

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

**Supplementary Right of Reply: Activities in the  
CMA**

**For Hearing Stream 6**

**6 August 2018**

**Topic: Activities in the CMA**

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# 1. Introduction and scope

## Background

1. This Supplementary Right of Reply: Activities in the CMA includes an additional amendment to Rule R202 which retracts part of the recommendation I put forward in my Amendment to Right of Reply: Activities in the CMA (dated 1 August 2018).
2. The Hearing Panel also requested additional clarification during the Right of Reply Hearing on 1 August 2018 for activities in the coastal marine area (CMA) as to:
  - What policies my recommended amendment to Rule R202 (set out in Amendment to Right of Reply: Activities in the CMA) gives effect to; and
  - Will my recommendation to rationalise the number of rules (set out in my Right of Reply: Activities in the CMA) provide the equivalent Section 12(1) controls, (as provided in the proposed rule framework prior to rationalisation).
3. Changes that I recommend as a result of this Supplementary Right of Reply are shown in **blue text** that is underlined or ~~struck-out~~. Original recommendations from the s42A Report that I continue to support are shown in **red text** that is underlined or ~~struck-out~~.
4. The additional recommendations I have made in this Supplementary Right of Reply: Activities in the CMA are:
  - Amend Rule R202 (maintenance dredging outside a commercial port area or navigational protection area) so that condition (e) does not consider sites listed with Schedule J (geological features) or Schedule K (surf breaks) and that matter of control 5 provides for effects on sites identified in these areas.
5. I recommend no further amendments to the matters provided in my earlier reports; Section 42A Report: Activities in the CMA, Right of Reply: Activities in the CMA or Amendment to Right of Reply: Activities in the CMA.

## 2. Further amendment to Rule R202

### Background

6. In my Amendment to Right of Reply: Activities in the CMA (paragraph 9, page 4 - 5) I recommended that:
- Rule R202 be amended to include a condition that maintenance dredging must not occur within the sites of significance in Schedules C (mana whenua), F2c (birds-coastal), F4 (coastal sites), F5 (coastal habitats), J (geological features) and K (surf breaks); and
  - That resource consent is required as a non-complying activity under Rule R205 when this condition is not met.
7. In the Hearing, Ms Anderson brought it to the attention of the Hearing Panel that Hearing Stream 6 Right of Reply: Legal Submissions states that there is scope to make this change, but only for sites of significance between schedules A – F. In her view, scope to make this amendment is not relevant in sites which fall within Schedule J (geological features) or Schedule K (surf breaks). Ms Anderson reiterated this rationale in her Hearing Stream 6 Right of Reply: Supplementary Legal Submissions.

### Response

8. I concur with Ms Anderson that the submission point from Rangitāne o Wairarapa (S279/213) does not provide scope for the amendment to be made in full. Therefore I now recommend amending proposed Rule R202 so that maintenance dredging is provided for as a controlled activity within locations which fall within Schedule J (geological features) and Schedule K (surf breaks) sites.
9. Further to that, I retain the part of the recommendation in my Amendment to Right of Reply: Activities in the CMA (and for the reasons provided in that report) that where maintenance dredging falls within Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites) and Schedule F5 (coastal habitats) resource consent would still be required as a non-complying activity under Rule R205.

## Recommendation

10. My recommended amendments to Rule R202 are as follows:

***Rule R202: Maintenance dredging outside a Commercial Port Area or navigation protection areas – controlled activity***

*Destruction, damage or disturbance associated with maintenance dredging outside a Commercial Port Area shown on Map 32, Map 33 and Map 34 or a navigation protection area shown on Map 49, in the coastal marine area, including any associated:*

*(a) deposition in, on or under the foreshore or seabed, and*

*(b) discharge of contaminants, and*

*(c) diversion of open coastal water*

*is a controlled activity, provided the following conditions are met:*

*(d) the activity shall comply with any related current resource consent conditions and the area of the coastal marine area that this consent(s) specifies, and*

*(e) the activity shall not occur inside a site or habitat identified in Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), or Schedule F5 (coastal habitats), and Schedule J (geological features) or Schedule K (surf breaks).*

*(e)(f) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2, excluding condition (b).*

*Matters of control*

*1. Method of dredging*

*2. Depth of any dredging including that which occurs in the Hutt Valley Aquifer Zone in the Wellington Harbour (Port Nicholson) shown on Map 30*

*3. Effects on coastal natural processes including effects on shoreline stability in the vicinity and adjacent areas and the potential to create a coastal inundation hazard*

*4. Effects of disturbance, deposition, discharge and diversion associated with the activity*

*5. Effects on sites and habitats identified in ~~Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats), Schedule J (geological features) or Schedule K (surf breaks)~~*

*6. Effects on the heritage values of sites identified in Schedule E4 (archaeological sites)*

*7. Navigational safety and charting including notification of Land Information New Zealand, the Wellington Regional Council Harbourmaster and Maritime New Zealand*

#### *Notification*

*In respect of Rule R202, applications are precluded from public notification (unless special circumstances exist).*

#### *Note*

*Rule R202 controls the destruction, damage and disturbance of the foreshore or seabed. The dumping of dredged material is not included in this rule. For dumping of material in the coastal marine area refer to Rules R210, Rule R211 or Rule R212.*

#### **Scope**

11. Submission point S279/213 from Rangitāne o Wairarapa provides scope for this amendment.

### **3. Responding to questions from the Hearing Panel**

#### **Background**

12. The Hearing Panel requested clarification as to the policies in the proposed Plan in which my recommended amendment to Rule R202 would (set out in Amendment to Right of Reply: Activities in the CMA) give effect to.
13. The Hearing Panel also requested clarification as to whether rationalising the number of catch all rules that manage destruction, damage and disturbance in the CMA will also reduce the number of section 12(1) controls provided in the proposed Plan.

#### **Response**

14. In response to the first question from the Hearing Panel, I note that given I have now retracted part of my original amendment to Rule R202 (see

paragraph 10 above), in my view, the revised recommended amendment to Rule R202 would give effect to a smaller number objectives and policies in the proposed Plan. As a result I have undertaken an assessment of the relevant objectives and policies which my recommended amendment to Rule R202 would give effect to and these are set out in Table 1 below.

**Table 1: Objectives and policies which, in my view, my recommended amendment to Rule R202 will give effect to**

Relevant objectives	Relevant policies
<p><b>Objective O33</b> Sites with significant mana whenua values are protected and restored.</p>	<p><b>Policy P19</b> Maori values <b>Policy P20</b> Exercise of kaitiakitanga <b>Policy P44</b> Protection and restoration of sites with significant mana whenua values <b>Policy P45</b> Managing adverse effects on sites with significant mana whenua values</p>
<p><b>Objective O35</b> Ecosystems and habitats with significant indigenous biodiversity values are protected and restored.</p>	<p><b>Policy P40</b> Ecosystems and habitats with significant indigenous biodiversity values <b>Policy P41</b> Managing adverse effects on ecosystems and habitats with significant indigenous biodiversity values</p>

15. In response to the second question from the Hearing Panel, I have undertaken an assessment to determine as to whether deleting rules which, in my view, provided a duplication of controls would provide the same number of Section 12(1) controls to manage the effects of destruction, damage and disturbance as provided for in the proposed Plan.
16. In summary, the detailed assessment (set out in Appendix B below) states that each of Section 12(1) controls in the Rules which I have recommended to be deleted in my Right of Reply: Activities in the CMA will, in my view, also be provided in the default rules which I have recommended to be retained; that being Rule R204 for destruction, damage and disturbance outside sites of significance (as a discretionary activity) and Rule R205 for destruction, damage and disturbance inside sites of significance.

17. Accordingly, I recommend no further amendments to the recommendations I made in response to Issue 6 (number of catch all rules to manage effects of destruction, damage and disturbance in the CMA).

## Appendix A – Section 32AA (Rule R202)

Amendment No./Submission point No.	Chapter	Provision	Text of provision with any recommended amendments	Evaluation of amendment ( Section 32AA assessment)
S279/213	5	Rule R202	<p><b>Rule R202: Maintenance dredging outside a Commercial Port Area or navigation protection areas – controlled activity</b></p> <p><i>Destruction, damage or disturbance associated with maintenance dredging outside a Commercial Port Area shown on Map 32, Map 33 and Map 34 or a navigation protection area shown on Map 49, in the coastal marine area, including any associated:</i></p> <p><i>(a) deposition in, on or under the foreshore or seabed, and</i></p> <p><i>(b) discharge of contaminants, and</i></p> <p><i>(c) diversion of open coastal water</i></p>	<p><b>Effectiveness and efficiency</b> The proposed amendment will ensure that a resource consent for maintenance dredging has the option to be declined in a scenario where the potential effects on the relevant sites of significance (whereby there is scope for the change to be made) have the potential to be adverse, thus providing a more efficient and effective approach.</p> <p><b>Costs (numerical and potential costs)</b> There will be a higher cost for applicant’s preparing an application for resource consent for maintenance dredging inside the relevant sites of significance.</p> <p><b>Benefits (environmental, cultural, economic and social)</b> The values of the relevant sites of significance will give effect to the relevant objectives of the Plan (Objectives 33 and Objective 35).</p> <p><b>Risk of acting or not acting</b> The risk of not acting is that the relevant sites of significance (whereby there is scope to make the change) will not be managed appropriately and the outcome for these sites not met.</p> <p><b>Decision about most appropriate option</b> This option is considered to be the most appropriate approach to achieve the relevant objectives of the Plan.</p>

		<p><i>is a controlled activity, provided the following conditions are met:</i></p> <p><i>(d) the activity shall comply with any related current resource consent conditions and the area of the coastal marine area that this consent(s) specifies, and</i></p> <p><i><u>(e) the activity shall not occur inside a site or habitat identified in Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), or Schedule F5 (coastal habitats), and Schedule J (geological features) or Schedule K (surf breaks).</u></i></p> <p><i><u>(f)</u> the activity shall comply with the coastal management general conditions specified above in Section 5.7.2, excluding condition (b).</i></p> <p><i>Matters of control</i></p> <ol style="list-style-type: none"> <li><i>1. Method of dredging</i></li> <li><i>2. Depth of any dredging including that which occurs in the Hutt Valley Aquifer Zone in the Wellington Harbour</i></li> </ol>	
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		<p><i>(Port Nicholson) shown on Map 30</i></p> <p><i>3. Effects on coastal natural processes including effects on shoreline stability in the vicinity and adjacent areas and the potential to create a coastal inundation hazard</i></p> <p><i>4. Effects of disturbance, deposition, discharge and diversion associated with the activity</i></p> <p><i>5. Effects on sites <del>and habitats identified in Schedule C (mana whenua), Schedule F2c (birds coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats), Schedule J (geological features) or Schedule K (surf breaks)</del></i></p> <p><i>6. Effects on the heritage values of sites identified in Schedule E4 (archaeological sites)</i></p> <p><i>7. Navigational safety and charting including notification of Land Information New Zealand, the Wellington Regional Council Harbourmaster and Maritime New Zealand</i></p>	
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			<p><i>Notification</i></p> <p><i>In respect of Rule R202, applications are precluded from public notification (unless special circumstances exist).</i></p> <p><i>Note</i></p> <p><i>Rule R202 controls the destruction, damage and disturbance of the foreshore or seabed. The dumping of dredged material is not included in this rule. For dumping of material in the coastal marine area refer to Rules R210, Rule R211 or Rule R212.</i></p>	
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## Appendix B – Providing Section 12(1) controls through rationalising the number of rules

Table 2: Section 12(1) matters that are, in my view, controlled in rules which I recommend to be retained (Rules R204 and R205)

<p><b>Rules in proposed Plan which I propose to be retained through rationalisation (see Right of reply: Activities in the CMA, Issue 6, dated 18 July 2018):</b></p>	<p><b>Section 12(1) matters controlled within the rules are as follows:</b></p>
<p><b>Rule R204: Destruction, damage or disturbance outside sites of significance – discretionary activity</b>                      Destruction, damage or disturbance outside a site and habitat identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area, including any associated:                      (a) deposition in, on or under the foreshore or seabed, and                      (b) discharge of contaminants, and                      (c) diversion of open coastal water that is not permitted, controlled, restricted discretionary, non-complying or prohibited, is a discretionary activity.</p>	<p>(c) disturb any foreshore or seabed (including by excavating, drilling, or tunnelling) in a manner that has or is likely to have an adverse effect on the foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal); or                      (d) deposit in, on, or under any foreshore or seabed any substance in a manner that has or is likely to have an adverse effect on the foreshore or seabed; or                      (e) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on plants or animals or their habitat; or                      (g) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage—</p>
<p><b>Rule R205: Destruction, damage or disturbance inside sites of significance – non-complying activity</b>                      Destruction, damage or disturbance inside a site</p>	<p>(c) disturb any foreshore or seabed (including by excavating, drilling, or tunnelling) in a manner that has or is likely to have an adverse effect on the foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal); or                      (d) deposit in, on, or under any foreshore or seabed any substance in a manner that has or is likely</p>

<p>and habitat identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area, including any associated:</p> <p>(a) deposition in, on or under the foreshore or seabed, and</p> <p>(b) discharge of contaminants, and</p> <p>(c) diversion of open coastal water that is not permitted, controlled, restricted discretionary, discretionary or prohibited, is a non-complying activity.</p>	<p>to have an adverse effect on the foreshore or seabed; or</p> <p>(e) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on plants or animals or their habitat; or</p> <p>(g) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage—</p>
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**Table 3: Illustrates that, in my view, each of the Section 12(1) controls provided in the rules I have recommended to be deleted (Rules R194, R195, Rule R208, R209 and Rule R216) will be provided in the catch all rules (Rule R204 and R205) I recommended to be retained**

<b>(1) Rules in proposed Plan which I recommend be deleted through rationalisation (see Right of reply: Activities in the CMA, Issue 6, dated 18 July 2018):</b>	<b>(2) Section 12 matters being controlled in the proposed rules are:</b>	<b>(3) If this rule is deleted (see column 1) what rule would the same activity default to (Rule R204, Rule R205 or both)?</b>	<b>(4) If this rule is deleted (see column 1) will the same Section 12 matters still be controlled under the new default rule?</b>	<b>(5) Additional notes</b>
<p><b>Rule R194: Disturbance or damage – discretionary activity</b> The disturbance or damage of the foreshore or seabed outside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J</p>	<p><b>Sub clause (c)</b> <b>Sub clause (d)</b> <b>Sub clause (e)</b></p>	<p>If Rule R194 is deleted from the Plan, activities will default to Rule R204.</p> <p>As outlined above (see table 1.0) Rule R204 controls each of the Section 12 matters (destruction, damage and</p>	<p><b>Yes</b> – the new default rule (Rule R204) will also, in my view, control each of the Section 12 matters which were originally controlled under Rule R194.</p>	<p>The reason as to why, in my view, section 12(1)(g) of the RMA is not controlled in Rule R194 is that the proposed rule did not list Schedule E4 (archaeological sites) sites.</p>

<p>(geological features) in the coastal marine area, including any associated:</p> <p>(a) deposition in, on or under the foreshore or seabed, and                  (b) discharge of contaminants that is not permitted by Rule R188, Rule R191 or Rule R193 is a discretionary activity.</p> <p>Note                  Rule R194 controls the damage and disturbance of the foreshore or seabed. The dumping of dredged material is not included in this rule. For dumping of material in the coastal marine area refer to Rule R210, Rule R211, Rule R212 or Rule R213.</p>		<p>disturbance) within sub-clause:</p> <p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>		
<p><b>Rule R195: Disturbance or damage inside sites of significance – non-complying activity</b></p> <p>Disturbance or damage of the foreshore or seabed inside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area, including any associated:</p>	<p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b></p>	<p>If Rule R205 is deleted from the Plan, activities will default to Rule R204.</p> <p>As outlined above (see table 1.0) Rule R205 controls each of the Section 12 matters (destruction, damage and disturbance) within sub-clause:</p> <p><b>Sub clause (c)</b>  <b>Sub clause (d)</b></p>	<p><b>Yes</b> – the new default rule (Rule R205) will also, in my view, control each of the section 12 matters which were originally controlled under Rule R195.</p>	<p>The reason as to why, in my view, section 12(1)(g) of the RMA is not controlled in Rule R195 is that the proposed rule did not list Schedule E4 (archaeological sites) sites.</p>

<p>(a) occupation in the common marine and coastal area, and                  (b) deposition in, on or under the foreshore or seabed, and                  (c) discharge of contaminants that is not permitted by Rule R191 or Rule R193 or a controlled activity under Rule R192, is a non-complying activity.</p> <p>Note Rule R195 controls the damage and disturbance of the foreshore or seabed. The dumping of dredged material is not included in this rule. For dumping of material in the coastal marine area refer to Rule R210, Rule R211 or Rule R21</p>		<p><b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>		
<p><b>Rule R208: Deposition outside sites of significance – discretionary activity</b> Deposition outside a site and habitat identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in, on or under the coastal marine area, including any associated:</p> <p>(a) disturbance of the foreshore or seabed, and</p>	<p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>	<p>If Rule R208 is deleted from the Plan, activities will default to Rule R204.</p> <p>As outlined above (see table 1.0) Rule R204 controls each of the Section 12 matters (destruction, damage and disturbance) within sub-clause:</p> <p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b></p>	<p><b>Yes</b> – the new default rule (Rule R204) will also, in my view, control each of the section 12 matters which were originally controlled under Rule R208.</p>	<p><b>N/A</b></p>

<p>(b) discharge of contaminants that is not permitted, controlled, restricted discretionary, non-complying or prohibited, is a discretionary activity.</p>		<p><b>Sub clause (g)</b></p>		
<p><b>Rule R209: Deposition inside sites of significance – non-complying activity</b> Deposition inside sites and habitats identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in, on or under the coastal marine area, including any associated:</p> <p>(a) disturbance of the foreshore or seabed, and                  (b) discharge of contaminants that is not a permitted activity under Rule R206 or a controlled activity under Rule R207 or a discretionary activity under Rule R208, is a non-complying activity.</p>	<p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>	<p>If Rule R209 is deleted from the Plan, activities will default to Rule R205.</p> <p>As outlined above (see table 1.0) Rule R205 controls each of the Section 12 matters (destruction, damage and disturbance) within sub-clause:</p> <p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>	<p><b>Yes</b> – the new default rule (Rule R205) will also, in my view, control each of the section 12 matters which were originally controlled under Rule R209.</p>	<p><b>N/A</b></p>
<p><b>Rule R216: Destruction – non-complying activity</b>                  The destruction of the foreshore or seabed in the coastal marine area including any associated:</p> <p>(a) disturbance of the foreshore or seabed, and</p>	<p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>	<p>If Rule R216 is deleted from the Plan, activities will default to Rule R204 “in sites of significance” and Rule R205 “outside sites of significance”.</p> <p>As outlined above (see table</p>	<p><b>Yes</b> – the new default Rules (R204 and R205) will also, in my view, control each of the section 12 matters which were originally controlled under Rule R216.</p>	<p><b>N/A</b></p>

<p>(b) deposition in, on or under the foreshore or seabed, and (c) discharge of contaminants, and (d) diversion of open coastal water is a non-complying activity</p>		<p>1.0) Rule R204 and Rule R205 controls each of the Section 12 matters (destruction, damage and disturbance) within sub-clause:</p> <p><b>Sub clause (c)</b>  <b>Sub clause (d)</b>  <b>Sub clause (e)</b>  <b>Sub clause (g)</b></p>		
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