

Appendix 1

TABLE 1 - ADDITIONAL REASONS FOR APPEAL AND RELIEF SOUGHT TO THE PROPOSED TE TAI O POUTINI PLAN

	Provisions	Reasons for appeal (in addition to those set out in paragraph 8 of the Notice of Appeal)	Relief (BDC changes are shown in <u>green underline</u> and red strike through to the decision version of pTTPP)
1.	NOISE - NGĀ ORO		
A.	N-R3.1(iii)	<p>1. The Decisions Version expanded the scope of N-R3.1(iii) by applying acoustic insulation requirements/standards to habitable rooms in “altered” buildings (c.f. only new buildings in the notified Proposed Plan).</p> <p>2. Enlarging the rule to include altered buildings is likely to capture works that do not create new noise-sensitive spaces, do not meaningfully reduce reverse-sensitivity effects, and effectively undermine existing use rights.</p> <p>3. The Respondent therefore erred because the amendment to the rule imposes disproportionate compliance costs unsupported by environmental benefits.</p>	<p>Amend N-P2 to recognise existing lawful activities.</p> <p>Amend N-R3.1(iii) as follows:</p> <p><i>Acoustic Insulation Requirement for New or Altered Buildings for Use by a Sensitive Activity</i></p> <p>.....</p> <p><i>iii. Any new or altered habitable room and/or space used for sleeping within 20m of the edge of the carriageway must be designed, constructed and maintained to achieve vibration limits not exceeding 0.3mm/s (Class C criterion Maximum Weighted Velocity, Vw 95);</i></p>
B.	N-R3.2 N-R3.3	<p>4. The Proposed Plan controls the effects of noise and vibration on sensitive receiving environments through buffers or setbacks (Buffers) (amongst other things).</p> <p>5. The Buffers require noise mitigation treatments to achieve internal noise (N-R3.2.i) and vibration limits (N-R3.3).</p> <p>6. KiwiRail submitted on the Buffers. Its submissions were focussed on adverse health and amenity effects on noise sensitive activities located near rail corridors.</p>	<p>Amend N-R3.2 and N-R3.3 as follows:</p> <p>2. 10040m of the edge of tracks of any railway line except for the Hokitika line where any new or altered habitable room used for a sensitive activity and/or space used for sleeping :...</p> <p>3. 6040m of the edge of the tracks of any railway line, except for the Hokitika line, where any new or altered habitable room and/or space used for</p>

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		<p>7. In response to the KiwiRail submission, the Decision increased the Buffers from 40 metres to 100 metres in N-R3.2 and 60 metres in N-R3.3.</p> <p>8. The Buffers will impact many of the Buller District's established residential areas, including Ngakawau, Granity, Birchfield, Waimangaroa, Westport, Inangahua and Reefton.</p> <p>9. The enlargement of the Buffers was not supported by adequate acoustic analysis and does not account for existing lawful activities, topography, screening, train frequency or operational characteristics of Buller District's rail lines.</p> <p>10. The Hokitika line has been excluded from the operation of those rules. That exclusion should have been also applied to sections on the line as it travels through Westport.</p> <p>11. The Decision did not undertake any, or any adequate, economic analysis of the cost of the enlargement of the Buffers and is therefore incomplete and/or in error.</p> <p>12. The most appropriate response is for the Buffers to be reinstated to the size in the notified Plan.</p>	<p><i>sleeping must be designed, constructed and maintained to achieve vibration limits not exceeding 0.3mm/s (Class C criterion Maximum Weighted Velocity, Vw,95)....</i></p> <p>And any consequential amendments to N-R3.2(iii) and N-R3.3 to reflect the change to N-R3.2 and N-R3.3 (including but not limited to an exclusion for the Westport line in those rules on the same basis as presently provided for the Hokitika line in N-R3.2).</p>
C.	N-P2 and N-R3 (general)	<p>13. The Decisions Version of N-R3 does not represent the most appropriate, efficient, or effective method under s 32 RMA for achieving and implementing the Noise Objectives (N-O1 to N-O3) or implementing the Noise Policies (N-P1 to N-P4).</p> <p>14. In particular (but not limited to):</p> <p style="padding-left: 40px;">a) Extending noise mitigation treatment requirements to all alterations, regardless of scale or effect, is not a</p>	Amend N-P2 and N-R3.1(iii) as detailed above at 1(A).

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		<p>proportionate or appropriate method for protecting health and wellbeing from noise effects (N-O3); and</p> <p>b) The uniform noise and vibration buffers and mandatory insulation standards fail to reflect zone context, sensitivity of the surrounding environment, or actual noise characteristics, contrary to N-P1 and N-P2.</p>	
2. NH NATURAL HAZARDS - NGĀ MATŪ MŌREAREA			
A.	Plan Structure	<p>15. The Natural Hazard Chapter is principally concerned with managing the risk to people and property.</p> <p>16. The Infrastructure Chapter addresses the effects of Infrastructure, as defined in the Proposed Plan.</p> <p>17. The nature of the effects from Natural Hazard Mitigation Structures (NHMS) are similar to those generated by Infrastructure.</p> <p>18. It is appropriate for NHMS to be regulated consistently with Energy, Infrastructure and Transport activities which are not subject to Zone Chapters and general zone rules.</p> <p>19. NHMS serve an equivalent public-good function and are essential for community wellbeing, particularly given West Coast is expected to experience increasing flood and storm-related hazards due to climate change.</p> <p>20. However, NHMS remain subject to “catch-all” zone rules that result in discretionary or non-complying activity status, including in the Residential, Open Space and Port Zones.</p> <p>21. This outcome is inconsistent with the statutory functions of a territorial authority under s 31(1)(b)(i) RMA to control the use of</p>	<p>Remove the provisions relating to natural hazard mitigation structures (NH-R2, NH-R3, NH-R4 and NH-R8) from the Natural Hazards Chapter and insert into the Infrastructure Chapter.</p> <p>Make any consequential amendments to NH objectives and policies, for instance NH-O5, NH-P3, NH-P9, and NH-P12, to ensure alignment with the repositioning of the above rules into the Infrastructure Chapter.</p>

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		<p>land for the purpose of avoiding or mitigating natural hazards, and fails to give effect to the WCRPS.</p> <p>22. Applying non-complying activity status to NHMS in zones where mitigation is essential, for instance in Residentially zoned land where the Westport Flood Protection Scheme is proposed, is not the most appropriate, efficient or effective method under s 32 RMA.</p> <p>23. NHMS are typically designed by technical experts, are required for public safety, and are already subject to regional consent processes. Imposing additional district-level barriers that require mitigation or management of effects to the extent likely required by a non-complying activity status adds costs, delays and duplication.</p>	
B.	Overview NH Chapter	<p>24. The objectives and policies in the Natural Hazards Chapter of the West Coast Regional Policy Statement direct the reduction of susceptibility of the West Coast community and environment to natural hazards (Policy 1) and enables appropriate hazard mitigation measures (Policies 3 and 4).</p> <p>25. The introductory text of the Natural Hazards Chapter and other Plan Chapters should reflect that direction and ensure there is clarity as to the provisions that apply to NHMS.</p>	<p>Insert the following text into the Natural Hazards Chapter:</p> <p><u>The Natural Hazards Chapter contains the objectives, policies and rules for managing Natural Hazard Mitigation Structures – the Area Specific Provisions (Zone Chapters) do not apply to Natural Hazard Mitigation Structures. The Overlay chapters and other District Wide rules do apply where relevant.</u></p> <p>Insert consequential amendments into the Zone Chapters.</p> <p>Insert consequential amendments to the General Approach - Te Huarahi Whānui Chapter: <u>The Infrastructure, Energy, Transport, Natural Hazards, Subdivision and Temporary Activities Chapters operate slightly differently to the rest of the Plan. If you are undertaking any activities relating to infrastructure, energy, transport, Natural Hazard Mitigation Structures, or are wanting to undertake any</u></p>

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			<p><i>temporary activities or subdivide your property, you should start by looking at those chapters first.</i></p> <p><i>These chapters will then refer you to other chapters, as required. The Area Specific Provisions (Zone Chapters) do not apply to the Energy, Transport, and Infrastructure <u>and Natural Hazards</u> Chapters, and the provisions of the Infrastructure Chapter do not apply to Energy Activities.</i></p>
C.	Rule NH-R4	<p>26. Rule NH-R4 controls new NHMS and repairs, maintenance and operation of minor upgrades to, or demolition, of existing NHMS.</p> <p>27. BDC is interested in the activity status of new NHMS.</p> <p>28. The Decisions Version imposed a restricted discretionary activity status for new NHMS.</p> <p>29. BDC seek reinstatement of permitted activity status for new NHMS constructed by a Statutory Agency, subject to appropriate performance standards.</p> <p>30. NHMS located within the Coastal Environment are permitted under CE-R4 (outside the Outstanding Coastal Environment Area), yet the same structures located outside the Coastal Environment attract a more restrictive status under NH-R4. This anomalous outcome does not reflect a coherent or risk-based approach to hazard management and creates internal inconsistency within the Proposed Plan.</p> <p>31. NH-R4 does not implement NH-P3(d), which expressly directs that natural hazard mitigation measures be enabled where they decrease natural hazard risk. Elevating such works to restricted</p>	<p>Amend NH-R4 to reinstate permitted activity status for Natural Hazard Mitigation Structures constructed by a Statutory Agency, subject to appropriate standards (e.g., an engineer’s report), consistent with the Notified Version.</p> <p>Make consequential amendments to all zone provisions to provide for a permitted activity pathway in line with NH-R4.</p> <p>Make any consequential amendments to ensure alignment with the Natural Hazards Chapter, Coastal Environment rules, and Natural Character and Margins of Waterbodies Chapter.</p> <p>In the alternative, delete NH-R4.3:</p> <p><i>It is accompanied by an assessment undertaken by a Chartered Professional Engineer confirming that the natural hazard mitigation structure does not increase the natural hazard risk to other properties or any other lawfully established natural hazard mitigation structure, and this assessment is provided to the relevant District Council 10 working days prior to works commencing.</i></p>

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		<p>discretionary status imposes avoidable consenting hurdles and is inconsistent with the enabling approach in NH-P3(d).</p> <p>32. More broadly, the change in activity status is inconsistent with the functions of a territorial authority under s 31(1)(b)(i) RMA to control land use for the purpose of avoiding or mitigating natural hazards. A rule that delays or complicates delivery of risk-reduction works frustrates, rather than assists, the performance of this statutory function.</p> <p>33. In terms of s 32 RMA, a more restrictive activity status than permitted is not the most appropriate, efficient or effective method. NHMS are already subject to regional consenting processes and technical design standards that address their potential effects. District-level control offers limited additional environmental benefit but significantly increases complexity and cost.</p> <p>34. A permitted activity pathway with standards is a more proportionate method for implementing the NH Objectives and Policies in the Proposed Plan.</p> <p>35. In the alternative, delete NH-R4.3 as that matter is inappropriate for a restricted discretionary activity.</p>	
3.	EW EARTHWORKS - TE HUKE WHENUA		
A.	EW-R1	36. The Decisions Version introduced exceptions to the permitted activity standards for earthworks for mineral extraction, mineral exploration, or mineral prospecting at EW-R1.8.	Amend EW-R1.8 as follows: <i>EW - R1 Earthworks General Standards</i>

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		<p>37. Earthworks for NHMS constructed by a Statutory Agency should likewise not be subject to EW-R1.1, which restricts earthworks to 1.5 m in height within 1.5 m of a boundary. This appears to be an unintended consequence of the rule structure, given that EW-R2.1(vii) expressly provides that earthworks for NHMS are a permitted activity.</p> <p>38. NHMS involving significant stop banks and flood protection walls (including the proposed Westport Flood Protection Scheme) will likely exceed the EW-R1.1 boundary excavation and height limits, meaning the combined effect of EW-R1.1 and EW-R2.1(vii) negates the permitted activity pathway.</p> <p>39. EW-R1.1 is directed at managing localised amenity effects arising from small-scale excavations on individual sites and was not intended to regulate the functional design of major hazard-mitigation infrastructure.</p> <p>40. NHMS are contemplated as permitted activities by EW-R2.2.vii. However, the references to boundaries in EW-R1.1 spatially constrain the application of the permitted activity rule, which, given the nature of NHMS (often straddling multiple properties), frustrates the application of a permitted activity rule.</p> <p>41. NHMS are already subject to relevant overlay chapters (such as the Outstanding Natural Landscapes, High Coastal Natural Character Area and Outstanding Coastal Natural Character Area overlays) which appropriately manage their broader environmental effects. Additional constraint through EW-R1.1 is unnecessary and disproportionate.</p> <p>42. This outcome is broadly inconsistent with the functions of a territorial authority under s 31(1)(b)(i) RMA to control the use of</p>	<p>All permitted activities must comply with the following relevant standards</p> <p>.....</p> <p>8. <i>Rule EW-R1 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting, <u>or Natural Hazard Mitigation Structures constructed by a Statutory Agency.</u></i></p>

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		land for the purpose of avoiding or mitigating natural hazards. NHMS are an essential means of reducing natural hazard risk, and a rule that effectively disables or complicates permitted earthworks for such structures undermines the Council's statutory obligations. It is also inconsistent with ss 5 and 6(h), which recognise that reducing significant natural hazard risk is integral to sustainable management and a matter of national importance.	
4.	LIGHT – NGĀ RAMA		
A.	LIGHT R5	<p>43. The Decisions Version rule text in LIGHT R5 does not include any reference to a “15 kilometres landward of the coastal marine area” distance threshold. The only place this requirement appears is in the heading to the rule.</p> <p>44. District Plan rules have the force and effect of regulations under the RMA. The effect of s 76(2) of the RMA is to make the Legislation Act 2019 applicable to the interpretation of rules, included in a district plan.</p> <p>45. Section 10 of the Legislation Act 2019 requires the meaning of legislation, which includes a rule by virtue of s 76(2) of the RMA, to be “ascertained from its text and in the light of its purpose and its context”.</p> <p>46. Subsections (3) - (4) provide that headings may be considered “indications provided in the legislation”, which may be used as an interpretive aid when determining the text of the rule. However, they do not override the text.</p> <p>47. Relying on a heading to impose a spatial trigger that the rule text does not contain would be inconsistent with the requirement that regulations be clear, certain and within power.</p>	<p>Delete bullet 4 from LIGHT R5 heading, as follows:</p> <p><i>Artificial Outdoor Lighting in the NOSZ - Natural Open Space Zone <u>or</u> SETZ - PREC3 - Coastal Settlement Precinct <u>which are also within the following and-in locations within:</u></i></p> <ul style="list-style-type: none"> • <i>Outstanding Coastal Natural Character Overlay (Schedule Eight);</i> • <i>Outstanding Natural Landscapes Overlay (Schedule Five);</i> • <i>Outstanding Natural Features Overlay (Schedule Six); or</i> • <i>A distance of 15 kilometres landward of the coastal marine area.</i>

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		<p>It means the rule is unclear and uncertain, and may be open to different interpretations.</p> <p>48. BDC seek deletion of the bullet 4 from LIGHT R5.</p> <p>49. In the alternative, if LIGHT-R5 does apply 15 km landward of the Coastal Marine Area, this should be supported by appropriate evaluation under s 32, and be aligned with the objectives, policies and mapped overlays of the Proposed Plan.</p> <p>50. The Decisions Version does not, or does not adequately do this, and therefore it should be deleted.</p>	
5.	ECO ECOSYSTEMS AND INDIGENOUS BIODIVERSITY - NGĀ PŪNAHA RAUOPI ME TE KANORAU KOIORA		
A.	ECO-R1.1(iii)	<p>51. The Threatened Environment Classification (TEC) layer was introduced in the Decisions Version in response to submissions seeking greater clarity in the Plan by mapping the TEC.</p> <p>52. The TEC layer is based on nationally modelled land-cover percentages and identifies areas where indigenous habitat has been lost.</p> <p>53. It does not identify site-specific ecological values, and therefore does not reliably identify areas with indigenous biodiversity values that require regulatory protection.</p> <p>54. Amongst other things, the TEC layer is tied into restrictions under Rule ECO-R1.1(iii) in the coastal environment.</p> <p>55. Applying ECO-R1.1(iii) to Highly Productive Land creates regulatory constraints unrelated to actual ecological risk, contrary to appropriate management of Highly Productive Land and contrary to the direction of the NPS-HPL.</p>	<p>Delete ECO-R1.1(iii), as follows: iii. The indigenous vegetation clearance will not occur in an area of land within category one or two of the Threatened Environment Classification; and</p> <p>Make any consequential amendments to ECO-R9.1(d), CE-R12.1(b), CE-R13(b), CE-R15(k) and CE-R16.1(g) as necessary.</p>

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6.	OVERLAYS		
A.	Coastal Environment Overlay	<p>56. The extent of the Coastal Environment Overlay (CE Overlay) has been significantly expanded in the Decisions Version.</p> <p>57. BDC submitted in support of the CE Overlay in principle but was concerned at the inland extent of the coastal environment and the consequences for land use and development constraints.</p> <p>58. The s 32 report¹ and Decisions Version² indicate that the mapped extent of the Coastal Environment was determined with reference to NZCPS Policy 1. However, despite applying that framework, the resulting boundaries include extensive modified inland areas that may not exhibit the characteristics identified in Policy 1(2) of the NZCPS. Examples of such areas include:</p> <ul style="list-style-type: none"> a) Urban areas of and rural residential areas near Westport, e.g. landward side of Utopia Road, Nine Mile Road south of Westport township; and b) Inland rural land at Karamea and Little Wanganui, which the Decisions Version has included despite their highly modified character and absence of coastal influences or qualities. <p>59. The extent of the CE Overlay does not reflect the NZCPS Policy 1(2) criteria and therefore does not “give effect to” the NZCPS as required by s 75(3)(b) RMA.</p>	<p>Amend the Coastal Environment Overlay by removing the urban area of Westport and moving the boundary in other areas from north of Westport to Karamea to be closer to the Coastal Marine Area.</p> <p>Amend the extent of the Coastal Environment Overlay within inland areas of Carters Beach, Little Wanganui, and Karamea to be closer to the Coastal Marine Area.</p> <p>Remove the extent of the Coastal Environment overlay south of the Westport township, including at Carters Beach, and north of Punakaiki.</p>

¹ Proposed Te Tai o Poutini Plan – Section 32 Evaluation Report Five Natural Environment Values – Ngā Uara Taiao Aotūroa, at paragraph [11.2.2], p. 79.

² pTTPP, CE Coastal Environment Chapter Overview: see ‘Approach to managing the coastal environment’.

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		<p>60. The CE Overlay imposes a rule framework on areas of modified land, including agricultural land and urban environments, that exhibit few or no coastal characteristics.</p> <p>61. The expansion of the CE Overlay results in additional development restrictions, including limits on building height and gross floor area. These constraints now apply to certain rural activities located a considerable distance inland and to urban properties with no functional or natural connection to the coast.</p> <p>62. The s 32 evaluation does not adequately assess the costs imposed on rural production activities by the Decisions Version extent of the CE Overlay and the appropriateness of restrictions on built form in established residential suburbs, or the proportionality of applying coastal constraints to land far removed from the shoreline.</p> <p>63. BDC therefore does not support the Decisions Version CE Overlay.</p>	
7.	CE COASTAL ENVIRONMENT - TE TAIAO O TE TAKUTAI		
A.	CE-R4.2(c)(i)	<p>64. The Decision Version retains a 200m² maximum ground floor area limit for new buildings within the CE Overlay under Rule CE-R4.2(c)(i).</p> <p>65. The ground floor area limit now applies across a significantly enlarged CE Overlay area, including extensive rural land far from the coast and modified inland areas that lack the natural character attributes identified in NZCPS Policy 1(2).</p> <p>66. The 200m² maximum ground floor area limit:</p>	<p>Amend Rule CE-R4.2(c)(i) as follows:</p> <p>c. <i>The gross ground floor area is:</i></p> <p>i. A maximum of 200<u>300</u>m² per building for new buildings</p>

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		<p>a) Prevents typical and necessary rural buildings (e.g. sheds, herd homes, equipment storage) that commonly exceed 200m²; and</p> <p>b) Imposes consenting costs and delays without demonstrable benefit to natural character where no coastal values exist.</p> <p>67. The Coastal Environment Objectives and Policies require:</p> <p>a) Protection of natural character where it exists, particularly within areas of high coastal natural character – see CE-P2, CE-P3;</p> <p>b) A proportionate management approach that reflects actual values – see CE-P5 and CE-P6 (enabling appropriate buildings in modified parts of the coastal environment); and</p> <p>c) Enabling appropriate activities where they do not adversely affect coastal character – see CE-O2, CE-P4, CE-P5 and CE-P6.</p> <p>68. The Proposed Plan already achieves protection of sensitive coastal margins through the High and Outstanding Coastal Natural Character overlays, which apply tighter controls.</p> <p>69. By contrast, the 200m² maximum ground floor area limit in CE-R4.2.c.i:</p> <p>a) Applies equally to remote rural land with no coastal character;</p>	

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		<p>b) Restricts primary production and rural operational buildings that are anticipated in the Rural Zone; and</p> <p>c) Does not align with the policy intent (identified above) to enable appropriate rural use outside sensitive coastal margins.</p> <p>70. This creates an over-inclusive restriction unrelated to the objectives and policies for maintaining natural character where it exists.</p> <p>71. A more appropriate maximum ground floor area limit is 300m² because it reflects the size of typical rural buildings, including houses and rural sheds within the expanded CE, and ensures that routine rural activities are not unnecessarily constrained, while still allowing any effects to be managed through the Proposed Plan's existing design and setback controls.</p>	