

# **Proposed Marlborough Environment Plan**

**Addendum to Section 42A Hearings Report for Hearing  
Commencing 18 February 2019**

**31 January 2019**

**Report on submissions and further submissions  
topic: Water Allocation and Use (Bore and Dam  
Rules Only)**

**Report prepared by:**

**Rachel Anderson, Policy Portfolio Manager and contributed to by**

**Peter Davidson – Environmental Scientist (Groundwater), Val Wadsworth –  
Environmental Scientist (Hydrology), Peter Hamill, Team Leader - Land and Water  
and John Bright (Aqualinc Research Limited)**



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# List of Abbreviations

Accolade	Accolade Wines New Zealand Limited
BRIL	Blind River Irrigation Limited
Clintondale	Clintondale Trust, Whyte Trustee Company Limited
Constellation	Constellation Brands New Zealand Limited
DOC	Department of Conservation
Federated Farmers	Federated Farmers of NZ
Fish and Game	Nelson Marlborough Fish and Game
GPA	Groundwater Protection Area
KiwiRail	KiwiRail Holdings Limited
MDC	Marlborough District Council
MEP	Proposed Marlborough Environment Plan
NPSFM	National Policy Statement for Freshwater Management (2011 & 2014)
MSRMP	Marlborough Sounds Resource Management Plan
North Rarangi WS	North Rarangi Water Supply Incorporated
NZ	New Zealand
NZDF	NZ Defence Force
NZTA	NZ Transport Agency
Oil Companies	Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited
Panel	MEP Hearings Panel
Pernod Ricard	Pernod Ricard Winemakers NZ Limited
RMA	Resource Management Act 1991
Te Ātiawa	Te Ātiawa o Te Waka-a-Māui
WARMP	Wairau/Awatere Resource Management Plan

# Introduction

1. This report is an addendum to our main report, dated 18 January 2019, containing recommendations to the Hearing Panel on submissions made on Water Allocation and Use. This addendum should be read in conjunction with the 18 January 2019 report, including the background and explanation within it.
2. This addendum addresses the Permitted Activity Rules for:
  - Geotechnical Bore;
  - Bore construction or alteration (excluding geotechnical);
  - Construction of an off-river dam;
  - Construction of a dam on an ephemeral river.
3. The s42a report dated 18 January 2019 should be read for details regarding the report author and contributors, and code of conduct.

## Scope of Hearings Report

4. This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA).
5. In this report we assess and provide **Recommendations** to the Hearing Panel on submissions made on the following –
  - the rules in Volume 2 relating to Section 9 of the RMA – specifically bores and dams;
  - definitions associated with this topic.
6. Provisions covered in this hearing topic that either received no submissions, or only submissions in support (with no relevant opposing further submissions) are not assessed in this report. However, submission points in support of provisions without any relevant opposition or amendment sought are recommended for acceptance in the “*Recommended decisions or decisions requested*” table in Appendix 1. For clarity, submissions on the following provisions fall into these categories –

### Provisions with no submissions

- Rules 4.1.16, 15.1.22, 18.1.15, 23.1.14
- Headings 4.3.16, 15.3.12, 18.3.11, 2.9.4
- Standards 3.3.17.2, 3.3.17.3, 3.3.17.4, 3.3.17.5, 3.3.17.6, 3.3.17.7, 3.3.17.8, 3.3.17.9, 3.3.17.10, 4.3.16.2, 4.3.16.3, 4.3.16.4, 4.3.16.5, 4.3.16.6, 4.3.16.7, 3.3.18.1, 3.3.18.2, 3.3.18.3, 4.3.16.1, 4.3.16.2, 4.3.16.3, 5.3.11.1, 5.3.11.2, 5.3.11.3, 9.3.5.1, 9.3.5.2, 9.3.5.3, 10.3.5.1, 10.3.5.3, 3.3.19.3, 3.3.19.5, 3.3.19.6, 4.3.18.1, 4.3.18.2, 4.3.18.3, 4.3.18.4, 4.3.18.5, 4.3.18.6, 11.3.4.1, 11.3.4.3, 12.3.20.1, 12.3.20.3, 13.3.12.1, 13.3.12.3, 15.3.12.1, 15.3.12.3, 17.3.10.1, 17.3.10.3, 18.3.11.1, 18.3.11.3, 19.3.7.1, 19.3.7.3, 23.3.3.1, 23.3.3.3, 2.9.4.1, 2.9.4.2, 2.9.4.3, 2.9.4.4, 2.9.4.5.

### Provisions with supporting submissions only

- Rules 4.1.17, 5.1.16, 9.1.10, 10.1.8, 13.1.23, 17.1.12, 19.1.9
  - Headings 3.3.18, 4.3.16, 5.3.11, 9.3.5, 17.3.10, 19.3.7
7. As submitters who indicate that they wish to be heard are entitled to speak to their submissions and present evidence at the hearing, the recommendations contained within this report are preliminary, relating only to the written submissions.
  8. For the avoidance of doubt, it should be emphasised that any conclusions reached or recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions or decisions having considered all the evidence to be brought before them by the submitters.

## **Further Submissions**

9. Due to the volume of submissions to be considered for this hearing topic, further submissions are not discussed within the report unless they are particularly specific in responding to a submission point.
10. Many further submissions received are broadly made on all of the submissions of a particular entity and on a point-by-point basis are often not relevant or present conflicting positions.

## **Overview of Provisions Development**

11. Refer to the s42a report dated 18 January 2019.

## **Statutory Documents**

12. Refer to the s42a report dated 18 January 2019.

## **Analysis of submissions**

13. This report contains assessments and recommendations relating to specific submission points as listed in Appendix 1 and referenced throughout the report.
14. There are some submission points that do not seek a specific decision, and for which one cannot be inferred. Due to their nature no recommendation can be made at this time.

## **Key Matters**

15. The analysis of the submissions points are set out by matter under the headings below:

Matter 1: Geotechnical Bore Permitted Activity Rules.

Matter 2: Bore construction or alteration (excluding geotechnical) Permitted Activity Rules.

Matter 3: Construction of an off-river dam Permitted Activity Rules.

Matter 4: Construction of a dam on an ephemeral river Permitted Activity Rules.

## Pre-hearing meetings

16. There have been no pre-hearing meetings for this topic.

## Matter 1: Geotechnical Bore Permitted Activity Rules

17. Matter 1 includes rules and standards from across Volume 2 that relate to the following activity –

*“Geotechnical bore drilling for the purposes of investigation of sub-surface conditions.”*

18. This activity is Permitted in the Rural Environment, Coastal Environment, Urban Residential 1 and 2, Business 1, 2 and 3, Industrial 1 and 2, Port, Marina, Open Space 1, 2 and 3 and Airport Zones. The activity is Discretionary in all other Zones.

19. A consistent set of three standards are applied to the Permitted Activity as follows –

Standard 1 – *“The bore must be drilled by a Recognised Professional”*;

Standard 2 – *“A copy of the bore log, including a grid reference identifying the bore location, must be supplied to the Council in a suitable electronic format within 20 working days of the drilling of the bore”*;

Standard 3 – *“On completion of the geotechnical investigation, the bore must be sealed or capped to prevent any potential contamination of groundwater”*.

20. This activity is not particularly related to water allocation and use, and therefore there are no higher level provisions under this hearing topic to relate these rules to. However, it has been requested that I address these submissions at this time for want of a more appropriate opportunity. Having participated in the development of these provision, I am comfortable to undertake this task.
21. Quite a number of the Permitted Activity rules and standards for this activity have received only submissions in support, therefore they have not been considered further and recommendations are only referenced in Appendix 1. Where there are submissions seeking other relief, they are assessed below.
22. There are nine submissions<sup>1</sup> that support Rules 3.1.18, 9.1.10, 10.1.8 and 12.1.31 and Headings 9.3.5, 10.3.5, 12.3.20 and 13.3.12, and seek their retention as notified.
23. The Oil Companies submissions<sup>2</sup> on Permitted Activity Rules 3.1.18, 11.1.4 (and Heading 11.3.4) and 12.1.31 (and Heading 12.3.20) and in the Rural Environment, Business 3 and Industrial Zones and Heading 10.3.5 in the Business 2 Zone support the provisions but suggest they should also be provided for in Chapter 2 - General Rules. In the submitters view this would be more practical.
24. The submitter does not identify where in the General Rules it considers this rule should be placed, and the reason for the addition does not assist with understanding the issue it is trying to resolve. As this rule is not provided for in all zones, and the activity does require a resource consent in some zones, I do not support the addition of this rule as sought to the General Rules as it would them permit the activity in all zones. As the submitter supported

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<sup>1</sup> 1201.147 (Trustpower Limited) and 873.118, 873.132, 873.133, 873.135, 873.136, 873.138, 873.139 and 873.152 (KiwiRail)

<sup>2</sup> 1004.036, 1004.088, 1004.063, 1004.071, 1004.092 and 1004.093

the provisions in the specific zone chapters, I have recorded the recommendations in Appendix 1 as accepted in part.

25. The Te Ātiawa submissions<sup>3</sup> on Permitted Activity Standards 10.3.5.2, 11.3.4.2, 12.3.20.2, 13.3.12.2, 15.3.12.2, 17.3.10.2, 18.3.11.2 and 23.3.3.2 seek amendments to the Standards to require a copy of the bore log to be sent to Te Ātiawa when the investigation is within the rohe of Te Ātiawa. No reason is provided for the relief sought.
26. I do not support the relief sought as the submissions provide no justification for this amendment, and none can be inferred.

### **Recommendation**

27. It is recommended that all Permitted Activity rules, and associated headings and standards are retained as notified.

## **Matter 2: Bore construction or alteration (excluding geotechnical) Permitted Activity Rules**

28. Matter 2 includes rules and standards from Chapters 3 and 4 of Volume 2 that relate to the following activity –  
  
*“Bore construction or alteration (except geotechnical bores constructed for the investigation of sub-surface conditions).”*
29. This activity is Permitted in the Rural Environment and Coastal Environment Zones. The activity is Discretionary in all other Zones. There is also a Prohibited Activity for bore construction or alteration in some specific lakes and rivers in the riverbed activity provisions in the General Rules.
30. A suite of 10 standards apply to the Rural Environment Zone Rule 3.1.17 (Heading 3.3.17) and 7 standards apply to the Coastal Environment Zone Rule 4.1.16 (Heading 4.3.16).
31. There are only submissions on the Rural Environment Rule, and the first Standard associated with each of the rules in each zone. The assessments of those submissions are below.
32. These Permitted activities implement Policy 5.3.12, which reads, *“Enable the construction of bores while recognising that this policy does not authorise the taking of water for any purpose other than bore testing”*. The submissions on Policy 5.3.12 are covered in the s42a report dated 18 January 2019.
33. There are nine submissions<sup>4</sup> that support Rule 3.1.17, and seek its retention as notified.
34. The NZDF submission (992.040) seeks for the Permitted Activity Rule to be added to all zones as they are of the view that to require a resource consent in zones such as Airport, Industrial 1 and Urban Residential 2 is overly onerous.
35. The consideration of which zones should be enabled with Permitted Activity bore provisions was not taken lightly. Previously bores deeper than 5m have required a resource consent and so the move to a Permitted Activity was significant. The potential for contamination of

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<sup>3</sup> 1186.151, 1186.154, 1186.157, 1186.160, 1186.174, 1186.193, 1186.198 and 1186.214

<sup>4</sup> 631.030 (Constellation), 909.049 (Longfield Farm Limited), 1218.049 (Villa Maria), 1242.028 (Yealands Estate Limited), 431.058 (Wine Marlborough), 457.058 (Accolade), 462.019 (BRIL), 473.043 (Delegat Limited) and 484.061 (Clintondale)



water resources every time a hole is punched through the strata is a significant matter to consider. It is considered that in the Rural and Coastal Environment Zones that have lower level contaminants and greater separation from urban type activities that this activity can be permitted, however elsewhere it is considered a consent process should be required to enable an assessment of effects and controls to be placed on the activity. In addition, in many other zones there is not great demand for bores for water abstraction as reticulated municipal supplies are in place. In my view, if a new bore is required in the Airport, Industrial 1 (Woodbourne) and Urban Residential 2 (Woodbourne) Zone areas then, given the potential contamination risk, a resource consent is appropriate.

36. The Pernod Ricard submission (1039.120) on Heading 3.3.17 (Rule 3.1.17) seeks for the provision to be amended to address its concerns. It does not provide any specific relief sought and appears to leave it to the reader of the submission to determine from the reasons what changes it seeks. The reasons indicate concerns about some of the Standards, however beyond giving one example, again is not explicit about the relief sought. The relief sought also indicates that it seeks consideration of a restricted discretionary activity (rather than full discretionary) be considered for more minor breaches.
37. The lack of specificity in the submission regarding concerns with the standards, the specific changes sought and what a minor breach would be, make it difficult to complete an assessment of the submission. Based on the content of the submission, the relief sought is not supported.
38. The Oil Companies submission (1004.035) on Permitted Activity Rule 3.1.17 is the same as the submissions lodged in relation to the geotechnical bore provisions, and the assessment/recommendation is also the same.
39. The following submissions are on Standards 3.3.17.1 (Rule 3.1.17) and Standard 4.3.16.1 (Rule 4.1.16). These standards both read as follows –  
  
*“The bore must not be located:*
  - (a) *within the bed of a river;*
  - (b) *within 8m of the landward toe of a stopbank;*
  - (c) *within 50m of the land application area of any on-site wastewater management system or an offal pit, unless the bore intercepts the confined layer of the Riverlands FMU or the confined layer of the Wairau Aquifer FMU;*
  - (d) *within 50m of the boundary of a property in which the discharge of dairy effluent to land occurs, unless the bore intercepts the confined layer of the Riverlands FMU or the confined layer of the Wairau Aquifer FMU;*
  - (e) *in, or within 8m of, a Significant Wetland.*
  - (f) *within a Groundwater Protection Area”*
40. There is one submission<sup>5</sup> that supports Standard 3.3.17.1(f), and seeks its retention as notified.
41. The P Wilhelmus and Ormond Aquaculture Limited submission (1035.005) and the J Timms submission (475.007) on Standard 3.3.17.1 seek for existing bores and surface takes within a GPA to be able to be altered or maintained. The submitters are of the view that the Plan makes no apparent recognition of the Wairau Valley GPA if the source of recharge is Mill Stream, then the water quality of that stream is impacted upon by upstream non-point source discharges as opposed to the land use practices of Ormond Aquaculture, or that the presence of existing bores within the GPA on which the financial viability of Ormond Aquaculture is dependent and which in all likelihood will require alteration or maintenance in

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<sup>5</sup> 1000.003 (North Rarangi WS)

the foreseeable future; or the ability to undertake excavation in excess of 10m<sup>3</sup> but not intercepting groundwater that would not lead to adverse effects on the GPA.

42. The matters raised in these submissions were traversed in almost identical submissions in relation to excavation in a GPA in the water quality hearing. Please see paragraphs 725, 726 and 728 of the s42a report on Water Quality dated 3 September 2018. The submission was recommended to be rejected on the basis that the relief sought would result in the provisions no longer protecting community drinking water. This assessment, including the advice of Peter Davidson, is also applicable in the context of the submission on bore construction and alteration.
43. The Butt Drilling Limited submissions (575.001 and 575.007) on Standards 3.3.17.1 and 4.3.16.1 seek for the setback in (c) of the Standards to be changed from 50m to 30m. In the submitters view there has been a change in policy on separation distances of effluent fields and such like and it feels this is unworkable as most house sections do not have enough size to allow for these distances and in most rural settings the bore will have to be out in paddocks making them prone to damage from machinery and stock. The submitter's company has drilled some 1500 wells in the Marlborough district with the current 30 metre separation distance and has never heard of contamination in any of these wells.
44. The approach to the activity of constructing or altering a bore as changed under the MEP and, where most bores (all those >5m deep) required a resource consent previously in these zones, it is now a Permitted Activity. This, along with the increased focus on protecting drinking water supplies (including requirements under legislation), means the standards had to be carefully considered given the discretion over setbacks would no longer exist. Through the review process it was determined that a 50m setback for bores would give the required level of comfort that water quality would be protected in a Permitted Activity scenario. Should a lesser setback be desired, a resource consent can be sought.

### ***Recommendation***

45. It is recommended that Rules 3.1.17 and 4.1.16, and associated headings and standards, are retained as notified.

### **Matter 3: Construction of an off-river dam Permitted Activity Rules**

46. Matter 3 includes rules and standards from Chapters 3 and 4 of Volume 2 that relate to the following activity –  
  
*“Construction of an off-river dam.”*
47. This activity is Permitted in the Rural Environment and Coastal Environment Zones. The activity would default to Discretionary in all other Zones.
48. A suite of six standards apply to Rule 3.1.19 (Heading 3.3.19) and Rule 4.1.18 (Heading 4.3.18).
49. These Permitted activities give effect to land disturbance provisions that will have been considered under other hearing topics, however they also support Policy 5.2.20 in Chapter 5 of Volume 1 in relation to encouraging off-river dams.
50. There are three submissions<sup>6</sup> that support Rule 3.1.19, and seek its retention as notified.

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<sup>6</sup> 631.031 (Constellation), 1242.029 (Yealands Estate Limited) and 456.071 (G Mehlhopt)

51. The Pernod Ricard submission (1039.121) on Heading 3.3.19 (Rule 3.1.19) mimics its submission on the bore provisions under Matter 2 above. In this instance the example given in the reason relates to Standard 3.3.19.4, which reads – “*The dam must not be built within 500m upstream of a dwelling, formed public road or designated rail infrastructure*”. The submitter is of the view that this will be difficult to comply with in many areas, and constitutes an unnecessary restriction so it will mean that this standard can often not be complied with.
52. Generally my assessment of the submission on the bore rules above also applies here. With regards to the concerns around Standard 3.3.19.4, I wonder if the submitter picked up on that the Standard applies 500m upstream of these features, not just within 500m of them. This setback has applied under a similar rule in the WARMP, and it is my understanding that, while many off-stream dams are within 500m of, say a road, they are not upstream of the feature and therefore the restriction does not apply.
53. The Davidson Group Limited submissions (172.005 and 172.009) on Headings 3.3.19 (Rule 3.1.19) and 4.3.18 (Rule 4.1.18) seeks for the Council to consider whether additional requirements should be included to ensure that dam safety is adequately addressed. The submitter is concerned that there is no reference under these provisions to dam height, catchment area, hazard classification, surveillance monitoring or the NZ Society on Large Dams Dam Safety Guidelines. The Plan would appear to potentially allow a small-volume High Potential Impact Category dam to be built as a Permitted Activity. A dam of any significant height will be captured by the Building Act, but a small dam on a big highly-ephemeral catchment would not.
54. The submitter may clarify at the hearing but given the example provided, it appears they are referencing the construction of a dam on an ephemeral river, which would not be permitted under these Rules as they only apply to off-river dams. At this time I have recorded the recommendation as “*None – no relief sought*”, as the submission did not specifically seek changes to the provisions.
55. The DOC submissions (479.205 and 479.206) on Rule 3.1.19 and Heading 3.3.19 seeks the removal of Standard 3.3.19.5 and include these activities in the note at the beginning of the Standards. The submitter is of the view that requiring resource consent for the construction of an off river dam, an otherwise permitted activity, should not be triggered by requirement for a consent for a separate land use activity.
56. I am not convinced by the submission that referencing compliance with standards in other Permitted Activity rules, rather than duplicating them, is inappropriate. The submitter may elaborate on its concerns at the hearing.
57. The following submissions are on Standard 3.3.19.1 (Rule 3.1.19), which reads as follows – “*The dam must not be within 8m of a perennially flowing or intermittently flowing river.*”
58. The W Lissaman submission (255.003) refers to the relief sought elsewhere with regards to the definition of “*intermittently flowing*”. It is assumed he is referencing submission point 255.025, which is assessed in paragraphs 1840 and 1841 of the s42a report dates 18 January 2019, please refer to that report in relation to point 255.003 also.
59. The M Chapman submission (348.027) seeks the deletion of this Standard as he is of the view that it is very vague as to what the definition of a river is, a lot of dams could be placed in gullies with intermittently flowing waterways.
60. In my view the Standard is not vague if the definitions are used to assist in understanding the provision, therefore I do not support the relief sought. I also note that the submitter may describing an ephemeral river (i.e. a gully that only has flow after significant rainfall events),

in which case dam construction is a Permitted Activity in the General Rules for Riverbed Activities.

61. The following submissions are on Standard 3.3.19.2 (Rule 3.1.19), which reads as follows –  
*“The dam must not intersect the groundwater.”*
62. The M Chapman submission (348.026) seeks the deletion of this Standard as he is of the view that Marlborough 's future lies in the capture and storage of water. The cheapest form of storage is in dams with the construction of one headwall across a gully.
63. I am not clear on the relationship between the relief sought and the reasons. A headwall constructed in a gully would not intersect groundwater as the activity would not be occurring sub-surface.
64. The G Mehlhopt submission (456.063) seeks the deletion or amendment of this Standard so that dams of 5000m<sup>3</sup> are exempt from this requirement. The submitter is of the view that Rules 2.2.17 and 2.3.16 provide for damming of 5000m<sup>3</sup> of water as a Permitted Activity, however Standard 3.3.19 may require a number of these dams to obtain resource consent. This is an unnecessary requirement for dams of this size when water and does not implement the policies of the MEP which encourage the damming and storage of water.
65. A dam storing 5000m<sup>3</sup> of water would only need a resource consent if it intercepted groundwater. This is an existing restriction carried over from the WARMP, which I understand has not been a significant hurdle for small stock water dams over the past two decades or so. While provision is appropriately made for small stock water dams, it is important to protect the water quality of groundwater resources, many of which are relied on for domestic drinking water supplies. I do not support the relief sought.
66. The following submission are on Standard 3.3.19.4 (Rule 3.1.19), which reads as follows –  
*“The dam must not be built within 500m upstream of a dwelling, formed public road or designated rail infrastructure.”*
67. The M Chapman submission (348.025) seeks the deletion of this Standard as he is of the view that it is unnecessary due to government regulated standards that dams have to be engineered and built to.
68. It is my understanding that not all dams are covered by the Building Act, and given that a Permitted Activity by nature is likely to include activities of a lesser scale, in my view it is appropriate that this Standard remains in the MEP for this activity.
69. The Federated Farmers submission (425.663) seeks that farm dams up to 20,000m<sup>3</sup> are permitted, and that the construction, taking, use, damming and diversion of water in the dam are managed by a single rule. The submitter supports the permitted status of off-river dams, however is unclear how this Rule will interact with General Rules because it seems counter-intuitive that this Permitted Activity Rule for construction of the dam does not also provide for taking, use, damming or diversion of water.
70. The rules for Permitted Activity dams and damming of water were original proposed to be combined, however the overwhelming feedback from the farming community was that they wanted the construction of dams to be separate from the damming of water. In particular, this was sought so that if a resource consent was required for the damming of water but otherwise would not be required for the land use activity, then landowners/developers were able to proceed with the land use/disturbance works while the water permit aspect was going through the resource management process. The risks of that approach were pointed out by Council staff, i.e. what if they ultimately do not get granted a water permit, however with that taken into consideration farmers still wanted the activities provided for separately. In my

view, there are no concerns with this approach and therefore I do not support the relief sought.

### **Recommendation**

71. It is recommended that Rules 3.1.19 and 4.1.18, and associated headings and standards, are retained as notified.

## **Matter 4: Construction of a dam on an ephemeral river Permitted Activity Rules**

72. Matter 4 includes rules and standards from Chapter 2 (General Rules) of Volume 2 that relate to the following activity –

*“Construction of a dam on an ephemeral river.”*

73. This activity is Permitted in the General Rules for activities in, on, over or under the bed of a lake or river.
74. A suite of five standards apply to Rule 2.7.4 (Heading 2.9.4). No submissions were received on the Heading or the Standards.
75. This Permitted Activity loosely supports Policy 5.2.20 in Chapter 5 of Volume 1 in relation to the encouragement of off-river dams really only being in preference to perennially and intermittently flowing rivers.
76. There are four submissions<sup>7</sup> that support Rule 2.7.4, and seek its retention as notified.
77. The K Loe submission (454.052) and Flaxbourne Settlers Association submission (712.011) on Rule 2.7.4 do not appear to make any sense as they read as though the submitters think it is a Prohibited Activity and/or the provision limits the volume of water to be stored – neither of which is the case. The relief sought was deletion/amendment of the Rule, however I expect on reflection this will not be accurate as the Rule is enabling in a manner that is likely to be supported by the submitters.
78. The Nelson Forests Limited submission (990.020) on Rule 2.7.4 supports the retention of the Rules but seeks the addition of Standards for the height of the dam and the volume of impounded water. The submitter is of the view that this is necessary to safeguard both the environment and downstream community.
79. The nature of these dams is that they are damming water on a river that flows only after extreme rainfall events, and as a Permitted Activity, can only store up to 5000m<sup>3</sup> of water. So, if more than that volume is to be stored then any adverse effects can be considered through a resource consent process for the permit to dam water. In addition, the Building Act will apply to dams with walls over a certain height and impounding over a certain volume of water. There is also the Standard requiring a 500m setback for dams upstream of dwellings and key infrastructure. In my view the provision does not require the amendment sought.
80. The Fish and Game submission (509.267) on Rule 2.7.4 seeks the removal of the Rule so it becomes a Discretionary Activity, or that additional standards are added to ensure the effects of the activity can be fully considered. The submitter is of the view that the construction of a

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<sup>7</sup> 1124.055 (S Mackenzie), 1002.125 (NZTA), 455.034 (J Hickman) and 456.034 (G Mehlhopt)

dam on an ephemeral river needs to have controls on the maximum upstream catchment e.g. 20ha.

81. In general, the submission lacks detail in terms of the specific standards sought to be added, except perhaps the example given in the reason. In my view there is no need to limit the catchment size given that only 5000m<sup>3</sup> of water can be dammed as a Permitted Activity, and there are other standards in place, such as setbacks. I am not persuaded by the submission to recommend changes to the Rule.

***Recommendation***

82. It is recommended that Rule 2.7.4, and associated headings and standards, are retained as notified.

## Appendix 1: Recommended decisions on decisions requested

There are submission points that do not seek a specific decision, and for which one cannot be inferred. Due to their nature no recommendation can be made therefore they are labelled "*None – no relief sought*" in the recommendation column of the table.

Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
454.052	K Loe	2	2	Rule 2.7.4	Reject
712.011	Flaxbourne Settlers Association	2	2	Rule 2.7.4	Reject
990.020	Nelson Forests Limited	2	2	Rule 2.7.4	Reject
509.267	Fish and Game	2	2	Rule 2.7.4	Reject
992.040	NZDF	2	2	New Permitted Activity Rules	Reject
1218.049	Villa Maria	2	3	Rule 3.1.17	Accept
1242.028	Yealands Estate Limited	2	3	Rule 3.1.17	Accept
431.058	Wine Marlborough	2	3	Rule 3.1.17	Accept
457.058	Accolade	2	3	Rule 3.1.17	Accept
462.019	BRIL	2	3	Rule 3.1.17	Accept
473.043	Delegat Limited	2	3	Rule 3.1.17	Accept
484.061	Clintondale	2	3	Rule 3.1.17	Accept
631.030	Constellation	2	3	Rule 3.1.17	Accept
909.049	Longfield Farm Limited	2	3	Rule 3.1.17	Accept
1004.035	Oil Companies	2	3	Rule 3.1.17	Accept in part
1004.036	Oil Companies	2	3	Rule 3.1.18	Accept in part
1201.147	Trustpower Limited	2	3	Rule 3.1.18	Accept
1242.029	Yealands Estate Limited	2	3	Rule 3.1.18	Accept
631.031	Constellation	2	3	Rule 3.1.18	Accept
456.071	G Mehlhopt	2	3	Rule 3.1.18	Accept
479.205	DOC	2	3	Rule 3.1.19	Reject
873.123	KiwiRail	2	4	Rule 4.1.17	Accept
425.663	Federated Farmers	2	4	Rule 4.1.18	Reject
873.128	KiwiRail	2	5	Rule 5.1.16	Accept
873.132	KiwiRail	2	9	Rule 9.1.10	Accept

Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
1004.078	Oil Companies	2	9	Rule 9.1.10	Accept
1004.083	Oil Companies	2	10	Rule 10.1.8	Accept
873.151	KiwiRail	2	10	Rule 10.1.8	Accept
1004.092	Oil Companies	2	11	Rule 11.1.4	Accept in part
1004.063	Oil Companies	2	12	Rule 12.1.31	Accept in part
873.138	KiwiRail	2	12	Rule 12.1.31	Accept
873.151	KiwiRail	2	13	Rule 13.1.23	Accept
873.165	KiwiRail	2	17	Rule 17.1.12	Accept
873.168	KiwiRail	2	19	Rule 19.1.9	Accept
1039.120	Pernod Ricard	2	3	Heading 3.1.17	Reject
873.119	KiwiRail	2	3	Heading 3.3.18	Accept
1039.121	Pernod Ricard	2	3	Heading 3.3.19	Reject
172.005	Davidson Group Limited	2	3	Heading 3.3.19	None – no specific relief sought
479.206	DOC	2	3	Heading 3.3.19	Reject
873.124	KiwiRail	2	4	Heading 4.3.16	Accept
172.009	Davidson Group Limited	2	3	Heading 4.3.18	None – no specific relief sought
873.129	KiwiRail	2	5	Heading 5.3.11	Accept
1004.079	Oil Companies	2	9	Heading 9.3.5	Accept
873.133	KiwiRail	2	9	Heading 9.3.5	Accept
1004.088	Oil Companies	2	10	Heading 10.3.5	Accept in part
873.136	KiwiRail	2	10	Heading 10.3.5	Accept
1004.093	Oil Companies	2	11	Heading 11.3.4	Accept in part
1004.071	Oil Companies	2	12	Heading 12.3.20	Accept in part
873.139	KiwiRail	2	12	Heading 12.3.20	Accept
873.152	KiwiRail	2	13	Heading 13.3.12	Accept
873.166	KiwiRail	2	17	Heading 17.3.10	Accept
873.169	KiwiRail	2	19	Heading 19.3.7	Accept
1035.005	P Wilhelmus and Ormond Aquaculture Limited	2	3	Standard 3.3.17.1	Reject
475.007	J Timms	2	3	Standard 3.3.17.1	Reject



Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
575.001	Butt Drilling Limited	2	3	Standard 3.3.17.1	Reject
1000.003	North Rarangi WS	2	3	Standard 3.3.17.1	Accept
348.027	M Chapman	2	3	Standard 3.3.19.1	Reject
348.026	M Chapman	2	3	Standard 3.3.19.2	Reject
456.063	G Mehlhopt	2	3	Standard 3.3.19.2	Reject
348.025	M Chapman	2	3	Standard 3.3.19.4	Reject
575.007	Butt Drilling Limited	2	4	Standard 4.3.16.1	Reject
1186.151	Te Ātiawa	2	10	Standard 10.3.5.2	Reject
1186.154	Te Ātiawa	2	11	Standard 11.3.4.2	Reject
1186.157	Te Ātiawa	2	12	Standard 12.3.20.2	Reject
1186.160	Te Ātiawa	2	13	Standard 13.3.12.2	Reject
1186.174	Te Ātiawa	2	15	Standard 15.3.12.2	Reject
1186.193	Te Ātiawa	2	17	Standard 17.3.10.2	Reject
1186.198	Te Ātiawa	2	18	Standard 18.3.11.2	Reject
1186.214	Te Ātiawa	2	23	Standard 23.3.3.2	Reject
255.003	W Lissaman	2	25	Definition of Intermittently Flowing	Reject