

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of submissions (288) and further submissions (480) by **WINSTONE PULP INTERNATIONAL LIMITED** to the **HORIZONS REGIONAL COUNCIL** on Chapter 6 (water), Chapter 13 (discharges to land and water), Chapter 15 (takes, uses and diversions of water and bores) and Schedule D of the Proposed One Plan

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**SUBMISSIONS ON BEHALF OF WINSTONE PULP INTERNATIONAL  
LIMITED**

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### **Background to submissions and evidence**

1. Winstone Pulp International Limited ('WPI') lodged a submission on the Horizon's Proposed One Plan ('POP') in August 2007. This made reference to a number of provisions in the POP. For the purposes of the hearing today, WPI have focussed on the issues concerning Water – chapters 6, 13, and 15; and Schedule D.
2. WPI filed statements of evidence from Ms Carmen Taylor (planning) and Mr Paul Kennedy (environmental science) in October 2009. As the Panel is aware, Horizon's staff and experts subsequently filed supplementary statements of evidence in response to the evidence filed by submitters. In some instances, the supplementary statements also incorporate the outcomes of caucusing that took place in November 2009.
3. These supplementary statements, and the caucusing report (*Report of a Meeting between Experts: water quality standards*, dated 10 November 2009) include recommended changes to the POP that are consistent with WPI's position. Indeed, provided all of the recommended changes (both arising out of caucusing and contained in supplementary evidence) are accepted by the Hearings Panel ('Panel') and implemented through the POP, a significant part of WPI's substantive concerns will be addressed. However, there are a number of remaining issues that I will outline below, and that our witnesses will speak to.
4. In light of these matters Mr Kennedy and Ms Taylor have prepared supplementary statements that provide the panel with an update of their evidence. The purpose of these supplementary statements is to assist the Panel in focussing on the issues that remain for WPI. These supplementary statements do not introduce any new substantive material – they acknowledge where matters have essentially been resolved and comment on the issues that remain outstanding.

5. We understand that the original statements of evidence are taken as read. We circulated the supplementary statements on Saturday 30 January 2010. As a consequence of the timing of circulation, I suggest that Mr Kennedy and Ms Taylor read their supplementary statements following completion of my submissions, and then answer any questions that the Panel may have.

### **Introduction – Winstone Pulp International – Position on POP**

6. WPI operates a saw mill and pulp mill on State Highway 49 near Ohakune. WPI are users of the region's land, air and water resources and under consents, discharges waste water to the Whangaehu River. WPI have taken part in the submission process on the POP in order to ensure that the provisions of the POP sustainably manage those resources, and particularly the Whangaehu River.
7. WPI generally supports the approach contained in the POP with regard to water resources. However, some specific provisions contained in the POP remain concerning to WPI and these have been addressed by Ms Taylor and Mr Kennedy.
8. In general terms, the fundamental issue for WPI is the POP's management of the Whangaehu River, which has a unique natural state, unlike all other water courses in the region. The water quality values of that part of the River are characterised by the volcanic activity in the area. Therefore, any water quality values or standards incorporated into the POP will have significant implications for WPI in its efforts to gain resource consent for its ongoing operations affecting the Upper Whangaehu. It is submitted that there is a need to acknowledge the unique character of the Upper Whangaehu through the provisions of the POP. (This is detailed later in my submissions).
9. WPI wishes to maintain and build on the positive relationship that it has established with Horizons Regional Council ('Council') and sees today as an opportunity to explain its position on those aspects of the POP that remain contentious for them.

## Remaining Issues

10. In summary, the points that remain in contention for WPI are:
  - (a) The use of the word “standard” throughout Schedule D and the POP, which is contrary to the agreement reached during caucusing and the treatment of water bodies which, in their natural state, are outside the ranges identified in Schedule D;
  - (b) The utilisation of the ANZECC (2000) numeric trigger values within Schedule D;
  - (c) Policy 13-4 and Policy 15-4, including the application of the NES on water takes; and
  - (d) Rule 15-6 regarding activity status.

## Schedule D

11. Mr Kennedy raised a number of concerns in his original evidence in relation to Schedule D and the way it is implemented through the provisions of the POP. Mr Kennedy also had specific concerns with individual water quality standards within Schedule D, including the ANZECC (2000) Guidelines. The specific concerns are highlighted as a list at paragraph 48 of his original statement of evidence.
12. In November 2009, Mr Kennedy took part in caucusing with Keith Hamill, Kathryn McArthur, John Quinn, John Roygard and Robert Willcock. As a result of that caucusing the group reached agreement on a number of points that were raised by Mr Kennedy in his original evidence. However, whether these agreed points have been fully integrated into the POP remains unclear.
13. The remaining issue in relation to Schedule D is the continued use of the word *standards*. This word implies a *bottom line* which must be complied with. Whilst reference to a *standard* may be applicable when assessing a permitted activity status, this is not the case for any other

activity status. It is clear from supplementary statements from Council's officers that these are intended to be standards when applied to permitted activities, but they are to be treated as guidelines or goals when applied to other activities. However, unless this intention is made clear within the provisions of the POP it is difficult to see how it will be implemented consistently over the life of the POP (for example, where there are staff changes and the incoming staff are not aware of the approach set out by Council officers during the course of the hearing).

14. In this regard, paragraph 6 of the report of a meeting between experts on 10 November 2009 records:

*Schedule D (as recommended), Standards Key, Table D.16*

***Issue: Application of the standards and whether they are standards (bottom lines) or targets***

*Matters agreed*

6. *For the purposes of all agreements reached in this meeting it is understood that the standards in Schedule D are targets.*
7. *HRC will refer back to HRC planners that "standards" is not a good term to use in this context and that clarity is needed.*
8. *One way to improve clarity in Schedule D about how the standards will be implemented is to provide reference to the relevant policies and other parts of the plan.*
9. *HRC experts will discuss with HRC planners options for clarifying that standards applied as absolute trigger values for permitted activities will be regarded as targets in other situations (eg resource consents).*

15. It is unknown whether the reference to *standards* has been removed in any subsequent version of Schedule D or related provisions of the POP that is publicly available or otherwise.
16. It is submitted that on the basis of the caucusing agreement all references to the word *standard* in Schedule D should be removed and replaced with an alternative such as *guidelines*, or *goals*. This will lead to, and require,

consequential amendments throughout the POP where reference is made to these “standards”.

### **Special Circumstances**

17. The caucusing report refers to the issue of special circumstances and how those will be dealt with within the plan. It states as follows:

#### ***Issue: Special circumstances***

##### *Matters agreed*

10. *There is a need for consideration of how Schedule D standards and the ANZECC Guidelines will be applied in special circumstances (like the Whangaehu River).*

18. Again, it is unclear whether this issue has been the subject of discussion amongst Council staff. Regardless of whether any discussion has taken place, it is submitted that the following words should be added as an advice note in Schedule D – Standards Key. This would acknowledge the point discussed in Kate McArthur’s supplementary evidence in relation to specific parameters but would ensure that it applies to all relevant parameters where these naturally breach the numerical values that are currently proposed as ‘standards’ in Schedule D:

*The [standards] set out in the above table apply unless the natural levels applying to each standard are already outside the range.*

Alternatively:

*All the values set out in this Schedule apply, unless the natural levels applying to each value are already outside the range.*

### **ANZECC Guidelines (2000)**

19. There are two parts to the concerns WPI have in regard to this issue. The first is how the ANZECC (2000) Guidelines (‘ANZECC 2000’) are used as ‘standards’. The second is the inherent errors contained in the ANZECC 2000 numeric trigger values.

*ANZECC 2000 as ‘standards’*

20. It is inappropriate for the ANZECC 2000 numeric trigger values to be adopted as 'standards' for Schedule D. In summary, the ANZECC 2000 guidelines were never intended to be 'standards'. They are a set of trigger values that where certain values are reached these trigger a management response in regard to a resource. Mr Kennedy discusses this in detail in his original statement of evidence, and in his supplementary statement.

*ANZECC 2000 Revisions*

21. The ANZECC 2000 guidelines are under review because there are significant errors associated with some of the numeric derivations. It is therefore concerning that the POP relies on a set of guidelines as being 'standards' particularly where the numeric values are known to be incorrect.
22. Consequently, the POP will need to be updated when the revision of the ANZECC 2000 guidelines is complete. As such, the POP must address how the revisions will be taken into account in the interim. It is not good planning to rely on a set of external guidelines where it is known that these are under review. This is exacerbated by the fact that there are issues as to the correctness of the existing guidelines. It is difficult to formulate wording that would allow for the updated ANZECC guidelines to replace the current version in the POP without raising issues of the provision being *ultra vires*. As a consequence, WPI does not have a suggested interim solution as it is understood that Council will undertake a variation of the POP when the review of the ANZECC 2000 guidelines are complete.

*Relief sought regarding ANZECC 2000 Guidelines*

23. While the above matters remain a concern for WPI, we consider that the removal of the word "standards" from Schedule D will largely address this concern. This is principally due to the fact that the inference to the fact that 'standards' are bottom lines that must be complied with at all times has effectively been removed.

**Policy 13-4 and Policy 15-4**

24. Pages 10 to 13 of Ms Taylor's original evidence set out WPI's position regarding these two policies. The subsequent supplementary statements of evidence from Ms Clare Barton and Dr Jon Roygard re-state Horizons Regional Council's position that it disagrees with the position stated by Ms Taylor.
25. The issue is referred to at pages 18 and 19 of Ms Barton's supplementary statement, and at page 10 of Dr Roygard's supplementary statement.
26. It is understood that the Proposed NES – and the alternative Regulations referred to by Dr Roygard – set out minimum standards and that a regional council may set higher standards as necessary. WPI does not have an issue with this point.
27. It is the prescriptive nature of policy 13-4 and policy 15-4 that is of concern to WPI. It is submitted that it is unnecessary for the type of device used for monitoring to be prescribed by the policy. It does not follow that the higher standards referred to by Ms Eagle (MfE, quoted in Dr Roygard's evidence) mean that the policy must prescribe the type of device used for monitoring. This approach does not reflect a 'future proof' approach to resource management.
28. Ms Barton's supplementary statement comments that:

*If alternative technology is developed in the future then if required a Plan Change could be undertaken to refer to different technology...*
29. Such an approach to planning is counterintuitive as it creates a provision in the plan that will, with certainty, become outdated within a relatively short time frame. Specifying the type of device used to monitor discharge and water takes does not account for changes in technology that will no



doubt occur in within the next ten years.<sup>1</sup> As members of the panel will be aware, initiating a variation to a plan is an expensive and time consuming process and it is sensible to avoid the need for a plan change where it is possible to do so.

30. Mr Maassen has rightly identified the steps involved in the task of resource management as set out in *Long Bay-Okura Great-Park Society Incorporated v North Shore City Council* (at page 4 of his opening submissions). It is the final step in that process – the framework of objectives, policies and methods that will achieve the purpose of sustainable management – that is relevant within the context of the two policies highlighted above.
31. Section 32 of the Resource Management Act 1991 requires that an evaluation must be carried out by a local authority that examines the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
32. It is submitted that policies 13-4 and 15-4 are not the most efficient or effective means for achieving objective 13-1A, as they build into the POP a need for a variation to the plan within 10 years. This necessity can be avoided through the inclusion of wording that allows flexibility in the application of the policy.
33. It is submitted that the proposed amendments referred to in Ms Taylor’s evidence better reflect an efficient and effective approach to achieving objective 13-1A as it builds in a flexibility that will avoid a plan variation, without compromising the overall policy framework in the POP. We have prepared a tracked change version of the policies for ease of reference.

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<sup>1</sup> Counsel notes the following comments from *Telecom New Zealand Limited v Christchurch City Council* [2003] NZRMA 280 in reference to Council ensuring “that standards or conditions that determine whether a consent is required are defined within the plan, or else reference an external document or definition that is not likely to change or be revoked”. Whilst the policy does not determine whether consent is required, the general intent of this comment is clear. A plan should avoid provisions that rely on a definition that is likely to change.

34. As Ms Taylor has pointed out in her evidence, the words *shall be in general accordance with the following* is not sufficient in practice. In her experience, processing planners do not exercise the discretion that these words afford. It is for these reasons that WPI reiterates the need for amendment to the policies.

**Rule 15-6: Takes of Water not complying with Core Allocations**

35. WPI maintains its position that the activity status for this rule should be discretionary, rather than non-complying. Ms Taylor addresses this issue in paragraph 52(b) of her evidence in chief. Essentially, WPI seeks a more consistent hierarchy of rules moving from controlled to discretionary rather than controlled to non-complying. In this circumstance, Council retains its discretion to grant or decline consent on the basis of effects (including effects on the amount of core allocation available or not). Such an arrangement will provide better certainty for resource users.

**Conclusions**

36. WPI is a resource user in a unique part of the Region. That uniqueness potentially creates challenges when assessing their activities against the provisions of the POP.
37. Following caucusing and the provision of supplementary statements of evidence from Council officers, a significant part of WPI's concerns have been addressed. However, some critical matters remain outstanding and have been discussed through submissions and the supplementary evidence of Ms Taylor and Mr Kennedy. WPI therefore seeks the following relief:
- (a) The removal of the word 'Standards' from Schedule D, and the necessary amendments to references to 'standards' throughout the POP;
  - (b) Add the following words as a note in Schedule D – Standards Key:

*“The [standards] set out in the above table apply unless the natural levels applying to each standard are already outside the range”*; or alternatively:

*“All the values set out in this Schedule apply, unless the natural levels applying to each value are already outside the range”*

- (c) Amend Policy 13-4 and 15-4 as set out in purple tracked change version of the policies provided to the Panel; and
  - (d) Introduction of discretionary activity status in rule 15-6.
38. Ms Taylor and Mr Kennedy will now answer questions from the Panel.

