

Joan Allin, Chairperson Hearings Panels
One Plan Hearings
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26 September 2008

Dear Madam Chair

HORIZONS ONE PLAN – COAST HEARING

We act for Mighty River Power Limited in relation to the Horizon One Plan hearings on the Coast portions of the One Plan.

I appeared before the Hearing Panel to present legal submissions on 12 September 2008. During the course of questioning by panel members I was invited to provide wording to address perceived difficulties with the current wording of Rule 17-39.

I enclose a Memorandum of Counsel addressing that matter.

If you have any questions or concerns in relation to this matter please contact the writer.

Yours faithfully
Cowper Campbell



Michael Moodie
Senior Solicitor

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of the Proposed One Plan notified by
the Manawatu-Wanganui Regional
Council, hearing related to the Coast

MEMORANDUM OF COUNSEL ON BEHALF OF MIGHTY RIVER POWER LIMITED

1. INTRODUCTION

- 1.1 Mighty River Power presented legal submissions and planning evidence at a hearing on the Coast provisions of the Proposed One Plan ("the Plan") on Friday 12 September 2008.
- 1.2 During questioning by the Panel the issue of the wording of Rule 17-39, and in particular paragraph 17-39(b) came up. I indicated that the change to the wording of the Rule proposed in the *Introductory Statement and Supplementary Recommendations of Robin Britton for the Coast hearing* (the Supplementary Recommendations) satisfied Mighty River Power's concerns over the Rule. However, as was acknowledged there remain issues with the wording of paragraph 17-39(b) that we were invited to address, with a view to making the Rule as clear and comprehensive a catch-all as possible.
- 1.3 My understanding of the intent of the Rule is that any activity in the coastal marine area (CMA) that is not classified by one or more of the rules contained in Chapter 17 should be deemed to be a discretionary activity.

1.4 The notified version of Rule 17-39 reads:

Rule	Activity	Classification
17-39 Activities that are not covered by any other rule, or which do not comply with permitted and controlled activity rules	Any activity that either: a) is subject to s 12(1) RMA and is not addressed by any other rule in this Plan, or b) does not comply with one or more conditions, standards or terms of a permitted or controlled activity rule in this chapter, but which is not expressly classified as a discretionary, non-complying or prohibited activity.	Discretionary

1.5 In the Supplementary Recommendations the Rule was changed to read (with new text underlined>):

Rule	Activity	Classification
17-39 Activities that are not covered by any other rule, or which do not comply with permitted and controlled	Any activity that either: a) is subject to s 12(1) RMA and is not addressed by any other rule in this	Discretionary

activity rules	Plan, or <u>aa) is subject to s 12(2) RMA, or</u> b) does not comply with one or more conditions, standards or terms of a permitted or controlled activity rule in this chapter, but which is not expressly classified as a discretionary, non-complying or prohibited activity.	
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1.6 This suggested change means that the Rule now captures occupation of part of the CMA and the removal of sand, shingle, shell or other natural material from land in the CMA. However, there remains potential ambiguity in paragraph (b). Paragraph 17-39(b) could be read as saying that any activity that is not classified by the other rules in the Chapter as permitted, controlled, non-complying or prohibited is deemed to be discretionary; or it could be read as meaning that any activity that would be permitted or controlled (excepting that it does not comply with one or more conditions, standards, or terms for a permitted or controlled activity) and which is not expressly classified as discretionary, non-complying or prohibited is deemed to be discretionary. In my submission this is an issue that should be clarified.

1.7 In my submission this issue could be simply dealt with by amending the wording of Rule 17-39 in the "Activity" column so that the entire activity description reads:

“Any activity in the coastal marine area not specifically classified as permitted, controlled, discretionary, non-complying, or prohibited by any other rule in this chapter.”



MM Moodie

Counsel for Mighty River Power Limited

26 September 2008