

PREFERRED OPTION REPORT TO DISTRICT PLAN COMMITTEE

DATE: 13/02/2018

TOPIC NAME: Rural

SCOPE DESCRIPTION: New and Expanded Dairy Farms and Stock Droving – RU210

TOPIC LEAD: Robert Love

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EXECUTIVE SUMMARY

<i>Issue(s)</i>	<i>Whether Rule 9.11 of the Operative District Plan (Rural Volume) relating to new and expanding dairy farms and stock droving is necessary given that equivalent rules are now contained in the Canterbury Land and Water Regional Plan and the Selwyn District Council Stock Droving Bylaw 2008.</i>
<i>Preferred Option</i>	<i>Option 2 – Remove Policies B2.1.15 and B2.1.16 and associated Rule 9.11 from the Proposed Selwyn District Plan.</i>
<i>DPC Decision</i>	<i>The preferred option (2) was endorsed by the District Plan Committee</i>



1.0 Introduction

The Operative Selwyn District Plan (Rural Volume) contains a small number of policies and rules relating to new and expanded dairy farms. The existing provisions relate specifically to dairy cows in waterways, and the stock droving of dairy cows on a road reserve. The aim of this report is to determine whether the existing provisions remain relevant and necessary in light of similar provisions contained in the Selwyn District Council Stock Droving Bylaw 2008 ('Stock Droving Bylaw') and the Canterbury Land and Water Regional Plan (LWRP).

The provisions of the Operative Plan that are subject to this review are as follows:

- Policies B2.1.15 and B2.1.16 in relation to stock droving;
- Rule 9.11 Activities and New or Expanded Dairy Farms.

The abovementioned provisions, along with any relevant definitions are attached to this report as **Appendix 1**.

This report provides a review of the relevant provisions contained in both the Stock Droving Bylaw and the LWRP, and compares the provisions with the activity standards for new and expanded dairy farms listed in the Operative District Plan. Consultation with key stakeholders on the topic, including the New Zealand Transport Agency (NZTA) and Mahaanui Kurataiao Limited, has been undertaken to further inform the review of the existing provisions. A summary of the comments provided by key stakeholders has been included in Section 6 of this report. Lastly, preferred recommendations have been provided based on the information gathered.

2.0 Summary of Issues

As noted above, the Operative District Plan rules relating to new and expanded dairy farms and stock droving appear to contain some overlap with the intent of the LWRP rules and the Stock Droving Bylaw. Notably, the following provisions may be considered comparable to Rule 9.11 of the Operative Plan:

- Clauses 9 and 10 of the Stock Droving Bylaw; and
- Rules 5.70 and 5.71 of the LWRP.

On that basis, the control of stock droving in the District Plan may now be redundant given the level of control afforded to Council by way of the Stock Droving Bylaw. Additionally, it may no longer be necessary for Selwyn District Council to control new and expanded dairy farms, given that the associated effects are likely to be controlled at the regional level. These issues are explored further throughout this report.



3.0 Background

It is relevant to note that Rule 9.11.1.2 and associated Rules 9.11.5 and 9.11.6 relating to the droving of dairy cows, were initially included in the notified version of the Operative District Plan, before subsequently being removed and then eventually reinstated by way of a Consent Order from the Environment Court (ENV-2006-CHC-000205 and ENV-2006-308-000139, attached as **Appendix 2**).

An equivalent version of the existing rules, albeit with typographical errors and a non-complying activity status, was listed in the notified version of the Operative Plan in the early 2000s. A number of submissions were received in opposition to the rules and the Officer's Report for the topic prepared by Ms Justine Ashley in 2003, recommended that the rules be removed (see Section 8.7 of OR23, attached as **Appendix 3**).

It was on that basis that the Hearing Panel for the District Plan Review made the following recommendation (see Section 9.1.1.7 of D23, attached as **Appendix 4**):¹

We are of the opinion that Rules 1.8, 10.1, 10.2 and 10.3 are unnecessary in that the potential effects from the stock droving of dairy cows for milking purposes are already controlled efficiently and effectively through the enforcement of a bylaw. We therefore recommend that all of those submissions seeking to delete these provisions be accepted.

At the time the recommendation was made, an earlier version of the Stock Droving Bylaw (from 2000) was in effect and is referred to by the Hearing Panel in the above quote. Although, the Bylaw has since been updated, the provisions relating to the droving of dairy cows remain the same.

Rules 9.11.1.2, 9.11.5 and 9.11.6 (then referred to as Rules 1.8, 10.1 and 10.2) were subsequently removed from the Decision version of the District Plan in 2004 as a result of the Hearing Panel's recommendation. However, the removal of the rules become the subject of an appeal from the New Zealand Transport Agency (then known as Transit) who were concerned that the Stock Droving Bylaw did not adequately protect State Highways.

After extensive discussions between NZTA and Council, an agreement was reached to reinstate an amended version of the notified provisions, which are now listed in the Operative Plan. A Consent Order to that effect was subsequently issued on 8 January 2007 (attached as Appendix 2). It was considered by the two parties that the District Plan rules were able to address the cause of the issue of damaged road reserves from dairy crossings, given that the rules restrict extensive dairy development on dispersed blocks. As a result, droving of dairy cows became subject to both the Bylaw, and the District Plan provisions as a restricted discretionary activity.

¹ NB: The Hearing Panel refer to Rules 1.8, 10.1 and 10.2, which are now referred to as Rules 9.11.1.2, 9.11.5 and 9.11.6 in the Operative Plan.



4.0 Review of Selwyn District Council Stock Droving Bylaw 2008

The Selwyn District Council Stock Droving Bylaw came into force on 1 July 2008 with the aim of promoting best droving practices to ensure the safety of stock drovers, animals and other road users.

The clauses of the Stock Droving Bylaw considered relevant to this report are:

- Clause 10 – Additional Provisions Relating to Droving of Dairy Cows for Milking Purposes.
- Clause 9 – General Conditions for Droving of Stock; and

Clause 10 – Additional Provisions Relating to Droving of Dairy Cows for Milking Purposes

Clause 10 of the Bylaw contains a series of provisions that seek to control the regular movement of dairy cows over a road reserve. Of particular note is Clause 10.3, which states:

No road or any part of a road may be used for the purpose of regularly droving dairy cows for milking purposes except with the prior written consent of the Council. Applications for consent must be made in writing using the form in Schedule E, setting out the nature, extent and frequency of the droving.

On that basis, the Bylaw ensures that the regular droving of dairy cows on a road can only be undertaken following approval from Council via a stock droving consent process. A decision on whether to grant a stock droving/dairy crossing consent must be made by Council within 20 working days of receiving the application or receiving any further information that was requested. Furthermore, Clause 10.4 states that:

Where the application relates in whole or in part to a State Highway, the applicant may be required to obtain approval from Transit New Zealand before Council can consider the grant of consent.

It is noted that the above provision outlines that approval 'may' be required from NZTA (formerly Transit) for droving on State Highways, allowing for the Council to use its discretion in deciding whether it is necessary.

Clause 10.5 contains a list of conditions which the Council may impose on any consent granted for the droving of dairy cows. The conditions relate broadly to traffic safety, the protection of road carriageways and the requirement to pay the cost of any damages to the road.

Clause 9 – General Conditions for Droving of Stock

Clause 9 is more broad in that it contains provisions relating to the droving of all stock and not just dairy cows. The provisions generally aim to ensure any stock droving on roads which can be undertaken as of right, occurs in a safe and efficient manner with little disruption to road users.



Clause 9.4 emphasizes that the droving of dairy cows is only permitted with the prior consent of Council in accordance with Clause 10. Clause 9.21 restricts the number of cattle in any one mob on a road to a maximum of 400.

Comparison with Operative Selwyn District Plan Provisions

Clauses 9 and 10 of the Stock Droving Bylaw are considered to be comparable to Rule 9.11.1.2 of the Operative Plan, which allows for new or expanded dairy farms, provided the activity takes place “on land which is adjoining to that of the milking shed.”

The intent of the District Plan standard is to discourage dairy farms from relying on a road reserve for regular stock droving purposes given the potential damage to the road carriageway, as well as adverse effects on traffic safety. Non-compliance with the standard is a restricted discretionary activity as per Rule 9.11.5 and is subject to the discretionary matters listed under Rule 9.11.6.

Rule 9.11.1.2 and associated Rules 9.11.5 and 9.11.6 have been formulated to satisfy Policies B2.1.15 and B2.1.16 of the Operative Plan which seek to:

Promote stock droving practices that are safe, controlled and alert motorists that stock are ahead and which minimise disruption to traffic flow;

And

Require dairy farms to have alternative access for milking herds to milking sheds other than along formed, legal road reserves.

The Plan provides an explanation for the latter policy, reasoning that the droving of dairy herds requires specific controls as “they have the greatest effect on the road reserve due to the frequency of stock movements.”

Similarly, it is noted that Clause 10.3 of the Stock Droving Bylaw also allows Council to control the droving of dairy herds on legal road reserves by requiring an application for written consent prior to any such activity being undertaken. Pursuant to Clause 10.5 of the Bylaw, Council are then able to implement a number of conditions in granting consent in order to protect the road carriageway and ensure adequate traffic safety measures are implemented. In this regard, the Stock Droving Bylaw effectively satisfies the direction sought by Council through Policies B2.1.15 and B2.1.16 of the District Plan.

On that basis, it is considered that both the Stock Droving Bylaw provisions relating to dairy cows and the stock droving provisions listed under Rule 9.11 of the District Plan seek to control the same effects through very similar methods. It is therefore considered more efficient to remove the stock droving provisions contained in the District Plan and allow for the droving of dairy cows to be controlled by way of the consent process prescribed in the Stock Droving Bylaw 2008.



5.0 Review of Canterbury Land and Water Regional Plan

The Canterbury Land and Water Regional Plan was made operative in stages, with the rules relating to the exclusion of stock from waterbodies becoming operative on 1 September 2015. The particular provisions of the LWRP considered relevant to this scope of work are Rules 5.70 and 5.71 which aim to prevent intensively farmed stock (including dairy cows) from entering waterbodies.

Specifically, Rule 5.70 outlines that:

the use and disturbance of the bed (including the banks) of a lake, a river that is greater than 1 m wide or 100 millimetres deep (under median flow conditions), or a wetland, by intensively farmed stock and any associated discharge to water is a non-complying activity.

As dairy cows are included in the definition of 'intensively farmed stock', the rule prevents them from being allowed to enter waterbodies without a level of control first being implemented by Environment Canterbury in relation to any potential adverse effects. The non-complying activity status ensures all potential effects can be considered in deciding whether to grant consent.

Furthermore, it is noted that Rule 5.71 prohibits the presence of farmed cattle in waterbodies within the following areas:

- 1) *In a salmon spawning site listed in Schedule 17, or in any inanga spawning habitat; or*
- 2) *Within a Community Drinking-water Protection Zone as set out in Schedule 1; or*
- 3) *Within 1,000 m upstream, in the bed of a lake river, of a fresh water bathing site listed in Schedule 6; or*
- 4) *In the bed (including the banks) of a spring-fed plains river, as shown on the Planning Maps.*

Chapter 11.5 of the LWRP contains rules which are specific to the Selwyn-Te Waihora sub-region. Of particular note is Rule 11.5.20 which is listed as an addition to Rule 5.70 and ensures drains which contain water are included in the definition of 'waterbody' under that rule. Furthermore, Rule 11.5.22 provides an additional condition to be read in conjunction with Rule 5.71, being that the presence of farmed cattle in waterbodies in the Cultural Landscape/Values Management Area is a prohibited activity.

In summary, Rules 5.70 and 5.71 ensure that dairy cows cannot enter a waterbody as of right. Any proposal to undertake an activity of that nature must first be the subject of a resource consent. Rule 5.71 ensures dairy cows are prohibited from entering waterbodies in particularly sensitive locations.



Comparison with Operative Selwyn District Plan Provisions

Rule 9.11.1.1 in the Operative Plan seeks to exclude dairy cows from all land within 10m of any waterbody on new and expanded dairy farms to ensure any new dairy activities do not compromise the quality of waterways. Where compliance can't be achieved, the activity is restricted discretionary as per Rules 9.11.3 and 9.11.4. In addition, Rule 9.11.2 restricts dry dairy cows on separate off-farm land from entering waterways.

In this regard, the provisions contained under Rule 9.11 of the District Plan and Rule 5.70 of the LWRP are considered to be comparable in that they both seek to exclude dairy cows from waterbodies for the betterment of water quality in the District.

It is noted that Rule 9.11.1.1 of the District Plan requires dairy cows to be set back 10m from waterbodies, while the LWRP rule does not provide a specific setback distance. Notwithstanding, the LWRP standard relates to the bed of a waterbody and its banks. On that basis, while a setback distance is not specified, dairy cows are prevented from locating in any part of a waterbody or on the immediately surrounding land (namely the banks of the waterbody) without a resource consent.

An additional matter to consider is whether the continued use of the existing rules in the Proposed District Plan would be able to satisfy the requirements for what can be included in district plans, as specified in section 75 of the Resource Management Act. Of particular relevance is section 75(4)(b) which states that a district plan cannot be inconsistent with a regional plan.

In this regard, it is noted that Rules 5.70 and 5.71 of the LWRP provide a more stringent level of control in relation to the exclusion of dairy cows from waterbodies when compared to the equivalent rules in the District Plan. The LWRP requires a non-complying activity status for proposals that allow dairy cows to enter waterbodies, while any such activity within a sensitive location (as listed under Rule 5.71) is prohibited. As such, provided the activity is not prohibited by Rule 5.71, any resource consent application to allow dairy cows to enter waterways would require substantiated detail and would be subject to a consideration of all of the potential effects on the environment.

Comparatively, the District Plan standards relating to stock exclusion require a restricted discretionary activity status for proposals relating to the location of dairy cows within 10m of a waterbody.² Any subsequent assessment of the proposal is restricted to the consideration of the potential effects on natural character and indigenous biodiversity, as well as any mitigation measures proposed. On that basis, the level of control over stock exclusion provided for by the

² The District Plan appears to contain a typographical error in Rule 9.11.3, meaning the activity status of Rule 9.11.2 relating to exclusion of dry dairy cows from waterbodies is unclear. Rule 9.11.3 lists activities which do not comply with Rule 9.11.1.1 and *Rule 9.11.1.2* as being restricted discretionary activities. However, the status of activities which do not comply with Rule 9.11.1.2 is again referred to in Rule 9.11.5, while the status of any non-compliance with Rule 9.11.2 is not referred to at all in the Plan. It is therefore anticipated that Rule 9.11.3 should refer to Rules 9.11.1.1 *and 9.11.2* as restricted discretionary activities.



District Plan standards is not considered to be consistent with the LWRP. Therefore, the standards are not able to satisfy the requirements of section 75(4)(b) of the RMA.

Taking into account the above discussion, it is considered that the exclusion of dairy cows from waterbodies is adequately controlled through the stringent provisions of the LWRP. On those terms, the comparable stock exclusion provisions listed under Rule 9.11 of the District Plan are no longer considered necessary, as the LWRP should become the sole planning instrument for the control of stock near waterbodies in the Selwyn District.

6.0 Summary of Stakeholder Engagement

Consultation has been undertaken with key stakeholders in order to better understand the potential effects of new and expanded dairy farms on waterways and the stock droving of dairy cows on public roads. Furthermore, the consultation sought comment from stakeholders as to whether they felt it reasonable to remove Rule 9.11 and associated policies from the District Plan, so as to avoid duplication with the LWRP and the Stock Droving Bylaw.

The following key stakeholders were contacted via email for comment:

Stakeholder	Contact & Position
SDC Consents	Emma Larsen, Team Leader Resource Consents
SDC Monitoring & Enforcement	Billy Charlton, Regulatory Manager
SDC Roding Department	Mark Chamberlain, Assets Engineer Transportation
SDC Animal Control Department	Steve Clarke, Senior Animal Control Officer
New Zealand Transport Agency	Caroline Hutchison, Principal Planning Advisor
Mahaanui Kurataiao Limited	Lizzie Thomson, Environmental Advisor
DairyNZ	Charlotte Wright, Senior Policy Advisor
Federated Farmers	Kim Reilly, South Island Regional Policy Manager

Table 6.1 – Key stakeholders.

Of those parties consulted, a reply was received from the following stakeholders:

- SDC Consents;
- SDC Roding Department;
- Mahaanui Kurataiao Limited (on behalf of Te Taumutu Rūnanga and Te Ngāi Tūāhuriri Rūnanga);
- DairyNZ

Notably, the SDC Consents Team were in favour of removing Rule 9.11 and associated policies. In terms of the requirement to exclude dairy cows from waterbodies, the Consents Team considered that *“if the issues are covered by the LWRP we don’t need [Rule 9.11] in the District Plan.”* The



Consents Team also felt that *“the bylaw covers [stock driving] for Council controlled roads”* and didn’t believe they had ever processed a consent under Rule 9.11. The team did raise a question in relation to whether the bylaw was adequate to address stock driving on State Highways. However, NZTA were consulted and a reply was not received.

DairyNZ were also in favour of the removal of the existing rules, noting that it *“removes unnecessary duplication so that farmers have greater clarity on their requirements through having only one set of rules to comply with.”* DairyNZ believed controls over the use of water by farmers would continue to be covered by the LWRP.

The SDC Roothing Department raised some concern in relation to the removal of the stock driving rules from the District Plan, noting that the department had dealt with issues due to dairy cows being driven across roads (mainly from mud and a lack of signage). On that basis, the Roothing Department were of the view that *“the District Plan can control the land use and deter farmers from having separate parcels used for dairy that would result in the stock being driven along the road. The bylaw then controls the resulting droving activity.”*

Notwithstanding, the department acknowledged the Stock Droving Bylaw as an adequate control. Whilst the Roothing Department’s comments are valid, it is noted that the Stock Droving Bylaw requires consent from Council *before* any dairy cows can be driven on a road carriageway. This allows Council to adequately control the droving of cattle on the road carriageway and prevent it from occurring if it is deemed to have adverse effects.

Comment was also obtained from Te Taumutu Rūnanga and Te Ngāi Tūāhuriri Rūnanga (via Mahaanui Kurataiao Limited). Te Taumutu Rūnanga stated that they were comfortable with the removal of the existing provisions, although they wanted to ensure that no activities would be missed as a result. Te Ngāi Tūāhuriri Rūnanga were not in favour of the rules being removed and preferred that they remain in the District Plan so that the related activities could be subject to *“more consideration/recognition.”*

In summary, there was a mixed response from key stakeholders in relation to the potential removal of Rule 9.11 and associated policies. While valid points have been raised by both the Roothing Department and the local rūnanga, from a planning perspective it is considered that the removal of the rules would allow for a simplification of the planning process and at the same time, the issues raised by stakeholders would be adequately addressed via the Stock Droving Bylaw and the LWRP provisions.

7.0 Summary of Options to Address Issues

7.1 OPTION 1

Option 1 is to keep the status quo. This would result in Policies B2.1.15 and B2.1.16 and associated Rule 9.11 in the Operative Plan being inserted into the Proposed Plan.



Effectiveness in Addressing Issue:

Option 1 would not be effective in addressing the issue of overlap between the current District Plan rules and the Stock Droving Bylaw. As a result of this option, any person wanting to regularly drive dairy cows over the road reserve would need obtain consent from Council under both the District Plan and the Bylaw. Similarly, the option would provide for the continued overlap between the District Plan provisions relating to the exclusion of dairy cows from waterways and the equivalent LWRP provisions.

Risks:

The most prominent risk is that the option would result in unnecessary planning controls, which would add to the time and cost for any landowners wanting to establish or expand a dairy farm.

Budget or Time Implications:

There would be very few budget or time implications given that the existing rules package would be carried over into the Proposed Plan with very few edits or additions.

Recommendation:

It is recommended that Option 1 is not adopted in developing the Proposed Selwyn District Plan.

7.2 OPTION 2

Option 2 is to remove Policies B2.1.15 and B2.1.16 and associated Rule 9.11 from the Proposed Plan and allow stock droving and new and expanded dairy farms to be controlled by the Stock Droving Bylaw and the LWRP provisions.

Effectiveness in Addressing Issue:

Option 2 would allow for a simplification of the planning process, whilst ensuring that stock droving continues to be suitably controlled by Council through the bylaw mechanism. Furthermore, the option would provide for the environmental effects of dairy activities on waterways to be controlled by a single planning document (namely, the LWRP) under the jurisdiction of the Regional Council.

Risks:

As noted in Section 4 of this report, the Stock Droving Bylaw outlines that approval 'may' be required from NZTA (formerly Transit) for droving on State Highways, allowing for the Council to use its discretion in deciding whether it is necessary. This poses a risk if Council did not use their discretion appropriately.

Budget or Time Implications:

There would be very few budget or time implications.



Recommendation:

It is recommended that Option 2 is adopted and the existing provisions in the District Plan relating to new and expanded dairy farms and stock droving are removed.

8.0 Preferred Option

Based on the information contained within this Preferred Option Report, including a comparison of the Operative Plan provisions relating to new and expanded dairy farms with the relevant provisions in the Stock Droving Bylaw 2008 and the Canterbury Land and Water Regional Plan, as well as matters raised via consultation with key stakeholders, Option 2 is considered to be the preferred option. As per Option 2, the following recommendations are made:

- Remove Policies B2.1.15 and B2.1.16 in relation to stock droving;
- Remove Rule 9.11 in relation to activities and new or expanded dairy farms;
- Allow the regular droving of dairy cows within the District to be entirely controlled by the Selwyn District Council Stock Droving Bylaw 2008;
- Allow the exclusion of dairy cows from waterways to be entirely controlled by Environment Canterbury via the Canterbury Land and Water Regional Plan.



Appendix 1

Relevant Selwyn District Plan Provisions



Definitions

Term	Definition
Adjoining	<i>includes any land which is physically attached or separated by road, railway, vehicular accessway, easement, water-race or drain, or a river or stream which has a formed bed of not more than 3 metres in width.</i>
Waterbody	<i>means fresh water or geothermal water in a river, lake, stream, pond (but excluding any artificial pond), wetland or aquifer or any part thereof that is not located within the coastal marine area. The terms "river", "lake" and "wetland" are also defined in this Plan.</i>

Chapter B2 – Physical Resources

Reference	Policy
Policy B2.1.15	<i>Promote stock droving practices that are safe, controlled and alert motorists that stock are ahead and which minimise disruption to traffic flow.</i>
Policy B2.1.16	<i>Require dairy farms to have alternative access for milking herds to milking sheds other than along formed, legal road reserves.</i>

Rule 9.11 – Activities and New and Expanded Dairy Farms

Permitted Activities

- 9.11.1 The establishment of, or any extension to, any dairy farm is on land shall be a permitted activity where the following conditions are met:
- 9.11.1.1 – All dairy cows are excluded from all land within 10m from any waterbody (excluding aquifers).
- 9.11.1.2 – It is on land which is adjoining to that of the milking shed

Notes:

Dairy farm means all the land used to support a dairy milking platform but excludes separate off-farm land areas used to graze dry dairy cows.

Rule 9.11.1.1 applies to the conversion of new land to dairying and for both grazing and droving of dairy cows; it does not include land which is used for grazing beef herds.

For Rule 9.11.1.2 expanding dairy farms include dairy farms which are expanding through an increase in herd numbers or an increase in land area.

Rule 9.11.1.2 does not apply to land which is used for grazing dry herds.

Adjoining is defined in Part D of the Plan and includes any land which is separated by a road, easement, water race or drain.

Where stock access is across a State Highway, Transit must be consulted.



- 9.11.2 All dry dairy cows on separate off-farm land areas shall be excluded from any waterbody.

Restricted Discretionary Activities

- 9.11.3 Any new or expanded dairy farm or off-farm dairy grazing activity that does not comply with Rule 9.11.1.1 or Rule 9.11.1.2 shall be a restricted discretionary activity.
- 9.11.4 Under Rule 9.11.3 the Council shall restrict its discretion to consideration of:
- 9.11.4.1 – The effect on natural character and indigenous biodiversity;
- 9.11.4.2 – Any mitigation measures to prevent or reduce animal access to the waterbody or its riparian margin.
- 9.11.5 The establishment of any new dairy farm or any extension to an existing dairy farm which does not comply with Rule 9.11.1.2 shall be a restricted discretionary activity.
- 9.11.6 Under Rule 9.11.5 the Council shall restrict its discretion to consideration of:
- 9.11.6.1 – The proposed method to move dairy cows between grazing areas and milking sheds;
- 9.11.6.2 – Traffic safety;
- 9.11.6.3 – Any positive effects which may offset any adverse effects; and
- 9.11.6.4 – Any monitoring or review conditions.



Appendix 2

ENV-2006-CHC-000205 and ENV-2006-308-000139



Appendix 3

Officer's Report 23 to the District Plan Hearings Panel, 25 July 2003



Appendix 4

Decision 23, Recommendations of Hearing Panel

