

IN THE MATTER

of the Resource
Management Act 1991
(RMA)

AND

IN THE MATTER

of the Environment
Canterbury: Proposed
Canterbury Land &
Water Regional Plan
(PCLWRP)

TO BE HEARD BY

Canterbury Regional
Council

HEARING DATE

20 May 2013

**Statement of Evidence of Christopher Adrian Hansen on Behalf of
the Hurunui Water Project**

4 February 2013

Introduction

1. My name is Christopher Adrian Hansen and I am a Director and Senior Planning Consultant with Chris Hansen Consultants Ltd. My qualifications are a Bachelor of Regional Planning (Hons) from Massey University (1980). I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Assoc. I have over 30 years' experience in planning and resource management.
2. I have particular experience in the review and assessment of regional plans and the preparation of submissions, attendance at hearings providing expert planning evidence, and in mediation to resolve appeals.
3. I provide the following statement of evidence in support of the submission and further submission lodged by the Hurunui Water Project (HWP) to the Proposed Canterbury Land & Water Regional Plan (PCLWRP/proposed Plan). I assisted HWP to prepare its submission(s).
4. I have read the Code of Conduct contained in the Environment Court's Practice Notes for Expert Witnesses and agree to comply with it.

Outline of Evidence

5. My approach today is to provide you with an overview of the planning matters raised by HWP, and the relief they sought. I will also comment on the Officer Report's recommendation on that relief.
6. I note that the hearings on the PCLWRP are divided into 4 groups, and my evidence today relates to Hearing Group 1 and in particular the following matters:

Plan Structure

Chapter 1 – Section 1.1.1; 1.2.6

Chapter 2 (excluding definitions) – Section 2.9

Objectives 3.5; 3.6; 3.7; 3.8; 3.9; 3.10; 3.21; 3.22

Strategic Policy 4.8

Discharges

Rules 5.55 – 5.58

Water Takes

Policy 4.52

Policy 4.53

Policies 4.66 – 4.70

Policy 4.76

Beds of Lakes and Rivers

Rules 5.112 – 5.121

Vegetation and Soil (incl. wetlands)

Policy 4.15

Rules 5.147 - 149

Miscellaneous

Definitions that do not fit into topics above

Plan Structure

Plan Provision: Section 1- Introduction, Issues and Major Responses (Page 1-1)

7. **Submission:** HWP expressed concerns regarding the description of issues in Section 1. HWP considered that while this section identifies the importance of resources such as fresh water and land and the need to protect them, there is no such recognition of the need to provide for use of these resources sustainably such that economic growth, social and cultural wellbeing are provided for.
8. HWP considered that a major issue impacting on the management of Land and Water resources in the Canterbury Region is the need to manage resources, while at the same time provide for economic growth and development, and this issue should be clearly acknowledged.
9. HWP sought the inclusion of an additional issue arising from the need to manage land and water resources while providing for economic growth and development, including social and cultural wellbeing.
10. **Officer Report Comment and Recommendation:** There is no reference to HWP's submission, and no additional issue included.
11. **Comment:** In my view, the matter raised by the submitter is the very purpose of the Resource Management Act (the Act) which is to promote the sustainable management of natural and physical resources. This is about managing the use, development and protection of natural and physical resources in a way, or at a rate, that enables people and communities to provide for the social and economic and cultural well-being.

12. In essence, this is at the very core of what the CRC needs to address in the proposed Plan in the context of the guidance given through the provisions of Part II of the Act, other relevant parts of the Act (including the s.32 evaluation), and key planning documents such as the NES for Freshwater Management and the Canterbury RPS. In my view, the need to address this matter should be clearly acknowledged in the proposed Plan.
13. This challenge is not an either/or exercise. The challenge is to get the right ‘balance’ for the Canterbury community between the need to manage natural and physical resources while at the same time enabling for economic growth and development (which enables social and economic well-being). The proposed Plan rightly includes provisions to manage the sustainable management of natural and physical resources, but fails, in my view, to recognise the need to enable economic growth and development. For example, in my view there is insufficient detailed analysis of the potential economic impact of restrictive limits/provisions resulting from this plan.
14. **Recommendation:** I recommend the Commissioners amend Section 1.1.1 to include as an issue the need to enable social and economic well-being, and a response that demonstrates how economic growth and development is to be promoted through the proposed Plan provisions. This response needs to be supported by a robust s.32 evaluation of the benefits and costs of the particular proposed Plan provisions (policies, rules or methods).

Plan Provision: 1.2.6. Managing new and existing Activities (Page 1-6)

15. **Submission:** HWP noted that it is stated in the 5th sentence of this section that when resource consents for infrastructure (irrigation and hydro-electricity schemes) expire, the activity must be assessed as if new, even when there is no practical alternative to continuing using the existing infrastructure. HWP considers that Part 104(2A) of the RMA is relevant, as it states that: “*the consent authority must have regard to the value of the investment of the existing consent holder*”.
16. HWP sought for Part 104(2A) of the RMA that states that “*the consent authority must have regard to the value of the investment of the existing consent holder*” to be added to the 5th sentence of this section.

17. **Officer Report Comment and Recommendation:** Clarification of wording is supported and the following change recommended: *“For applicants seeking a replacement consent, the RMA provides particular recognition through sections 124-124C and s104(2A) which states that the consent authority must have regard to the value of the investment of the existing consent holder.”*
18. **Comment:** I support the Officer Report recommendation and the additional words to be added to Section 1.2.6.
19. **Recommendation:** I recommend the Commissioners accept the Officer Report recommendation and amend Section 1.2.6 accordingly.

Plan Provision: 2.9 Relationship with other regional plans controlling land and water (Page 2-3)

20. *“...Any objective, policy or rule on the same subject matter in the Proposed Hurunui and Waiau River Regional Plan prevails over the objectives, policies and rules contained in this Plan.”*
21. **Submission:** HWP supports the clarification given in this section. Notwithstanding this, later in this submission HWP seeks clarification regarding whether the rules of the PHWRRP prevail over the PCLWRP rules where the subject matter is not well defined.
22. **Officer Report Comment and Recommendation:** While not specifically recognising HWP’s submission, the Officer Report identifies that the relationship with other regional plans that is detailed in Section 2.9 has received a number of specific submissions, generally seeking clarifications. The Officer Report goes on to state: *“The detail of relationships with other plans will continue to be subject to some interpretation, particularly where there are partial overlaps in rule frameworks or rules triggered by different criteria. This is a particular difficulty in relation to the Proposed Hurunui Waiau River Regional Plan that is currently under development, as there is not yet certainty as to the objective, policy and rule framework being developed.”* The Officer Report goes on to state: *“At a more specific level, it is anticipated that there will be a far greater level of cross-referencing between Section 5 and Sections 6 to 15, and between the pLWRP and other regional plans. This will hopefully provide a high level of clarity as to which*

policies and rules apply in different circumstances.” No amendment is recommended to address this matter.

23. **Comment:** I consider this is a critical issue for HWP and for the Waitohi Irrigation and Hydro Project which it has already lodged consents for. I welcome the Officer Report suggestion that cross-referencing between the PCLWRP and other regional plans is proposed, and that this will provide some clarity. However, without any cross-referencing recommended in the Officer Report, I am still concerned about this matter. In particular, at a general level I am concerned if there is the possibility of interpretation between the rule provisions of the PCLWRP and PHWRRP, and the Officer Report recognising that this matter is ‘... *subject to some interpretation...*’ verifies my concern. In addition, HWP has raised a concern regarding the term ‘*on the same subject matter*’. The reason for this concern is because the potential for interpretation is heightened if the subject matter the rules apply is not well defined. I interpret the term ‘*subject matter*’ to relate to the activities that the plan may wish to control in order to manage effects. However, a particular activity, such as HWP’s Waitohi Project, has a number of aspects relating to the taking, using, diverting and discharge of water, and the subsequent changes in land use that may arise from the availability of water from the irrigation scheme that means defining the ‘*subject matter*’ is complicated. Determining which plan provisions apply is therefore difficult.
24. For example, the PHWRRP has rules relating to the cumulative effects on land use that do not take effect until 1 January 2017 (although this may change through the decisions to make these rules relevant when the Plan becomes operative). Should the PHWRRP rules remain as they were in the notified Plan, will the PCLWRP rules relating to land uses apply until the PHWRRP rules take effect? Another example relates to discharges. The PHWRRP clearly states in the Scope of the Plan (Page 1) that it applies to the discharge of water (in accordance with section 15(1) of the Resource Management Act) for non-consumptive uses, with non-consumptive uses being defined as: “*Is an activity where water is taken and discharged back to the water body in the same or better quality and at the same or similar rate.*” Does that mean that all consumptive uses are subsequently covered by the PCLWRP? Clarity on

these types of situations is what HWP was hoping to gain from the Officer Report. Several other examples are provided below in this evidence.

25. As an aside, the project approvals are made even more complex when the boundaries of plans do not align. For example, the physical area covered by the PHWWRP does not align with the Hurunui sub-region included in the PCLWRP. In this case there are potentially three different sets of plan provisions covering various parts of the HWP's project command area.
26. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan, including cross-referencing of the PCLWRP with other regional plans, and defining what the '*subject matter*' the PCLWP addresses as opposed to the other regional plans, in order to provide clarity regarding which rules apply.

Plan Provision: Objectives (Page 3-1/2)

27. **Submission:** HWP made the following 'high-level' submission points:
- It would be helpful if there was an indication of which policies implement the Objectives;
 - There are a variety of terms/phrases used in the Objectives that are undefined and may be emotive – these include: '*respect*'; '*embracing*'; '*protected*', '*are suitable for use by*', '*good practice*' – it would be helpful to have such terms/phrases either deleted or replaced with RMA terms. Other terms that place an importance on a resource such as '*outstanding*', '*significant*', '*high quality*' also need reference to either schedules or assessments that verify such an importance.
28. HWP sought for the above matters to be addressed through amendments to the proposed Plan – some recommended amendments are outlined in its submission.
29. **Officer Report Comment and Recommendation:** In relation to the first bullet point, the Officer Report States (Page 47): "*Many submissions, including from the Fuel Companies and HWPL, have requested cross-referencing between objectives, policies and rules, to demonstrate the relationship. The justification for the framework of the pLWRP is addressed in*

Section 1 of this Report which includes the intention to increase the level of cross-referencing to aid in the interpretation of the pLWRP. The CRC has specifically identified the need for cross-references in Section 5 to the relevant rule in the sub-regional sections whenever a Plan user needs to be directed to a specific rule. Further, the CRC has sought clarification so that all references to “Section X” that relate to the pLWRP be changed to “Section X of this Plan” and all references to “Sections 6-15” to be changed to “Sub-regional Sections 6-15 of this Plan”.

30. In relation to the second bullet point, reference to submitters raising this matter is included on Page 79. The Officer Report states: *“The obvious answer to these submissions is to rewrite the objectives and policies in a manner that allows for grouping of the objectives and policies together so that it is clear which policies follow which objectives, and to use RMA type language such as “avoid, remedy or mitigate”, “best practicable option” or “no more than minor adverse effects”.* While one or two terms remain, overall the objectives have been rewritten with more use of RMA terms and less use of terms that undefined and emotive.
31. **Comment:** In relation to the first bullet point, the Officer Report expresses support for cross-referencing referred to on P.47. Notwithstanding this, there does not appear to be any evidence in the recommendations that this idea has been adopted. I support the suggestion that cross-referencing be adopted as I consider it will assist with the readability of the Plan and future interpretation by resource users and Council staff. Concerns relating to terms used in specific objectives are addressed in my evidence below.
32. **Recommendation:** I recommend the Commissioners note the Officer Report recommendation that cross-referencing be adopted and ensure this occurs, and note the particular concerns regarding defining terms in objectives raised by HWP when considering submissions on these matters.

Plan Provision: Objective 3.5 (Page 3-1)

33. *“Outstanding fresh water bodies and hāpua and their margins are maintained in their existing state or restored where degraded.”*

34. **Submission:** As stated above, HWP considered there is a need to define ‘*outstanding*’ in terms of a reference to an assessment in a schedule of such water bodies. Furthermore, HWP considered the use of the management approach “*maintained in their existing state or restored where degraded*” is appropriate, and should be adopted in other Objectives and Policies.
35. HWP supported the intent of Objective 3.5 and sought a Schedule of ‘*outstanding*’ fresh water bodies and hāpua and their margins be included in the proposed Plan for clarity. HWP also sought for the management approach to “*maintained in their existing state or restored where degraded*” be retained, and adopted consistently in the following policies.
36. **Officer Report Comment and Recommendation:** The Officer Report identifies on Page 81 that the HWP (and 4 other submitters) sought a Schedule listing the outstanding fresh water bodies and hāpua; there is no reference to the other request for the management approach to be retained; the Officer Report recommends no change to Objective 3.5 (which is now Objective 3.12). On page 126-127 of the Officer Report “*outstanding fresh water bodies*” are defined with a reference that they will be listed in the sub-regional sections 6-15.
37. **Comment:** I acknowledge the recommendation that Objective 3.5 be replaced with Objective 3.12, and the retention of the management approach, which I support. Objective 3.12 reads: “*Outstanding fresh water bodies and hāpua and their margins are maintained in their existing state or restored where degraded.*” HWP also sought a Schedule to be included in the proposed Plan that clearly identifies the outstanding freshwater bodies and hāpua and their margins. While the need for a request for a Schedule is noted in the Officer Report, I do not consider it is good planning practice or appropriate to leave the preparation of the Schedule to the Section 6 - 15 processes as there are no timeframes regarding when these sections might be completed. There are policies, rules and methods in the proposed Plan that address the management of the outstanding water bodies and hāpua and their margins, but it is not known where these provisions will apply or what the implications of the provisions will be on the resource user. This may lead to uncertainty and confusion, and in the interim (i.e. while the Section 6 – 15 plan change process occurs – which could take a number of years), it is not clear what areas the

proposed Plan provisions apply, and this uncertainty needs addressing. I do acknowledge the definition of ‘*outstanding freshwater bodies*’ includes ‘*high naturalness waterbodies*’ which are listed in Sections 6 to 15. However, the definition also includes hāpua, natural wetlands and natural state water bodies that are listed in Sections 6 – 15. One option may be to have the proposed Plan identify a timeframe by which Council will provide the Schedule in Sections 6 – 15 (say two years) which could go some way to addressing my concerns. However, I am not in a position to know whether the information is readily available to Council to have a Schedule ready to be introduced within two years, and I am unclear whether Council would wish to introduce plan changes before the rest of the work on the Sections is completed. These matters may make this option impracticable.

38. **Recommendation:** I recommend that while the Commissioners adopt the Officer Report recommendation to maintain the management approach of “*maintained in their existing state or restored where degraded*” in Objective 3.5 [now Objective 3.12]. I also recommend the Commissioners require the inclusion of a Schedule in the proposed Plan that clearly identifies the outstanding fresh water bodies (as defined in the proposed Plan) and hāpua and their margins in the Canterbury Region.

Plan Provision: Objective 3.6 (Page 3-1)

39. “*The significant indigenous biodiversity values of natural wetlands and hāpua are protected and wetlands in Canterbury that contribute to cultural and community values, biodiversity, water quality, mahinga kai or ecosystem services are enhanced.*”
40. **Submission:** Similar to comments above, HWP considered the “*significant*” values referenced in the Objectives need to be established and referenced in a Schedule. In addition, it is likely that all wetlands in Canterbury contribute to one of the elements identified, and therefore need to be enhanced. In addition this Objective should reflect the need for wetlands to be “*maintained in their existing state or restored where degraded*” approach as supported above.
41. HWP sought for Objective 3.6 to be amended as follows (or similar):

“The significant indigenous biodiversity values (as defined in Schedule XX) of natural wetlands and hāpua ~~are protected~~ and wetlands in Canterbury that contribute to cultural and community values, biodiversity, water quality, mahinga kai or ecosystem services are ~~enhanced~~ maintained in their existing state or restored where degraded.”

42. **Officer Report Comment and Recommendation:** The Officer Report identifies on Page 82 what HWP is seeking. The first part of the relief sought is not accepted, while the second part is accepted in part with a recommendation that ‘*enhanced*’ be changed to ‘*maintained*’ in Objective 3.6 (now Objective 3.13) (Page 98).
43. **Comment:** I acknowledge the recommendation that Objective 3.6 is now Objective 3.13 which states: *“The significant indigenous biodiversity values of rivers, natural wetlands and hāpua are protected and wetlands that contribute to cultural and community values, biodiversity, water quality, mahinga kai, water cleansing and flood retention properties are maintained.”* I also note the proposed Plan defines “*Significant Indigenous Biodiversity*” as areas or habitats that meet one or more of the criteria in Appendix 4 to the Canterbury RPS. I note “*Significant Indigenous Biodiversity Values*’ is not defined. In relation to the first point, I have similar comments as above regarding the need to ensure the indigenous biodiversity values considered significant are identified and included in a Schedule so a resource user can determine whether the proposed Plan provisions that implement this Objective apply to them. The other matters discussed above regarding how this might be achieved are applicable. I note that the significant indigenous biodiversity values are still required to be ‘*protected*’. I do not consider this is consistent with s.6(c) of the Act which requires, as a matter of national importance, the recognition and provision for the protection of areas (i.e. not values) of significant indigenous vegetation and significant habitats of indigenous fauna. I also note s.7 (d) of the Act requires intrinsic values of ecosystems to be given particular regard to. I therefore consider Objective 3.13 as currently written is not appropriate and should be rewritten to be consistent with the Act by stating that particular regard will be given to significant indigenous biodiversity values. Furthermore, I believe these values have not been established and need to be included in a Schedule. Without these amendments it is unclear

how a resource user will be affected. In relation to the second point, the Officer Report recommendation to amend the wording from ‘*enhanced*’ to ‘*maintained*’ applying to wetlands is only part of the matter raised by HWP. I consider for consistency the management approach “*maintained in their existing state or restored where degraded*” is appropriate.

44. **Recommendation:** I recommend the Commissioners adopt the relief sought by HWP and require the inclusion of a Schedule in the proposed Plan that clearly identifies what the significant indigenous biodiversity values are and where in the Canterbury Region they are found, and amend the new Objective 3.13 as follows: delete the term ‘*protected*’ and replace it with “*will be given particular regard to*” to be consistent with the Act; delete the term and ‘*enhanced*’ and change it to ‘*maintained in their existing state or restored where degraded*’.

Plan Provision: Objective 3.7 (Page 3-1)

45. “*The mauri of lakes, rivers, hāpua and natural wetlands is maintained or restored and they are suitable for use by Ngāi Tahu and the community.*”
46. **Submission:** Similar to comments made above, HWP considered the term “*and they are suitable for use*” is uncertain and should be deleted, and a consistent management approach as taken in Objective 3.5 should be adopted.
47. HWP seeks for Objective 3.7 to be amended as follows (or similar):
“*The mauri of lakes, rivers, hāpua and natural wetlands is maintained in the existing state or restored where degraded and they are suitable for use by Ngāi Tahu and the community.*”
48. **Officer Report Comment and Recommendation:** The Officer Report identifies the relief sought by HWP on Page 83. Objective 3.7 seems to have been incorporated into Objective 3.12 which reads: “*Outstanding fresh water bodies and hāpua and their margins are maintained in their existing state or restored where degraded.*”
49. **Comment:** I support the recommendation that Objective 3.7 be melded into Objective 3.12, and the use of the management approach proposed by HWP.
50. **Recommendation:** I recommend the Commissioners adopt the Officer Report recommendation by deleting Objective 3.7 and accepting the proposed wording included in the new Objective 3.12.

Plan Provision: Objective 3.8 (Page 3-1)

51. *“The health of ecosystems is maintained or enhanced in lakes, rivers, hāpua and wetlands.”*
52. **Submission:** Similar to comments made above, HWP considers the Objective should apply to natural water bodies, and a similar management approach be adopted as in Objective 3.5.
53. HWP sought for Objective 3.8 to be amended as follows (or similar):
“The health of ecosystems is maintained in its existing state or enhanced where degraded in natural lakes, rivers, hāpua and wetlands.”
54. **Officer Report Comment and Recommendation:** The Officer Report identifies the relief sought by HWP on Page 83. It is recommended that Objective 3.8 be incorporated into a new Objective 3.10 which reads: *“The quality and quantity of water in fresh water bodies and their catchments is managed to safeguard the life-supporting capacity of ecosystems and ecosystem processes, including ensuring sufficient flow and quality of water to support the habitat and feeding, breeding, migratory and other behavioural requirements of indigenous species, nesting birds and, where appropriate, trout and salmon.”* – safeguard life-supporting capacity of ecosystems.
55. **Comment:** I acknowledge the recommendation that Objective 3.8 be deleted and incorporated into a new Objective 3.10. I consider the new wording of Objective 3.10 is consistent with the wording of the Act and is appropriate when read together with the other objectives.
56. **Recommendation:** I recommend the Commissioners adopt the Officer Report recommendation by deleting Objective 3.8 and adopting the new Objective 3.10 as it is proposed in the Officer Report.

Plan Provision: Objective 3.9 (Page 3-1)

57. *“The existing natural character values of alpine rivers are protected.”*
58. **Submission:** Similar to comments made above, this Objective should apply to recognised outstanding natural character values listed in a Schedule, and a similar management approach be adopted as in Objective 3.5.
59. HWP sought for Objective 3.9 to be amended as follows (or similar):

“The existing outstanding natural character values of alpine rivers (as defined in Schedule XX) are ~~protected~~ maintained in their existing state or restored where degraded.”

60. **Officer Report Comment and Recommendation:** The Officer Report identifies the relief sought by HWP on Page 83. It is recommended Objective 3.9 be melded into Objective 3.14 with natural character to be protected. There is no reference to Alpine Rivers but a more generic reference to freshwater bodies is made, and there is no mention of a schedule.
61. **Comment:** I acknowledge the recommendation that Objective 3.9 be deleted and be incorporated into Objective 3.14 which states: *“Natural character values of freshwater bodies, including braided rivers and their margins, wetlands, hāpua and coastal lagoons, are protected.”* In my view, the new Objective 3.14 is appropriate from the perspective that it addresses natural character values of all freshwater resources (i.e. not just Alpine Rivers), and I support deleting Objective 3.9. Notwithstanding this, as previously discussed I believe the proposed Plan needs a Schedule of the natural character values that need to be managed. I am also concerned that Objective 3.14 requires the protection of these values, when the Act requires natural character to be preserved (s.6 (a)). While I accept that ‘*protection*’ can be appropriate and necessary in some cases as a way to ‘*preserve*’ natural character values, I consider the Objective needs to be consistent with the intent of the Act, and the options of management (including protection but also “*recognised and provided for*” as discussed in relation to Objective 3.3 above) are matters that need to be determined through policies and methods (to implement the Objective) and in accordance with recognising which values require such management through a Schedule.
62. **Recommendation:** I recommend the Commissioners accept the Officer Report recommendation to delete Objective 3.9 and introduce a new Objective 3.14 that applies to natural character values of all freshwater bodies, with amendments to that objective that requires these values to be ‘*preserved*’ and requires the values to be recognised and provided for to be consistent with the Act. I also recommend the Commissioners adopt the relief sought by HWP and require a Schedule that clearly identifies “*natural character values of freshwater bodies*” be included in the proposed Plan

Plan Provision: Objective 3.10 (Page 3-1)

63. *“The significant indigenous biodiversity values, mahinga kai values, and natural processes of rivers are protected.”*
64. **Submission:** Similar to comments made above, HWP considers the Objective should apply to recognised significant indigenous biodiversity values listed in a schedule, and a similar management approach be adopted as in Objective 3.5.
65. HWP sought for Objective 3.10 to be amended as follows (or similar):
“The significant indigenous biodiversity values (as defined in Schedule XX), mahinga kai values, and natural processes of rivers are ~~protected~~ maintained in their existing state or restored where degraded.”
66. **Officer Report Comment and Recommendation:** The Officer Report identifies the relief sought by HWP on Page 84. It is recommended Objective 3.10 be melded into Objective 3.13, without adopting the relief sought within the HWP submission. The values are protected.
67. **Comment:** I acknowledge the recommendation that Objective 3.10 be deleted and be incorporated into Objective 3.13 which reads: *“The significant indigenous biodiversity values of rivers, natural wetlands and hāpua are protected and wetlands that contribute to cultural and community values, biodiversity, water quality, mahinga kai, water cleansing and flood retention properties are maintained.”* My comments above on Objective 3.6 and the [new] Objective 3.13 apply. In particular, I consider that Objective 3.13 needs to reference a Schedule of significant indigenous biodiversity values, and be amended as sought by HWP in its submission to be consistent with s.6(c) of the Act.
68. **Recommendation:** I recommend the Commissioners accept the Officer Report recommendation to delete Objective 3.10 and incorporate it into Objective 3.13. I also recommend the Commissioners adopt the relief sought by HWP and require the inclusion of a Schedule in the proposed Plan that clearly identifies what the significant indigenous biodiversity values are and where in the Canterbury Region they are found, and amend the new Objective 3.13 as follows: delete the term ‘protected’ and replace it with *“will be given*

particular regard to” to be consistent with the Act; delete ‘enhanced’ and change it to ‘maintained in their existing state or restored where degraded’.

Plan Provision: Objective 3.21 (Page 3-2)

69. *“Land uses continue to develop and change in response to socio-economic and community demand while remaining consistent with the CWMS targets.”*
70. **Submission:** HWP considers that developing land uses may not necessarily mean change in land use (when considering the proposed Plan definition of ‘*changed*’), and the Objective should reflect this.
71. HWP sought for Objective 3.21 to be amended to read (or similar):
“Land uses continue to develop and/or change in response to socio-economic and community demand while remaining consistent with the CWMS targets.”
72. **Officer Report Comment and Recommendation:** The Officer Report identifies the relief being sought by HWP on Page 90. It is recommended Objective 3.21 become Objective 3.5, with no amendments recommended.
73. **Comment:** I acknowledge the recommendation that Objective 3.21 become 3.5, without amendment. The concern I have relates to how the term “*develop and change*” will be interpreted in this Objective – I consider it is possible to develop a land use (i.e. increase sheep numbers) without changing the land use itself (i.e. changing from sheep to dairy), and it is difficult to understand how this Objective will be interpreted while there are questions regarding the definition of “*changed*” as it relates to land uses (raised by the submitter in its submission – to be addressed in Hearing Group 2). The amendment sought intended to simply acknowledge that land use can be developed and or change.
74. **Recommendation:** I recommend the Commissioners adopt the relief sought by the HWP and amend the renumbered [new] Objective 3.5 to read: “*Land uses continue to develop and/or change in response to socio-economic and community demand while remaining consistent with the CWMS targets.*”

Plan Provision: Objective 3.22 (Page 3-2)

75. *“Community outcomes for water quality and quantity are met through managing limits.”*

76. **Submission:** HWP considers there are other aspects to achieving community outcomes, other than just managing limits – including adopting non-regulatory approaches. HWP considers the Objective should provide a broader management approach.
77. HWP sought for Objective 3.22 to be amended to read (or similar):
“Community outcomes for water quality and quantity are met through a range of regulatory and non-regulatory management tools ~~managing~~ limits.”
78. **Officer Report Comment and Recommendation:** The Officer Report identifies the relief sought by HWP on Page 90. The Officer Report recommends Objective 3.22 be renumbered Objective 3.15 and amended to read “... are met through setting, and managing within, limits.”
79. **Comment:** I acknowledge Objective 3.22 is recommended to be Objective 3.15. I note the relief sought by HWP has not been recommended, and no reason is given. In my view, the Objective should recognise that there are appropriate regulatory and non-regulatory methods available to Council to achieve the community outcomes agreed to. In particular I note Policy A2 of the NPS for Freshwater Management anticipates regulatory and non-regulatory methods to be used to meet freshwater objectives. As there is no Officer Report comment on this matter, it is difficult to determine what concerns the Council may have. I accept that it is conceivable that the setting of limits does not have to be in a regulatory context, but without such recognition, this assumption cannot be made and including recognition of this point in the Objective is consistent with the NPS.
80. **Recommendation:** I recommend the Commissioners amend the renumbered Objective 3.15 as follows:
“Community outcomes for water quality and quantity are met through a series of regulatory and non-regulatory methods, including the setting of, and managing within, limits.”

Plan Provision: Policies (Page 4-1)

81. **Submission:** HWP made the following ‘high-level’ submission points:
- It would be helpful if there was an indication of which rules implement the policies (and which policies implement the Objectives);

- There is no reference to Schedule 8 (Industry Derived Nitrogen Discharges) in the Strategic Policies;
 - Throughout the policies there is reference to ‘catchments’, however it appears that in some case the term relates to zone committee boundaries, and in other cases water flow areas. This causes some confusion when considering policies and there needs to be a clear delineation of whether the term ‘catchment’ refers to an administrative boundary or a water flow area.
82. HWP sought for the above matters to be addressed through amendments to the proposed Plan – some recommended amendments are outlined in its submission.
83. **Officer Report Comment and Recommendation:** The first bullet point is likely to have been covered by the comments referenced above regarding cross-referencing objectives and policies; there is no reference to the request in the second Bullet Point; Page 100 identifies Ravensdown as raising issues with term ‘*catchment*’, but not HWP
84. **Comment:** In relation to the first point, my comments above regarding cross-referencing Plan provisions apply. In relation to the second point, I consider this is an important point as Schedule 8, when completed, will be a very important tool for establishing nitrogen rates for rural activities, and recognising this tool in the strategic policies would strengthen its importance and could give a clear indication of how it will be utilised.
85. In relation to the definition of Catchment, I address this matter at the end of this evidence.
86. **Recommendation:** I recommend the Commissioners adopt the relief sought by HWP and amend the proposed Plan provisions accordingly.

Plan Provision: Policy 4.8 (Page 4-1)

87. *“The harvest and storage of water for irrigation or hydro-electricity generation schemes contribute to or do not frustrate the attainment of the regional concept for water harvest, storage and distribution set out in Schedule 16 or the priority outcomes expressed in the relevant ZIP.”*
88. **Submission:** Overall HWP supported the general intent of this policy, and sought it to be retained as currently written.

89. **Officer Report Comment and Recommendation:** The Officer Report identifies on Page 109 that 2 submitters sought Policy 4.8 to be retained. The Officer Report recommends: *“the Policy is recommended to be maintained, albeit with an addition to recognise the need to provide for proposals that can be established and operated within limits already set.”*
90. *“Policy 4.8 The harvest and storage of water for irrigation or hydro-electricity generation schemes contribute to or do not frustrate the attainment of the regional concept for water harvest, storage and distribution set out in Schedule 16, ~~or~~ the priority outcomes expressed in the relevant ZIP or a water quantity limit set in sections 6-15.”*
91. **Comment:** I consider the proposed amendment is appropriate and acceptable, and that the overall intent of the policy is retained.
92. **Recommendation:** I recommend the Commissioners adopt the Officer Report recommendation and amend Policy 4.8 accordingly.

Discharges

Plan Provision: Rules 5.55 – 5.58 (Pages 5-14/15)

93. **Submission:** HWP sought clarification regarding whether these rules apply to the area covered by the Proposed Hurunui Waiau River Regional Plan (PHWRRP).
94. **Officer Report Comment and Recommendation:** The Officer Report states on Page 174): *“HWPL has requested clarification as to whether this rule prevails over the Proposed HWRRP. This matter has been specifically considered in section 2.3 of this Report.”*
95. **Comment:** I note that Section 2.3 of the Officer Report addresses rules, but does not address the matter raised by the submitter. As discussed above, this matter appears to be addressed in Section 2.9 of the Officer Report. In my view, the statement that the relationship of the rules to other plans (including the PHWRRP) is open to interpretation is not helpful. As I discussed above in relation to Plan Provision 2.9, non-consumptive discharges are covered by the PHWRRP, and it would seem that consumptive discharges are covered by the PCLWRP. HWP sought clarification regarding Rules 5.55 – 5.58 which apply to land drainage water and the discharge of water that may contain

contaminants from sub-surface or surface drains as this ‘*subject matter*’ may or may not be covered by the PHWRRP, if the discharge is non-consumptive. While I appreciate that the Commissioners have the task of considering submissions on the PCLWRP, HWP’s highlights another example of the difficulty of determining what rules apply, and this uncertainty does not, in my view, represent sound planning practice.

96. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan regarding whether Rule 5.55 – 5.58 apply to the area covered by the PHWRRP.

Water Takes

Plan Provision: Policy 4.52 (Page 4-11)

97. *“The discharge of water resulting from moving water from one catchment or water body to another does not:*
(a) facilitate the transfer of fish species, plant pests or unwanted organisms into catchments where they are not already present;
(b) adversely affect Ngāi Tahu values;
(c) adversely affect the natural character of the receiving water;
(d) adversely affect existing drinking water treatment systems to the extent that they are no longer able to effectively treat the water to achieve the standards set out in the Drinking-water Standards for New Zealand; and
(e) adversely affect fish migration.”
98. **Submission:** The HWP expressed concern that this subject matter may not be covered by the PHWRRP or Waipara Catchment Environmental Flow and Water Allocation Regional Plan (WCEF&WARP), and therefore is relevant to its proposed irrigation project. Clarification of whether the PHWRRP policy prevails over the PCLWRP policy is required.
99. Overall HWP supported the intent of the policy, and the requirements appear reasonable and pragmatic.
100. **Officer Report Comment and Recommendation:** While the Officer Report does not directly reference HWP’s concerns, it does state: *“One submission received seeks clarification whether this policy prevails over policies*

contained in Sections 5-16. As indicated in Section 2 of the pLWRP this policy applies across the region unless there is a specific policy in a sub-regional chapter which also addresses this matter.” The Officer’s Report recommends an amendment to Policy 4.52 by introducing the term ‘negligible adverse effects’ in a number of places for flexibility.

101. **Comment:** While it is not clear, I assume this statement refers to the concerns raised by HWP. In my view, the recommended amendments do not address the matter being raised by the submitter that relates to better defining the ‘subject matter’. In particular, I note that Policy 6.6 of the PHWRRP specifically deals with the transfer of water from one catchment to another and the discharge of that water. However, Policy 4.52 also deals with the transfer of water from one catchment to another and the discharge of that water. HWP consider clarification on which policy prevails is required.
102. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan regarding whether Policy 4.52 applies to the area covered by the PHWRRP.

Plan Provision: Policy 4.53 (Page 4-11)

103. *“Where water is introduced from outside the catchment, the additional surface water flows are not available for abstraction unless a new or revised environmental flow and allocation regime is introduced through a plan change.”*
104. **Submission:** Similar to above, the HWP expressed concern that this subject matter may not be covered by the PHWRRP or WCEF&WARP, and therefore is relevant to its proposed irrigation project. Clarification of whether the PHWRRP policy prevails over the PCLWRP policy is required.
105. Overall HWP has concerns regarding the intent of this policy, if it applied to its project.
106. **Officer Report Comment and Recommendation:** The officer Report states: *“HWPL’s submission seeks clarification whether this policy prevails over the policies contained in Subregional Sections 6-15. As indicated in Section 2 of the pLWRP this policy applies across the region unless there is a specific*

Policy in a sub-regional Section which also addresses this matter.” Policy retained without amendment.

107. **Comment:** The comments I have made above regarding the need for clarity apply to this matter. Conceivably, the HWP could gain approvals to take and transfer water from the Hurunui River to the Waipara River under the PHWRRP and then, under this policy, is not able to access that water for irrigation purposes. One reason for this is because the area covered by the PHWRRP is not the same area that is covered by Sub-region Section 7 Hurunui of the PCLWRP. This means clarity on such matters is critical to HWP’s interests.
108. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan regarding how Policy 4.53 applies to the ‘*subject matter*’ covered by the PHWRRP.

Plan Provision: Policies 4.66 - 4.70 (Page 4-12)

109. **Submission:** Similar to above, while matters of water efficiency appear to be covered by the PHWRRP, it is possible the WCEF&WARP does not cover these matters, and it is not clear which policy would prevail.
110. In addition, Policy 4.68 does not appear to provide for the efficient use of water, as it implies that water allocated to a consent holder not using the allocation will not be allocated to someone else who may be able to use that allocation efficiently. This situation would affect HWP’s project.
111. HWP sought clarification regarding whether the WCEF&WARP policy or this policy prevails, and is concerned that Policy 4.68 does not promote the efficient use of water but appears to protect water allocated to a consent holder but not being used.
112. **Officer Report Comment and Recommendation:** The question of the relationship between the WCEF&WARP is not addressed and is unclear. The issue with Policy 4.68 is addressed, with the Officer Report stating: “*While the Policy does not exclude users from entering into a water users group or water sharing agreement, it is considered that the Policy should be re-worded to clarify that unused water should not be reallocated to the existing consent*

holder, or any other user, particularly in an over-allocated catchment. It is not appropriate to allow unused water to be reallocated to other uses, as it could exacerbate the effects associated with over-allocation.” The Officer Report recommends Policy 4.68 be amended to read: “Policy 4.68 Where ~~W~~water is allocated to a consent holder for abstraction, and the water permit does not specify the period of abstraction, and the water is not required for 12 months of the year, the unused water shall not be further allocated to the consent holder or any other applicant or transferee through the granting of ~~or backup~~ a further water permit.”

113. **Comment:** From HWP’s perspective, it appears that the PHWRRP covers matters relating to water efficiency for the majority of its scheme, but that part that is in the Waipara Catchment, the PCLWRP applies as the WCEF&WARP does not include provisions relating to water quality. Clarification of this matter was sought from Council. I note the comments of the Officer Report relating to efficiency, and the amendments to Policy 4.68 which is likely to apply to the HWP’s project. As stated in HWP’s submission, Policy 4.68 does not appear to promote water efficiency and seems to be more focussed on ensuring that water not taken by a consent holder cannot be used by anyone else. While I accept this principle is appropriate for over-allocated water resources from a sustainable management perspective, I do not consider this needs to apply to water resources that are not over-allocated as this does not represent the efficient use of resources, and is not consistent with s.7 (b) of the Act.

114. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan regarding how Policy 4.68 applies to the WCEF&WARP, and that this policy only applies to water resources that are over-allocated.

Plan Provision: Policy 4.76 (Page 4-13)

115. “Resource consents for the use of land for farming activities and the associated discharge of nutrients in catchments that are coloured red on the Planning Maps and resource consents for water take and use in catchments or groundwater allocation zones that are over-allocated will generally be subject

to a 5 year duration if the land use and associated nutrient discharges or water take and use may impede the ability of the community to find an integrated solution to manage water quality and the over-allocation of water.”

116. **Submission:** The HWP questioned how the Nutrient Zones have been determined and their accuracy, and is seeking for the ‘red’ classification over the Waipara Catchment to be reviewed (elsewhere in its submission). The HWP opposed this policy while the current Nutrient Zone classifications are being used to determine whether resource consent is required.
117. The HWP opposed Policy 4.76 as it is currently written and sought clarification of the process of determination and accuracy of the Nutrients Zones, and in particular seeks a review of the ‘red’ classification of the Waipara Catchment.
118. **Officer Report Comment and Recommendation:** The Officer Report clarifies that the nutrient discharges are to be dealt with in Hearing Group 2, and recommends minor amendments to the policy.
119. **Comment:** While I accept the clarification that the determination of the red zone will be a matter covered in detail in Hearing Group 2 as it is related to nutrient discharges, it does not seem appropriate to me that some minor amendments are recommended to Policy 4.76 at this stage, as HWP has opposed the wording of the entire policy.
120. **Recommendation:** I recommend the Commissioners reject the Officer Report recommendation to make amendments to Policy 4.76 until the consideration of the nutrient zones is considered in full in Hearing Group 2.

Beds of Lakes and Rivers

Plan Provision: Rules 5.112 – 5.121 (Pages 5-26 – 5-28)

121. **Submission:** HWP sought clarification regarding whether these rules apply to the area covered by the Proposed Hurunui Waiau River Regional Plan.
122. **Officer Report Comment and Recommendation:** The Officer Report notes: *“Hurunui Water Project Ltd has requested clarification as to whether this Rule prevails over the Proposed HWRRP. This matter has been specifically considered in section 1.4 of this Report.”*

123. **Comment:** My comments on the request for clarification of the relationship between the PHWRRP and PCLWRP above apply. In particular clarity around the ‘*subject matter*’ of structures is sought in relation to infrastructure that may be associated with HWP’s project.
124. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan regarding how Rules 5.112 – 5.121 applies to the ‘*subject matter*’ covered by the PHWRRP.

Vegetation and Soil (incl. wetlands)

Plan Provision: Policy 4.15 (Page 4-6)

125. *“The discharge of sediment and other contaminants to surface water from earthworks, including roading, works in the bed of a river or lake, land development or construction, is avoided, and if this is not achievable, the best practicable option is used to minimise the discharge to water.”*
126. **Submission:** HWP supported the general intent of Policy 4.15 and considered it is pragmatic and reasonable.
127. **Officer Report Comment and Recommendation:** Policy remains unchanged.
128. **Comment:** I support the Officer Report recommendation to retain Policy 4.15 as written.
129. **Recommendation:** I recommend the Commissioners adopt the Officer Report recommendation.

Plan Provision: Rules 5.147 – 5.149 (Pages 5- 33 – 5- 34)

130. **Submission:** HWP sought clarification regarding whether these rules apply to the area covered by the Proposed Hurunui Waiau River Regional Plan.
131. **Officer Report Comment and Recommendation:** Not specifically addressed
132. **Comment:** My comments on the request for clarification of the relationship between the PHWRRP and PCLWRP above apply. In particular clarity around the ‘*subject matter*’ of earthworks and vegetation clearance is sought in relation to infrastructure that may be associated with HWP’s project.

133. **Recommendation:** I recommend the Commissioners adopt the HWP submission and require clarification to be included in the proposed Plan regarding how Rules 5.147 – 5.149 applies to the ‘*subject matter*’ covered by the PHWRRP.

Miscellaneous

Plan Provision: Definition - Catchments

134. **Submission:** Throughout the policies there is reference to ‘*catchments*’, however these are not water catchment areas, but catchment committee boundaries. This causes some confusion when considering policies.
135. HWP sought for clarity regarding the use of ‘*catchment*’ and in particular when reference to ‘*catchment*’ relates to water flow, or when ‘*catchment*’ refers to committee administrative boundaries, or sub-regional zones.
136. Officer Report Comment and Recommendation: The Officer Reports notes three submissions sought for ‘*catchments*’ to be defined, and states the matter is covered under Policy 4.53. The Officer Report does not recommend a definition of ‘*catchment*’ to be added.
137. **Comment:** I note that Section 4.3 of the Officer Report identifies proposed definitions, and identifies the term ‘*catchment*’ is covered in Section 6.2 of the Report. In Section 6.2 it states the matter is addressed in the discussion under Policy 4.53. However, this discussion relates to issues around water transferring between catchments, and not the issue HWP was making regarding the use of ‘*catchments*’ to define areas covered by the zone committee. HWP’s concerns have not been addressed in the Officer Report. I note the Oxford Dictionary defines ‘*catchment*’ as “*the action of collecting water, especially the collection of rainfall over a natural drainage area.*” I would suggest a definition of ‘*catchment*’ that clearly recognises the physical nature of water catchment areas is better suited than one that reflects administrative boundaries. Notwithstanding this, Council may wish to include a definition that relates specifically to administration boundaries covered by the zone committees, and use that term when specifically referencing that matter.

138. **Recommendation:** I recommend the Commissioners adopt the request by HWP to add a new definition of ‘catchment’ that reflects the physical nature of water catchment areas.

Plan Provision: Definition - Property

139. **Submission:** Include a broad definition of ‘*property*’ as part of definition of ‘*changed*’.
140. **Officer Report Comment and Recommendation:** Officer Report agrees a definition of property is needed and states (Page 220): *“It is agreed with the submitters that “property” tends to be used when referring to a land holding that may be comprised in more than one site (or certificate of title). Given its wide spread use it is considered appropriate to include a definition of property. The Officer Report recommends a new definition of Property as follows: “means any contiguous area of land held in one, or more than one ownership, that is utilised as a single operating unit, and may include one or more certificates of title.”*
141. **Comment:** While I support the inclusion of a separate definition of the term ‘*property*’, I question the wisdom of addressing this matter at Hearing Group 1. I consider this term is very important when considering the definition of ‘*changed*’ in relation to land use which will be considered as part of the farming provisions in the Hearings Group 2.
142. **Recommendation:** I recommend the Commissioners delay consideration of the inclusion of a separate definition of the term ‘*property*’ until consideration of the term ‘*changed*’ in relation to land use which will be considered as Hearing Group 2.

Chris Hansen

4 February 2013