

Before the Independent Commissioners

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of the Proposed Canterbury Land
and Water Regional Plan

**BRIEF OF EVIDENCE OF AMY MIRIAM KEARSE ON BEHALF OF THE NEW
ZEALAND TRANSPORT AGENCY**

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INTRODUCTION

1. My name is **Amy Miriam Kears**.
2. I am a Principal Planning Advisor at the Wellington office for the New Zealand Transport Agency (**NZTA**).
3. I have the following qualifications and experience relevant to the evidence I shall give:
 - (a) I hold a Bachelor of Arts in Sociology and a Masters of Environmental Studies, both from Victoria University of Wellington.
 - (b) I joined the NZTA in February 2011. My key responsibilities include influencing the land transport activities of the NZTA's partners to develop an integrated, safe, responsible, affordable and sustainable land transport system; and promoting sound solutions to regional transportation issues by integrating land use and transport. This involves working with the NZTA's local government and other partners on Long Term Plans, Regional Land Transport Strategies and Programmes, Regional Policy Statements and Plan Reviews, District Plan Reviews, resource consent applications, and strategic and transport planning studies.
 - (c) Prior to starting at the NZTA, I worked for approximately six and a half years at the Ministry for the Environment; three on resource management policy and legislation, including the Resource Management Amendment Act 2005, as well as national policy statements and standards, and also the Waitakere Ranges Heritage Area Act 2008. In the remaining three and a half years, I worked on emissions trading policy and legislation, implementation of the NZ Emissions Trading Scheme, and finally on policy and legislation to create the Environmental Protection Authority as a separate Crown entity. While studying, I also worked part-time in resource management consultancies as a planning assistant and/or assistant researcher.
4. In preparing my evidence I have:
 - (a) reviewed the Proposed Canterbury Land and Water Regional Plan (**Proposed Plan**), its accompanying Section 32 Report and the Section 42A Report, Volume 1;
 - (b) familiarised myself with other regional planning documents applying to the Canterbury region such as the Canterbury Regional Policy Statement and Canterbury Water Management Strategy;
 - (c) reviewed the submission and further submission of Mark Yaxley, NZTA Regional Manager, Planning and Investment and relevant submissions and further submissions made by other organisations; and
 - (d) consulted the NZTA staff members who provided input into the NZTA's submissions, including staff with experience and/or expertise in: constructing

State highway capital projects and carrying out maintenance and operations of State Highways; industry and NZTA standards relating to stormwater and erosion and sediment control; planning, including knowledge of the range of regional consents held and those currently being sought by the NZTA.

5. Although I was not responsible for preparing the NZTA submissions, I agree with the points made unless addressed otherwise by my evidence.
6. I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2011. My evidence has been prepared in compliance with that Code. While I am employed by the NZTA, I and my employer recognise and acknowledge my overriding duty to assist the Hearing Commissioners.
7. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

8. On 5 October 2012, the NZTA submitted on the Proposed Plan, supplemented by the NZTA's further submission on 13 November 2012. I refer to submissions made in the 5 October submission as "submission 169.1" (or other number corresponding to NZTA's submitter number 169 and the relevant submission point). For the NZTA's 13 November further submission, I refer to the submitter and submission point which NZTA supports or opposes. Recommendations in the Section 42A Report are referred to by their recommendation number (eg, R2.10.30).
9. The purpose of my evidence is to explain the key issues in the NZTA's submissions on the Proposed Plan. In doing so my evidence addresses the following matters:
 - (a) an overview of the NZTA's statutory role and functions, and business relating to the Proposed Plan; and
 - (b) issues with how the Proposed Plan deals (or fails to deal) with the following key matters, and recommendations the NZTA has to resolve such issues:
 - (i) treatment of stormwater runoff from the State highway network;
 - (ii) consents required for NZTA works in watercourses as part of routine maintenance;
 - (iii) consents required for geotechnical investigations;
 - (iv) processing global resource consents; and
 - (v) other issues.
10. Rather than restate each amendment sought by the NZTA in its submissions on the Proposed Plan, my evidence only explains the more substantive issues and amendments sought (in light of the Section 42A Report recommendations where

appropriate). This focus on these substantive issues and amendments sought is in no way intended to detract from the entire relief sought in the NZTA's submissions.

EXECUTIVE SUMMARY

11. In relation to the NZTA's main areas of concern, my key recommendations include:
 - (a) changing the activity status in Rule 5.73 to restricted discretionary for stormwater run-off that does not comply with the conditions of Rule 5.72;
 - (b) amending certain conditions in Rules 5.89 and 5.92 to facilitate NZTA works in watercourses as part of NZTA's routine maintenance;
 - (c) amending conditions in Rules 5.82 and 5.83 required for the provision of information from geotechnical investigations; and
 - (d) including a definition of "global resource consents" and a new policy and provisions to facilitate the processing of global resource consents.

OVERVIEW OF THE NZTA'S STATUTORY ROLE AND FUNCTIONS, AND BUSINESS RELATING TO THE PROPOSED PLAN

Overview of NZTA's statutory roles and functions

12. The NZTA is a Crown entity, established on 1 August 2008 combining the former functions of Transit NZ and Land Transport New Zealand.
13. The objective of the NZTA, which is set out in section 94 of the Land Transport Management Act 2003 (**LTMA**) is "to undertake its functions in a way that contributes to an affordable, integrated, safe, responsive and sustainable land transport system".
14. The functions of the NZTA are defined in section 95(1) of the LTMA. Of relevance to the NZTA's submission on the Proposed Plan, the functions of the NZTA include:
 - (a) to promote an affordable, integrated, safe, responsive, and sustainable land transport system;
 - (b) to manage the State highway system, including planning, funding, design, supervision, construction, and maintenance and operations; and
 - (c) to assist, advise, and co-operate with "approved organisations" (which includes regional councils).
15. In meeting its objective and undertaking these functions, the NZTA is required by the LTMA to exhibit social and environmental responsibility. That includes avoiding, to the extent reasonable in the circumstances, adverse effects on the environment and using revenue in a way that seeks value for money (s96 LTMA).

NZTA's business relating to the Proposed Plan

16. The main types of consents that NZTA holds under the Canterbury Natural Resources Regional Plan (**NRRP**) that are relevant to the Proposed Plan are:

- (a) land use consents (s9 RMA) – to undertake earthworks and vegetation clearance in riparian margins, to undertake geotechnical testing;
 - (b) land use consents for beds of lakes and rivers (s13 RMA) – to erect, alter and extend structures in and on waterways as part of State highway maintenance and stormwater maintenance works and projects;
 - (c) water permits – to temporarily divert and dam water during construction and permanently divert water as part of State highway maintenance works and projects;
 - (d) discharge permits – to discharge water and contaminants to water and land associated with stormwater maintenance works and projects and weed spraying; and
 - (e) consents for the application of de-icing agent calcium magnesium acetate, mainly in the mountain passes in the Canterbury region.
17. The NZTA holds approximately 170 resource consents in the Canterbury region. It has also made three applications for global resource consents under the NRRP, including for those activities outlined above.
18. Three main areas of concern for NZTA in relation to the Proposed Plan are:
- (a) treatment of stormwater runoff from the State highway network;
 - (b) NZTA works in watercourses as part of NZTA's routine maintenance; and
 - (c) consents required for geotechnical investigation.
19. Where activities are repetitive in nature and effects can be adequately addressed by permitted activity conditions, permitted activity status is supported. The NZTA strongly supports those rules in the Proposed Plan that permit NZTA activities (eg, Rules 5.87 and 5.89, with the amendments sought by the NZTA).
20. The Proposed Plan should encourage and facilitate the NZTA's global resource consents where appropriate, by including a definition of "global resource consents" and a new policy and provisions to facilitate the processing of global resource consents.
21. Furthermore, the NZTA is seeking to be able to efficiently implement its statutory functions by reducing the complexity and cost of complying with the Proposed Plan. This will allow the NZTA to use its revenue in a way that seeks value for money, while ensuring robust environmental outcomes.

ISSUE A – TREATMENT OF STORMWATER RUN-OFF FROM THE STATE HIGHWAY NETWORK

NZTA stormwater management

22. Managing environmental issues – such as the effects of stormwater run-off from State highways – is an essential component of State highway construction and maintenance and ties to the NZTA's operating principle of environmental responsibility.
23. The NZTA Environmental Plan (published June 2008) is designed to encourage:
 - (a) continuous improvement in environmental outcomes in a timely and cost-effective manner;
 - (b) advanced environmental management techniques for transport in New Zealand; and
 - (c) further integration of environmental matters into the NZTA's business in a balanced manner.
24. To help implement the Environmental Plan, the NZTA developed a Stormwater Treatment Standard for State Highway Infrastructure. This provides guidance on the implementation of project specific water quality and quantity management objectives related to the design, construction, operation and maintenance of stormwater management for highways.
25. The NZTA's approach to stormwater management, as set out in the Standard is:

“to provide best practice for both stormwater quantity and quality control that, in the absence of local requirements or where local requirements are limited, New Zealand Transport Agency will undertake to demonstrate environmental responsibility”.
26. In addition to providing best practice guidance for management of stormwater generally, the Stormwater Treatment Standard for State Highway Infrastructure is applied to State highway design, construction and maintenance of new stormwater assets.
27. The NZTA's State highway stormwater network varies throughout the region. It is comprised of kerb and channel, swales, unformed filter strips, soakage systems, catch-pits, and pipe inlets and outlets. Discharge is either into the road reserve to ground or into a local authority stormwater network or into surface water.
28. The NZTA undertakes the following types of maintenance activities in relation to the State highway stormwater network:
 - (a) seal widening (sealing existing hardstand areas);
 - (b) kerb and channel (new, replacement and extension); and
 - (c) soak pits and swales (new, replacement and rehabilitation).

29. The NZTA has submitted that it is not clear how the Proposed Plan will apply to NZTA stormwater-related activities. If this remains unclear, the ambiguity is likely to lead to increased compliance costs for both the NZTA and the CRC as time is spent in discussions or hearings to clarify how NZTA activities are treated under the Proposed Plan. I discuss the changes sought to remedy the NZTA's concerns below.

Definitions

30. The NZTA submitted on a number of definitions associated with stormwater. I would like to comment on two particular definitions that create confusion for how NZTA activities would be considered:
- (a) "community or network utility operator" (169.14); and
 - (b) "stormwater system" (169.40)
31. The NZTA sought clarification about whether its stormwater systems would be caught by the term "community or network utility operator stormwater system" and associated Rules 5.71 and 5.72. The Section 42A Report addresses the anomaly and recommends (R.10.24) deleting the reference to "network utility operator" in this term, as well as from the activity description of Rules 5.71 and 5.72.
32. The NZTA also queried the use of the term "public" in Policy 4.13, that is, "public reticulated stormwater system" and whether the intent was to capture non-territorial reticulated stormwater systems such as those serving State highways, which could be considered "public". The Section 42A Report clarifies the intent and recommends (R2.10.165) that "community" replace "public", and that it be limited to those that serve more than one site in separate ownership. It also recommends a consequential amendment to Policy 4.13.
33. These recommendations address the NZTA's concerns. I support both proposed amendments (R2.10.24 and R2.10.165).
34. The NZTA submitted that a definition of "stormwater system" was required. With the changes recommended in the Section 42A Report, I now consider that this is no longer necessary.

Decision requested:

Accept R2.10.24 and R2.10.165.

Policies

Policy 4.13 – public reticulated stormwater systems for urban areas

35. Policy 4.13 regarding stormwater and community wastewater systems does not, as discussed earlier, specify what makes the reticulated stormwater system "public" (submission 169.58). The recommended amendment to the definition (R2.10.165) addresses this, although the opening words in Policy 4.13 should also refer to any "community reticulated stormwater system" rather than any "public reticulated stormwater system".

36. The NZTA also submitted that Policy 4.13 should be clarified to apply to stormwater systems serving a road. However, I consider that with the clarified policy intent this is no longer required.

Decision requested:

Accept R4.13 but amend Policy 4.13 as follows:

“Any community ~~public reticulated~~ stormwater system for any urban area...”.

Rules

Rule 5.71 – Discharge of stormwater from a community or network utility operator stormwater system onto or into land where a contaminant may enter water; or into groundwater or a surface water body (restricted discretionary)

37. Rule 5.71 provides that the above discharges are a restricted discretionary activity. The recommended removal of the term “network utility operator” from this definition (R5.71) and from Rule 5.71 addresses the NZTA’s query (submission 169.81) as to whether the NZTA would be captured by this rule.

Decision requested:

Accept R5.71 in respect of the removal of “network utility operator”.

Rule 5.72 – discharge of stormwater into a river, lake or wetland or artificial watercourse or onto or into land where a contaminant may enter water (permitted)

38. I support the splitting of Rule 5.72 as recommended in the Section 42A Report (R5.72).

Decision requested:

Accept R5.72.

Rule 5.73 – discharge of stormwater into a river, lake or wetland or artificial watercourse or onto or into land where a contaminant may enter water (non-complying)

39. The NZTA also supported various submissions (submissions 127.10, 128.28, 148.11, 149.25) to amend Rule 5.73 to make stormwater discharges that do not comply with the conditions of Rule 5.72 a *restricted discretionary activity*, rather than a *non-complying activity*.
40. The Section 42A Report recommends a change to the activity status from non-complying to discretionary (R5.73). However, I consider that restricted discretionary status allows a more appropriate, staged approach to the assessment of effects while still allowing a robust assessment against the key objectives and policies in the Proposed Plan. Discretionary activity status is typically appropriate where the effects of the activity are so variable that it is not possible to prescribe standards to control them in advance.¹ That is not the case here – indeed the list of conditions in Rule 5.72

¹ For example, see *Fletcher Forest Ltd v Taumarunui County Council* (1983) 11 NZTPA 233 (HC).

exhaustively sets out the types of effects concerning the Canterbury Regional Council (CRC). In my opinion, discretion should be restricted to “the effects on ground and/or surface water quality from not meeting conditions of Rules 5.72A and 5.72B”.

Decision requested:

Amend Rule 5.73 by changing the activity status from non-complying to restricted discretionary, with discretion being restricted to “the effects on ground and/or surface water quality from not meeting the conditions of either Rule 5.72A or Rule 5.72B”.

ISSUE B – NZTA WORKS IN WATERCOURSES AS PART OF ROUTINE MAINTENANCE

41. NZTA undertakes the a range of activities in watercourses as part of routine maintenance of State highways, including replacement of culverts, stormwater outfalls and associated structures, bank protection works and bridge maintenance.
42. As evident, the NZTA’s maintenance activities are wide-ranging. They also vary between sites and environments however they are generally categorised as activities that involve repair, replacement or minor upgrading of physical assets.
43. For management purposes, the Canterbury State highway network is split into two sub-regions: North and South Canterbury, separated by the boundary of the Rakaia River. The NZTA has network maintenance contracts are in place for carrying out the physical works associated with maintenance.
44. The NZTA has submitted that some of the matters covered by the rules in the Proposed Plan are relatively minor and little purpose or environmental benefit is achieved in them being subject to resource consent. For example, as detailed below, Rule 5.89 would require resource consent for temporarily diverting watercourses to allow maintenance activities to be carried out so those activities are not undertaken in flowing or standing water (thus avoiding issues, for example, with sedimentation).

Definitions

“Diversion”

45. The definition of “diversion” in the Section 42A Report limits the term to the deflection of water within a river or lake bed and states that any water leaving the bed or beyond the banks of a river – even temporarily – will be treated as a water take and discharge.
46. The NZTA sought amendment (169.17) of the definition of “diversion” so that temporarily diverting water out of waterbeds was not deemed to be a “take” (and therefore a consumptive use). Submission 169.17 was rejected in the Section 42A Report:

“NZTA request a revision of diversion so that it is not limited to a diversion within the bed of the river. They are concerned that this definition will require them to apply for a take and discharge to take water away from, and return it to, a river or lake. The pLWRP has specifically provided for a more limited definition of diversion however this has not meant that out of river diversions are not provided for. The various provision for takes and discharges for temporary

purposes or involving small amounts will generally provide for these situations. The definition of diversion therefore does not need to be changed"².

47. The authors recommend (R2.10.44) amendment to the definition of "diversion" so that water leaving the bed of a river or taken beyond its banks, even for a short distance and returned, is "taken" and "discharged".
48. However, in my opinion, the "various provisions" do not provide for temporary diversions, as the authors of the Section 42A Report suggest. By deeming temporary re-routing of water a "take" all of the rules referring to "takes" of water will apply. This will significantly affect the NZTA because it will be more likely that the NZTA will have to seek resource consents for diversions (which would previously not be required under the NRRP), for activities that may be part of routine maintenance, that importantly are non-consumptive and have only temporary effects on the receiving environment.
49. For example, under Rule 5.89 the NZTA will be required to seek resource consent for temporary re-routing of water if the re-routing exceeds the conditions specified (eg, exceeds 15 L/s and 100m³ per day, or exceeds 10% of the flow at the point of take).
50. As part of State highway construction, upgrading and maintenance works the NZTA is often required to temporarily divert *all* of the water flow in a section of a river so that it can avoid carrying out works in flowing water. Examples of this are:
 - (a) where the bed of a culvert is replaced and upstream of the culvert inlet the water is blocked off (eg, with sand bags) and pumped out and "discharged" to below the culvert outlet, or
 - (b) repairs required to the culvert so the water upstream of the culvert inlet is blocked off and the water is "flumed" through a pipe that is placed temporarily within the culvert.
51. In both these examples the water is "returned" to the river just below the culvert outlet. However 100% of the flow is re-routed. Indeed Policy 4.86 supports diverting water out of river beds rather than undertaking the activities in flowing or standing water. Yet, because of the definition of "diversion" such re-routing is deemed to be a "take" and the NZTA will be required to seek resource consent, despite the different effects of that diversion than a consumptive take.
52. Secondly, deeming such temporary diversions to be takes and discharges is illogical and does not accord with caselaw on the meaning of diversion. "Diversion" is not defined in the RMA but typically case law take a natural and contextual interpretation of the word, focusing on whether there has been a deflection or change in the direction of water, without distinguishing whether the water has been deflected in-

²

Section 42A Report, page 329.

stream or taken beyond river banks.³ Such diversions are not consumptive and it is erroneous to refer to them as a "take".

53. Decision requested:

Amend the definition of "diversion" to read:

~~"means the turning aside, deflection, or changing the direction of water from its natural course", but remaining within the bed or banks of the water body, or artificial lake or artificial watercourse. If the water leaves the bed or is taken beyond the banks even for a short distance and then returned to the same water body, artificial lake or artificial watercourse, this Plan considers that the water has been "taken" and subsequently "discharged".~~

"Maintenance"

54. The NZTA submitted (169.27 and 169.76) that the Proposed Plan should include a definition of "maintenance", which includes repair work and appropriately provides for the upgrading of infrastructure in the policies and rules. Without such a definition it is unclear as to whether the policies and rules appropriately provide for the upgrading and repair of infrastructure and diversions, water takes etc. For example, the NZTA submitted (169.66) that Policies 4.40 and 4.44 would benefit from the use of a definition of maintenance that includes upgrades, which can be an essential part of maintenance. The NZTA supported either of the definitions advanced by KiwiRail (306.5).

55. The Section 42A Report recommends (RN44, pages 328-329) inclusion of the following definition:

"Maintenance means repairing and keeping a structure, land or vegetation in good and safe condition and includes upgrading and minor alterations as long as any upgrading or minor alteration does not increase the footprint, height, or external envelope of the structure".

56. I support the inclusion of a definition. However, in some instances, the footprint, height or external envelope of the structure may increase slightly beyond the existing envelope of the structure. For example, new regulations might require safety structures on a bridge to be higher or wider such that they may exceed the existing envelope. It would be not make sense for that alteration to no longer come within the definition of "maintenance" because of a minor exceedance.
57. Definitions should not contain substantive obligations. Instead, the definition should stop at *"maintenance means repairing and keeping a structure, land or vegetation in good and safe conditions and includes upgrading or minor alterations"*. The rules already set limits on the types of maintenance activities that are permitted, based on the effects of such activities on the relevant resource. If the effects exceed those

³ For example, see *Chatham Islands Seafoods Ltd v Wellington Regional Council* A18/2004 paras [28] and [29]; *Stewart v Kanieri Gold Dredging Ltd* [1982] 1 NZLR 329 and *Rotorua Conservancy Fishing and Shooting Federation v Bay of Plenty Catchment Commission* (1973) 4 NZTPA 427.

limits, resource consent will be required. For example, Rules 5.89 and 5.113 contain detailed conditions setting out when maintenance activities will require resource consent.

Decision requested:

Accept RN44 but delete the words following minor alterations, so the definition of maintenance is:

“Maintenance means repairing and keeping a structure, land or vegetation in good and safe condition and includes upgrading or minor alterations”.

58. The Section 42A Report has recommended (R2.10.30), as the NZTA submitted (169.15), that the definition of “construction” be amended to remove the word “maintenance”. I support that approach, as there will now be a separate definition of “maintenance”, as long as “maintenance” and “construction” are both mentioned in objectives, policies and rules which previously would have covered both terms under the definition of “construction”.
59. These consequential amendments that would flow from this recommendation (but are not addressed in the Section 42A Report) are to insert “maintenance” next to “construction” in Objective 3.20 (page 93 of the Section 42A Report); Objective 3.22 (page 99); Rule 5.92 (page 274), and within the definition of “earthworks” (pages 384-385).

Decision requested:

Accept R2.10.30 and make consequential amendments to Objectives 3.20 and 3.22, Rule 5.92 and the definition of “earthworks”.

Objectives

Objective 3.7 – The mauri of lakes, rivers, hāpua and natural wetlands is maintained in their existing state or restored and they are suitable for use by Ngāi Tahu and the community

60. The NZTA sought an amendment (169.49) to Objective 3.7 to delete the words “and they are suitable for use by Ngāi Tahu and the community” as it is not clear what suitable for use is intended to mean (eg, swimming, recreational or drinking use etc).
61. The Section 42A Report did not directly respond to submissions on Objective 3.7. The only objective to refer to Ngāi Tahu is the new proposed Objective 3.17 (R3.0):

“3.17 The relationship of Ngāi Tahu and their culture and traditions with the water and land of Canterbury is recognised and enabled.”

62. I consider that the deletion of previous Objective 3.7 has addressed the NZTA’s concerns and I have no objection to Objective 3.17, as recommended in the Section 42A Report.

Decision requested:

Accept R3.0 insofar as it relates to previous Objective 3.7.

Policies

Policy 4.3 – discharge of contaminants shall not diminish any values of cultural significance to Ngāi Tahu

63. The NZTA submitted (169.56) on Policy 4.3 which stated “the discharge of contaminants...shall not diminish Ngāi Tahu cultural values”. I note that the Section 42A Report recommends replacing this policy with a new one submitted by Ngāi Tahu (albeit with a minor change), as follows:

“The cultural values of each catchment shall be identified and provided for in the sub-regional sections of the Plan.”

64. I support this change, but seek clarification as to how the cultural values of each catchment are to be identified and provided for in the sub-regional sections of the Proposed Plan. Any further changes to the sub-regional sections of the Proposed Plan would need to go through a separate plan variation process.

Decision requested:

Accept R4.3, but seek clarification as to how the cultural values of each catchment are to be identified and provided for in the sub-regional sections of the Proposed Plan.

Policy 4.44 – small scale diversions within the beds of lakes

65. Paragraph (c) of Policy 4.44 provides:

"undertaking minor flood or erosion control or repair works and the diversion is occurring within the boundaries of an individual's property and there are no potential effects on any other person, their property, or any ecological, cultural, recreational or amenity values of the fresh water body".

66. The NZTA submitted that the reference to an individual's property does not reflect case law. That is, landowner consent is not required in order to apply for resource consent, but resource consent can only be exercised by, or with the approval of, the owners or occupiers of the land.⁴

67. The Section 42A Report did not recommend any change to Policy 4.44, commenting:

"Part (c) of the Policy provides for small scale diversions within individual properties for minor flood or erosion control works, provided that there are "no potential adverse effects" on any other party and a number of other matters. The effects of these small scale diversions are expected to be managed within the boundary of the site where the works are to be undertaken and therefore requested amendment is not appropriate."

⁴ Sections 88(1) and 134 of the RMA.

68. The explanation clarifies that part (c) is not intended to be restricted to a property owned by an individual carrying out the work. However, the explanation refers to both "individual properties" and a "site" (both differently defined terms in the Proposed Plan). I think that the current reference to an "individual's property" in part (c) is intended to refer to "a site" because "site" is defined as being limited to single allotments held in a single certificate of title, whereas "property" may include more than one certificates of title.
69. I therefore recommend amending Policy 4.44 (c) to clarify refer to "a site".
70. In my opinion, the reference to "no potential adverse effects" within part (c) has the practical consequence that it is very unlikely that this provision can be complied with. Therefore I support the submissions requesting that "significant" be added to part (c).

Decision requested:

Amend Policy 4.44 (c) to read:

"Undertaking minor flood or erosion control or repair works and the diversion is occurring within the boundaries of a site ~~an individual's property~~ and there are no significant potential adverse effects on any other person, their property, or any ecological, cultural, recreations or amenity values of the fresh water body."

Policy 4.47 – abstraction of water limited where it exceeds environmental flow and water allocation regime

71. The current drafting of Policy 4.47 relating to the abstraction of water would not allow a temporary in-stream diversion within a catchment that is at its allocation limit as in-stream diversion is considered to be a take and discharge activity. Abstraction is defined in the Proposed Plan as "the taking of water from a water body or the diverting of water outside of the bed of a river, lake or artificial watercourse". The NZTA seeks the policy be amended to make an exception for activities where the water is returned directly to the catchment within a short distance (169.67), for example, replacement of a culvert, which involves temporarily requires re-routing water to avoid the activity being carried out in flowing water.
72. The Section 42A Report did not address the NZTA's submission on this point. I acknowledge that the intent of the policy is to allow existing consented water abstractions to be replaced at the same or a lesser rate of water. The amendment sought by the NZTA would not detract from this policy intent but would clarify that diversions could occur if the water was returned to the river, lake or artificial watercourse.

Decision requested:

Either:

- (a) Amend Policy 4.47 to read:

“where the rate of take or volume of water ... exceeds the environmental flow ... for that catchment, any further allocation of water (excluding temporary diversions in-stream and temporary diversions of water returned to the river, lake or artificial watercourse) is limited to”.

Or:

(b) Amend the definition of “abstraction” as follows:

“means the taking of water from a water body or the diverting of water outside of the bed of a river, lake or artificial watercourse (but excluding any in-stream diversion if the water is returned to the river, lake or artificial watercourse)”.

Policy 4.80 – modification of natural wetlands etc may occur if necessary to provide for the installation of infrastructure

73. The NZTA submitted (169.69) that Policy 4.80 be amended by providing for the installation, upgrading and maintenance of infrastructure within this Policy. The Section 42A Report has addressed the NZTA's submission. I support this recommended amendment.

Decision requested:

Accept R4.80.

Policy 4.84 – earthworks and structures in the beds or margins of lakes, rivers, natural wetlands, hapua, coastal lakes and, lagoons

74. The NZTA submitted (169.71) that it may not always be practicable or safe, to retain all existing lawful accesses to water bodies during earthworks or following the construction of new structures.

75. The NZTA has requested that Policy 4.84(c) read “so far as practicable do not preclude”. Recommendation R4.84 of the Section 42A Report recommends use of the wording suggested by Fulton Hogan Canterbury and the Aggregate Group: “except where necessary to protect public health or safety”. I support this recommendation as it addresses the NZTA's concern about public safety and ensuring a safe system approach is employed in relation to construction, operation and maintenance of State highways.

76. The NZTA also requested a change to Policy 4.87 to incorporate a degree of pragmatism in relation to effects of earthworks and structures on flood flow or erosion. I support the recommendation proposed (R4.87), which resolves the NZTA's concerns.

Decision requested:

Accept R4.84 and R4.87.

Rules

Small and community water takes, Rule 5.84 – take and use of water from a river, lake or artificial watercourse (permitted)

77. The NZTA sought (169.85) that condition 3 of Rule 5.84 comply with the requirements for incorporation of material by reference as specified in Part 3 of Schedule 1 of the RMA. The Section 42A Report recommends deleting the reference to incorporation of material by reference and replacing this with “as measured by CRC” (R5.84). However, I consider that this amendment does not address the NZTA’s concern and adds significant uncertainty to the Rule. It would be less ambiguous, and provide certainty to the rule, to simply remove this reference so that the condition relies on the minimum flow set in Sections 6-15 of the Sub-Regional Rules, which would need to be changed by way of a plan change.
78. As a minor point, I note that condition 3 as still refers to “diversion” although all other uses of this in the rule have been deleted.

Decision requested:

Amend Rule 5.84 by deleting the phrase “as measured by the CRC” and remove the reference to “diversion” in condition 3.

Rule 5.89 – taking and using water for infrastructure construction and maintenance (permitted)

79. The NZTA submitted (169.88) that this Rule needs to provide appropriately for upgrading and repair of infrastructure. The time limit of 2 months provided in condition 2 does not enable this. The NZTA submitted that the timeframe should be extended to 6 months per year per activity. I am advised by my colleague Craig Redmond⁵ that a period of up to 6 months could be required for replacement of a complex culvert or series of culverts. It could also be required for de-watering associated with the upgrading of a large area of hard shoulder.
80. The Section 42A Report commentary on page 270 explains that water take for de-watering purposes is covered by Rule 5.92. However, that only relates to taking of groundwater not taking of water from a river, lake or artificial watercourse, which is sometimes is necessary for NZTA de-watering purposes. In summary, I consider that it would be appropriate for Rule 5.89 to be amended by adjusting the time limit to “up to 6 months”.

Decision requested:

Amend Rule 5.89 as set out in the Section 42A Report by extending the time limit in condition 1 to 6 months instead of 2 months.

⁵ Craig Redmond is the NZTA’s Southern Regional Environmental Specialist. Craig holds the qualifications of Bachelor of Environmental Management, Masters of Applied Science (Environmental Management) and is a Certified Environmental Practitioner (CEnvP) and a Full Member of the Environmental Institute of Australia and New Zealand (Currently Co-President of the NZ Chapter).

Rule 5.92 – taking (and associated use and discharge) of water from groundwater for the purpose of de-watering for carrying out excavation, construction, and geotechnical testing (permitted)

81. The NZTA sought a number of changes to Rule 5.92 (169.90). This rule provides for the taking of water from groundwater for the purpose of de-watering for carrying out excavation, construction and geotechnical testing etc as a permitted activity, subject to 8 conditions.
82. In relation to condition 1, the NZTA sought clarification as to whether “carry out the work” relates to an entire project or a specific site. For example, if construction of a new part of State highway took longer than 6 months, but the water take for the purpose of de-watering from one particular site was needed for less than 6 months – would this condition apply?
83. The Section 42A Report noted “In respect of Condition 1 the Rule appears to refer to individual takes rather than an entire project”. I consider that it is appropriate to amend the Rule to clarify that the take relates to that from a particular site and that it is the take rather than the works that not exceed 6 months. My recommendation for condition 1 is:

“The take from a specific site continues ~~only for the time required to carry out the work but~~ for a time period not exceeding 6 months”.

84. In relation to condition 7, the Section 42A Report states:

“Submissions from NZTA, The Fuel Companies and Transpower request the rationale be provided for the 50 g/m³ referenced in Condition 7 and suggested 100 g/m³ as an alternative. Given that 100 g/m³ is used for a significant number of rivers in the region in Rule 5.77 and the take is subject to a number of conditions it is agreed that 100 g/m³ is appropriate.”

85. However, there appears to be an error in R5.92 as 100 is replaced with 50 rather than the other way around.
86. As discussed earlier, I also consider that it appropriate that this Rule provide for maintenance activities, now that R2.10.30 recommends that “maintenance” be removed from the definition of “construction”. This would ensure that maintenance activities are also captured.

Decision sought:

Accept R5.92 with the following amendments:

- (a) Include a reference to maintenance as follows: “The taking of water...for the purpose of de-watering for carrying out excavation, construction, maintenance and geotechnical testing”;
- (b) to condition 1: “The take continues for a period ~~only for the time required to carry out the work but~~ not exceeding 6 months”; and

- (c) to condition 7: replace “50” with “100”.

Structures – Rules 5.113, 5.114 and 5.115

87. In relation to the rules associated with structures (Rules 5.112 to 5.121), the NZTA sought various amendments to these rules (169.92 and 169.93) to appropriately provide for installing, maintaining and removing NZTA structures, such as bridges.

Rule 5.114 – drilling, tunnelling, or disturbance in or under the bed of a lake or river and the installation, maintenance, or removal of pipes, ducts, cables or wires (permitted)

88. Condition 2 of Rule 5.114 states: "The activity does not involve the deposition of any substance, other than bed material, on the bed of a lake or river". The NZTA submitted (169.109) that condition 2 could be interpreted as not permitting someone actually depositing the pipe, duct, cable or wire, the marker posts required under condition 5, or any substance used in the maintenance of the pipe, duct, cable or wire on the bed of a lake or river (which would seem to nullify the intended effect of the draft Rule) and sought that condition 2 be amended to clarify the intent of the Rule.
89. The NZTA's submission was not accepted by the authors of the Section 42A Report, who considered that there was no need to exempt marker posts and pipes from condition 2 because "it clearly is not intended to include these items within the term "substance".⁶⁶ I consider this clarification addresses the NZTA's concern.
90. Similarly, as also submitted in the NZTA submission 169.109, condition 3 could be interpreted as not permitting the actual installation, maintenance or removal of materials that are actually attached or proposed to be attached to the structure, although I note that R5.114 includes the following wording for condition 3, which addresses the NZTA's concern:

“...or closer where there is evidence that permission has been obtained from the owner of the infrastructure or the works are being carried out by or on behalf of the owner”.

Rule 5.115 – installation, extension, use, maintenance or removal of bridges and culverts...and the consequential deposition of substances on, in or under the bed of a lake or river...and the associated take, discharge or diversion of water (permitted)

Condition 1

91. Condition 1 of Rule 5.115 states: "Any substance deposited in, on, under of over the bed of a lake or river in order to construct or maintain the structure is of inert materials of colour and material type that blends with the surrounding natural environment and does not contain or is coated with any hazardous substance".
92. The NZTA sought (169.93) that condition 1 be deleted because it would not permit anyone depositing many of the materials that need to be used in such works (eg, steel

⁶⁶ Section 42A Report, page 339.

and wood for bridges, or paint or other materials used to maintain bridges which may contain hazardous substances).

93. The Section 42A Report clarifies that the term substances is intended to refer to solid materials and it is recommended that the condition be amended to replace “substance” with “material”. This is an improvement, however, I consider that at a minimum, it is appropriate that material being replaced be “like for like”. Rather than not being coated with any hazardous substance, which would prevent painting of any structures, it would be more appropriate for the material to “not be contaminated” with any hazardous substance. In addition, the requirement to “blend” with the natural environment is not always going to be possible for NZTA works (eg, a culvert does not blend with the natural environment).

Condition 2

94. Condition 2 of Rule 5.115 provides that an activity must, among other things, be undertaken at a distance greater than 10m from any bridge. This makes it impossible to carry out any installation, extension, maintenance or removal of a bridge, defeating the purpose of the rule in relation to bridges. KiwiRail also submitted on this point and has made a request for amendment also. The Section 42A Report recommends provision be made for this (as for 5.114), by the insertion of “or closer where there is evidence that permission has been obtained from the owner of the infrastructure or the works are being carried out by or on behalf of the owner”. This addresses the NZTA’s concern.

Condition 6(b)

95. Condition 6(b) specifies a maximum width of the river bed at the point of the crossing for any permanent culvert as being 5m. It is not clear why this is necessary for a temporary culvert or for maintenance of culverts. The NZTA sought that this condition be deleted or alternatively clarification be provided as to its purpose. The Section 42A Report does not recommend any change; it states:

“NZTA questions the need in 6(b) to limit the width of the bed over which the culvert is installed. The width limit is a trigger so that a more detailed assessment can be made for large culverts through the consent process”.

96. This does not address the submission (169.93), which is that condition 6 also applies to maintenance of existing culverts, yet the effects of the river being wider than 5m would have been addressed at the time of installation of the culvert. Therefore, I recommend that the opening words of condition 6 be amended so that it solely applies to installation: ““At the time of installation...””.

Condition 6(c)

97. The NZTA submission (169.93) noted that condition 6(c) creates a problem for the NZTA as the majority of its culverts only flow during rainfall events and are dry for the remainder of the time. The NZTA submitted that a condition requiring a specified

coverage of the culvert by water is likely to lead to culverts susceptible to blockage and increased maintenance costs. The condition is appropriate where water flow is continuous and fish passage is required. Indeed the authors of the Section 42A Report state: "The condition was developed for the permitted activity rule with the purpose of retaining fish passage". The authors acknowledge the concerns of the NZTA but note that no alternative wording was supplied.

98. In instances where fish passage is not necessary, an exemption is able to be sought from the Director-General of Conservation under the Fish Passage Regulations. I consider it would be clearer for an exemption to this provision, where fish passage is not required. If the condition is amended in this manner, it would not be necessary to include new condition 9 "the works or structures do not impede any existing fish passage" as per R5.115. I suggest wording in the decision sought below.

Decision requested:

Amend condition 1 of Rule 5.115 to read:

"any substance deposited in, on, under or over the bed of a lake or river in order to construct or maintain the structure is of inert materials, like for like or of a colour and material type that predominantly blends with the surrounding natural environment and is not contaminated ~~does not contain or is not coated~~ with any hazardous substance."

Amend condition 6(b) to read: "At the time of installation..."

Amend condition 6(c) to read:

"the culvert is installed so that the base of the culvert is below bed level to an extent that a minimum of 25% of the internal width of the culvert is below the level of the bed of the river or lake or is covered with water at the estimated 7DMALF, except where fish passage is not required".

Rule 5.117

99. The NZTA also sought that condition 1 of Rule 5.117 be deleted and replaced with the following condition that appropriately provides for the materials and processes required to safely maintain the structural integrity of bridges:

"Any substance deposited in, on, under or over the bed in order to maintain the structure is of inert materials and like for like or of colour and material type that predominantly blends with the surrounding natural environment, is not contaminated with any hazardous substance and is not deposited into surface water in a manner that will significantly adversely affect water quality".

100. The Section 42A report amends this condition by replacing "substance" with "material". Similarly to my comments on Rule 5.114, this does not address the NZTA's concern and I recommend inclusion of the wording above.

Decision requested:

Accept R5.117 with an amendment to condition 1 as follows:

“Any material deposited in, on, under or over the bed in order to maintain the structure is of inert materials and like for like or of colour and material type that predominantly blends with the surrounding natural environment, is not contaminated with any hazardous substance in a manner that will significantly adversely affect water quality”.

Gravel from Lake and Riverbeds

Rule 5.125 – extracting gravel from lakes and riverbeds permitted activity

101. The NZTA’s submission on Rule 5.125 supported it with the exception of condition 6, which it submitted that the carve-out for network utility operators needs to apply to the whole condition, and not just the last item in the condition (that is, move “unless they are the network utility operator responsible for the structure” to the beginning of the condition).
102. This is consistent with the intent of the carve-out (which was added to the First Schedule Consultation Version) and would clearly enable NZTA to extract gravel within 50 m from a lawfully established bridge (without undermining its structural integrity).

Decision requested:

Accept R5.1525 with an amendment to move “unless they are the network utility operator responsible for the structure” to the beginning of the condition 6.


Rule 5.141 – reducing the area of a natural wetland (restricted discretionary)

103. The NZTA submitted (169.102) that condition 1 of Rule 5.141 (“the practicality of avoiding the natural wetland, including alternative routes or methods”), gives complete discretion to CRC about where a route would go and in doing so opens a whole new area for consideration beyond the RMA.
104. The RMA Schedule 4, clause (1)(b) specifies that an AEE should include a description of any possible alternative locations or methods for undertaking the activity *where it is likely that an activity will result in any significant adverse effect on the environment*. It does not permit the decision maker to make a decision about the alternative location of an activity. Schedule 4 only requires a description of alternative routes or methods for significant effects. Condition 1 requires an assessment of alternatives for any effect when the area of wetlands is reduced. As the NZTA submitted, I consider it appropriate that Condition 1 be amended.
105. The NZTA also commented on the fourth condition (“the extent to which the proposed activity will prevent or compromise the attainment of the environmental outcomes sought by, or is inconsistent with, the objectives and policies of this Plan”). The NZTA’s submission noted that this was vague and could be applied in an arbitrary

manner, but I also question how discretion can be “restricted” if attainment and consistency with all the objectives and policies of the Proposed Plan is required.

Decision requested:

Amend R5.141 as follows:

- (a) deleting the words “including alternative routes or  methods” from condition 1; and
- (b) delete condition 5 (previously condition 4).

ISSUE C – BORES FOR GEOTECHNICAL INVESTIGATIONS

106. In the Canterbury region, the NZTA currently has approximately 27 consents for bores for geotechnical investigations and monitoring, although it has held more in the past. Under the NRRP there was a change to the rules with consent only being needed if the bore was for monitoring and if groundwater would be intercepted – this has cut down the number of consents NZTA has needed.

Bores for geotechnical investigations

107. Rule 5.79 provides for bores for geotechnical investigations or monitoring as a permitted activity subject to certain conditions. Condition 3 requires that “information on bore or gallery location, bore installation (including bore logs and intended uses), and other relevant information is submitted to the CRC within 20 working days of drilling the bore.” The NZTA submitted (169.83) that the timeframe of 20 working days in condition 3 should be extended to no later than 40 working days. The Section 24A Report authors consider that, following discussions with geotechnical experts, 20 working days is reasonable. However, in the NZTA's experience 20 working days is insufficient to ensure that the NZTA has enough time to ensure that raw data can be tested and presented in a meaningful way. If bore samples for test pits are sent to a laboratory for testing, this can easily take longer than 20 working days.
108. It is also unclear what “other relevant information” means. The NZTA requests that this phrase be clarified or deleted (169.83). As currently drafted, this is left open to the CRC's discretion. The Section 42A Report authors note (page 259) that to remove this requirement would remove the ability of the applicant to supply additional information that the applicant may consider relevant to substantiate their application for a permitted activity status for their proposal, therefore did not consider an amendment appropriate. If this is the intent of the condition, I think it is appropriate that the Rule clarify that “relevance” is determined by the applicant, as set out below.

Decision requested:

Amend Rule 5.79, condition 3 to:

- (a) “no later than 40 working days” rather than “30 working days”; and
- (b) refer to “any other information the applicant considers relevant is submitted...”

109. The NZTA sought that Rules 5.82 and 5.83 relating to the taking of water should also extend to use of water for geotechnical investigations (169.84), otherwise this would require NZTA to seek water and discharge permits for any bores established or used for the purposes of obtaining geotechnical information. Given that bores for the use of land for geotechnical investigations are already established by Rule 5.79, it does not follow that bores for geotechnical investigations are excluded from Rules 5.82 and 5.83 yet bore development and pumping are permitted when the effects are similar, particularly if they meet the same conditions as set out in the rule. Requiring the NZTA to seek resource consents in such situations is contrary to the NZTA's statutory requirement to use revenue in a way that seeks value for money.
110. The Section 42A Report notes that the NZTA should confirm if groundwater is taken as part of geotechnical investigations as it is understood that this does not occur.
111. After speaking with my colleague Craig Redmond, I can confirm that the NZTA does often hit groundwater when drilling bores for geotechnical investigations, therefore in such circumstances can be considered a "take". Therefore, I consider that it appropriate that the rules be amended to provide for geotechnical investigations also.

Decision requested:

Amend R5.82 and R5.83 by inserting "or geotechnical investigations", to read:

"The taking of water from groundwater for the purposes of carrying out geotechnical investigations, bore development or pumping tests..."

ISSUE D – GLOBAL RESOURCE CONSENTS

112. The NZTA submitted that the Proposed Plan should encourage and facilitate global resource consents, particularly for network utility operators.⁷
113. The Section 42A Report did not address this submission. However, the report authors acknowledge that global resource consents have been granted in the Canterbury region (referring to the Christchurch City Council's two global resource consents for stormwater discharges)⁸ and suggest that global consents could be sought under the Proposed Plan, in the following comments:

"To avoid large numbers of applications being made, the submitter could always apply for a global consent for the use of each substance over multiple sites."

"Some form of global consent for this activity may provide the NZTA and CRC with the necessary flexibility to deal with a series of different river environs."⁹

114. Despite the fact that global resource consents can (and in my view should) be sought under the Proposed Plan, the lack of guidance as to what is meant by the phrase, and lack of direction as to how such consents should be processed, misses an opportunity to promote global resource consent applications.

⁷ 5 October 2012 submission.

⁸ Page 191 of the Section 42A Report.

⁹ Pages 171 and 356 of the Section 42A Report.

What are global resource consents?

115. Despite the relatively common use of "global resource consents" there is no accepted definition. Typically, global resource consents have one or more of the following characteristics:

- (a) granted for a long term (minimum ten years);
- (b) the activity only just exceeds permitted activity conditions, and in isolation are normally processed on a non-notified basis;
- (c) granted for multiple sites within a broad area;
- (d) granted to network utility operators in order to maintain or operate their networks (eg, for discharges to land and water from maintenance and repair works to a water distribution network, or for stormwater discharges to and from stormwater systems, or for maintenance works on bridges or to manage stormwater runoff from State highways, weed spraying);
- (e) the activities covered by the consents, although spanning multiple sites, have similar effects and similar scale of effects; and
- (f) are not granted for major projects/new capital works.

116. Examples of global resource consents the NZTA holds in the Canterbury region are:

- (a) to undergo land use activities to assist proposed works on bridges in the Waitaki District (granted on 4 December 2012, for a ten year term);
- (b) for the application of de-icing agent calcium magnesium acetate, mainly in the mountain passes;
- (c) for weed spraying (consent is only required in locations where the discharge could enter water); and
- (d) for maintenance works in Kaikoura.

117. In December 2012 the NZTA applied for two more global resource consents, one for the Christchurch City boundaries and another for the balance of the Canterbury region, each for a ten year term. The applications authorise existing discharges (that were not permitted), new minor projects¹⁰ and construction of associated stormwater works on State highways.

What are the benefits of global resource consents?

118. There are many benefits of global resource consents, including:

- (a) avoiding delays, and the need for multiple consent applications, as described in a Greater Wellington Regional Council's decision to grant such a consent:

¹⁰ Defined as works on State highways that will create four hectares of new seal or less.

"The discharges occur as a result of dewatering excavations while repairing pipes. This 'global' consent was processed as Greater Wellington Water had previously had to apply for a number of site specific consents - this often meant delays to the repairing the pipe while the consent was processed. This 'global' consent allows Greater Wellington Water the flexibility to carry out works as required, within the bounds of a robust set of consent conditions around environmental performance.¹¹

- (b) providing flexibility in management while ensuring robust environmental outcomes, as described in the current NZTA application for global resource consents in the Christchurch City area:

"They are described as 'global' because they are not limited to a specific area but rather State highways and various waterways within the areas of the application. A global consent allows flexibility in the management of the network whilst providing for a consistent and integrated approach to stormwater associated with operations, maintenance and minor works and a certainty that legislative requirements are being met. It would result in consistent monitoring and reporting and cost effective management. Separate resource consents for large capital projects will continue to be applied for on a project by project basis."

- (c) assisting the CRC to meet statutory timeframes for processing resource consents, given that Council officers will not be required to process multiple applications.

Why and how should the Proposed Plan include provisions encouraging global resource consents?

- 119. I acknowledge that applicants are not precluded from seeking global resource consents under the Proposed Plan. However, given the demonstrated benefits of global resource consents, I consider that the Plan should explicitly acknowledge and facilitate such applications.
- 120. The NZTA typically applies for global resource consents to avoid multiple resource consent applications for activities which only just exceed the conditions for permitted activity status, therefore triggering the need for resource consent (eg., for routine works on bridges, culverts and in-stream river works where there has been a diversion of water required). The effects of such activities are minor and, if resource consents were sought separately, would be processed on a non-notified basis.
- 121. The reason for the CRC processing such applications on a notified basis may be the uncertainty of assessing effects when the applicant has not specified exactly where an activity is to occur (as opposed to covering a wider area). However, in my opinion if the potential effects cannot be described with certainty a global approach is not the right one. If a global consent is sought, comprehensive investigation can be conducted

¹¹ Greater Wellington Regional Council, Decision on non-notified resource consent application E11/01/05.

by seeking feedback on proposals from, for example. the Department of Conservation and NZ Fish and Game and incorporating feedback received into the application. Examples of feedback could be a list of sites that are deemed significant (eg, for spawning) and specific conditions could apply in those areas (eg, no works within spawning period).

122. I acknowledge that some global resource consent applications should be processed on a notified basis, if the activity is likely to have effects on the environment that are more than minor. However, the Proposed Plan should make it clear that if an activity only just exceeds permitted activity conditions and the effects do not meet the notification threshold, simply amalgamating those consent applications does not trigger notification. In fact, it promotes a more robust assessment of potential adverse effects, including any potential cumulative effects.
123. Guidance is also required in the Proposed Plan as to what is meant by "global resource consents" and when applications for such consents are appropriate, in order to provide certainty to decision-makers and applicants.

Decision requested:

124. Insert a new definition of "global resource consents" as follows:

"global resource consent" means one or more resource consent applications for the same or similar type of activities within an area that could cover multiple sites and include routine maintenance and/or minor projects associated with capital works or infrastructure"

125. Insert a new policy 4.9 (strategic policy) as follows:

"Global resource consent applications by network utility operators that exceed permitted activity status, but meet restricted discretionary standards, shall be processed on a non-notified basis."

126. Insert after Rules 5.73,¹² 5.83, 5.90, 5.93, and 5.101 a new provision:

"Non-notification

Global resource consent applications by network utility operators that meet the conditions listed in [insert relevant rule above] need not be notified."

ISSUE E – OTHER ISSUES

Introduction – quarrying gravel outside of riverbeds

127. Paragraphs 1.2.3 and 1.2.4 of Section 1 (Introduction), describing the land and water resources management for the region, state: "Quarrying, mining and extractive activities need to be appropriately located, operate without affecting water quality, and

¹² The original activity status of this Rule is non-complying; the Section 42A Report recommends it be changed to discretionary. The NZTA seeks that it be changed to restricted discretionary.

sites are appropriately managed or rehabilitated once extraction ceases” and “care needs to be taken to ensure gravel removal does not affect water quality” .¹³

128. The NZTA submitted (169.6 and 169.7) opposing the references to “not affecting” water quality, noting that the RMA is not a no-effects statute; the section is supposed to frame issues relating to gravel resources; and is in contrast with Rule 5.123, which states that extracting gravel is a permitted activity, provided certain conditions (which manage potential effects on water) are met.

129. The Section 42A Report authors did not agree, concluding that:

“Quarrying and mining are issues in that unless well managed there are potentially significant effects on groundwater, resources, and long-term management of quarrying and mining sites. Overall, the section is considered to strike an appropriate balance, but it is recognised that the addition of mining into this section will make it more encompassing”.

130. However, I consider that the way this issue is currently framed is not an appropriate balance between the competing interests. In my view, Rule 5.123 strikes an appropriate balance (permitting quarrying with appropriate safeguards), while the issue does not.

131. In addition, the quoted sentences are not statements of issues but rather policies – courses of action to achieve a certain environmental outcome. I therefore consider that the sentences should be deleted or re-worded as follows: “Quarrying, mining and extractive activities need to be appropriately located, operated without water quality, and sites appropriately managed or rehabilitated once extraction ceases” and “care needs to be taken to ensure gravel removal does not affect water quality is conducted appropriately”.

Decision requested:

Amend paragraphs 1.2.3 and 1.2.4 of the Introduction to read:

“Quarrying, mining and extractive activities need to be appropriately located, operated without water quality, and sites appropriately managed or rehabilitated once extraction ceases” and “care needs to be taken to ensure gravel removal ~~does not affect water quality~~ is conducted appropriately”

Rule 5.86 – taking and using of less than 5 L/s and 10 m³ per day of groundwater (permitted)

132. Rule 5.86 permits the taking and using of less than 5 L/s and 10 m³ per day of groundwater as long as the bore, other than a sampling or monitoring bore, is located more than 20m from the site boundary, or any surface water body.

¹³ This is the wording recommended on pages 59 and 61 of the Section 42A Report, which (in this respect) is substantially unchanged from the previous drafts of the Proposed Plan.

133. The NZTA submitted on this rule (169.87), however the Section 42 Report authors did not consider that the NZTA had provided sufficient information and amendment was not considered necessary.
134. I am advised by Stephanie Brown¹⁴ (from Opus International Consultants) that this Rule has its origins enabling landowners to take water for use on their property. The Rule can easily be complied with by a farmer who is able to select a site on a lifestyle block or farm which is more than 20 m from a site boundary. However, the condition poses problems for the NZTA because State highways are long and narrow, so the bore, typically near the edge of the road reserve, is likely to be within 20m of the site boundary. Bores are used for dust suppression, which is an integral part of road construction and maintenance works.
135. I therefore consider it appropriate to seek an exception for State highways, as set out below, which reflects the layout of State highways.

Decision requested:

Amend condition 1 of Rule 5.86 to read:

"The bore, other than a sampling or monitoring bore, is located more than 20m from a site boundary where that site is in different ownership (except for State highways), or and surface water body."

Schedule 1 – Group or Community Drinking Water Protection Areas

136. The NZTA submitted (169.114) that the process for adding new group or community drinking water protection areas to Schedule 1 is unlawful as the RMA resource consent process can only impose restrictions on people undertaking the activity authorised by the resource consent; it cannot impose restrictions on third parties. The NZTA sought a more formal process for establishing protection zones and made a number of suggestions.
137. The authors of the Section 42A Report do not consider that amendment to Schedule 1 is required, and note that "third parties will always have the ability to be involved in the re-consenting of new supplies or applications for new supplies and this will provide an opportunity for impacts of a protection zone to be considered."¹⁵
138. I consider that this is problematic for the NZTA as the NZTA would need to rely on notification through the resource consent process, which may or may not occur. Rules 5.55, 5.57, 5.72A and 5.72B 5.76 and 5.92 of the Proposed Plan potentially apply to NZTA activities, all of which must not occur within group and community drinking water protection areas. It will be a significant administrative burden on the NZTA to be involved in each resource consent application (rather than one plan change process), which could change the water protection areas. I also consider it inappropriate for

¹⁴ Stephanie Brown has the following qualifications: BSc, MSc, CEnvP. Stephanie is employed by Opus International Consultants as a Principal Environmental Consultant and has worked on behalf of the NZTA for the past 12 years on a variety of projects from network maintenance and safety projects to obtaining resource consents from CRC for the Christchurch Southern Motorway.

¹⁵ Section 42A Report, page 206.

resource consents to drive planning processes, especially in such a non-transparent manner. This does not achieve integrated and sustainable management.

139. The authors also note on page 202: "Potentially an existing permitted discharge could require a consent if a new protection area is defined."
140. If new drinking water supply zones are established in areas where the NZTA carries out permitted discharges, this may require the NZTA to then apply for resource consent for these existing activities.
141. In my view, further consideration should be given to the process for establishing new drinking water protection areas, so that at the very minimum, affected third parties are notified and consultation about the extent of the zone occurs.

Decision requested:

Revise the process for adding new group or community drinking water protection areas to Schedule 1.

CONCLUSION

142. In conclusion, I consider the Proposed Plan will assist the CRC in achieving the sustainable management of the land and water resources of the Canterbury region. I consider the submissions made by the NZTA and the evidence I have provided contribute to objectives, policies and rules that are straightforward, functional and that support the purpose of the Proposed Plan.



Amy Kearse

4 February 2013