

**In the Hearing Panel
At Wellington**

Under the Resource Management Act 1991

In the matter of Proposed Natural Resources Plan for the Wellington Region
(Hearing Stream 2)

**Wellington Regional Council Legal Submissions in Reply for Hearing Stream
2: Air quality management, land use in riparian margins and stock access to
water bodies and soil conservation**

Date: 11 August 2017



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MAY IT PLEASE THE PANEL:

- 1 These legal submissions reply to the main legal matters raised by the Hearing Panel and submitters during Hearing Stream 2. They do not address every legal issue or question asked, but have addressed common themes or key questions from the Panel.
- 2 These submissions should be read in conjunction with the other submissions previously filed by counsel in respect of this Hearing Stream.¹
- 3 In summary, the main legal themes or issues that arose in Hearing Stream 2 are:
 - 3.1 The appropriateness of permitted activity rules that rely on management plans, and the wording of these permitted activity conditions.
 - 3.2 The appropriateness of permitted activity rules which require compliance with New Zealand Standards.
 - 3.3 The implications of 'deemed' permitted activities in terms of section 87BB of the RMA, to be introduced by the Resource Legislation Amendment Act 2017.
 - 3.4 The meaning of the term 'discourage' within the Regional Policy Statement (**RPS**). Particularly whether it means 'avoid' or something different.
 - 3.5 Whether a closed landfill is an industrial or trade premises.
 - 3.6 The appropriateness of the use of notes within the proposed Plan and what standing they have.

¹ Legal Submissions on behalf of Wellington Regional Council: Hearing Stream 2, 9 June 2017.

3.7 An update on the proposed National Environmental Standard for Plantation Forestry, and proposed Regulations for Stock Exclusion.

3.8 Controlling different activities in one rule.

4 We address these matters in turn below.

Permitted activity rules with a management plan condition

5 The Panel has queried whether it is appropriate for:

5.1 a permitted activity condition to require a stock access plan, and

5.2 a permitted activity condition to require the approval of the that plan by the Council.

6 This query has arisen specifically in the context of Mr Loe's suggested alteration to Rule 97 which would provide a permitted activity if a *livestock access plan has been approved in writing by the Wellington Regional Council, and the terms and conditions of the access plan are complied with at all times.*² The management plan permitted activity condition would apply as an alternative to another set of permitted activity conditions.³

7 The issue raised was whether this proposed rule introduces an element of discretion to be exercised by the Council when approving the management plan, inconsistent with the nature of a permitted activity. As a matter of law the Council is not entitled to reserve to itself a discretion to finally approve a permitted activity.

² Section 42A Hearing Report for Hearing commencing on 10 July 2017, dated 9 June 2017, prepared by Barry Loe, page 108.

³ Rule 97 (a)-(e) as notified.

8 Permitted activity rules can specify requirements and conditions that need to be met (section 87A(1) of the RMA). For permitted activities, the rules need to be clear on their face as to whether an activity is permitted by that rule or not.⁴ Discretion should not be required to determine if an activity is permitted, as it is up to the person undertaking the activity to demonstrate compliance with the required conditions of the rules.⁵

9 A permitted activity rule would not be *ultra vires* and could be considered appropriate if:⁶

9.1 the condition is simply a requirement to provide a management plan to the Council (containing certain information), or

9.2 the condition requires compliance with a management plan in undertaking the activity, or

9.3 if the condition is about notification of the Council (ie the provision of a management plan to the Council by a certain date).

10 If a permitted activity rule requires a management plan to be submitted to the Council for approval it is likely that the requirement will be *ultra vires* and not appropriate as it is ultimately at the Council's discretion whether it approves or rejects a management plan. This would not provide certainty to an applicant or enable them to demonstrate compliance with the permitted activity condition.

11 It may be possible for a permitted activity condition to allow the Council to reject a management plan. However, it would only be able to do so on the basis that it does not contain the required information or was not

⁴ *Boanas v Oliver* PT Christchurch C072/94 28 July 1994.

⁵ *Wawatai v Hamilton City Council* PT Wellington W017/96 26 February 1996.

⁶ *TL & NL Bryant Holdings Ltd v Marlborough District Council* [2008] NZRMA 485 (HC).

produced by the required time. That would need to be a procedural tick the box type activity as opposed to a substantive review of the material.

- 12 If the Council wishes to retain discretion in order to approve the adequacy of a management plan, this should be done through a rule which requires resource consent to authorise the activity, rather than as a permitted activity condition. We note that management plans are required elsewhere in the proposed Plan as part of Rules that require resource consent as either a restricted discretionary or controlled activity.⁷ There is also another permitted activity management plan requirement in Rule R102.
- 13 In answer to the Panel's question, it is appropriate to impose a permitted activity condition that requires the production of a management plan (containing certain information) and provisions of it to the Council (by a certain time). However, this requirement should not include any 'approval' of discretionary or subjective matters where there is 'room' for different interpretations.
- 14 Any amendment to Rule 97 to include a stock access management plan requirement as a permitted activity condition can require that this plan is submitted to the Council (perhaps by a certain time prior to the activity commencing), and that it specify what it must obtain but should not state that the plan must be 'approved' by the Council. We understand that this is consistent with the intent of the proposed changes to Rule 97.

⁷ Rule 51: discharge of stormwater is a restricted discretionary activity if the resource consent application includes a stormwater management strategy and matters of discretion relate to stormwater management plans. Rule 79 and 90: matters of control and discretion include the provision of an Operation and Management Plan. Rule 106: Activities for the purpose of restoring the indigenous biodiversity that are not permitted (under rules 104 and 105) are controlled activities if '*the activities are stipulated and carried out in accordance with an approved restoration management plan*'. The contents of a restoration management plan are set out in F3a which provides that plans that do not meet the requirements will be declined and that any decline of the plan is appealable to the Council.

Permitted activity rules which require compliance with New Zealand Standards

- 15 The Panel queried the inclusion of New Zealand Standards in permitted activity conditions, as these standards may not be readily available to the public.⁸
- 16 Clause 30 of the Schedule 1 to the RMA provides for the incorporation of documents by reference in plans and proposed plans. It provides that the material listed may be incorporated by reference in plans and proposed plans. That material is:
- 16.1 standards, requirements, or recommended practices of international or national organisations;
- 16.2 standards, requirements, or recommended practices prescribed in any country or jurisdiction; and
- 16.3 any other written material that deals with technical matters and is too large or impractical to include in, or print as part of, the plan or proposed plan.
- 17 The categories are clearly aimed at technical material and standards.⁹ From a legal perspective, the use of New Zealand Standards in permitted activity conditions is, in our submission, legally acceptable.
- 18 Material may be incorporated into a plan in whole or in part and once incorporated has legal effect as part of the plan or proposed plan.¹⁰ A copy of material incorporated by reference in a plan must be certified as a correct copy of the material, and retained by the Council.¹¹

⁸ The issue arose in relation to Rule 38, but a number of Rules of the proposed Plan (including permitted activity conditions) refer to New Zealand Standards.

⁹ *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 285

¹⁰ Schedule 1, Clause 30(2)-(3) of the RMA.

¹¹ Schedule 1, Clause 32 of the RMA.

19 Clause 35 of Schedule 1 of the RMA provides that:

(1) The local authority—

- (a) must make the material referred to in subclause (2) (**material**) available for inspection during working hours at the offices of the local authority; and
- (b) must make copies of the material available for purchase in accordance with section 36 at the offices of the local authority; and
- (c) may make copies of the material available in any other way that the chief executive of the local authority considers appropriate in the circumstances (for example, on an Internet website maintained by or on behalf of the local authority); and
- (d) must give public notice stating that—
 - (i) the material is incorporated in the plan or proposed plan; and
 - (ii) the material is available for inspection during working hours free of charge and the place at which it can be inspected; and
 - (iii) copies of the material can be purchased and the place at which they can be purchased; and
 - (iv) if copies of the material are available under paragraph (c), details of how and where it may be obtained or accessed.

20 Council will be required to make the New Zealand Standards available at its offices free of charge. The public notice given by Council regarding the incorporation of documents by reference states:

All documents proposed to be incorporated by reference into the Proposed Natural Resources Plan for the Wellington region can be viewed through Greater Wellington Regional Council's website <http://www.gw.govt.nz>, **except New Zealand Standards** (due to copyright restrictions). Copies of all

documents can be viewed or purchased during normal working hours at the Regional Council's offices.

- Shed 39, 2 Fryatt Quay, Pipitea, Wellington 6011
- 34 Chapel Street, Masterton 5810

If you wish to view the documents at a Greater Wellington Regional Council depot in Otaki, Upper Hutt or Lower Hutt or obtain a copy of a document please contact Greater Wellington Regional Council (regionalplan@gw.govt.nz or 0800 496 734).

- 21 Copies have been available at Council offices since notification of the documents to be incorporated by reference was made. As such, readers of the proposed Plan will be able to easily obtain and consider the New Zealand Standards which have been incorporated by reference into the plan. The Council also advises of how and where copies can be purchased, and can provide them for a fee.
- 22 The Council could also choose to make copies available on its website, so they can be read together with the proposed Plan online. However, there is no legal requirement that it does so. We note here that due to copyright restrictions, it may not be possible to electronically provide all New Zealand Standards referenced. As set out in the excerpt above, all documents other than New Zealand Standards are available on the Council's website.

The implications of 'deemed' permitted activities introduced by the Resource Legislation Amendment Act 2017

- 23 The Panel has queried the application of the 'deemed' permitted activities in terms of new section 87BB of the RMA to be introduced on 18 October 2017 by the Resource Legislation Amendment Act 2017 (**Amendment Act**) to air discharges. Specifically to small scale discharges in a residential setting. One example discussed of a 'minor' or 'technical' discharge was the use of pesticide in residential areas for a domestic garden.
- 24 In summary, our submission is that an activity cannot be a 'deemed' permitted activity unless it would have been a permitted activity but for a minor or technical non-compliance. In the context of the proposed

Plan, primarily that means that there needs to be a relevant permitted activity rule. We expand on this below.

25 New section 87BB will make activities meeting certain requirements permitted activities.¹² As relevant to the Panel's question, it provides:

- (1) An activity is a permitted activity if—
- (a) the activity would be a permitted activity except for a marginal or temporary non-compliance with requirements, conditions, and permissions specified in this Act, regulations (including any national environmental standard), a plan, or a proposed plan; and
 - (b) any adverse environmental effects of the activity are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance referred to in paragraph (a); and
 - (c) any adverse effects of the activity on a person are less than minor; and
 - (d) the consent authority, in its discretion, decides to notify the person proposing to undertake the activity that the activity is a permitted activity.

26 The type of activities which might be 'deemed' permitted activities are not confined. They include activities which would otherwise require resource consent and contravene requirements of the RMA (including section 15 - discharges), regulations (including any national environmental standard), or a regional or district plan (including a proposed regional or district plan).

¹² The full text of section 87BB is set out in full in **Appendix 1** to these submissions.

- 27 Section 87BB will allow an activity to be treated as 'permitted' and therefore no resource consent is required if all of the following apply:
- 27.1 It would be a permitted activity, but for a marginal or temporary non-compliance with requirements in the proposed Plan.
- 27.2 Any adverse environmental effects of the activity are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance.
- 27.3 Any adverse effects of the activity on a person are less than minor.
- 28 The first step for an air discharge to be a 'deemed' permitted activity under this section is that the activity does not comply with a permitted activity rule in the proposed Plan. The key is that but for the non-compliance (which is marginal or temporary) the activity would be permitted.
- 29 Under section 15(2A) of the RMA any discharge of contaminant into air from a place or source (other than an industrial or trade premises) is allowed, unless it contravenes a regional rule. Where it contravenes a regional rule, it must be expressly allowed by a NES/regulations, resource consent or existing use rights. Any air discharges not explicitly covered by the rules of the proposed Plan will not require a resource consent as they will be allowed by section 15(2A).¹³
- 30 In order to be a deemed permitted activity, there must be a specific permitted activity rule that applies. If there is such a rule, a discharge to air will only be a 'deemed' permitted activity where there is a minor or temporary non-compliance with that rule, and the other conditions set out above in paragraph 27 apply.

¹³ Noting that different provisions apply to discharges to air from industrial or trade premises.

- 31 If there is no permitted activity rule, and just a discretionary or non-complying activity rule that applies, the air discharge could never be a 'deemed' permitted activity. The activity would never have been permitted, but for a minor non-compliance.
- 32 The deemed permitted activity provisions are limited in scope as set out above. Whether a minor air discharge will qualify as a 'deemed' permitted activity, will depend on the nature of the permitted activity rules in the proposed Plan.

Terminology - use of the word 'discourage'

- 33 The Panel has asked about the use of the word 'discourage' in the RPS in policies 18 and 43. It has asked if the word 'discourage' is directive, and if it means the same as avoid, or something less.

- 34 Policy 18 states:

Policy 18: Protecting aquatic ecological function of water bodies – regional plans

Regional plans shall include policies, rules and/or methods that:

- (a) promote the retention of in-stream habitat diversity by retaining natural features – such as pools, runs, riffles, and the river's natural form;
- (b) promote the retention of natural flow regimes – such as flushing flows;
- (c) promote the protection and reinstatement of riparian habitat;
- (d) promote the installation of off-line water storage;
- (e) discourage the reclamation, piping, straightening or concrete lining of rivers;
- (f) discourage stock access to rivers, lakes and wetlands;
- (g) discourage the diversion of water into or from wetlands – unless the diversion is necessary to restore the hydrological variation to the wetland;
- (h) discourage the removal or destruction of indigenous plants in wetlands and lakes; and
- (i) maintain fish passage.

35 Policy 43 relates to protecting aquatic ecological function:

Policy 43: Protecting aquatic ecological function of water bodies – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, particular regard shall be given to:

- (a) maintaining or enhancing the functioning of ecosystems in the water body;
- (b) maintaining or enhancing the ecological functions of riparian margins;
- (c) minimising the effect of the proposal on groundwater recharge areas that are connected to surface water bodies;
- (d) maintaining or enhancing the amenity and recreational values of rivers and lakes, including those with significant values listed in Table 15 of Appendix 1;
- (e) protecting the significant indigenous ecosystems and habitats with significant indigenous biodiversity values of rivers and lakes, including those listed in Table 16 of Appendix 1;
- (f) maintaining natural flow regimes required to support aquatic ecosystem health;
- (g) maintaining fish passage;
- (h) protecting and reinstating riparian habitat, in particular riparian habitat that is important for fish spawning;
- (i) discouraging stock access to rivers, lakes and wetlands; and
- (j) discouraging the removal or destruction of indigenous wetland plants in wetlands.

36 As indicated to the Panel on 11 July, there is no case law directly on the meaning of the word 'discourage' in the RMA context. However, it is our submission that discourage does not mean avoid. It is something less than avoid and relates to a state of tolerance for or attitude towards the appropriateness of an activity as opposed to being directive as to required action. This position is supported by case law to the extent that the Courts have separately considered policies that require avoidance, and ones that seek to discourage.¹⁴ Although not directly commenting

¹⁴ Refer for example to *Save Wanaka Lakefront Reserve Incorporated v Queenstown Lakes District Council* [2017] NZEnvC 88.

on the difference between avoid and discourage, the Environment Court stated:¹⁵

There is a further direction to discourage development within an ONL. The noncomplying activity status of activities on the banks of lakes is an aspect of this. That implies that a decision-maker ought to closely examine whether a proposal has a strong functional justification for its choice of siting and whether in terms of the assessment matters in s 2.2.2(1), it is a truly exceptional case. However, it does not mean that every non-complying activity should be declined.

37 This is clearly something less than 'avoid', which has been judicially defined by the Supreme Court to mean 'not allow' or 'prevent the occurrence of'.¹⁶

38 This position is supported by the dictionary definition of 'discourage'. The Shorter Oxford English Dictionary defines discourage as:¹⁷

1. Deprive of courage, confidence, hope or the will to proceed; dishearten, deject
2. Dissuade or deter from
3. Inhibit or seek to prevent (an action etc.) by expressing disapproval.

39 We consider that avoid is more directive than discourage. Avoid is a clear directive to ensure an activity does not occur (ie it is prevented). It is an absolute. Discourage is less directive, referencing an intolerance for an activity, but not an absolute requirement for it not to occur (ie, you seek to prevent it). Discouraging something only seeks to prevent it, as opposed to requiring its prevention.

40 We note that discourage is still a strong word, but less directive than avoid. Accordingly, while it needs to be treated differently to policy direction using the 'avoidance' language it is a strong requirement.

¹⁵ Ibid, at [121].

¹⁶ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38, at [96].

¹⁷ *The Shorter Oxford English Dictionary* (5th ed, Oxford University Press, Oxford, 2002) at 695.

Is a closed landfill an industrial or trade premise?

41 The Panel has asked whether a closed landfill is an industrial or trade premise. The context of this question was in respect of the air discharge provisions of the proposed Plan.

42 The RMA defines 'industrial or trade premises' as:¹⁸

industrial or trade premises means—

- (a) any premises used for any industrial or trade purposes; or
- (b) any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or
- (c) any other premises from which a contaminant is discharged in connection with any industrial or trade process;—

but does not include any production land

43 The RMA defines industrial or trade process as:¹⁹

industrial or trade process includes every part of a process from the receipt of raw material to the dispatch or use in another process or disposal of any product or waste material, and any intervening storage of the raw material, partly processed matter, or product

44 Production land is defined in the RMA as:

production land—

- (a) means any land and auxiliary buildings used for the production (but not processing) of primary products (including agricultural, pastoral, horticultural, and forestry products):
- (b) does not include land or auxiliary buildings used or associated with prospecting, exploration, or mining for minerals,—

and **production** has a corresponding meaning

¹⁸ RMA, section 2.

¹⁹ RMA, section 2.

45 'Waste or other matter' is defined as:²⁰

means materials and substances of any kind, form, or description

46 In response to the Panel's question, given the above, we consider that a landfill, whether closed or not, is 'premises used for the storage of waste materials'. Accordingly, any land containing a landfill is considered to be an industrial or trade waste premise.

47 However, the term 'industrial or trade premise' is only used in section 15 of the RMA. It is used in the context of restricting any discharge of contaminant into air, or onto or into land. Any such discharge from an industrial or trade premise is not allowed, unless expressly allowed by a NES, regulation, regional rule or resource consent.

48 As there is no rule in the proposed Plan that expressly permits such discharges, resource consent would be required if such a discharge were to occur.

Use of notes in the proposed Plan

49 The Panel has queried the appropriateness of notes being included within the proposed Plan. While this issue has arisen in the context of the air discharge topic and rules, notes are found throughout the proposed Plan.

50 Using the air discharge rules as an example, the note following Rule R1 states:

Outdoor burning is also controlled by provisions in district plans and bylaws.

51 A different type of note follows Rule R6:

The installation of a new **open fire** is a prohibited activity in a **polluted airshed** under Clause 24A of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004.

²⁰ RMA, section 2.

52 Other notes refer to New Zealand Standards that apply or provide cross-references to other rules in the proposed Plan. Some of the notes in the proposed Plan are less straightforward, such as the note under Rule R18:

Laboratory Fume cupboard shall comply with *AS/NZS 2243.8 Safety in Laboratories Part 9 - Fume cupboards (2006)*.

53 There is no legal barrier to including notes within the proposed Plan. They are not 'provisions' as defined in section 32 of the RMA and are not required to be assessed to be the most appropriate way to achieve the objectives of the proposed Plan. In our view, they are not requirements of the proposed Plan in terms of it restricting or authorising activities.

54 Instead, the usage of notes in the proposed Plan is to primarily assist users of the proposed Plan by advising users of requirements that sit outside the proposed Plan. They also, in some cases, assist in the interpretation of the provisions themselves.

55 It is submitted that in order to ensure clarity, the use of notes should be consistent throughout the proposed Plan. The notes themselves should not include requirements that are intended to be enforceable by the Council under the proposed Plan.

National Environmental Standard on Plantation Forestry

56 On 31 July 2017, by order in Council, the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NES-PF**) were made.

57 Regulation 2 states that the NES-PF comes into force on 1 May 2018. That is before the Panel is required to release its decision on the proposed Plan. This resolves the uncertainty previously discussed with the Panel on the opening day of Hearing Two as to timing. Until 1 May 2018, the NES-PF has no effect.

58 The NES-PF applies to: afforestation, pruning and thinning to waste, earthworks, river crossings, forestry quarrying, harvesting, mechanical land preparation, replanting, ancillary activities related to slash traps and

indigenous and non-indigenous vegetation clearance, discharges, disturbances, diversions, noise, dust, indigenous bird nesting, and fuel storage and refuelling.²¹

59 The NES-PF does not apply to vegetation clearance that is carried out before afforestation or any activities or general provisions and conditions not specified in paragraph 58 above.²²

60 There are no transitional or savings provisions in the NES-PF.²³

61 Regulation 6 sets out the requirements when planning rules may be more stringent than the NES-PF. In summary:

61.1 rules in the proposed Plan can be more stringent than the NES-PF where the rule gives effect to a freshwater objective developed to give effect to the NPS-FM, or any of policies 11, 13, 15 and 22 of the NZCPS.²⁴

61.2 a rule in the proposed Plan can also be more stringent where the rule recognises and provides for the protection of outstanding natural features and landscapes or significant natural areas.²⁵

61.3 a rule can also be more stringent in 'unique and sensitive environments'. Regulation 6(3), Regulation 6(4) and Regulation 6(5) provide detail as to what this means.

62 In accordance with section 43B of the RMA, the NES-PF prevails over relevant proposed Plan rules, unless one of the three situations above applies and the proposed Plan rule is more stringent.

²¹ Regulation 5(1).

²² Regulation 5(3).

²³ Regulation 4, Schedule 1.

²⁴ Regulation 6(1).

²⁵ Regulation 6(2).

- 63 In reliance on section 44A of the RMA, where there is duplication of conflict between the proposed Plan and the NES-PF, the Panel can amend the proposed Plan to remove that duplication. Or equally, the Council could remove that duplication/conflict on 1 May 2018 when the NES-PF comes into effect without using the First Schedule Process. The Council considers that the most efficient approach is for the Panel to address the duplication/conflict as necessary through its decision.
- 64 The Council officers will advise the Panel as to any duplication or conflict and their recommendations on how the proposed Plan can be amended so that the duplication or conflict can be addressed.
- 65 At the time of writing these submissions, the Stock Exclusion Regulations have not been made. As with any other instrument, be it a further NES, regulations, National Planning Standards or National Policy Statement, or an amendment to any existing instrument, the Panel can only make decisions within the scope of submissions, or as directed by the RMA or new instrument when it is in effect. Until a new instrument has effect, the Panel is limited to matters within the scope of submissions. The Council has, however, sought leave for Mr Loe to file a supplementary reply when the Stock Exclusion Regulations too are made.

Controlling different activities with one rule

- 66 Finally, a question has been raised by Rangitāne o Wairarapa Inc regarding the appropriateness of the Council addressing activities relating to both section 9 and section 15 of the RMA within one rule (or sections 12 to 15 of the RMA). In our view, such a rule is permissible.
- 67 This issue has specifically been raised in the context of rule R97, R99, R100 and R102 which all relate to land use activities with discharge conditions.

68 Section 9 of the RMA provides that no one may use land in a manner that contravenes a National Environmental Standard, or a Regional or District Plan unless they are expressly allowed to either by virtue of a Resource Consent, or through the RMA itself. Section 15 provides that certain activities are prohibited in relation to discharging contaminants, or water unless they are expressly allowed under a National Environmental Standard, a Regional Plan or a Resource Consent.

69 There is nothing in the RMA that requires separate Rules to address individual sections of the RMA or activities that may fall under them.

70 We acknowledge that the Council does issue separate permits for each type of activity (ie land use, water permit, coastal permit, etc) and will do so regardless of whether all activities are in on Rule or not. However, that is more of an administrative issue rather than one that affects the Council's ability to group different activities into one Rule.

71 We note that other Councils have used this technique of combining different activities into one Rule. See for example Rule 17-6 of the One Plan (Horizons Regional Council):

Except as regulated by Rule 17-15, the removal or demolition of a structure located in, on, under or over the bed of a river or lake pursuant to s13(1) RMA, and any ancillary:

- (a) excavation, drilling, tunnelling or other disturbance of the river or lake bed pursuant to s13(1) RMA
- (b) damming or diversion of water pursuant to s14(2) RMA
- (c) discharge of water or sediment into water or onto or into land pursuant to ss15(1) or 15(2A) RMA
- (d) deposition of substances in or on the bed of the river or lake pursuant to s13(1).

72 In our view there is no legal reason to prevent the Council grouping activities (eg. section 9 and 15 issues or sections 12 to 15 issues) into one Rule in the proposed Plan.

Date: 11 August 2017

A handwritten signature in black ink, consisting of a large, stylized initial 'K' followed by a horizontal line that ends in a sharp point.

.....
Kerry Anderson/ Emma Manohar
Counsel for Wellington Regional
Council

Appendix 1: Section 87BB of the RMA

87BB Activities meeting certain requirements are permitted activities

- (1) An activity is a permitted activity if—
 - (a) the activity would be a permitted activity except for a marginal or temporary non-compliance with requirements, conditions, and permissions specified in this Act, regulations (including any national environmental standard), a plan, or a proposed plan; and
 - (b) any adverse environmental effects of the activity are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance referred to in paragraph (a); and
 - (c) any adverse effects of the activity on a person are less than minor; and
 - (d) the consent authority, in its discretion, decides to notify the person proposing to undertake the activity that the activity is a permitted activity.
- (2) A consent authority may give a notice under subsection (1)(d)—
 - (a) after receiving an application for a resource consent for the activity; or
 - (b) on its own initiative.
- (3) The notice must be in writing and must include—
 - (a) a description of the activity; and
 - (b) details of the site at which the activity is to occur; and
 - (c) the consent authority's reasons for considering that the activity meets the criteria in subsection (1)(a) to (c), and the information relied on by the consent authority in making that decision.
- (4) If a person has submitted an application for a resource consent for an activity that is a permitted activity under this section, the application need not be further processed, considered, or decided and must be returned to the applicant.
- (5) A notice given under subsection (1)(d) lapses 5 years after the date of the notice unless the activity permitted by the notice is given effect to.