this amendment from the submission of Rangitane o Wairarapa.

**6. Updated redline version of the proposed amendments dealt with in Hearing Stream 5 for Beds of Lakes and Rivers**

This is provided as a separate attachment and incorporates the amendments recommended by the Supplementary Right of Reply prepared by Ms Conland.