

Report No:	REP12-02-08
File No:	R430-6-2
Report Date:	17 February 2012
Decision Required	

REPORT SUMMARY

Report to: Environment & Planning Committee
Meeting Date: Wednesday, 29 February 2012
Report Author: Mary-Anne Baker, Policy Planner

Subject: **UPDATE REPORT: FINAL DECISIONS ON PART IV SUBMISSIONS (SCHEDULE 30)**

EXECUTIVE SUMMARY

This report updates council on the process to date for resolving outstanding submissions on Part IV of the TRMP in relation to decisions yet to be released on Schedule 30

RECOMMENDATION/S

That report REP12-02-08 be received.

DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the Final Decisions on Part IV Submissions (Schedule 30) REP12-02-08 and adopts the recommended process for resolving the outstanding submissions on Part IV of the TRMP as follows:

- **To provide a pre-hearing opportunity for submitters to provide feed-back on a draft supplementary staff assessment report on resolution of submissions on Schedule 30**
- **Provide a second formal hearing opportunity that enables both Council and submitters take into account the results of the research work.**

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Subject: **FINAL DECISIONS ON PART IV SUBMISSIONS
(SCHEDULE 30)**

1. PURPOSE

- 1.1 To update the Council on process and outputs of the work carried out in respect of resolving submissions on Part IV of the TRMP (Variation 68 and Changes 17, 26 & 27)
- 1.2 To seek confirmation of the on-going process required to make final decisions on Schedule 30A of the TRMP.

2. BACKGROUND

- 2.1 The Council notified Part IV for public submissions in February 2010 (Variation 68 and Changes 17, 26 & 27). The amendments introduced provisions to manage the adverse effects of activities in the beds of rivers and lakes. They made consequential changes to Schedule 30A already contained in Part V of the Plan.
- 2.2 Schedule 30A lists water body uses and values and includes management objectives in relation to management of water quantity, which is addressed in that Part of the Plan.
- 2.3 Included in the Part IV amendments were additional policies in Chapter 27 concerning management of the Schedule to give some direction as to how the schedule might be applied when making decisions on application for resource consents. Some additional values/uses were also added to the Schedule, including gold mining, kayaking and indigenous bird habitat, .
- 2.4 Part IV rules refer to uses and values listed in Schedule 30A. In some cases, activities are restricted where specific values are present. For example most bed disturbance activities are not permitted where birds are nesting. In other rules, the matters for discretion refer to the list of values and uses that might be affected by the activity.
- 2.5 Further detail about the particular significance of a value was also given for some uses and values. For example, some of the bird nesting areas were noted as being nationally significant.

- 2.6 A number of submissions both in support and opposition to the changes to the Schedule were made by a number of submitters.
- 2.7 The nature of concerns of some submitters and the coincidental establishment of a national research project considering identification of river uses and values and their management, together led to the Council making interim decisions, The Council resolved not to release decisions relating to the schedule until the research project had progressed further. If necessary it would re-consider the decisions made in the light of the research.
- 2.8 The research project was to include examination of how Schedule 30A assisted water allocation decision-making and could be further developed to assist the management of rivers in Tasman District as a case study.
- 2.9 The results of the case study were to be used to inform decision-making on the submissions on Part IV in respect of the Schedule.

3. PRESENT SITUATION/MATTERS TO BE CONSIDERED

- 3.1 The research project; Freshwater Values Objectives and Monitoring (FVOM) is being managed by Landcare Research with assistance from a number of other organisations including Cawthron Institute.
- 3.2 The programme managers set up a series of workshops with people in the Tasman District having a particular interest in or expertise associated with the management of rivers. Also included were participants with a more national perspective but also having local interests.
- 3.3 The nature and content of the Schedule was the subject of five workshops, which were conducted over several months. A particular aspect considered by the workshop participants was the new RiVAS tool developed for the Council under the leadership of Ken Hughey of Lincoln University. A report on the workshop outcomes and learning is presently being prepared by the researchers and will be available to the Council when complete.
- 3.4 The report will be useful in informing the interim decisions made on Schedule 30A.

4. FINANCIAL/BUDGETARY CONSIDERATIONS

- 4.1 The process requires that Council make its remaining decisions final in respect of the outstanding Part IV submissions. Given the new evidence resulting from the research work, staff are recommending that a further opportunity be provided for submitters to be heard as part of the submission hearing process. It is a second hearing opportunity that departs slightly from normal practice.

- 4.2 While a second hearing opportunity does impose additional costs, the financial considerations are more significant in relation to the subsequent risk of appeal to the Environment Court on decisions made on submissions to Part IV.
- 4.3 Staff consider that a second hearing opportunity that allows all submitters to put their submissions following consideration of the outputs of the research programme, is a more cost effective process that will reduce some (but not all) risk of appeal. A further hearing and pre-hearing process allows opportunity for all parties, including Council, to become familiar with the research findings and issues arising. Staff are proposing a pre-hearing meeting with submitters to consider a reviewed (draft) Staff Assessment Report prior to the formal hearing opportunity by the Council.
- 4.4 Staff note that the RMA Schedule 1 (clause 10) requires that Council release decisions on submissions to any plan change within two years of notification of the change/variation. We consider that resolution by council of the recommendations contained in this report will satisfy the requirements of the Act.

5. OPTIONS

- 5.1 The Council could either:
- (i) proceed straight to confirming and releasing interim decisions already made on Part IV submissions without further input by submitters; or
 - (ii) before finalising submissions on Schedule 30A, provide a pre-hearing opportunity for submitters to provide feed-back on a draft supplementary staff assessment report on the submissions on Schedule 30A as well provide a second formal hearing opportunity that enables both Council and submitters take into account the results of the research work.
- 5.2 Given the risk of appeal, and the value in accounting for the research on water body uses and values, and so the need to repeat parts of the inquiry process that submissions generate, the process recommended by staff is option (ii).

6. SIGNIFICANCE

- 6.1 This is/is not a significant decision according to the Council's Significance Policy because it continues with resolution of issues already identified through the introduction of Part IV to the Plan.

7. RECOMMENDATIONS

- 7.1 That Council adopt the following process for resolving the outstanding submissions on Part IV of the TRMP:

- (i) Before finalising submissions on Schedule 30A, to provide a pre-hearing opportunity for submitters to provide feed-back on a draft supplementary staff assessment report on the submissions on Schedule 30A.
- (ii) Provide a second formal hearing opportunity that enables both Council and submitters take into account the results of the research work before finalising decisions on these submissions.

8. TIMELINE/NEXT STEPS

- 8.1 Depending on the decision made by Council, a supplementary report on resolution of submissions on Part IV is to be prepared taking into account the new evidence provided by the Freshwater; Values Monitoring and Outcomes research project. The report is expected to be completed during February/March 2012.
- 8.2 A draft of the supplementary report will then be circulated to submitters and they will be invited to a pre-hearing meeting to discuss any issues arising.
- 8.3 A final opportunity for re-hearing submitters and confirmation of decisions will then need to be provided by the Committee. This is likely to be sought for April 2012.

11. DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the Final Decisions on Part IV Submissions (Schedule 30) REP12-02-08 and adopts the recommended process for resolving the outstanding submissions on Part IV of the TRMP as follows:

- **To provide a pre-hearing opportunity for submitters to provide feed-back on a draft supplementary staff assessment report on resolution of submissions on Schedule 30**
- **Provide a second formal hearing opportunity that enables both Council and submitters take into account the results of the research work.**



Mary-Anne Baker
Policy Planner