

IN THE MATTER

of the Resource Management
Act 1991

AND

IN THE MATTER

of submissions and further
submissions by Rangitata
Diversion Race Management
Limited to the proposed
Canterbury Land & Water
Regional Plan

STATEMENT OF EVIDENCE OF NIGEL ROLAND BRYCE

1.0 INTRODUCTION

- 1.1 My name is Nigel Roland Bryce. I am an Associate Director and Planner at Ryder Consulting Limited ('**Ryder**') and am based out of the company's Dunedin office. My responsibilities include reviewing and submitting on national, regional and district planning instruments, designing and implementing consultation programmes, the preparation of resource consent applications, the management of resource consent processes, and the preparation and presentation of expert evidence.
- 1.2 This evidence is in support of the submissions and further submissions lodged by Rangitata Diversion Race Management Limited¹ to the proposed Canterbury Land & Water Regional Plan.²

2.0 QUALIFICATIONS AND EXPERIENCE

- 2.1 I am a qualified and experienced environmental planner, having completed a Bachelor of Resource and Environmental Planning at Massey University in 1996. I am also a full member of the New Zealand Planning Institute.
- 2.2 I have 15 years experience as a resource management practitioner in New Zealand and in the United Kingdom, which includes both public and private sector planning roles. I have a broad range of planning and process management experience. A list of processes that I have been, or am currently involved in (as they relate to the Canterbury Region, Otago and Southland) is attached as **Annexure A**.
- 2.3 I confirm that I have read and agree to comply with, the Code of Conduct for Expert Witnesses, as set out in the Environment Court's Consolidated Practice Note.

3.0 STRUCTURE OF EVIDENCE

- 3.1 This evidence is structured to reflect the submissions and further submissions lodged by RDRML to the pL&WRP. The RDRML made a broad range of submissions to the Regional Plan. My evidence will address those submission points that are of particular concern to the RDRML. I do this by briefly summarising the response of the Officers to the submission points made by the RDRML and then offering my own evidence in relation to the same.
- 3.2 The issues addressed in this statement have been grouped into 11 topics, being:
- a. The approach to minimum flow setting and to the allocation of water;
 - b. Recognition given to existing infrastructure and the continuation of the same;

¹ Hereafter referred to as '**RDRML**' or as '**the Company**'

² Hereafter referred to as the '**pL&WRP**' or '**the Regional Plan**'.

- c. The 'reconsenting' of existing infrastructure;
- d. Management of adverse environmental effects;
- e. Existing infrastructure and efficiency improvements;
- f. The transfer of water permits between users;
- g. The application of the 'prohibited activity status' to proposals that cannot achieve prescribed limits;
- h. The prioritisation of various 'values' under the Plan;
- i. Water quality, Table 1;
- j. Surface takes of water and their 'conversions' from 'run of river' abstractions to 'abstractions to storage';
- k. Surface takes and the associated discharge of water.

4.0 THE OFFICERS' REPORT

- 4.1 I have reviewed the Officers' report. I note from the outset, that the focus of the Officers' report is on the primary submissions made by the RDRML. There is only limited reference to, and acknowledgement of the further submissions that the Company made, which I find unusual and disconcerting. In my experience, further submissions add another layer of information to the discussion of a provision, or group of provisions. In several instances, this additional information assists with the assessment of the argument that is advanced in the principal submission and in doing so, assists with the 'testing' of that argument and its appropriateness in the context of both the Resource Management Act 1991 generally and Part 2, in particular. That point aside, however, I acknowledge that the Officers' assessment is useful and that there are a number of instances where I believe it offers recommendations which are both sound and constitute good planning and resource management practice. I have listed those recommendations that I agree with in **Annexure B** to this statement.
- 4.2 There are, however, a number of matters raised in the RDRML's submissions and further submissions where the Officers recommend relief that I do not support, or which I wish to address. These matters are addressed in subsequent sections of this evidence.
- 4.3 Further, within **Annexure C** I set out those amendments to the pL&WRP that I consider appropriate to address the concerns that I raise in sections 5 to 15 of this evidence.
- 4.4 Further, I note, for completeness, that when I refer to the plan "as amended" I am referring to the recommendations proposed by the officers (the Commissioners are not obliged to accept).
- 4.5 Lastly, I note, for completeness, that when preparing this evidence I have reviewed the following statutory planning instruments, reports and statements of evidence:
- The proposed pL&WRP;
 - The Operative Canterbury Regional Policy Statement (2013) ('RPS');
 - The Section 32 report supporting the pL&WRP ('Section 32 Report');
 - The Environment Canterbury Section 42a Hearing 1 Officers Report ('Officers' Report');
 - The Canterbury Water Management Strategy ('CWMS');
 - The National Policy Statement on Freshwater Management ('NPS FM');
 - The Canterbury Natural Resource Regional Plan ('NRRP');
 - The Resource Management Act 1991 ('the Act' or 'the RMA');
 - The submissions and further submissions of the RDRML;
 - The statement of evidence of Mr Ben Curry on behalf of RDRML;
 - The draft evidence of Mr Ian McIndoe on behalf of the Canterbury Primary Sector Policy Group;

- The draft evidence of Mr Peter Callander on behalf of the Canterbury Primary Sector Policy Group;
- The draft evidence of Ms Shirley Hayward on behalf of the Canterbury Primary Sector Policy Group;
- The draft evidence of Dr Greg Ryder on behalf of TrustPower Limited

5.0 FLOW AND ALLOCATION REGIMES AND RECOGNITION GIVEN TO EXISTING INFRASTRUCTURE

Recognition Given to Existing Infrastructure & Derogation

- 5.1 The RDRML made a submission³ opposing the water allocation structure within the pL&WRP generally and sought that the Plan be amended to recognise and provide for the 'first in time' and 'last in, first out' approaches to water allocation and that ensuring that existing, legally authorised abstractions are not derogated.

Officer's Report

- 5.2 The Officer in addressing the RDRML's submission states *"Sections 124 – 124C of the RMA address matters of priority and resource allocation issues, and apply to the consideration of applications to renew existing permits. It is not considered necessary to include policies that identify this approach, or potentially go further than the RMA provides for. It is also noted that there is significant case law regarding the issue of non-derogation (ensuring that the granting of a consent does not impinge on rights conferred to another user through a resource consent). It is considered that the existing policies and rules of the pLWRP, in addition to Sections 124 – 124C of the Act, are sufficient to provide the protection sought in this submission, and it is therefore not considered necessary to include additional provisions as sought by RDRML."*⁴

Comments

- 5.3 This section of my evidence, while not making any specific changes or recommendations provides a brief overview and context within which the RDRML has raised matters of particular relevance to flow and allocation regimes under the Regional Plan.
- 5.4 Within its submission, the RDRML considered that there is a clear policy thrust within the L&WRP to elevating both biophysical and metaphysical values over the rights of existing consent holders and the use of water, which is only partially addressed within the pL&WRP. Importantly, the Company notes that the 'first in time' principle that is the foundation upon which water allocation in New Zealand is typically built is not reflected within the pL&WRP.
- 5.5 In my opinion, balancing considerations such as the benefits derived from the taking and using of water and the value of investment underpinning existing infrastructure, are essential considerations in deciding on any allocation priorities, especially in a statutory planning document that deals with a broad range of competing resource management issues, like the pL&WRP. This is principally due to the significant sunk investment associated with many regionally significant infrastructure schemes, and the social and economic benefits that they provide.
- 5.6 I note that the Regional Plan provides for specific recognition given to existing consent holders within Rule 5.96, and those takes and diversions subject to section 124 of the Act, in addressing the taking and use of water. The Officer considers that the existing policies and rules of the pLWRP, in addition to Sections 124 – 124C of the Act, are sufficient to provide the protection sought within the RDRML's relief. I agree with the Officer on this point, however note that an area of uncertainty that exists within the Regional Plan is the manner in which consent reviews are to be undertaken. While I do not make any specific

³ Submissions 197.1, 197.14, 197.16, 197.17 and Further Submission F623.56.

⁴ Page 228

recommendations on this point, I note that the pL&WRP provides limited guidance on this matter, which in turn may increase the level of uncertainty for consent holders who are subject to reviews.

- 5.7 I note that the RDR is given specific reference to within Chapter 13 and its regional importance is reflected in the manner in which it is individually recognised through A and B allocation blocks specified within Policy 13.4.7(a). I also note that Policy 13.4.7(d) specifically excludes the RDR allocations and Water Group takes from incremental stepped reductions as set out in Table 13.
- 5.8 While the Company's concerns relating to Section 13 of the Regional Plan will be set out in Hearing 3, a key matter that links back to the setting of flow and allocation regimes is the increase in the residual flow for the South Branch of the Ashburton River and its potential to adversely impact upon the reliability of the RDR. This is a critical issue for the RDRML, as discussed by Mr Curry (refer paragraph 11.1), and one that has the potential to adversely affect the ongoing operation of the RDR on the Ashburton River.
- 5.9 I note that the pL&WRP is more enabling at a policy level in recognising existing infrastructure and associated water takes as part of the existing environment under Policy 4.48 of the pL&WRP. Subject to addressing the issues that I have raised in paragraphs 7.31 to 7.37 in relation to this policy, there is clear recognition given to infrastructure and existing takes when these schemes are reconsented. Further, the Regional Plan has been further amended at section 1.2.6, which provides particular recognition through sections 124-124C and section 104(2A) of the Act.
- 5.10 Seeking to balance the prioritisation of values under Policy 4.4 (which seeks to give effect to Policy 7.3.4 of the RPS), I have recommended further amendments to Section 2.6 (Limits) that expressly states that when setting flow and allocation regimes within Chapters 6-15, and addressing potential competing interests, that it may be appropriate to include provision for hydroelectric power generation, irrigation, Principal Water Suppliers and other activities that involve substantial investment within environmental flow and water allocation regimes. I address this in more detail at paragraphs 12.3 to 12.6.
- 5.11 The Regional Plan through Policy 4.47 overlays key outcomes in increasing efficiency improvements, while also seeking to reduce over-allocation and the associated adverse effects linked to this. As I discussed in paragraphs 7.13 to 7.29, should this policy not be amended, there is the potential for reconsenting infrastructure and takes within over-allocated catchments to be subject to more restrictive flow regimes in order to address over-allocation. While reducing over-allocation is a central limb of the NPS FM, the extent to which this policy could potentially fetter existing infrastructure operations through the 'significant and enduring' outcomes that it is seeking will need to be carefully weighed. In this regard, the Regional Plan seeks to ensure that all objectives and policies are considered as a whole in reaching an overall broad judgement as to whether sustainable management of natural and physical resources is to be achieved. In my mind, the Regional Plan does provide for greater recognition to existing infrastructure albeit in a way that still limits certainty through the more restrictive planning provisions addressing reconsenting processes and especially as they relate to over-allocated catchments.
- 5.12 As noted above, the RDRML has significant reservations relating to the manner in which flow and allocation regimes are to be implemented on the South Branch of the Ashburton, which does have the potential to adversely affect the ongoing operation of the RDR. This is a matter that will be returned to in the evidence addressed in Hearing 3.

6.0 RECOGNITION GIVEN TO THE MAINTENANCE & UPGRADING OF EXISTING INFRASTRUCTURE

Maintenance, Repair, Development and Upgrading of Existing Infrastructure

- 6.1 The RDRML made a submission⁵ seeking greater policy support for Objective 3.16 (or amended Objective 3.9 of the pL&WRP) within Section 4.0 of the pL&WRP. Objective 3.16 provides that “[i]nfrastructure of national or regional significance is resilient and positively contributes to economic, cultural and social wellbeing through its efficient and effective operation, ongoing maintenance, repair, development and upgrading.”
- 6.2 As Mr Curry notes (refer paragraphs 7.1 and 7.5), a key thrust of the RDRML’s submission was that the Plan recognises and provides for the ongoing operation, maintenance, development and upgrading of existing lawfully established and consented infrastructure (including regionally significant infrastructure such as the RDR, associated irrigation schemes, stockwater networks and Power Stations that it serves).

Officers' Report

- 6.3 The Officer supports a submission for the term ‘maintenance’⁶ to be defined and included within the Plan.

The Officer notes that “[u]pgrading and minor alteration are similar to the term maintenance if they are qualified to be limited to the current form of the structure.”⁷

Comments

- 6.4 I consider that the amendments recommended by the Officer would achieve the central thrust of the RDRML’s submission to Section 4.0 of the Plan. I note that the pL&WRP (as amended) provides for the continued operation, maintenance and upgrading of existing infrastructure within;
- Policy 4.6 (as amended) refers to ‘existing’ infrastructure;
 - Policy 4.48 provides for the recognition of existing hydroelectric power generation schemes (‘HEPS’) and irrigation schemes as a part of the existing environment (and has been amended to recognise ‘their existing takes’).
 - Policy 4.80 (as amended) provides for the modification of natural wetlands, hāpua, coastal lakes and lagoons to occur if the activity is necessary to provide for the installation, upgrading and maintenance (including repair) of infrastructure;
 - Policy 4.90 (as amended) seeks to recognise the value of gravel extraction for construction and maintenance of infrastructure;
 - Rule 5.89 (as amended) provides for the taking and using of water from a river, lake or an artificial watercourse for infrastructure construction, maintenance and repair is a permitted activity (subject to conditions);
 - Rule 5.132 now includes the maintenance of a lawfully established dam as a controlled activity;
 - Rule 5.117 provides for the use and maintenance of structures lawfully established prior to the notification of the Plan as a permitted activity;
 - New Rule 5XX provides for the temporary discharges to land or water within artificial watercourses (as part of the maintenance of these structures) subject to the discharge being only water, sediment and vegetative matter from within the structure and not adversely affecting water outside of the structure.
- 6.5 Defining the term ‘maintenance’ in the manner proposed is appropriate, in my opinion, as it greatly assists with understanding the application of the Objective. In saying that, however, I

⁵ Submission 197.12

⁶ 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 (submitter 348).

⁷ Page 346.

note that there is a divergence as to how this definition is applied within the changes proposed within the Officers' Report and also how the application of 'upgrade' within the definition of 'maintenance' will be interpreted in the Regional Plan. Further, I note that there is divergence as to how the term 'upgrading' is applied in the context of those permitted activities that specifically provide for maintenance. I discuss each in turn below.

Maintenance

- 6.6 The definition of 'maintenance' prescribes a limitation of upgrading works included within this definition and includes *"upgrading or minor alteration providing these do not increase the footprint, height, or external envelope of the structure."* While I appreciate that this limitation may be appropriate to the application of permitted activity rules⁸, when this definition is applied to both a policy context and those controlled⁹ and discretionary activity rules governing maintenance and upgrade activities it is important that the limitations prescribed within the definition of 'maintenance' do not unduly restrict or limit the extent of upgrade works to the same extent. I note that amended Rule 5.117 expressly includes reference to the extent of upgrading anticipated by the rule as a condition to this rule. This is an appropriate response.
- 6.7 The Officers' response in accepting the amendments to Rule 5.117 states *"[i]n response to a submission on Rule 5.117 and the addition of the terms "upgrading" and "minor alterations" in this rule it is considered that if these minor works are limited in their extent they will have no greater impacts than what could strictly be referred to as maintenance. Rather than amend a number of rules which only refer to maintenance it is appropriate to add a definition of maintenance which includes upgrading and minor alterations subject to some limitations."*
- 6.8 To avoid the concerns that I have raised above, there are two options that could be provided for. Firstly, the definition of 'maintenance' specifically lists those rules that the upgrading limitation applies to, or secondly, a specific condition is added to each permitted activity rule, as is the case with Rule 5.117 where this refers to maintenance. I prefer the latter approach, as it is more concise.
- 6.9 I therefore recommend that a condition addressing 'upgrading' activities carried out as part of 'maintenance' works is added to amended Rules 5.113, 5.114, 5.115, 5.116, and new Rule 5.XX and shall include the following additional condition:

"Any upgrading or minor alteration associated with maintenance works shall not increase the footprint, height, or external envelope of the structure".

Upgrading

- 6.10 I note further that there are a number of instances within the Regional Plan (as amended by the Officer) where the application of the 'maintenance and upgrading' of existing infrastructure is inconsistent. The Officer has recommended amendments to Rule 5.117 (maintenance, upgrading and minor alterations to structures, excluding dams) to specifically provide for 'upgrading and minor alterations, providing such works do not increase the footprint, height, or external envelope of the structure'. In my opinion, it is appropriate to include the term 'upgrading' into those permitted activities rules identified in paragraph 5.9 above as the extent of upgrading works is addressed by the condition I have recommended above. I believe that good planning practice dictates that a consistent approach should be adopted, where possible, as doing so assists with the implementation of the Plan.
- 6.11 In addressing this matter, I consider it important that the pL&WRP does not confine the extent of upgrade works to those limited only to minor works, but it is appropriate to enable a degree of flexibility to undertake such works without the need for consent. I set out in **Annexure C** those further amendments that I consider could further seek to address maintenance activities within the Plan.

⁸ Such as in amended Rules 5.113, 5.115, 5.116, 5.117 and new Rule 5.XX

⁹ Rule 5.132 refers to 'maintenance'

7.0 EXISTING INFRASTRUCTURE AND 'RECONSENTING' PROCESSES

7.1 The pL&WRP includes specific reference to existing infrastructure and the continuation of the same. The RDRML made a number of submissions¹⁰ and further submissions¹¹ addressing the need to provide for existing infrastructure and sought provisions that enable the re-consenting of the same. The rationale behind its approach is set out in Mr Curry's evidence.¹²

7.2 These submissions and further submissions sought the following key outcomes:

- Revisions to Section 1.2.6 to better reflect reconsenting processes in the pL&WRP;
- Amendments to Policy 4.47 by deleting reference to 'significant and enduring improvements' in the efficiency of water use being needed when considering replacement of existing resource consents;
- Amendments to Policy 4.48 (include reference to 'Principal Water Supply Schemes' and other infrastructure that involves substantial investment);
- That Section 5 of the pLWRP be amended to include a rule providing for re-consenting of existing infrastructure and associated activities as a controlled activity.

Section 1.2.6

7.3 The RDRML made a further submission¹³ in support of TrustPower Limited's¹⁴ submission to Section 1.2.6 of the pL&WRP. In this regard, TPL's submission sought a number of amendments to this section of the pL&WRP including the deletion of the words "...the activity must be reassessed as if new...". I note that TPL's submission has been accepted in part, however the sentence that it sought be deleted has been retained.

Officers' Report

7.4 The Officer notes that many submitters request a reference to section 104(2A) of the RMA regarding investment recognition and that all existing activities should be considered in the allocation of natural resources. No advice was offered, however, as to why the words "...the activity must be reassessed as if new..." have been retained.

Comment

7.5 I understand that Section 1 of the pLWRP is a narrative statement of land and water issues in the Canterbury Region, the key responses and a description of the partnerships necessary to effectively manage land and water in the Canterbury Region. Section 1.2.6 (Managing New and Existing Activities) discusses the importance of existing infrastructure in particular. I note that this section has been amended to provide for more specific reference to the reconsenting of existing infrastructure and states "[f]or 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." I support this amendment as it clearly reflects the requirement within the Act for decision makers to have regard to the level of investment associated with the reconsenting of infrastructure. I note that the use of the words 'must have regard' in section 104(2A) of the Act sets a mandatory requirement and as such the pL&WRP should reflect this.

7.6 The Officer has, however, retained reference to "...the activity must be reassessed as if new..." in section 2.0 of the pL&WRP. In my opinion, this statement should be amended as it is not aligned with the policy outcome expressed within both Policy 7.3.11 of the RPS or Objective 3.16 (amended policy 3.9) and Policy 4.48 of the pL&WRP which lend policy support to the continuation of existing activities provided that certain improvements are made.

¹⁰ Submission 197.37 to Policy 4.47, 197.38 to Policy 4.48, 197.57 and 197.89 (inclusion of controlled activity for reconsenting processes).

¹¹ Further submissions addressing submissions 200.80, 232.5, 250.2,

¹² Evidence of Curry, Paragraphs 8.1 to 8.3, page 7.

¹³ Further submission F623.50

¹⁴ Hereafter referred to as 'TPL'

- 7.7 I note that the RPS provides for clear policy support for the continuation of existing infrastructure. Policy 7.3.11 (Existing activities and infrastructure) of the RPS, states:
"In relation to existing activities and infrastructure:
 (1) *to recognise and provide for the continuation of existing hydro-electricity generation and irrigation schemes, and other activities which involve substantial investment in infrastructure; but*
 (2) *require improvements in water use efficiency and reductions in adverse environmental effects of these activities, where appropriate."*
- 7.8 I further note that the Principal reasons and explanation supporting Policy 7.3.11 states
"Policy 7.3.11 takes a pragmatic approach to existing hydro-electricity generation and irrigation schemes, and other activities which involve substantial investment and infrastructure, by recognising them and providing some certainty in regional plans that these activities can continue. This may include provision for these activities within environmental flow and water allocation regimes."
- 7.9 Further, Policy 4.48 seeks to give effect to Policy 7.3.11 of the RPS. Policy 4.48 is the cornerstone policy for consenting within the pL&WRP and specifically recognises and provides for existing hydro-generation and irrigation schemes as a part of the existing environment. In my opinion, Section 1.2.6 (as presently worded) fails to accurately reflect the resource management processes associated with the consenting infrastructure under the provisions of Act, and supporting statutory planning documents such as the RPS and to the pL&WRP itself through Policy 4.48. Given the foregoing, I support the amendment of the phrase *"...the activity must be reassessed as if new.."*.
- 7.10 I set out in **Annexure C** my recommended amendment to Section 1.2.6.
- Policy 4.47**
- 7.11 The RDRML made a submission¹⁵ that opposed (in part) Policy 4.47. When considered in the context of consenting processes, the RDRML considered that there is an inconsistency between the outcomes sought by Policy 4.47. The principal area of inconsistency relates to the need to accommodate *"significant and enduring improvements in the efficiency of water use and in any adverse effects"* for infrastructure located within over-allocated catchments.
- Officers' Report**
- 7.12 In addressing those submissions that raised concerns relating to the phrase 'significant and enduring', the Officers sought to retain reference to this phrase in Policy 4.47 so as to ensure the Policy is consistent with both the Freshwater NPS and Policy 7.3.4 (2) of the RPS. The Officers, however, acknowledge that in some cases water users may already be operating at an efficient level having carried out significant improvements, and it is appropriate that this is recognised in the Policy.
- Comment**
- 7.13 The NPS FM provides a clear emphasis on promoting both the efficient supply and use of water,¹⁶ and I therefore agree with the Officer that it is important to ensure that the policy provides for ongoing efficiency improvements so as to give effect to the NPS FM. I do not, however, agree that the retention of the term *"significant and enduring improvements"* is necessary to ensure that this outcome is achieved. Further, I consider that Policy 4.47 fails to appropriately address the policy direction provided for under the RPS in addressing improvements in water use and conveyance infrastructure. In my opinion, this is a significant failing, within the policy, especially when applied to regionally significant infrastructure, such as the RDR.
- 7.14 In dealing first with the management of the adverse effects of over-allocation, I draw a parallel between the wording proposed within Policy 4.47 and Policy 7.3.4(2)(b) of the RPS,

¹⁵ Submission 197.37

¹⁶ Objective B3 seeks to improve and maximise the efficient allocation and efficient use of water.

which is the key policy addressing water use within over-allocated catchments and which Policy 4.47 seeks to give effect to.

- 7.15 I note that Policy 7.3.4(2) does not require “*significant and enduring reductions in adverse effects*” as reflected in Policy 4.47 of the pL&WRP. Rather, Policy 7.3.4(2) seeks to:

“(a) *avoid any additional allocation of water for abstraction or any other action which would result in further over-allocation;*
(b) *set a timeframe for identifying and undertaking actions to effectively phase out over-allocation;*
and
(c) *set an interim response to effectively address any adverse effects of over-allocation.*”

- 7.16 The principal reasons and explanation to Policy 7.3.4(2) “*indicates no additional abstraction is allowed, and measures must be put in place to try and reduce the effects of the over-allocation over time. For the purposes of Policy 7.3.4(2)(a), the renewal of water permits are not considered to be additional allocation which would result in further over-allocation. What is an appropriate timeframe for reducing the over-allocation of water for abstraction will vary in each catchment depending on the severity of the over-allocation and its effects, and the costs of remedial options. Therefore this matter needs to be addressed as part of a regional plan for that catchment.*”

- 7.17 Policy 4.47 is only concerned with managing abstraction in over-allocated catchments, including water takes for renewal consents. In dealing with reconsenting processes for infrastructure (and their associated takes), Policy 7.3.4(2)(c) of the RPS is helpful in determining the extent to which the adverse effects of over-allocation must be reduced by.

- 7.18 In my opinion, the term “effectively address” has a different meaning to the term “significant and enduring improvements” when applied to reducing adverse effects of over-allocation. Clearly, they are both geared towards reducing the level of effects associated with over-allocation (being the central thrust of the NPS FM), however it is the rate at which this is to occur and the associated expectation that this implies through re-allocating water back to the environment which is of central concern here.

- 7.19 The word ‘significant’ is defined as “*significantly great or important to be worthy of attention*”.¹⁷ ‘Great’ is defined as “*of an extent, amount, or intensity considerably above the normal or average*”.¹⁸ The word ‘enduring’ is defined as “*continuing or long lasting*”.¹⁹ Therefore, Policy 4.47 is seeking to provide for a reduction in adverse effects of over-allocation, which is considerable and which is long lasting.

- 7.20 Conversely, the word ‘effective’ is defined as “*successful in producing a desired or intended result*”.²⁰ The word ‘reduction’ is defined as “*the action or fact of making a specified thing smaller or less in amount, degree, or size*”.²¹ Therefore, Policy 7.3.4(2)(c) of the RPS in addressing an interim response to addressing the adverse effects of over-allocation, is seeking the successful reduction in the amount of water made available in managing the adverse effects of over-allocation. The timing of which is specified as both an interim reduction, timed with a broader timeframe to ensure over-allocation ceases (as provided for under Policy 7.3.4(2) of the RPS).

- 7.21 Having broken down the above definitions, it is evident that the wording adopted within Policy 4.47 anticipates a far greater response to the reduction in adverse effects of over-allocation than expressed by Policy 7.3.4(2) of the RPS. Certainly, there is no doubt both are driving towards a reduction in effects, however it is the extent to which these reductions are to be advanced in a ‘one size fits all approach’ with little with no recognition given under Policy 4.47 to limitations of implementing such changes. While I acknowledge that Policy

¹⁷ New Oxford American Dictionary. (electronic version)

¹⁸ New Oxford American Dictionary. (electronic version)

¹⁹ New Oxford American Dictionary. (electronic version)

²⁰ New Oxford American Dictionary. (electronic version)

²¹ New Oxford American Dictionary. (electronic version)

4.47 is seeking to address issues of over-allocation, it must still be balanced with the reality of implementing such changes on the ground, which is a matter recognised and provided for within other policies in the RPS. I discuss these in turn below.

- 7.22 In addressing efficiency improvements, Policy 7.3.8(2) (Efficient Allocation and Use of Fresh Water) of the RPS seeks to *“ensure the infrastructure used to reticulate and apply water is increasingly efficient (where not already highly efficient) for existing takes and uses of water, having regard to matters*
(a) the nature of the activity;
(b) the benefits and costs of achieving a higher level of efficiency;
(c) practicable options to implement any change required; and
(d) the physical environment in which the activity takes place.”
- 7.23 A key theme within Policy 7.3.8(2) is that for existing takes and uses of water there are particular matters that are to be considered in advancing with efficiency improvements. These matters reflect the “where appropriate” wording in Policy 7.3.11 where it states that efficiency improvements and conveyance of water, are provided for where appropriate.
- 7.24 In relation to the anticipated level of efficiency improvements to be achieved Policy 7.3.8 is supported by method 1 which states *“ensuring the infrastructure used to reticulate and apply water is highly efficient relative to the nature of the activity, for any new take or use of water;”*
- 7.25 As such, the key ‘goal’ is for infrastructure and water use to be “highly efficient” relative to the nature of the activity.
- 7.26 In my opinion, it is important that Policy 4.47 in addressing efficiency improvements better reflects the manner in which these are to be achieved and the efficiency goal that is to be aimed at (if it has not already been attained by existing infrastructure). Either way, in my opinion, Policy 4.47 seeks to ‘lift the bar’ on implementing efficiency improvements and provides less flexibility associated with implementing these improvements. This is unhelpful in my opinion, as it ignores the potential limitations for larger schemes to potentially achieve a higher level of efficiency at or during consenting processes.
- 7.27 Policy 7.3.11, set out above, implements method 1(b) of the RPS which requires that the regional council will establish objectives and policies *“... and may include methods in regional plans (including environmental flow and water allocation regimes) that:*

“Require these existing activities to make on-going improvements in water efficiency and reductions in adverse environmental effects, as appropriate, including through reviewing conditions on resource consents.”[Emphasis added]
- 7.28 I note that the Officer neither addresses Policy 7.3.11 nor the associated supporting method in justifying the retention of this wording in Policy 4.47.
- 7.29 As it is currently worded, I believe that the Policy 4.47 fails to appropriately give effect to the RPS in accordance with section 67(3)(c) of the Act. I therefore, recommend amendments to policy 4.47 attached as **Annexure C** to this evidence. My amendments seek to ensure that Policy 4.47 is (i) more appropriately aligned with Policy 7.3.4(2) of the RPS, and (ii) provides for the commensurate level of certainty for existing infrastructure providers that ongoing efficiency improvements and the reduction of adverse effects will be required, where appropriate, as part of any re-consenting process.

Policy 4.48

- 7.30 The RDRML made a submission²² supporting (in part) Policy 4.48. In essence, the Company considers that Policy 4.48 should be amended to reflect that where efficiency gains and reduction in adverse effects are sought to be achieved, they are advanced where it is

²² Submission 197.38

appropriate to do so. This reflects the outcome sought in Policy 4.47 discussed in paragraphs 7.11 to 7.29 of this evidence). Further, the Company considers that the policy should be amended to ensure that it acknowledges Principal Water Supply schemes and 'other infrastructure that involves substantial investment' which would include but not be limited to water storage infrastructure.

Officers' Report

- 7.31 The Officer has not addressed the RDRML's submission directly. I note, however, that the key amendments to the policy sought by the Company have not been adopted into the policy as amended. As a consequence, I have assumed that the Officer is recommending that the submission be declined.

Comments

- 7.32 In its submission, the RDRML submitted that its scheme would not fall within the definition of an irrigation scheme or a hydro-electric power scheme ('HEPS'), and as such the Policy would not adequately lend support for the future consenting of the RDR. I note that the Officer addressing Policy 4.73 agreed that the term Principal Water Supplier be inserted within this policy to ensure that physical resources such as the RDR are appropriately addressed by Policy 4.73. I also note that a new definition has been included in the pL&WRP to reflect this term (consistent with the definition included within the NRRP). It is therefore odd that this has not been reflected within Policy 4.48. In my opinion, it is critical that Policy 4.48 is amended to provide specific reference to Principal Water Supply Schemes, such as the RDR, so as to provide a greater level of certainty.
- 7.33 Further, I note here that Policy 4.48 does not acknowledge other forms of infrastructure (including water storage infrastructure) that both irrigation and HEPS may be reliant upon. This is at a time when water storage infrastructure is seen as an important cornerstone to freshwater management in Canterbury (as reflected within the CWMS and within the RPS).²³
- 7.34 The RDRML made a submission²⁴ to include 'water storage' into the definition of 'Infrastructure' under the pL&WRP. The Officer rejected this submission and stated that if there is a preference for policies or rules to specifically include water storage facilities in any expression of infrastructure, then that is better covered within the specific policies or rules. In my opinion, Policy 4.48 is an important policy relating to the consenting of all infrastructure, which includes water storage infrastructure. Put another way, I can think of no compelling planning reason not to include water storage infrastructure into this policy or to treat it differently from HEPS and/or irrigation schemes.
- 7.35 While I support Policy 4.48, given that it is the primary policy within the pL&WRP to give effect to Policy 7.3.11 of the RPS, I believe it is important that Policy 4.48 is amended to address the issues that I have raised above. In particular, the central focus of the policy on both irrigation and HEPS, fails to encapsulate entities such as the RDR, which does not fall within the definition of either an irrigation or hydroelectric power scheme. In my opinion, the lack of specific reference to water storage infrastructure is also problematic because this type of infrastructure is not acknowledged within the policy itself. Further, as discussed at paragraphs 7.37 to 7.52 of this evidence, it is also considered important that in addressing consenting processes that improvements in the efficiency of water use and conveyance and reductions in any adverse effects on flows and levels are provided for, where

²³ The CWMS identifies the need for efficient use of water in existing and new infrastructure in the primary principal identified under 'Regional Approach'. Further, Policy 7.3.10 (Harvest and storage of fresh water) of the RPS provides specific policy support for recognition to be given to the potential benefits of harvesting and storing surface water for (1) improving the reliability of irrigation water and therefore efficiency of use. The supporting Methods to Policy 7.3.10 also reflect an enabling policy outcome through the direction provided to Regional Plans to provide for the harvesting and storage of water, and by allowing resource consents to be granted to take water as either 'run of river' or to storage, with appropriate conditions, and to provide for irrigation schemes that harvest and store water where such proposals achieve the purpose of the Act, and give effect to the RPS.

²⁴ 197.105.

appropriate. This reflects the central thrust of Policy 7.3.11(2) of the RPS.

- 7.36 My recommended amendment to Policy 4.48 is tracked in **Annexure C** to this evidence.

Reconsenting Provisions with Section 5.0

- 7.37 The RDRML made a number of submissions²⁵ opposed (in part) to Section 5.0 of the pL&WRP. The Company's key concern is that the rules governing infrastructure do not adequately reflect the level of certainty needed to govern reconsenting of infrastructure within the pL&WRP. This contrasts markedly with the policy support governing existing consented infrastructure under both the RPS and the pL&WRP. The RDRML considers that 'reconsenting' of existing lawfully established infrastructure should be a controlled activity within the pL&WRP.

Officer's Comments

- 7.38 The Officer acknowledges the RDRML's submission on this point and notes that dams associated with existing hydro electric power schemes are a controlled activity under Rule 5.132. The Officer does not, however, believe that it is appropriate to make associated activities (such as the abstraction, use and discharge of water) a controlled activity. In addressing Rule 5.132, the Officer states that *"the rule is intended to capture existing structures at the time they are required to renew resource consents. The controlled activity status for the use of the structures recognises the generally large scale and capital cost of structures associated with hydroelectricity power schemes and that their reconsenting is unlikely to be declined given the effects are self-evident and they are now an established part of the environment."*²⁶
- 7.39 Further, the Officer notes that *"the pLWRP anticipates that other activities associated with the operation of a hydroelectricity scheme (taking, damming, diverting and discharging) will require consideration under other rules of the Plan in order that the effects on flow regimes can be properly assessed. Given that a flow regime may be contentious particularly given the NPS Freshwater it is therefore not considered appropriate these activities are a controlled activity."*²⁷

Comments

- 7.40 As set out in the evidence of Mr Curry (refer paragraphs 8.1 to 8.3), the inclusion of a controlled activity rule for the reconsenting of important physical resources (such as the RDR) is sought to expressly recognise and provide for the level of investment and benefits derived from the use of such infrastructure. It also recognises that the effects of these existing physical resources are well known, and are well understood. Experience also suggests that effective and practicable remediation and mitigation strategies can be developed to offset any unacceptable effects that are associated with the continued existence and operation of these facilities. As presently drafted, the pL&WRP requires that a myriad of resource consents are necessary to re-consent the RDR and associated irrigation schemes and power stations.
- 7.41 While I appreciate that the pL&WRP provides for a number of rules that accommodate the use of existing structures as a controlled activity²⁸, a key concern raised by the RDRML and which has not been addressed by the Officer is that when reconsenting large scale infrastructure it is normal to address all of the necessary consents required at once and not just the land use consents associated with the use of a structure. As such, were the bundling principle to apply (as I would expect it would), then there is a greater likelihood for the necessary resource consent applications for the reconsenting of the RDR, to be processed as a non-complying activity under the pL&WRP provisions.²⁹ I question whether this outcome is (i) an appropriate response to reconsenting processes associated with an existing asset, (ii) seeks to appropriately reflect the policy direction of those policies within the RPS and the

²⁵ Submission 197.57 and 197.89

²⁶ Page 378 of the Officers Report.

²⁷ Page 378 of the Officers Report.

²⁸ Rule 5.132

²⁹ Reconsenting of the RDR would be deemed a non-complying activity as a result of rules such as 5.99 (which the RDR would not comply with two of the conditions prescribed within this rule).

pL&WRP (including but not limited to Policy 4.48), and (iii) is needed to achieve the Act's sustainable management purpose.

- 7.42 While the pL&WRP speaks of providing for 'rule bundling', where several permissions which may be required under sections 9 and 13 to 15 of the Act are addressed by one rule³⁰, I don't believe that the Regional Plan has been successful in achieving an appropriate outcome. Where the pL&WRP falls short, in my opinion, is the absence of a comprehensive regime of rules relating to those associated activities linked to the operational aspects of infrastructure. By 'operational aspects' I mean consents for takes and associated discharges that underpin the normal day to day operational requirements of large scale infrastructure. As a consequence of this, activities that would normally form a part of a re-consenting process for the RDR would be deemed a non-complying activity. Given the forgoing, the current plan provisions offer little certainty for infrastructure providers and in turn their investors (or in the case of the RDR its shareholders). I see this as being an adverse outcome, and one that cuts across good planning and resource management practice.
- 7.43 In my opinion, the use of a 'one stop' reconsenting rule for large scale infrastructure of national or regional significance reflects the intent of Policy 4.48 of the pL&WRP and that of Policy 7.3.11 of the RPS in promoting the continuation of existing HEPS and irrigation schemes, and other activities which involve substantial investment in infrastructure. I note that Policy 7.3.11 is supported by methods that seek to establish objectives, policies and methods in regional plans that recognise and provide for the continuation of existing infrastructure and requires these to make ongoing efficiency improvements, where it is appropriate to do so. Objective 3.9 (as amended by the Officer) and Policy 4.48 (as also amended by the Officer) achieve this to an extent, as do Rules 5.132 and 5.117 (as they apply to the use of existing lawfully established dams and structures).
- 7.44 As I have already noted, the Officer in addressing the RDRML's submission does not consider it appropriate for matters associated with (i) water allocation and flows (ii) discharges and associated effects on water quality to be addressed through a controlled activity rule. I disagree with this conclusion and note that while a controlled activity cannot be declined, conditions can be imposed to appropriately address key environmental concerns including those relating to managing water allocation and flows and issues associated with water quality. In instances where the ongoing environmental effects of an infrastructure scheme may be unacceptable, especially in situations where it has not been appropriately operated or maintained, it may be wholly appropriate to elevate the activity status of such schemes to reflect this outcome, however, conversely I would argue that it could be equally appropriate to place more restrictive conditions (including annual reviews to address these issues if necessary). I do not believe it is appropriate to apply a more restrictive reconsenting regime for those existing infrastructure schemes (whether it be HEPS, irrigation schemes or a Principal Water Supplier such as the RDR) which have been appropriately maintained and operated over a long period, and whose environmental effects are well understood. In such instances, I consider that it is wholly appropriate to apply a controlled activity rule to reconsenting processes.
- 7.45 I note that there is already precedent within New Zealand for controlled activity rules to cover consent renewal processes. A case in point is Rule 47C of the Bay of Plenty Regional Water and Land Plan which provides for lawfully established Hydroelectric Power Schemes as a controlled activity under the plan. I attach a copy of this rule for the Panel's consideration as **Annexure D** to this evidence. The Rule is set out below.

"Controlled – Lawfully Established Hydroelectric Power Schemes in Schedule 11

The lawfully established:

- (1) *Discharge of water to water; and*

³⁰ Example being Rule 5.115, which provides for the use of a structure, disturbance to the bed and associate take, discharge or diversion.

- (2) *Discharges of contaminants to water; and*
 - (3) *Take and use of water (including non-consumptive use); and*
 - (4) *Damming and diversion of water; and*
 - (5) *Use of a structure in the bed of a stream or river;*
- Associated with a hydroelectric power scheme that existed on the date this regional plan becomes operative and is listed in Schedule 11, is a controlled activity."*

7.46 Another example, is the West Coast Regional Council which has adopted a schedule of existing HEPS. The scheduled schemes are provided for as a controlled activity under Rule 12.6.1 within the operative West Coast Regional Water Management Plan. I attach a copy of this rule for the Panel's consideration as **Annexure E** to this evidence. A similar provision is included with the Bay of Plenty Regional Council's Regional Water and Land Plan supporting Rule 47C discussed in paragraph 7.45 above. While the use of a schedule in these rules would prevent the rule becoming a 'catch all', it would nonetheless appropriately recognise those physical resources where the benefits are large, and the effects are well known.

7.47 In my opinion, the Officer's concerns relating to the use of a controlled activity rule may be overstated. By way of an example, TPL own and operate the Matahina Hydroelectric Power Scheme, which went through an extensive re-consenting exercise and was advanced under the Bay of Plenty Regional Council's controlled activity renewal rule. This re-consenting process included a comprehensive Assessment of Environmental Effects Report to support the application and was thoroughly tested during this process. In my opinion, this reflects the fact that just because an application is advanced as a controlled activity does not lessen the rigour and level of assessment over those matters governed by the rule in question. I might also add that the Matahina re-consenting project was the subject of extensive consultation and public input.

7.48 In my opinion, the Matahina re-consenting example demonstrates that it is possible to accommodate investment certainty through this type of rule provision while also ensuring a thorough assessment process is also provided for to address environmental considerations. It also recognises the importance of regionally significant infrastructure in a re-consenting process and promotes a more efficient use of a physical resource and enables the consent renewal process to be advanced in a timely and cost effective manner. With respect to the RDR, as you have heard from Mr Curry (refer paragraph 8.1), the RDR was re-consented under the provisions of the Act and found to be appropriate. Further, I note that the Council can have a greater level of comfort in re-consenting schemes that are governed by Water Conservation Orders, as is the case with the RDR on the Rangitata River. This is particularly the case with the RDR given that clause 12(4) of the Rangitata River Water Conservation Order states:

"(4) This order does not prevent the granting of further resource consents for the Rangitata Diversion Race on similar terms and conditions to those imposed on the resource consents held on the date this order comes into force including a stepped flow regime."

7.49 The fact that the re-consenting of the RDR would be deemed a non-complying activity under the pL&WRP reflects a failing, in my opinion, to adequately and comprehensively address re-consenting processes in the rules of the pL&WRP. This is especially the case given the fact that the pL&WRP states that non-complying activities are generally inappropriate, which would greatly impede investment certainty for re-consenting processes. While the Officer has made a number of positive changes to further enhance the ability for existing infrastructure providers to re-consent existing structures, and a number of amendments have been made to the rules to make their provisions more enabling, these largely relate to the use of the structure or to small discharges associated with maintenance and upgrade activities.

7.50 It therefore calls into question whether the sustainable management of these physical resources is appropriately addressed in the rules governing the operational aspects of these schemes. In my opinion, the pL&WRP as presently drafted does not provide an acceptable

level of certainty required to enable the continued existence and operation of existing infrastructure. In my opinion, a commensurate level of certainty can only be provided to existing infrastructure providers through the adoption of a controlled activity rule specifically addressing consenting processes.

- 7.51 Given the foregoing, I recommend amendments to Section 5.0 (which are also attached as **Annexure C** to this evidence) to address this issue. I note that my proposed rule draws together the central threads of existing rules with other operative regional plans that I have discussed above.

8.0 MANAGEMENT OF ADVERSE EFFECTS

Policies 4.41, 4.52, 4.89, 4.91 and Rule 5.99

- 8.1 The RDRML made a number of opposing submissions to the provisions of the PLWRP which raised concern relating to the manner in which adverse effects are to be addressed within a number of policy provisions within Section 4.0 of the Plan. These include the following:

- Policy 4.41 – the RDRML sought the inclusion of words “results in unacceptable adverse effects”,³¹
- Policy 4.52 – the RDRML sought the inclusion of words “results in unacceptable adverse effects”,³²
- Policy 4.89 – the RDRML sought the inclusion of words “results in unacceptable adverse effects”,³³
- Policy 4.91 – the RDRML sought the inclusion of words “avoids unacceptable adverse effects on significant indigenous biodiversity values” and “avoids, remedy or mitigates adverse effects on other values”,³⁴
- Rule 5.99(condition 2) – the RDRML sought the inclusion of the words “no unacceptable adverse effects” on the limits set out in condition 2.³⁵

Officer Comments

- 8.2 The Officer notes there were “seven submissions to Policy 4.41 requesting various amendments that would make less absolute the direction that the damming and diversion does not “adversely affect” the listed values, requiring instead that adverse effects on these matters be avoided, remedied or mitigated” or that there be no “significant” adverse effects or “unacceptable” adverse effects.”
- 8.3 Further, the Officer states “[t]he Policy as notified establishes the baseline position that damming and diversion should not give rise to adverse effects on the stated values which clearly is the desired outcome. However it is accepted this absolute may be difficult to achieve in all cases and that some flexibility is appropriate. Generally some of the amendments sought are considered to reduce the effectiveness of the Policy by indicating lesser standards are acceptable. To provide flexibility without reducing the force of the Policy it is recommended the term “negligible” be inserted.”³⁶ I note that the Officer makes similar comments in addressing Policy 4.52.³⁷
- 8.4 In addressing Policy 4.91 the Officer states that the relief sought by the RDRML has not been accepted as it was felt that “avoid, remedy or mitigate” added little to the policy.³⁸ As I will note in my evidence below, this conclusion is contrary to the policy provisions contained within the RPS that seek to manage the ongoing operation, maintenance and upgrade of existing regionally significant infrastructure.

³¹ Submission 197.36

³² Submission 197.40

³³ Submission 197.52

³⁴ Submission 197.43

³⁵ Submission 197.78

³⁶ Page 376

³⁷ Page 231

³⁸ Page 354

- 8.5 I note that the Officer has not sought to include the amendments to Rule 5.99 sought by RDRML. The Officer has not changed the clause relating to effects in both provisions (from that which was notified).

Comments

- 8.6 While the Officer's recommendations in relation to the inclusion of the term "*not have more than a negligible adverse effect on*" is an improvement, in my opinion it is a very small one. In highlighting this point, I also note that the Act is not a 'nil' effects statute.
- 8.7 In relation to amendments made to both Policy 4.41 and 4.52 the term "negligible" is defined in the New Oxford American Dictionary as "so small or unimportant as to be not worth considering".³⁹ In the context of a policy or rule framework governing such infrastructure, I find the use of such terminology to be highly questionable. To that end, in my opinion it offers little in the way of assistance to the Panel in addressing the concerns raised by the RDRML and the submissions of others. The Officer provides no justification as to why "negligible" is considered appropriate from a resource management perspective. Moreover, I note that the term "*no more than negligible adverse effects*" is not frequently used in resource management instruments, such as the RPS or NPS FM. As such, this could leave the provisions open to divergent interpretation by parties seeking to give effect to them.
- 8.8 Importantly, in my opinion, the amendments proposed to Policies 4.41 and 4.52 do nothing to address the Officer's own assessment that a "*no adverse effects*" threshold will be difficult to meet. Put another way, if "*no adverse effects*" is considered difficult to meet, then by way of comparison, an effect which is so small as to be not worth considering does little to reduce the 'bar' set by these amended policies. In short, it will still be extremely difficult for large scale infrastructure schemes to meet a "*no more than negligible adverse effects*" threshold. In my opinion, this effects threshold is far too low and potentially could preclude the consideration of a broad range of infrastructure projects. Further, in my opinion, it also calls into question whether the natural and metaphysical 'resources' within Canterbury need or warrant this level of protection in all instances.
- 8.9 It is my understanding that the term "unacceptable" adverse effects, as referenced within the RDRML submissions to Policies 4.41 and 4.52, is an adverse effect that could not appropriately be mitigated through condition (so as to make it more acceptable). As such, it is a more serious adverse effect. I note that the term "unacceptable" has found favour with the Court in the past:

*"We would only alter the words of their decision more than minor to read unacceptable."*⁴⁰

- 8.10 Applying the word "unacceptable" to both policies would, in my opinion, mean that the respective activities do not generate adverse effects on identified values that cannot otherwise be addressed through an appropriate management response or through conditions of consent (or a combination of the two). That is they are made acceptable. Further, in a resource management context, something that accords with the Act's purpose would be deemed 'acceptable', whereas something that does not is 'unacceptable'.
- 8.11 In addressing the management of adverse effects from regionally significant infrastructure, the principal reasons and explanation to Policy 5.3.9 of the RPS states "*Regionally significant infrastructure will be required to minimise their adverse effects on the surrounding environment to the extent practicable. This includes: managing interfaces to surrounding development to reduce impacts on amenity values; implementing measures to control noise; and ensuring that there is appropriate provision for the necessary management of hazardous substances and stormwater.*" The use of words "*to the extent practicable*" is a term used repeatedly throughout the RPS in addressing the management of effects raised by regionally significant infrastructure. This term reflects

³⁹ New Oxford American Dictionary. (electronic version)

⁴⁰ (McKinlay Family Trust EnvC Auckland, A119/08 at [55]).

the fact that for the most part, operationally such large scale infrastructure, such as the RDR, simply cannot avoid all adverse effects and that 'residual effects' normally persist following the implementation of the practicable remediation and mitigation strategies. In many instances, in my experience these 'residual effects' are more than negligible but are normally minor. This does not, however, cause the proposal to become 'unacceptable'. Rather, such considerations need to be carefully factored into the overall assessment of the proposal against Part 2 of the Act.

- 8.12 Reinforcing this point, Policy 5.3.9(3)(b) of the RPS seeks to specifically *"avoid any adverse effects on significant natural and physical resources and cultural values and where this is not practicable, remedying or mitigating them, and appropriately controlling other adverse effects on the environment."* Further, Policy 5.3.9(3)(c) of the RPS states *"when determining any proposal within a sensitive environment (including any environment the subject of section 6 of the RMA), requiring that alternative sites, routes, methods and design of all components and associated structures are considered so that the proposal satisfies sections 5(2)(a) – (c) as fully as is practicable."*
- 8.13 Policy 5.3.11 of the RPS (Community-scale irrigation, stockwater and rural drainage infrastructure (Wider Region)) in relation to established and consented community-scale irrigation, stockwater and rural drainage infrastructure seeks to:
- "...(2) Enable this infrastructure to be operated, maintained and upgraded in Canterbury to more effectively and efficiently transport consented water provided that, as a result of its location and design:*
(a) the adverse effects on significant natural and physical resources and cultural values are avoided, or where this is not practicable, mitigated; and
(b) other adverse effects on the environment are appropriately managed."
- 8.14 The Officer provides for little or no assessment of the recommended changes to policies 4.41 and 4.52 and whether they accord with Policy 5.3.9 and 5.3.11 of the RPS.
- 8.15 In my opinion, it is important that policies 4.41, 4.52, 4.89 and 4.91 of the Regional Plan do not reflect an effects regime which is inconsistent with the purpose of the Act. To this end, in my opinion (i) that it is wholly appropriate for the policies to be amended to avoid those adverse effects generated on values of significance identified within the policies, where this is practicable to do so, and (ii) that other effects be remedied or mitigated or appropriately controlled in accordance with section 5(2)(c) of the Act. This approach is not only consistent with the sustainable management of these resources natural and physical resources, but also reflects the central thrust of the higher order statutory planning documents which the pL&WRP must give effect to under section 67(3)(c) of the Act.
- 8.16 My recommended amendment to Policies 4.41, 4.52, 4.89, 4.91 and Rule 5.99 are also tracked in **Annexure C** to this evidence.

9.0 - EXISTING INFRASTRUCTURE AND EFFICIENCY IMPROVEMENTS

Policy 4.70

- 9.1 The RDRML made a submission⁴¹ which supports (in part) Policy 4.70 and made a further submission⁴² in support of TPL's submission to the same policy. The RDRML considers that any upgrading of existing infrastructure, especially when dealing with infrastructure as large as the RDR, needs to be advanced in a manner that appropriately responds to the constraints in achieving a higher level of efficiency. The Company considers that Policy 4.70 should be subtly amended to reflect that any efficiency gains are achieved, where appropriate. Lastly, the Company considered that it is not equitable for irrigators that rely on 'seepages' from canals and ponds to have those rights protected in preference to more efficient conveyance infrastructure. The RDRML sought amendments to Policy 4.70 to address these concerns.

⁴¹ Submission 197.43

⁴² F623.62

Officers' Report

- 9.2 The Officer states that “[g]enerally it is considered the Policy is consistent with the RPS 2013 but that additional wording could be added to make it more consistent with these policies. RDRML also states that it is not equitable for irrigators to rely on recharge as a source of water and while this situation may apply in some instances recharge does provide a relatively significant resource for some existing abstractors.” It is noted that some amendments are made to assist with making the policy clearer.

Comments

- 9.3 I am generally supportive of the amendments that the Officer has recommended to Policy 4.70(a), particularly as this relates to addressing the practicable options associated with implementing any change required to any existing schemes, given that this gives better effect to Policy 7.3.11 of the RPS. I further note that the Officer has amended Policy 4.70 to delete reference to ‘except where’, which implies a mandatory exception to this policy and replaced this with ‘taking into account’ which, in my opinion, is less absolute. I am, however, concerned that the Officer has sought to retain reference to “*adverse effects on ecosystems or existing abstractors from a loss of any recharge currently arising from conveyance inefficiencies*” in clause (b) of this amended policy. [Emphasis added] The reason for this concern is two fold.
- 9.4 Firstly, as set out by Mr Curry (in section 7.0 of his statement), the RDR is 67 km in length and when the RDR was completed in 1944, it was not lined and consequently, over time some areas of the RDR have leaked. The RDRML has been progressively upgrading sections of the RDR to make it more efficient in conveying water. I understand that while this is not currently an issue for the RDR, it has been in the past. I also note that the Mayfield Hinds Irrigation Scheme, which the RDR conveys water to, is also subject to loss to groundwater and that this is more of an issue for this scheme.
- 9.5 In relation to the RDR and associated irrigation schemes, all of the upgrade works that are advanced are undertaken as part of existing consents that each company holds, and that enable the ongoing maintenance and upgrading of these schemes. As such, while Policy 4.70(b) seeks to address effects on recharge, these maintenance and upgrade works are already provided for within the Company’s existing consents and therefore form part of the existing environment.
- 9.6 Secondly, the Officer notes that this policy is supported by Rule 5.96, where the matters of discretion for taking surface water include the effects on water quality and existing abstractors. However, Rule 5.96 would only apply to the RDR where the RDRML was seeking to renew its existing suite of consents. Under this consenting process it would be, in my opinion, inappropriate for the Company to have to assess the effects of all existing groundwater takes over its entire 67 km length. More importantly, however, is that it is questionable whether it is appropriate to restrict the operation of these schemes to specifically provide for existing abstractors. This would add significant costs and frustrate measures within the Plan that seek to provide for efficiency improvements. Lastly, I note that Policy 4.70 only refers to ‘existing abstractors’ whereas Rule 5.96 refers to “any other authorised takes or diversions”. In my opinion, it would be entirely inappropriate for the Regional Plan through Policy 4.70 to restrict legally authorised takes in favour of other abstractors who have no legal basis to take this water (other than those abstractions that may be permitted under the pL&WRP).
- 9.7 As such, in my opinion, Policy 4.70 should both be amended by deleting reference to existing takes under clause (b). This is simply to reflect that Policy 4.70 cuts across the efficiency outcomes envisaged within Policy 4.47 and also is not needed to give effect to Rule 5.96 which refers to “any other authorised takes or diversions”.

10.0 TRANSFER OF WATER PERMITS

Water Transfers Generally

- 10.1 The RDRML made a submission⁴³ opposed (in part) to Section 5.0 of the pL&WRP. In summary the Company's submission sought to provide for the following amendments to the pL&WRP:

- "1. The inclusion of permitted activity rules that enable the transfer of water between authorised activities where:
 - i. The transfer is from a non-consumptive use to another non-consumptive use, and the transfer is downstream.
 - ii. The transfer is from a consumptive use to another consumptive use, or a non-consumptive use, and the transfer is downstream.*
- 2. The inclusion of a controlled activity rule to enable the transfer of water between authorised activities where the transfer is from a non-consumptive use to a consumptive use, and the transfer is downstream.*
- 3. The inclusion of restricted activity rules that enable the transfer of water upstream. The assessment of these transfers should be limited to the ability of the proposal to derogate from an existing use, any impacts (positive or negative) on the reach of the river between the existing and proposed points of take and any positive social and economic effects associated with the transfer.*
- 4. The inclusion of a permitted activity rule enabling the irrigation area associated with existing schemes to be increased where efficiency gains in water use are made by an existing consent holder.*
- 5. Where appropriate Section 5 should provide for a distinction between transfers processes under section 136 of the Act and those water transfer processes which fall outside of the processes governed by section 136 of the Act;*
- 6. All transfer provisions should recognise and provide for Principal Water Suppliers."*

Officer Comments

- 10.2 The only submission point accepted by the Officer relates to the inclusion of the term "Principal Water Supplier" which has been included into Rule 5.107(5). I support the inclusion of this term for the reasons that I have provided in paragraph 13.8 of this evidence.

Policy 4.71

- 10.3 The RDRML made a submission⁴⁴ in support of Policy 4.71. The Company sought a minor amendment deleting the word 'will' and replacing this with 'may'.

Officers' Report

- 10.4 I note that the Officer did not specifically address the RDRML's submission point, however the policy has been retained as notified. The Officer, nonetheless states that *"this policy does not provide an exhaustive list of all mechanisms used to address over allocation, although it acknowledges that transfers is one tool that can be used."*

Comments

- 10.5 The Company supports the use of water permit transfers and notes that they have the potential to improve efficient resource use. As a consequence, the RDRML accepts that the transfer of water may assist in reducing over-allocation or at a minimum, not worsen any over-allocation that has occurred. I think that it is important to note that the Officer acknowledges that the policy is not exhaustive of all of the mechanisms that could be used to address over-allocation. As such, the use of the word "will be achieved through managed transfers of water take and use permits", may be unduly elevating these measures, especially given that they may not be appropriate in all instances. As such, I consider that the use of the word "may" to be the most appropriate way to achieve the Act's purpose on this issue. As a consequence, I support the submission of the RDRML and recommend that the term 'will' be replaced with 'may' in Policy 4.71.

⁴³ not included within the summary of submissions.

⁴⁴ Submission 197.44

Rule 5.107 & 108

- 10.6 The RDRML made a submission⁴⁵ seeking the inclusion of the term “Principal Water Supplier” within Rule 5.107(5) and the amendment of Rule 5.108 so that it is provided for as a discretionary activity. Further, the Company also sought that Rule 5.107 be amended so that the temporary or permanent transfer, in whole or in part, of a water permit to take or use surface water or groundwater be provided for as a controlled activity. Further, the Company sought that Rule 108 be amended so that the temporary or permanent transfer, in whole or in part, of a water permit to take or use surface water or groundwater that does not comply with one or more conditions under Rule 5.107 be provide for as a restricted discretionary activity (and carry through those matters set out in condition 5.107 as notified)

Officers' Report

- 10.7 The Officer supports the inclusion of “Principal Water Supplier” and has recommended an amendment to Rule 5.107(5) which reflects this. The Officer recommends that the non-complying status is retained in Rule 5.108 so that an appropriate test can be applied to such “exceptions”. The Officer notes that *“the Act does not limit a Regional Council from nominating an activity status for an application for a transfer. Given the need to address over-allocation and the associated effects, it is appropriate to retain Rules 5.107 and 5.108.”*

Comments

- 10.8 The RDRML stated within its submission that Rule 5.107 does not give effect to Policy 4.72 of the pL&WRP, which seeks to ‘enable’ the transfer of water permits to take and use water. As such, the Company concluded that Rule 5.107 did not align with sections 67(1) and 68(1)(b) of the Act. Section 68(1)(b) states *“a regional council may for the purposes of achieving the objectives and policies of the plan, include rules in a regional plan.”* Further, section 67(1) of the Act states *“a regional plan must state...(c) the rules (if any) to implement policies.”* In my opinion, Rule 5.107 could be enabled through the adoption of a controlled activity status for the temporary or permanent transfer, in whole or in part, of a water permit to take or use surface water or groundwater. This is consistent with the approach advanced historically under the NRRP (Policy WQN17 Transfer of water permits to take or use water). Further, I note that Rule WQN19 reflects Policy WQN17 by recognising the temporary or permanent transfer of a water permit for taking surface water, or groundwater (that is classified as having a direct degree of hydraulic connection in Schedule WQN7), as a controlled activity (subject to conditions). It is therefore difficult to understand the rationale behind the pL&WRP provisions becoming more restrictive. I attach a copy of Policy WQN17 and Rule WQN19 as **Annexure F** of this evidence.
- 10.9 Both the NPS FM and the CWMS include specific reference to the transfer of water permits as a means to improve and maximise the efficient allocation of water. Provided that environmental values can be maintained, the ability to transfer allocated, but unused water should be enabled and not prevented. Further, Objective B3 of the NPS FM seeks *“[t]o improve and maximise the efficient allocation and efficient use of water”*. Objective B3 is supported by policies B2, B3 and B4, all of which reinforce the need for efficient use and allocation of water.
- 10.10 The NPS FM promotes the ability to transfer entitlements between users so as to maximise the value users get from water, which is a key driver in realising economic efficiency of fresh water resource. Objective B3 of the NPS FM, which is applicable to RPS’s and Regional plans, is supported by Policy B3 of the NPS FM which requires every regional council making or changing regional plans to the extent needed to ensure the plans state criteria by which applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water.
- 10.11 Policy 7.3.8 (Efficient allocation and use of fresh water) of the RPS promotes the efficient allocation of water and is supported by methods, which require objectives and policies, and

⁴⁵ Submission 197.81

methods to be included within regional plans. Method 1(g) requires that “conditions and circumstances for the transfer of water permits to take or divert water within a water body and avoiding any transfers that would be inconsistent with Policy 7.3.4.”

- 10.12 Given the foregoing, in my opinion, there is a clear policy direction toward enabling transfers where this is deemed appropriate to do so. I see no compelling reason within the Officers' report why a controlled activity cannot be applied to the temporary or permanent transfer of a water permit for taking surface water, or groundwater, consistent with the RDRML's submission. Further, even in instances where transfers are proposed within catchments that are over-allocated, I see little justification for advancing with this as a non-complying activity. In this regard, I do not believe that the transfer of water within over-allocated catchments necessitates a non-complying activity classification, particularly given that resource consent for such activities, in the context of the pL&WRP, may only be approved in exceptional circumstances. I believe that a discretionary activity classification provides sufficient flexibility in this instance. In this regard the Council will still maintain adequate ability to refuse the transfer should it have the potential to worsen the situation where an over-allocation exists, and/or where unacceptable effects could arise. Simply put, according non-complying activity status to transfer of water permits simply works against the above policy outcomes and is not necessary to achieve an outcome that accords with the Act's purpose. For this reason, I conclude that Rule 5.108 be amended such that non-compliance with one or conditions of Rule 5.107 is a discretionary activity. I set this out in **Annexure C** my recommended amendments.
- 10.13 With respect to the RDRML's submission to Section 5.0 relating to enhancing recognition for various transfer processes, the Company sought the inclusion of a controlled activity rule to enable the transfer of water between authorised activities where the transfer is from a non-consumptive use to a consumptive use, and the transfer is downstream. In my opinion, similar to my discuss at paragraph 10.8 of this evidence, providing these transfer processes do not result in adverse effects on the water resource, I do not see why this outcome should be recognised within the Plan.
- 10.14 Lastly, the RDRML requested inclusion of a permitted activity rule enabling the irrigation area associated with existing schemes to be increased where efficiency gains in water use are made by an existing consent holder. It is through the adoption of efficiency measures and a more comprehensive management approach to the management of schemes such as the RDR, that lends support to a consent holder being able to benefit from efficiency improvements implemented on the ground. In my opinion, where efficiency measures have been implemented and a scheme is governed by a Scheme Management Plan, it would be entirely appropriate for irrigation expansion to be enabled. I appreciate that where a Scheme Management Plan is in place, the Council should have confidence that irrigation expansion is governed by appropriate management controls to ensure that nutrient and water quality related issues are appropriately controlled in accordance with this scheme. In my opinion, however, it may be more appropriate for this relief to be provided for as a controlled activity so as to provide for an appropriate assessment (or audit) of the management mechanisms governing the scheme to ensure that any associated effects that may be attributable to irrigation expansion are avoided, remedied or mitigated.

11.0 – PROHIBITED ACTIVITY FOR NON-COMPLIANCE WITH (MINIMUM FLOWS)

Rule 5.98 and Rule 5.96(1)

- 11.1 The RDRML made a submission⁴⁶ seeking Rule 5.98 be deleted and that non-compliance with Condition 1 supporting Rule 5.96 be a non-complying activity.

⁴⁶ Submission 197.77

Officers' Report

- 11.2 The application of a prohibited activity status is discussed at 1.4.4 of the Officers' Report⁴⁷, and I note that various caselaw is quoted. I note the Officer refers to the *Thacker v Christchurch City Council* case. The Environment Court in that case "*preferred to focus on the proposition that the appropriate test for an imposition of prohibited status is whether or not the allocation of that status is the most appropriate of the options available. This decision can only be reached after undertaking the planning process required under the RMA; in particular, the need for a comparative evaluation under section 32.*"

- 11.3 The Officer addresses RDRML's submission at page 282 and states:

"Given that there are significant adverse effects associated with over abstraction from a surface water body and Condition 1 is a critical control arrived at on a local basis, it is considered appropriate to retain the prohibited activity status. It is noted this status is the same as in the NRRP."

- 11.4 I note that the RDRML, in its submission raised concerns that the section 32 report provides for limited commentary of the adoption of a prohibited activity status supporting rule 5.98 and as such considered that this has not been sufficiently justified. Equally, it is not certain that such a rule is required to achieve the Act's purpose.

Comments

- 11.5 A prohibited activity status sets a very high bar that does not allow for any consideration of the merits of a proposal, or for new information to be taken into account, because it does not allow for a consent application to even be made. As such, and based on my own experience in dealing with statutory planning documents which adopt a prohibited activity status for certain activities, it is almost certainly applied sparingly and for the most part to those more objectionable activities. Reiterating this matter, I am aware that there are few Regional Councils throughout New Zealand that apply a prohibited activity status to non-compliance with minimum flows. I am not saying here that there are no examples where a prohibited activity status has been applied in these instances, only that they are limited in extent. It is more typical for this to be applied to those rivers which are regionally or nationally significant that are to be protected outright. A case in point is the Bay of Plenty Regional Water and Land Plan, which only includes a prohibited activity rule for the damming and taking of water from the Motu River. Further, I note that unless specifically provided for within the order, that Water Conservation Orders effectively represent a prohibited activity status, through the protection regimes adopted within each order.

- 11.6 Variation 6 to the Waikato Regional Plan (addressed in Environment Court decision Env C 380/2011) is a more recent example of a regional plan that provides for non-compliance with allocable flow limits (where in combination takes exceed primary and secondary allocable flow identified in Table 3-5) as a non-complying activity under Policy 3(3)(iv).

- 11.7 One of my principal concerns in applying a prohibited activity status to Rule 5.98 (through non-compliance with condition 1 of Rule 5.96) is that it completely forecloses the ability for a compelling case (truly exceptional case) to be advanced, that may, when all matters are considered (including evidence provided to demonstrate that the proposal will not result in significant adverse effects on the environment) promote the purpose of the Act. In terms of the limits that are set or are to be set within Sections 6-15 for each catchment a prohibited activity effectively forecloses the ability for an applicant to argue, based on new science, that there would be any adverse environmental outcomes as a result of the limits being breached. The only alternative option, in this instance, would be for a plan change to be advanced that sought to change the limit based on new and compelling evidence that demonstrated that the limits set for the catchment are not correct and could therefore be changed. While this is not an ideal situation, it reflects that caution should be applied when seeking to apply a prohibited activity status for flow and allocation limits, especially in situations where there is uncertainty surrounding the science upon which the limits have

⁴⁷ Page 34

been promulgated. I note here that such concerns have been raised by Mr Callander on behalf of the Primary Sector Group, whose evidence identifies concerns around adopting a prohibited activity status for ground water limits where the processes upon which these limits have been set, are not appropriately robust and the science supporting these limits has not been adequately tested. Mr Callander raises concerns associated with the reliance on tier 1 and 2 processes in establishing limits for groundwater (refer paragraph 9.1 to 9.13 of Mr Challander's).

- 11.8 In addressing limits and the ability for these to be correctly set, the NPS FM 2011 Implementation Guide states:

*"Accurate limit setting can be technically difficult, time-consuming and expensive. It would be appropriate for the regional council to prioritise which catchments (and waterbodies) require a very site-specific, limit-setting process (rather than being able to be addressed through generic limits for that type of waterbody), and which catchments (and waterbodies) would benefit most from earlier setting of limits. Experience nationally and internationally suggests that limit setting, particularly in water quality, will be difficult to get right the first time. Once a limit is set, it is likely to be modified and fine-tuned in subsequent plan changes as better information is obtained."*⁴⁸

- 11.9 Further, I note for those catchments that have not had allocation and flow limits set, it is not appropriate to set a prohibited activity status where the science to justify these limits has not been rigorously tested. Even then, these processes are not always advanced on information that has been robustly and independently assessed (as is the case with the setting of the interim Nutrient Management Zones under the pL&WRP) and are advanced in a timely manner. The upshot is that in my opinion, there may be instances where a case could be put to the Council that appropriately demonstrates that a proposal can be advanced in 'exceptional circumstances'. Therefore, should a prohibited activity status be applied in the Plan (for example Rule 5.98), the pL&WRP should be amended to include a policy framework to address situations where new science is brought forward to address eventualities where the limits have been proven to be incorrect or inaccurate based on earlier science, where the only option would be to advance a plan change to address and revise the limit.
- 11.10 Notwithstanding the process discussed in paragraph 10.9 of this evidence, my preference is for limits within Sections 6-15 to be supported by a non-complying activity status. The pL&WRP acknowledges that non-complying activities are generally inappropriate. This sets a very high hurdle (appropriately so) in the context of proposals seeking consent for activities that do not fall within the ambit of the allocation regime. Reinforcing this point, Policy 4.6 (as amended) of the pL&WRP states that "[w]here a water quality or quantity limit is set in Sections 6-15, resource consents, will generally not be granted if the granting would cause the limit to be breached or further over-allocation to occur. New consents replacing expiring consents may be granted, but will likely be subject to additional restrictions."
- 11.11 In my opinion, while the NPS FM provides for a clear emphasis in avoiding further over-allocation, there is no direct support for the use of a prohibited activity status in this higher order statutory planning instrument.
- 11.12 Objective B1 of the NPS FM seeks to safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water. Further, Objective B2 seeks to avoid any further over-allocation of fresh water and phase out existing over-allocation. I do not read into either objective as supporting the use of a prohibited activity status, rather in the case of Objective B2 seeks the avoidance of any further over-allocation. In my opinion, this could realistically be achieved through the use of a non-complying activity status that makes it quiet clear that consent will be declined in all but the most exceptional cases.

⁴⁸ Page 15

- 11.13 Policy B1 of the NPS FM requires every regional council making or changing regional plans to the extent needed to ensure the plans establish freshwater objectives and set environmental flows and/or levels for all bodies of fresh water in its region (except ponds and naturally ephemeral water bodies) to give effect to the objectives in this national policy statement, having regard to at least the following:
- the reasonably foreseeable impacts of climate change
 - the connection between water bodies.
- 11.14 In my opinion, the NPS FM does not prescribe a prohibited activity status in situations where minimum flows are not complied with. This is reflected within the relevant Objectives and policies relating to water quantity within the NPS FM, a number of which I have set out above.
- 11.15 To this end, I support RDRML's submission to delete Rule 5.98 and make non-compliance with Condition 1 to Rule 5.96 a non-complying activity.

12.0 THE PRIORITISATION OF VARIOUS 'VALUES' UNDER THE PLAN

Strategic Policy 4.4

- 12.1 The RDRML made a submission⁴⁹ opposing Policy 4.4. The Company notes that the priority expressed within this policy is more explicit than the purpose of the Act set out in section 5(2). Its requested relief was that Policy 4.4 be amended to remove the reference to the first and second order priorities and to simply refer to the list of natural and human use values identified within the Policy.

Officers' Report

- 12.2 The Officer states "[t]his policy primarily gives effect to the prioritisation in the CWMS Principles. The majority of the submitters seek either deletion of the prioritisation, changes in the prioritisation or additional priorities to be added. Any of these changes would detract from the implementation of the CWMS, which is carried through other policies and rules of the pLWRP. It is noted that the RMA, particularly through Part 2, section 14 and section 30 and the RPS in Policy 7.3.4 support prioritisation of water "allocation". On this basis, these submission are recommended to be rejected. Minor changes to the wording regarding drinking water supplies are recommended, partly to make the policy consistent with how community and stock water supplies are managed in the pLWRP and with the CWMS."⁵⁰

Comments

- 12.3 I note that the priority order provided for within Policy 4.4 reflects the priority order given to specific values under the CWMS. The principles provide for first order priority considerations for the environment, customary uses, community supplies and stock water and then second order priority considerations, including irrigation, renewable electricity generation, recreation, tourism and amenity. While I acknowledge that when considering any proposed regional policy statement or plan, the Council must have particular regard to the vision and principles of the CWMS in addition to the matters relevant under the Act,⁵¹ tension can be created at a policy level when these first order values are given greater emphasis over those second order priorities listed within the CWMS. Such tension can be immediately apparent when addressing water allocation and flow provisions in the pL&WRP, should abstractive uses not be adequately provided for in managing water levels and flows. Such an outcome could result in perverse outcomes, especially when considering consenting processes. An example of this may be the inappropriate weighting of competing values where one value is elevated to the detriment of another.

⁴⁹ Submission 197.19

⁵⁰ Page 105

⁵¹ Section 63 of the ECan Act.

- 12.4 Objective 7.2.1 and Policy 7.3.4 of the RPS both embody the prioritisation of values reflected within Policy 4.4. To this end, Policy 4.4 seeks to give effect to the RPS. I note, however, that a central tenet of method 1(a) supporting Policy 7.3.4 is that the Council will set objectives, policies and methods in regional plans that “[e]stablish and implement environmental flow and water allocation regimes for surface water resources in the region, in accordance with all relevant policies, including but not limited to Policy 7.3.4, Policy 7.3.10 and Policy 7.3.11...”. Put another way, so as to avoid a potentially narrow focus, the RPS seeks to ensure that objectives and policies that deal with flow and allocation regimes in regional plans are considered in parallel with other relevant provisions, including those that address the continuation of existing irrigation schemes. In my opinion, this is an important consideration which I consider has not been appropriately reflected within the policy regime of the PL&WRP.
- 12.5 I note that the RDRML supported amendments suggested by Genesis to Section 2.1⁵² relating to the need for an overall broad judgement to be made as to how conflicting objectives fit within the overall scheme of the Regional Plan. Similarly, I note that Section 2.2 ‘Policies’ identifies that as with the objectives, the policies are intended to apply as a comprehensive suite, and must be read and considered together. In my opinion, both are positive provisions in addressing the need for objectives and policies to be considered as a ‘whole’ and reinforcing the need for an overall broad judgement to be made in weighing these competing considerations (in the case of the Genesis submission to Section 2.1). This will assist in ensuring that one policy is not unduly elevated over another. I note that the Officer in addressing Strategic policies states that “[i]t is through reading the objectives and policies as a group, rather than individually, that any required balancing will be seen, rather than within the individual objectives or policies”.⁵³ I agree with this approach.
- 12.6 Policy 4.48, which deals with existing infrastructure and their existing takes and goes some way towards addressing RDRML's concerns. However, it may nonetheless be helpful, in my opinion, by amending Section 2.6 (Limits) to reflect the outcome expressed within method 1(a) supporting Policy 7.3.4 of the RPS (given that it has not been expressly identified within the Plan). More particularly, I believe that a sentence added to Section 2.6 (Limits) that expressly states that when setting flow and allocation regimes within Chapters 6-15, and addressing potential competing interest, that it may be appropriate to include provision for hydroelectric power generation, irrigation, Principal Water Suppliers and other activities that involve substantial investment within environmental flow and water allocation regimes. I have recommended an amendment to Section 2.6 in **Annexure C** to reflect this.

13.0 SURFACE TAKES OF WATER AND THEIR ‘CONVERSIONS’ FROM ‘RUN OF RIVER’ ABSTRACTIONS TO ‘ABSTRACTIONS TO STORAGE’

Policy 4.67

- 13.1 The RDRML made a submission⁵⁴ opposing Policy 4.67 and seeking its deletion.

Officers' Report

- 13.2 The officer notes that a number of submitters requested that the irrigation season be amended to reflect current irrigation practice and Schedule 10. Ultimately they agree that the irrigation season should be amended to reflect Schedule 10, although it is also noted that the Policy does not preclude a consent holder from obtaining a resource consent which specifies a different irrigation season. The Officer notes that four submitters (including the RDRML) expressed concern that takes to storage have been confined to the winter period, and water should be able to be stored during the irrigation season if the water is available. The Officer has recommended that these submissions be rejected, the rationale being that

⁵² Further submission F623.25

⁵³ Page 100

⁵⁴ Submission 197.19

the Policy does not exclude the storage of water during the irrigation season.

Comments

- 13.3 Policy 4.67 is very clear, in my opinion, states that water abstracted for irrigation is to be managed so that that winter flows can be abstracted for storage. While I accept that the policy does not explicitly preclude water being stored during the irrigation season, it does not specifically provide for this. Put another way, the intent of the policy is open to interpretation by those parties seeking to give effect to it. I see this cutting across good planning and resource management practice.
- 13.4 Mr Curry (at paragraph 11.4 of his statement) states that in the Company's view, the all flows being abstracted by a consent holder (under a legally authorised consent) should be available for storage (at any time of the year) subject to managing any unacceptable adverse effects. For the same broad reason, environmental flow and allocation regimes should apply year round. This is particularly relevant to the RDRML given that:
- i. The Rangitata River Water Conservation Order has an allocation and environmental flow regime that applies throughout the year.
 - ii. The RDR serves more than irrigation uses and thus is required to abstract its full allocation for the duration of most years.
 - iii. The Company has a desire to enhance the reliability of the regionally significant RDR with water storage at Klondyke.
- 13.5 I note that Mr Curry states (at paragraph 11.5) that operationally the RDR is unique given that it plays a dual role in relation to the abstraction and conveyance of water and that currently, the RDR is not serviced by storage infrastructure, however this is currently being investigated by the Company. On this basis, Mr Curry reinforces (at paragraph 11.5) the need to ensure that there are no constraints provided within the pL&WRP as to when water can be abstracted and used for water storage. The only restriction being that this should not result in any unacceptable adverse effects.
- 13.6 I agree with the RDRML that Policy 4.67 is not sufficiently clear. In the absence of any supporting explanation within the Plan itself, I agree that the Policy should be amended so as to make it more explicit and to ensure that it appropriately provides for the range of abstraction activities undertaken by the RDR.
- 13.7 My recommended amendments to Policy 4.67 are tracked in **Annexure C** to this evidence.
- 13.8 The purpose of these changes are to address the lack of explicit provision for enabling abstraction for storage when these can be undertaken without unacceptable adverse environmental effects. Further, given that the RDR is a Principal Water Supplier, which provides for a range of water abstraction and conveyance services over a 12 month period, it is appropriate, in my opinion, that the policy is specifically amended to recognise this type of conveyance infrastructure.

14.0 SURFACE TAKES AND THE ASSOCIATED DISCHARGE OF WATER

Rule 5.99

- 14.1 The RDRML made a submission⁵⁵ opposing (in part) Rule 5.99. The RDRML within its submission raised concern that there appears to be no rational basis for the 250 metre separation distance provided for under condition 3 supporting Rule 5.99 and sought amendments that exempted existing infrastructure and activities associated their ongoing, maintenance and upgrading from condition 4 of this rule.

⁵⁵ Submission 197.78

Officer Reports

- 14.2 The Officer notes *“that the 250 metre threshold is set to allow further scrutiny when considering the effects associated with removing water from a river system over a longer distance. It is recommended that condition 3 is retained.”*⁵⁶ Further, the Officer in addressing the issue raised by the RDRML relating to existing infrastructure states *“[t]he inclusion of condition 4 appropriately allows for greater scrutiny of effects associated with applications to take water from the specified water bodies, and as such it is recommended that this condition is retained.”*

Comments

- 14.3 I note that Rule 5.99 is of particular importance to the RDRML given that the scheme would unlikely comply with conditions (3) and (4) of this rule. Therefore, it would fall to be determined as non-complying activity under Rule 5.100 (where one or more conditions are not met) as part of any consenting process. The RDR has existed on the Rangitata River since 1948 and therefore its effects are well understood. Consequently, I struggle to find a valid planning reason for consenting to be deemed to be a non-complying activity, particularly as a consequence of rules that are founded on thresholds that appear to have no sound basis.
- 14.4 As set out in Mr Curry’s statement (refer paragraph 6.6), the relaxation of this rule to accommodate existing infrastructure, associated surface takes and discharges is a particularly important outcome for the RDRML given that the RDR is serviced with existing infrastructure that provides for the discharge of water from the race back into the Rangitata River. These are intrinsically linked to the ongoing operation of the RDR and include:
- Consent (CRC011237) to discharge water from the race and discharges to the Rangitata River in the form of a fish return canal at the Bio-acoustic Fish Guidance system⁵⁷ which has been constructed within the RDR for the purpose of diverting, as far as practicable, migrating salmon smolt to the Rangitata River;
 - Consent (CRC011241) to discharge water and contaminants from the Rangitata Diversion Race Sandtrap to the Rangitata River via a spillway.⁵⁸
- 14.5 I attach a copy of each of these consents as **Annexure G** to this evidence. Further, to assist the Panel I have also included an aerial plan showing the location of the RDR Intake at Klondyke, the BAFF and Sediment Trap as they relate to the Rangitata River. This is included as **Annexure H** to this evidence.
- 14.6 I note that clause (10) of the Rangitata Water Conservation Order 2006 states that *“[t]he restrictions in subclauses (3) to (5) do not apply in respect of a take of water for the purpose of a fish bypass system and which is discharged back into the Rangitata River within 2500 metres downstream of the point of abstraction.”*
- 14.7 In my opinion, when comparing the discharge distances from the point of take provided for under the Water Conservation Order against the 250 metre distance provided for under the Regional Plan, it is clearly evident the Regional Plan is significantly more onerous. For the reasons I set out in paragraphs 14.8 to 14.10 below, I consider this to be unjustifiably restrictive. As discussed above, the Officer notes *“that the 250 metre threshold is set to allow further scrutiny when considering the effects associated with removing water from a river system over a longer distance. It is recommended that condition 3 is retained.”*
- 14.8 In my opinion, this explanation does not justify why the 250 metre threshold should not be

⁵⁶ Page 283

⁵⁷ Herein referred to as ‘the BAFF’.

⁵⁸ I note that condition 2 of this consent states that the discharge of sediment and water in terms of this permit may only be exercised whenever the flow in the Rangitata River, at the Klondyke recorder site (map reference J36:666-149), is greater than 140 cubic metres per second.

extended out to address discharges from an artificial watercourse such as the RDR and the operational requirements of the same. My reasoning for this is set out as follows:

- (i) in both cases, the existing conditions of consent governing these discharges are linked to operational and environmental management requirements of the scheme (and both are imposed through conditions of consent);
- (ii) both involve the discharge of contaminants into the river, however, both have been consented under the provisions of the Act and deemed appropriate;
- (iii) in the case of the discharge of water from the fish return associated with the BAFF, this would likely generate no more than minor contaminants entering the river given that this process is simply passing water back into the river from the RDR itself;
- (iv) in relation to the sediment trap (which as its name suggests is designed to settle sediment out of the scheme), this can only be operated when the river is at a certain flow, so as to ensure a reasonable level of mixing is achieved;
- (v) the sediment trap is used to simply flush sediments that have made its way into the RDR. Therefore, the discharge includes sediments which were in the river system and that have entered the race as part of the abstraction process; and
- (vi) the sediment trap, due to its operational and functional requirements is required to be sited some distance from the intake and in a location where the RDR could be designed with a bend, so as to enable the construction of the settling pond shown in Annexure H.

14.9 Given the foregoing, I see no compelling planning reason why from an effects point of view, condition 4 should capture the operational activities of the RDR (and for that matter other forms of similar infrastructure). Consistent with the Water Conservation Order, I recommend that this condition is amended to specifically exclude discharges otherwise provided for by way of existing consents or which are governed by Water Conservation Orders. In my opinion, given the issues that I have raised above, the 250 metre threshold within condition 3 is too arbitrary and unduly restrictive. In my opinion, condition 3 should be deleted as it would be difficult to try and identify a threshold distance that would appropriately apply across the regional and to all infrastructure that incorporates similar operational limitations associated with sediment discharges linked to sediment trap infrastructure.

14.10 Further, if the idea for capturing all existing takes on the rivers listed within Sections 6-15, is simply to enable their effects to be appropriately assessed, I see no compelling resource management reason why these takes need to be assessed as a non-complying activity. Especially given the fact that the pL&WRP states that non-complying activities are generally inappropriate. This sets a very high hurdle for the reconsenting of such takes, in my opinion. Having considered the issues set out in paragraphs 14.8 to 14.9 of this evidence, I concur with the relief sought by the RDRML which seeks to exclude takes which support the ongoing operation of existing infrastructure in condition 4. Again, my suggested amendments are set out in **Annexure C** to this evidence.

15.0 WATER QUALITY AND TABLE 1

Policy 4.1 and Table 1

15.1 The RDRML made a number of submissions⁵⁹ relating to Policy 4.1 and Table 1 of the pL&WRP. The RDRML raised specific concerns relating to the manner in which the standards set within Table 1 (which in turn is referenced within strategic Policy 4.1) are to be used to address water quality measures until fresh water outcomes are advanced for each catchment. The Company is concerned with the manner in which the Table 1 standards are to be applied given that Table 1a is largely the same as Table WQL5 of the NRRP and that Table 1b is largely the same as Table WQL6 of the Canterbury NRRP. The NRRP recognised

⁵⁹ not included within the summary of submissions.

that the objectives sought within the water quality conditions (in Table WQL5) were not met in some rivers, but that water quality would be progressively improved to meet those conditions and that this may take a period of some years.

15.2 The key focus of the RDRML concerns regarding Table 1 and the regulatory aspects associated with the manner in which water quality is to be advanced under the pL&WRP are as follows:

1. The use of Table and its standards being applied as a regulatory basis for controlling nitrogen discharges from land. In particular, the Company questions the validity of the policy approach adopted within the pL&WRP and the ability for land owners to demonstrate compliance in accordance with Policy 4.1 and Policy 4.34 (supported by Rules 5.39 and 5.40).

It will be extremely difficult for landowners to demonstrate compliance for an individual property, when a water body may also show non-compliance with these standards, particularly given that for some rivers they were originally set higher under the NRRP than existing states.

2. The Company considers that Table 1 does not appropriately address 'cause and effect'. There are no numeric parameters set within Table 1 addressing nitrogen discharges directly. For example, for farming activities being undertaken (prior to 1 July 2017) within an area coloured 'red' or within a 'Lake Zone' (as shown on the Planning Maps) an applicant for resource consent is required to demonstrate that the nitrogen loss from the proposed activity, when assessed in combination with the effects of other land uses or discharges, will not prevent the water quality outcomes of Policy 4.1 being achieved. However, the parameters used in Table 1 do not include a direct measure of nitrogen loss, although some parameters may be affected by it. Consequently, any assessment will be exceedingly difficult.
3. A focus on minimising nitrogen losses only may not achieve the Table 1 outcomes, which may be affected by a broader range of influences other than just nutrient inputs. This is a critical point and calls into question the validity of the parameters set within Table 1. If Table 1 is to be used as a basis for showing compliance with nitrogen discharges, a numeric standard should be included within Table 1.

Officers' Comments

15.3 The Officer in addressing Table 1 states "[a] large number of submitters have sought that Tables 1a, 1b and 1c be reviewed and replaced in their entirety. An example is Fresh Pork Farms Limited, who seek a review of the Tables and state that "The inclusion of these values should not be used until accurate economic and social impacts on the region can be ascertained..." The Tables are further noted as "aspirational" and not appropriate for use as the regulatory basis for the pLWRP. The submitters do not provide any detail on what the values in Tables 1a, 1b or 1c should be, other than the need for a "review

*These submissions have been reviewed and considered by Dr Adrian Meredith. He has reviewed the purpose of Tables 1a-1c and how the requested changes would affect the outcome nature of the Tables. He has reviewed the literature referenced by the submitters, along with other relevant research. For the reasons outlined in his memo attached in Appendix 1 to this Report, he recommends no changes to Tables 1a-1c."*⁶⁰

Comments

15.4 As discussed within the evidence of Mr Curry (refer paragraphs 6.2. to 6.6), the RDRML has a critical concern around how water quality is to be managed by the pL&WRP. This centers on both the RDR (and issues around compliance with discharge limits that are to be set for discharges to surface water bodies) but also to the associated irrigation schemes which the

⁶⁰ Page 112

RDR supports (which is linked to nutrient management associated with irrigation application and issues linked to nutrient discharges to both groundwater and surface water bodies).

- 15.5 As discussed by Mr Curry, the RDRML takes its responsibilities in managing issues around nutrient discharges very seriously to the point where the Company has voluntarily adopted Audited Self Management approaches as part of the ongoing operation of the irrigation schemes, and which are being implemented in accordance with Schedule 7 requirements (including adoption of Farm Environmental Management Plans for each property, as well as at Scheme Management Level). This is before the pL&WRP provisions were notified.

Table 1a

- 15.6 I note that most of the freshwater outcomes within Sections 6-15 refer back to Table 1 (which is embodied within Policy 4.1). As such, the standards set within Table 1 are to be used to address water quality measures until fresh water outcomes are advanced for each catchment. The standards are therefore to be used as a regulatory tool to address issues around nutrient management and the management of water quality in the region's lakes and rivers (as envisaged within Policy 4.1 and 4.2, and the nutrient management policies 4.28 to 4.36) until these catchment specific limits are set.
- 15.7 At a fundamental level the concerns raised by the RDRML have been reinforced in a number of submissions to this section of the Regional Plan, as reflected within the Officers' Report. In relation to Table 1a, I understand that the outcomes in Table 1a are largely the same as Table WQL5 of the NRRP. In considering the draft evidence of Ms Hayward who was involved with the preparation of the NRRP water quality provisions, I note that Ms Hayward reiterates the RDRML's own submission point on the NRRP provisions that *"the numeric criteria for each indicator and river/lake types was developed with the aim of setting 'aspirational but achievable' objectives."*
- 15.8 Further, I note Dr Ryder on behalf of TPL and Ms Hayward both raise concerns associated with the manner in which the management units set out in the pL&WRP group rivers and lakes according to common biophysical features at a broad regional scale, however, this quite coarse scale fails to recognise the unique existing environment of rivers by grouping the diverse range of river environments within Canterbury into just ten management units. Dr Ryder concludes that this *"potentially fails to address and respond to considerable variability in responses and resilience of individual rivers and lakes to both natural and anthropogenic influences."*⁶¹ Ms Hayward concludes that in addressing Table 1a, *"this has implications in their use for determining allocation status of catchments or zones."*
- 15.9 It is clearly evident that the evidence of Dr Ryder and Ms Hayward, whose evidence I have relied on in addressing Table 1, raise specific concern as to how both the management units (and their 'coarse' application into 10 management units) will adequately respond to the 'more fined' grained catchment specific water quality issues, including how these may be addressed within catchments that are over-allocated.
- 15.10 Further, Dr Ryder questions the appropriateness of using qualitative objectives, which are poorly defined and open to interpretation. A case in point is Table 1a (All river management units) addressed within the RDRML submission which states *"natural colour of the water in the river shall not be altered"*. This provision completely ignores the assimilative capacity of water and the ability for discharges to be assimilated through reasonable mixing. Further, it fails to acknowledge the presence of existing infrastructure and other lawfully consented activities that may alter the natural colour of water through the operation, maintenance and upgrade activities undertaken, however whose effects are appropriate in the context of achieving sustainable management of natural and physical resources.
- 15.11 While the RDRML's principal submission to Policy 4.1 (which includes Table 1) sought that

⁶¹ Refer Section 2.0 of Dr Ryder's evidence.

the policy be deleted, the Company also lodged a further submission in support of the amendments made to this policy by TPL.⁶² I note that the Officer adopts the relief sought by TPL into Policy 4.1 which sets out reference to limits being set for each catchment in Sections 6- 15 within the specific timeframe and if the outcomes have not been established for each water body then the outcomes in Table 1 are to be met by 2023. In my opinion this provides sufficient certainty for the community that catchment specific limits are to be determined based on the timeframes specified by the Regional Plan and the outcomes expressed within Table 1 are to be met by 2023.

- 15.12 A key issue raised by both Dr Ryder⁶³ and Ms Hayward⁶⁴ in their evidence relates to maintaining or improving water quality (in accordance with Objective A2 of the NPS FM) by ensuring the ‘average’ condition of waterways meet the criteria set out in Tables 1a, b and c.
- 15.13 In my opinion, if Tables 1a, b and c water quality objectives are to be used as an interim water quality response used to evaluate the implications of activities, I agree with Ms Hayward and Dr Ryder, that natural variation or catchment specific variations should be appropriately addressed through the use of ‘median’ or ‘average’ values for the various parameters set within the table. While this approach can still be criticised when seeking to apply it as a regulatory tool (for not being sufficiently accurate), it does nonetheless provide a degree of flexibility (ie one is not required to comply at any given time, but rather is averaged out over a period of time to more appropriately account of variability of a water body).
- 15.14 Returning to the RDRML’s relief sought on Table 1a, the Company sought a specific amendment to the objective relating to “natural colour of the water in the river shall not change”. The Company sought that this objective be amended to take account of lawfully consented discharges. In my opinion, the RDRML relief reflects the fact that large scale infrastructure such as the RDR is acknowledged as forming part of the existing environment, as are their takes under amended Policy 4.48 of the Regional Plan. I note also that to an extent the Regional Plan also provides for certain discharges as a permitted activity (new Rule 5.XX⁶⁵ and as such the natural colour of water will change within a mixing zone until such time as the discharge has assimilated with the water body. In my opinion, the relief sought to this objective is appropriate in addressing a short-coming of this existing objective.

16.0 SUMMARY

- 16.1 In summary, I recommend that those provisions discussed within Sections 5 to 15 of this statement be further amended to ensure that they are consistent with the Resource Management Act 1991 and the direction of the National Policy Statement on Freshwater Management and the operative Canterbury Regional Policy Statement. I consider that my recommended changes promote both good resource management and planning practice and accord with the purpose of the Act and the manner that is should be applied.
- 16.2 For the reasons set out in this statement I do not believe that aspects of the proposed Canterbury Land & Water Regional Plan, as publicly notified or as amended in the recommendations of the Officers’, achieve either of these requirements.
- 16.3 I thank the Panel for affording the time to consider this statement.

⁶² Refer Further Submission F623.56

⁶³ Refer Section 2.0 of Dr Ryder’s evidence.

⁶⁴ Refer Section 2.0 of Dr Ryder’s evidence.

⁶⁵ Rule 5.XX provides for the temporary discharges to land or water within artificial watercourses (as part of the maintenance of these structures) subject to the discharge being only water, sediment and vegetative matter from within the structure and not adversely affecting water outside of the structure.

Nigel Roland Bryce, B.REP, NZPI.

4th of February 2013

ANNEXURE A

PROJECTS AND PROCESSES OF RELEVANCE TO THE CANTERBURY, SOUTHLAND AND OTAGO REGIONS: NIGEL ROLAND BRYCE

Canterbury Region

- Assisting Rangitata Diversion Race Management Limited and the Mackenzie Irrigation Company with their responses to the proposed Canterbury Regional Policy Statement, including presenting planning evidence
- Assisting Rangitata Diversion Race Management Limited with its response to the proposed Ashburton District Plan, including presenting planning evidence at the Utility and Designation Hearings.
- Assisting Rangitata Diversion Race Management Limited with its response to the Ashburton Zone Implementation Programme.
- Assisting Rangitata Diversion Race Management Limited, and King Country Energy Limited with their responses to the proposed National Policy Statement for Indigenous Biodiversity.
- Assisting Amuri Irrigation Company with their responses to the proposed Hurunui-Waiapu River Regional Plan, including presenting planning evidence.
- Assisted a number of clients review decisions on the Canterbury Natural Resources Regional Plan.

Otago Region

- Assisting Pioneer Generation Limited and Ballance Agri-Nutrients with their responses to the proposed Otago Regional Council Plan Change 6A:Water Plan.
-
- Assisted Primary Sector Stakeholders at the proposed Otago Regional Council Plan Change 6A:Water Plan, including presenting planning evidence

Southland Region

- Assisting Ballance Agri-Nutrients with its response to the proposed Southland Regional Statement.

ANNEXURE B

SUBMISSION POINTS ACCEPTED BY OFFICER OR GENERALLY ADDRESSES RDRML RELIEF

- | | |
|--------|---|
| 157.5 | As it relates to RDRML's submission to Objective 3.3 (renumbered Objective 3.17). |
| 197.9 | As it relates to RDRML's submission to Objective 3.15 (renumbered Objective 3.7). |
| 197.11 | As it relates to RDRML's submission to Objective 3.16 (renumbered Objective 3.9). |
| 197.21 | As it relates to RDRML's submission to Policy 4.19 |
| 197.21 | As it relates to RDRML's submission to Policy 4.19 |
| 197.51 | As it relates to RDRML's submission to Policy 4.89 |
| 197.84 | As it relates to RDRML's submission to Rule 5.115 |
| 197.85 | As it relates to RDRML's submission to Rule 5.117 |
| 197.91 | As it relates to RDRML's submission to Rule 5.138 |
| 197.87 | As it relates to RDRML's submission to the Definition of 'Dam' |
| 197.31 | As it relates to RDRML's submission to the Definition of 'Principal Water Supplier' |

**Annexure C – Recommended Changes Proposed by Nigel Bryce to the Provisions of the Proposed
Canterbury Land & Water Regional Plan**

Track Change Colour Code

Relief sought by the RDRML retained

Recommended amendments of Nigel Bryce

Recommendations of the Officer retained

Section 2.6 Limits

“.....

Water quantity limits determined at a catchment level, in consultation with stakeholders, are included in the relevant sub-regional sections. Where catchment surface water limits have not been established a regional methodology sets out the limits to be applied. Groundwater quantity limits are set for all groundwater allocation zones in the Canterbury region.

In setting flow and allocation regimes within Chapters 6-15, it may be appropriate to include provision for hydroelectric power generation and irrigation schemes, Principal Water Suppliers and other activities that involve substantial investment in infrastructure within the environmental flow and water allocation regimes.

The region-wide nitrogen limits in Section 5 of the Plan are designed to move from a regime of little or no statutory management of diffuse non-point source discharges of nutrients to a statutory regime that requires ‘good management practice’ across the region. Where good management practice will not result in the Plan’s objectives and the in-stream fresh water outcomes being met, then a comprehensive catchment management regime for managing both diffuse and point-source discharges will be included by way of plan change into sub-regional sections.”

Policy 4.41 The damming or diversion of any alpine or hill-fed river does not result in unacceptable adversely ~~effects on~~:

- (a) values of significance to Ngāi Tahu associated with the mainstem;
- (b) the passage of floods and freshes needed to maintain river processes, ecosystem health and the removal of vegetation encroaching onto the bed of the mainstem;
- (c) sediment transport within the river and to the coast;
- (d) prevention of fish passage; and
- (e) downstream water quality;
- (f) existing, and lawfully established abstractions”

Policy 4.47 Where the rate of take or volume of water consented for abstraction from a catchment exceeds the environmental flow and water allocation regime for surface water or stream depleting groundwater, or the groundwater allocation limit for that catchment, any further allocation of water is limited to:

- (a) any abstraction necessary to meet community drinking and stockwater requirements; and
- (b) the replacement of existing resource consents at the same or a lesser rate of take and the same or a lesser annual or seasonal volume (where a seasonal take is relevant), provided ~~there are significant and enduring the use of water and associated infrastructure is made increasingly efficient (where it is not already highly efficient) improvements in the efficiency of water use and there are ongoing and effective~~ reductions in any adverse effects associated with water use.

Policy 4.48 Existing hydro-electricity, ~~and~~ irrigation and Principal Water Supply schemes and their water takes are recognised as a part of the existing environment. In re- consenting the schemes, it is expected that where appropriate there will be improvements in the

efficiency of water use and conveyance assessed over the life of the consent and reductions in any adverse effects on flows and levels in water bodies in order to maximise the term of the consent.

Policy 4.52 The discharge of water resulting from moving water from one catchment or water body to another does not:

- (a) facilitate the unwanted transfer of fish species, plant pests or unwanted organisms into catchments where they are not already present;
- (b) result in unacceptable adversely ~~effects on~~ Ngāi Tahu values;
- (c) result in unacceptable adversely ~~effects on~~ 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) result in unacceptable adversely ~~effects on~~ fish migration.

Policy 4.67 Water abstraction for irrigation is managed so that:

- (a) ~~winter~~ All flows are available for abstraction to storage, while ensuring ecosystem recovery; and
- (b) abstraction is for the summer ~~(Oct-Apr)~~ 1st September to 30th April, irrigation season, unless specified otherwise, and shall include abstraction of water necessary to provide for the range of services (including for storage) provided by a Principal Water Supplier and other irrigation scheme providers over this period.

Policy 4.70 Systems to convey or apply fresh water are designed to maximise efficient use of water, including the improvement over time of existing systems, ~~except where there will be an adverse effect on ecosystems or existing abstractors from a loss of recharge.~~ taking into account

- (a) practicable options to implement any change required to existing systems; and
- (b) adverse effects on ecosystems ~~or existing abstractors~~ from a loss of any recharge currently arising from conveyance inefficiencies

Policy 4.89 Land uses, and other activities in the beds or margins of lakes and rivers, do not ~~adversely~~ unacceptably affect the stability or functioning of lawfully established erosion control or flood protection works or infrastructure."

Policy 4.91 For all gravel removal from the beds of rivers:

- (a) the rate of gravel extraction does not exceed the rate of gravel recharge, except where stored gravel is available for extraction and in that case short-term extraction of stored gravel may occur at a rate that exceeds gravel recharge rates only to the point that gravel levels reach gravel recharge rates; and
- (b) the activity is undertaken in ways which
 - (i) avoids unacceptable adverse effects on significant indigenous biodiversity values, or where this is not practicable avoids, remedies or mitigates all other adverse effects on these values;
 - (ii) avoids, remedy or mitigates adverse effects on water quality, disturbance to wildlife habitat, sites of cultural significance to Ngāi Tahu, ~~or affect~~ public access and recreational values; and
 - (iii) manages any adverse erosion effects associated with gravel removal, including where practicable avoiding inducing erosion of the beds of rivers.

Amended Rules

Rule 5.99 The non-consumptive taking and use of water from a lake, river or artificial watercourse and discharge of the same water to the same lake, river or artificial watercourse is a restricted discretionary activity, provided the following conditions are met:

1. Limits have been set for that surface water body in Sections 6-15 or the lake or river is

subject to a Water Conservation Order;

2. The taking of water and subsequent discharge will have no unacceptable adverse effect on the limits set for that water body in Sections 6-15 or the flow and allocation regime set out in the Water Conservation Order;
- ~~3. The maximum distance from the point of take to the point of discharge is not more than 250 m; and~~
- 4.3. The take is not from a natural wetland, hāpua or a high naturalness lake or river that is listed in Sections 6-15 or where it is, the take is in support of the operation, maintenance or upgrading of existing lawfully approved infrastructure.

The Canterbury Regional Council will restrict discretion to the following matters:

1. Measures that will ensure the limits are not unacceptably affected;
2. Whether the amount of water to be taken is reasonable for the intended use;
3. The effects the take has on any other authorised takes or diversions;
4. The potential to frustrate or prevent the attainment of the regional network for water harvest, storage and distribution, shown on the Regional Concept diagram in Schedule 16;
5. The reduction in the rate of take in times of low flow and the need for any additional restrictions to prevent the flow from reducing to zero;
6. Whether and how fish are prevented from entering the water intake and/or discharge structure; and
7. Effects on aquatic ecosystems, instream habitat, wetlands, dryland habitats, sites of significance to Ngāi Tahu and Ngāi Tahu values, amenity & recreational values in the area of the river subject to the diversion take;
8. Effects of both take ~~or diversion and~~ and any subsequent discharge on water quality.”

Rule 5.100 The non-consumptive taking and use of water from a lake, river or artificial watercourse and discharge of the same water to the same lake, river or artificial watercourse that does not meet ~~one or more of the~~ conditions 2 in Rule 5.99 is a non-complying activity.

Rule 5.108 The temporary or permanent transfer, in whole or in part, of a water permit to take or use surface water or groundwater that does not meet one or more of the conditions of Rule 5.107 is a ~~non-complying discretionary~~ activity.

Rule 5.113 The placement, use, altering, reconstruction, maintenance or removal of pipes, ducts, cables or wires over the bed of a lake or river, whether attached to a structure or not is a permitted activity, provided the following conditions are met:

1. The pipes, ducts, cables or wires ~~run perpendicular to the channel and~~ do not prevent access to or over the bed or to lawfully established structures or defences against water, including flood protection works, or to flood control vegetation;
2. The activity is not undertaken in, on, or over the bed of any river or lake listed as a high naturalness lake or river in Sections 6-15, unless the pipes, ducts, cables or wires are attached to an existing structure
- ~~3. If the pipes, ducts, cables or wires are attached to an existing structure, they are attached above the soffit; and~~
4. The pipes, ducts, cables or wires do not obstruct or alter navigation of the lake or river or reduce the flood carrying capacity of the waterway; and
5. Any upgrading or minor alteration associated with maintenance works shall not increase the footprint, height, or external envelope of the structure”.

Rule 5.114 The 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 and associated support structures is a permitted activity, provided the following conditions are met:

1. The activity is not undertaken in, on, or under the bed of a lake listed as a high naturalness lake in Sections 6-15 or in an inanga or salmon spawning site listed in Schedule 17;

2. The activity does not involve the deposition of any substance, other than bed material, on the bed of a lake or river;
3. The activity is undertaken at a distance greater than 10 m from any dam, weir, bridge, or network utility pole, pylon or flood protection vegetation, 150 m from any water level recorder, 50 m from any flood protection work 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;
4. Within 30 days of the completion of the activity the bed of the lake or river is returned to its original contour;
5. Marker posts are erected for the lifetime of the pipes, ducts, cables or wires; and
6. The works do not occur in flowing water; and
7. Any upgrading or minor alteration associated with maintenance works shall not increase the footprint, height, or external envelope of the structure".

Rule 5.115 The installation, extension, use, maintenance or removal of bridges and culverts, ~~including the erection or extension of the structure~~ and the consequential deposition of substances on, in or under the bed of a lake or river, the excavation or other disturbance of the bed of a lake or river, and, in the case of culverts, the associated take, discharge or diversion of water is a permitted activity, provided the following conditions are met:

1. Any ~~substance~~ material 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 of colour and material type that blends with the surrounding natural environment and does not contain or is not coated with any hazardous substance;
2. The activity is undertaken at a distance greater than 10 m from any dam, weir, bridge, or network utility pole, pylon or flood protection vegetation, 150 m from any water level recorder, 50 m from any flood protection works 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;
3. The works do not occur in flowing water;
4. Other than the maintenance of a structure outside the spawning season and the use of a structure the activity is not undertaken in an inanga or salmon spawning site listed in Schedule 17;
5. Upon completion of the activity:
 - (a) any area of the bed of a lake or river which has been disturbed is returned to as near as practicable to its original state;
 - (b) any excavated areas are left with battered slopes not steeper than 3:1 slope angle (3 horizontal to 1 vertical) and any flow channels disturbed during the activity are reinstated;
6. For any permanent culvert:
 - (a) the maximum length is 25 m;
 - (b) the maximum width of the river bed at the point of the crossing is 5 m;
 - (c) 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;
 - (d) the culvert provides a 50%366 AEP flood flow capacity without increasing upstream water levels; and
 - (e) the location is not within any urban area or settlement;
7. For any temporary culvert:
 - (a) the maximum width of the river bed at the point of the crossing is 5 m;
 - (b) the culvert is installed at a level no higher than bed level, and no lower than 100 mm below the level of the bed of the river or lake;
 - (c) the culvert is not placed in a water body managed for flood control or drainage purposes, unless written approval is obtained from the authority responsible for the waterbody it is undertaken by or on behalf of the CRC; and
 - (d) the culvert is not in place for more than four weeks; and

8. For any bridge:
 - (a) there are no piers within the bed;
 - (b) the bridge and the approaches are designed so that a 5% AEP flood event does not cause any increase in upstream water levels;
 - (c) the soffit (underside) of any bridge is higher than the top of the river bank, and at least 500 mm above the 5% AEP flood level; and
 - (d) the bridge abutments are constructed parallel to the flow.
9. The works or structures do not impede any existing fish passage.
10. Any upgrading or minor alteration associated with maintenance works shall not increase the footprint, height, or external envelope of the structure".

Rule 5.116 The installation, maintenance, use and removal of defences against water flood protection works, and including the associated deposition of substances on, in or under the bed of a lake or river and excavation, associated diversions and discharges of sediment or other disturbance of the bed of a lake or river is a permitted activity, provided the following conditions are met:

1. The activity does not prevent access in any way to lawfully established structures, including defences against water flood protection works, or to flood control vegetation;
2. Other than for the use of flood protection work the activity is not in, on, or under the bed of any river or lake listed as a high naturalness lake or river in Sections 6-15 or site in Schedule 17 and
3. The activity is undertaken by or on behalf of a local authority or a network utility operator in accordance with a flood protection plan that has been certified by the CRC as being in accordance with the CRC's River Engineering Section Quality and Environmental Management System Manual (March 2010) by the CRC and
4. The works or structures do not impede any existing fish passage and
5. Any upgrading or minor alteration associated with maintenance works shall not increase the footprint, height, or external envelope of the structure".

New Rules

"Controlled – Reconsenting of Lawfully Established Regionally Significant Infrastructure

The lawfully established:

- (1) Discharge of water to water; and
- (2) Discharges of contaminants to water; and
- (3) Take and use of water; and
- (4) Damming and diversion of water;
- (5) the diversion or bunding of water associated with a water intake; and
- (6) Use of a structure in the bed of a stream or river;

Associated with regionally significant infrastructure that existed on the date this regional plan becomes operative is a controlled activity. This rule applies to applications to replace existing resource consents.

The CRC will restrict discretion to the following matters:

- (a) Any adverse effect of continuing or discontinuing the damming, taking, use, discharge or diversion of water on:
 - (i) The water quality of the lake or river;
 - (ii) The amenity values of the lake or river;
 - (iii) Fish passage;
 - (iv) Any existing lawfully established take, use, dam, discharge or diversion of water;
 - (v) Measures to identify and manage the risk of dam failure.
 - (vi) Measures to manage discharges to water from the use or alteration of the structure.
 - (vii) Measures to avoid, remedy or mitigate any adverse effect on aquatic ecosystems, areas of significant indigenous vegetation, significant habitats of indigenous fauna.
 - (viii) Effects on the relationship of tangata whenua and their culture and traditions with the site and any waahi tapu or other taonga affected by the activity.
 - (ix) Measures to avoid, remedy or mitigate adverse effects on amenity values (including recreation), and existing public access to and along the margins of rivers and lakes.
- (b) Any maximum or minimum level or flow of water, and the range, or rate of change, levels or

- flows of water; and
(c) Information and monitoring requirements.”
(d) The duration of the resource consent; and
(e) Review of the conditions of the resource consent; and
(f) Financial contributions.”

Rule 5.107A

“The temporary or permanent transfer of a water permit for taking surface water, or groundwater is a controlled activity provided the activity complies with all of the conditions in this rule.

1. The point of take may only be transferred to an alternative site or sites within the same catchment.
2. For any surface water take or groundwater that is identified as having a direct degree of hydraulic connection, the transfer must be downstream of the original take.
3. On transfer, the water permit to take water shall remain within the same allocation block.
4. The transfer must be registered with Environment Canterbury.
5. A water permit may only be transferred beyond the property, where it has been exercised on the property for which it was originally intended in accordance with the terms of the water permit.
6. The transfer of any part or all of the permit complies with any existing conditions on the original permit which specifically address transfer

Where the activity is classified as a controlled activity, CRC has reserved control over the following matters:

1. The nature and/or duration of the transfer – whole or partial/short term or permanent.
2. The appropriateness of existing conditions and in particular of monitoring, minimum flow and other restrictions to avoid or mitigate effects of the transfer to the new site.
3. The effect on any allocation regime.
4. The apportioning of the maximum rate of take and annual volume where the take is to be partially transferred.
5. The need for conditions preventing concurrent taking where there is a partial transfer or the transfer is to two or more points of take.”

Rule 5.100A The non-consumptive taking and use of water from a lake, river or artificial watercourse and discharge of the same water to the same lake, river or artificial watercourse that does not meet conditions 1 and 3 in Rule 5.99 is a discretionary activity.

Annexure D – Controlled Activity Rule 47C of the Bay of Plenty Regional Water and Land Plan

Rule 47C Controlled – Lawfully Established Hydroelectric Power Schemes in Schedule 11

The lawfully established:

- 1 Discharge of water to water; and
- 2 Discharges of contaminants to water; and
- 3 Take and use of water (including non-consumptive use); and
- 4 Damming and diversion of water; and
- 5 Use of a structure in the bed of a stream or river;

Associated with a hydroelectric power scheme that existed on the date this regional plan becomes operative and is listed in Schedule 11, is a controlled activity.

This rule applies to applications to replace existing resource consents.

Environment Bay of Plenty reserves its control over the following matters:

- (a) Measures to provide for the passage of fish, both upstream and downstream.
- (b) Upstream and downstream water levels, residual flows and water quality.
- (c) Screening of intake and diversion structures.
- (d) Intake velocities.
- (e) Measures to manage erosion effects (including destabilisation of beds and banks or river).
- (f) Measures to identify and manage the risk of dam failure.
- (g) Stability of the land bordering the dam.
- (h) Measures to manage discharges to water from the use or alteration of the dam structure.
- (i) Measures to avoid, remedy or mitigate any adverse effect on aquatic ecosystems, areas of significant indigenous vegetation, significant habitats of indigenous fauna.
- (k) The quantity and flow rate, outstanding natural features and natural character.
- (j) Measures to avoid, remedy or mitigate any effects on other lawfully established users of the river or stream of water released from the dam.
- (l) Volume and rate of any take or diversion.
- (m) Techniques for ensuring the safe passage of flood water.
- (n) Effects on the relationship of tangata whenua and their culture and traditions with the site and any waahi tapu or other taonga affected by the activity.
- (o) Effects on the ability of tangata whenua to exercise their kaitiaki role in respect of any waahi tapu or other taonga affected by the activity.
- (p) Measures to avoid, remedy or mitigate adverse effects of the operation on downstream sediment transport processes.
- (q) Measures to avoid, remedy or mitigate adverse effects on lawfully established downstream infrastructure.
- (r) The range, or rate of change of levels or flows of water.
- (s) The structural integrity and maintenance of the structure.
- (t) Measures to avoid, remedy or mitigate adverse effects on amenity values (including recreation), and existing public access to and along the margins of rivers and lakes.
- (u) Information and monitoring requirements.
- (v) Administration charges under section 36 of the Act.

Notification

Applications for resource consents under Rule 47C will be publicly notified in accordance with the requirements of section 93(2) of the Act.

Explanation/Intent of Rule

To provide for existing, lawfully existing hydroelectric power schemes that are listed in Schedule 11, and clearly state that all aspects of the activity will be managed within one resource consent. Resource consent applicants may wish to separate ancillary activities (such as the take of water for domestic supply needs, or stormwater discharges) from the main consent for the hydroelectric scheme. Public notification of resource consents under Rule 47C is in accordance with section 94D(1) of the Act.

12.6 Damming and associated Taking, Use, Discharging and Diversion for Hydro-Electricity Generation purposes

- 12.6.1** For the Hydro-Electricity operations identified in Schedule 7 of this Plan:
- (a) The damming of water for hydroelectric power generation purposes
 - (b) The taking of water for hydroelectric power generation purposes
 - (c) The use of water for hydroelectric power generation purposes
 - (d) The discharge of water and trace contaminants to water for hydroelectric power generation purposes
 - (e) The diversion of water for hydroelectric power generation purposes

is a **controlled** activity.

In considering any resource consent for the damming, taking, use, discharge or diversion of water in terms of this rule, the Council will restrict the exercise of its control to the following matters:

- (a) Any adverse effect of continuing or discontinuing the damming, taking, use, discharge or diversion of water on:
 - (i) Any natural or human use value identified in Policy 5.4.1, 5.4.1B & 5.4.1C of any affected water body, including the impoundment itself;
 - (ii) The water quality of the lake or river;
 - (iii) The amenity values of the lake or river;
 - (iv) Fish passage;
 - (v) Any existing lawfully established take, use, dam, discharge or diversion of water;
 - (vi) Public access to and along any lake or river, and present and future access to the water resource for the purpose of taking or using water or discharging contaminants or water to water; and
- (b) Any maximum or minimum level or flow of water, and the range, or rate of change, levels or flows of water; and
- (c) Any potential flooding, erosion, land instability, sedimentation or property damage resulting from the damming, diversion, taking, use, or discharging of water or from the discontinuation of the damming, diversion, taking, use or discharging of water; and
- (d) The management of the lake or river shores; and
- (e) Invasion by or proliferation of aquatic plants; and

- (f) Any restoration of exposed lake bed resulting from any reduction in authorised lake levels; and
- (g) The purpose of the existing dam or lake level control; and
- (h) The duration of the resource consent; and
- (i) The information and monitoring requirements; and
- (j) Any financial contribution; and
- (k) Any bond; and
- (l) Review of the conditions of the resource consent.

An application for resource consent under this rule does not need to be notified and does not need to be served on persons who may be adversely affected by the activity, provided that Council will serve the application on the Director General of Conservation if it considers the Director General may be adversely affected by the activity.

Explanation

The Department of Conservation has particular functions involving the preservation and protection of freshwater fisheries and freshwater fish habitat. Furthermore, many of the existing hydro schemes listed in Schedule 7 are located on (in full or in part) or connected to, areas administered by the Department.

Policy WQN17 Transfer of water permits to take or use water

- (1) To enable the temporary or permanent transfer of a water permit, where this is consistent with the provisions of this plan, including flow, level and allocation regimes, and water metering. In particular:
 - (a) to allow as a controlled activity the transfer of the taking of surface water or groundwater to another location within the same catchment or aquifer, in whole or in part, where:
 - (i) in the case of a groundwater take, the taking of groundwater has a direct stream depletion effect (as per Policy WQN7(1)(a)) both at the point of take for the original permit and at the site to which the permit is being transferred to;
 - (ii) the take is from within the same surface water allocation block;
 - (iii) the take is within the appropriate zone for each river set out in Schedule WQN8;
 - (b) to otherwise process the transfer of any water permit to take or use water in accordance with RMA s.136(2)(b)(ii).
- (2) Notwithstanding (1) above, where the transfer of a water permit to take water within a catchment listed in Schedule WQN1, or in an aquifer or groundwater allocation zone listed in Schedule WQN3, the transfer shall be consistent with the relevant provisions in Schedule WQN1 or Schedule WQN3.

Temporary or permanent transfer of water permits for taking or using water

Rule WQN19 Temporary or permanent transfer of water permits for taking or using water

Activity	Conditions
<ol style="list-style-type: none"> The temporary or permanent transfer of a water permit for taking surface water, or groundwater that is classified as having a direct degree of hydraulic connection in Schedule WQN7, is a controlled activity provided the activity complies with all of the conditions in this rule. The temporary or permanent transfer of a water permit to take or to use water in whole or part, that is not provided for in 1 above shall be processed in accordance with RMA s136(2)(b)(i) as a restricted discretionary activity. 	<ol style="list-style-type: none"> The point of take may only be transferred to an alternative site or sites within a transfer zone identified in Schedule WQN8. For any surface water take or groundwater take classified as having a direct degree of hydraulic connection in Schedule WQN7, the transfer must be downstream of the original take. For any groundwater take classified as having a direct degree of hydraulic connection as per Schedule WQN7 at the original point of take, it must retain the same classification at the point of take to which it is being transferred. On transfer, the water permit to take water shall remain within the same allocation block. The transfer must be registered with Environment Canterbury. A water permit may only be transferred beyond the property, where it has been exercised on the property for which it was originally intended in accordance with the terms of the water permit. The transferring of a water permit complies with the provisions set out in Schedule WQN1 and Schedule WQN3. The transfer of any part or all of the permit complies with any existing conditions on the original permit which specifically address transfer.
Where Rule Applies: This rule applies everywhere in the Canterbury Region except where the activities are expressly authorised by rules in the following regional plans: <ol style="list-style-type: none"> Opihi River Regional Plan Waimakariri River Regional Plan Waitaki Catchment Water Allocation Regional Plan 	Matters for Control Where the activity is classified as a controlled activity , Environment Canterbury has reserved control over the following matters: <ol style="list-style-type: none"> The nature and/or duration of the transfer – whole or partial/short term or permanent. The appropriateness of existing conditions and in particular of monitoring, minimum flow and other restrictions to avoid or mitigate effects of the transfer to the new site. The effect on any allocation regime. The apportioning of the maximum rate of take and annual volume where the take is to be partially transferred. The need for conditions preventing concurrent taking where there is a partial transfer or the transfer is to two or more points of take. Where the transfer of a water permit is from a water body listed in Schedule WQN1 or Schedule WQN3, any requirement to surrender a proportion of the amount of water that is freed up from the original permit being transferred. Financial contributions or bonds as specified in Part 5.11 of this chapter.
	Restriction of discretion Where the activity is classified as a restricted discretionary activity , Environment Canterbury has restricted its discretion to the following matters: <ol style="list-style-type: none"> The nature and/or duration of the transfer – whole or partial / short term or permanent. The location(s) of the current and proposed use. The location(s) within the catchment or aquifer of the current and proposed points of take. The extent to which the water permit has been exercised to date. The extent to which the conditions on the original permit limit the ability to transfer. The effects of ceasing or changing the exercise of the permit under its current conditions, and the effects of allowing the transfer. The appropriateness of existing conditions and in particular of monitoring, minimum flow and other restrictions to avoid or mitigate effects of the transfer to the new site and the extent to which any conditions should be amended. The need for conditions preventing concurrent taking where there is a partial transfer or the transfer is to two or more points of take. The effects on adjacent water permit holders. The effect on any allocation regime. The apportioning of maximum rate of take and annual volume where the take is to be partially transferred. Where the transfer of a water permit is from a water body listed in Schedule WQN1 or Schedule WQN3, compliance with any relevant provisions set out in these.

Cross reference: This rule contributes to the implementation of Policy WQN17.

For information only:

Where a take or a use is transferred in whole or part a change to the conditions of the water permit for both the take and the use of the water may be required if the nature or scale changes (refer RMA s136(4)). This will include a situation where part of a water permit is transferred. Conditions on the original permit may need to be reviewed to fit the redistribution of the water.

Annexure G

Consent (CRC011237) to discharge water from the race and discharges to the Rangitata River in the form of a fish return canal at the Bio-acoustic Fish Guidance system which has been constructed within the RDR for the purpose of diverting, as far as practicable, migrating salmon smolt to the Rangitata River;

Consent (CRC011241) to discharge water and contaminants from the Rangitata Diversion Race Sandtrap to the Rangitata River via a spillway.

Record Number CRC011241

Record Type Renewal

Permit Type Discharge Permit

Record Holder Rangitata Diversion Race Management Limited

Record Status Issued - Active



Location Rangitata River Bed, RDR KLONDYKE

Description to discharge water and contaminants from the Rangitata Diversion Race Sandtrap to the Rangitata River via a spillway.

Trim File No CO6C/11184

Commencement Date 12 Feb 2005

Given Effect To 12 Feb 2005

Lapses 12 Feb 2010

Expires 12 Feb 2040

Cond No	Text
1	The rate of discharge shall not exceed 90 cubic metres per second.
2	The discharge of sediment and water in terms of this permit may only be exercised whenever the flow in the Rangitata River, at the Klondyke recorder site (map reference J36:666-149), is greater than 140 cubic metres per second.
3	The dates and times at which this permit is exercised shall be recorded in a log kept for that purpose and a copy of the records submitted to Canterbury Regional Council before 31 May each year.
4	The term of this consent shall be 35 years.
5	Notwithstanding the provisions of Section 125 of the Act this consent may be first exercised up to 35 years after the date of commencement of the consent. If at any time the consent holder does not exercise this consent for a continuous period of two years, the consent shall not be cancelled under Section 126 of the Act.

Record Number CRC011237

Record Type Renewal

Permit Type Water Permit

Record Holder Rangitata Diversion Race Management Limited

Record Status Issued - Active



Location Rangitata Diversion Race, ASHBURTON DISTRICT

Description To dam the Rangitata River by means of a rock weir to an average height elevation of 365.5 metres above mean sea level, and to divert and take water continuously at a maximum rate of 30.7 cubic metres per second from the Rangitata River into the Rangitata Diversion Race via the Klondyke intake structure, at or about map reference NZMS 260 J36:678-144, to use water for irrigation and stockwater purposes, and to generate electricity at Montalto and Highbank Power Stations.

Trim File No CO6C/11184

Commencement Date 31 Jan 2007

Given Effect To 08 Jan 2009

Lapses 31 Jan 2012

Expires 31 Jan 2042

Subject to the following conditions:

- 1 The maximum rate at which water may be taken and diverted shall be 30.7 cubic metres per second (m^3/s), such that the combined take with that from the South Ashburton River (CRC011245) does not exceed 35.4 cubic metres per second. Water shall be taken in accordance with the Water Abstraction Restriction Levels and minimum flow provisions outlined in the following tables:

Permitted Rate of Water Abstraction for the period 1st September to 31st May:

Flow (m^3/s) at Klondyke	RDR	Other Irrigation	Other Stockwater	Residual Flow in River
64.0 – 60.1	30.7	0.3	1.0	32.0 – 28.1
60.0 – 50.1	26.2	0.3	1.0	32.5 – 22.6
50.0 – 43.1	21.8	0.2	1.0	27.0 – 20.1
43.0 – 40.1	18.9	0.1	1.0	23.0 – 20.1
40.0 – 38.1	16.9	0.1	1.0	22.0 – 20.1
38.0 – 36.1	14.9	0.1	1.0	22.0 – 20.1
36.0 – 34.1	12.9	0.1	1.0	22.0 – 20.1
34.0 – 32.1	10.9	0.1	1.0	22.0 – 20.1

Permitted Rate of Water Abstraction for the period 1st June to 31st August:

Flow (m^3/s) at Klondyke	RDR	Other Irrigation	Other Stockwater	Residual Flow in River
Above 64	30.7	Nil	1.0	GT 32.3
64 – 60.1	30.7	Nil	1.0	32.3 – 28.4
60 – 50.1	26.5	Nil	1.0	32.5 – 22.6
50 – 40.1	21.5	Nil	1.0	27.5 – 17.6
40 – 38.1	22.0	Nil	1.0	17.0 – 15.1
38 – 36.1	20.0	Nil	1.0	17.0 – 15.1
36 – 34.1	18.0	Nil	1.0	17.0 – 15.1
34 – 32.1	16.0	Nil	1.0	17.0 – 15.1
32 – 30.1	14.0	Nil	1.0	17.0 – 15.1

- 2 The consent holder shall measure and record the rate at which water is taken and diverted at not greater than 30 minute intervals and shall make such records available to Canterbury Regional Council upon request.
- 3 The consent holder shall, within six months of the commencement of this consent and thereafter maintain a notice at or about map reference NZMS 260 J36:678-144 warning of the dangers of swimming and boating close to the intake structure.
- 4 The consent holder shall ensure that the rock weir does not significantly impede the passage of trout, salmon and native fish.
- 5 The consent holder shall take such measures as are appropriate to ensure that, so far as is reasonably practicable, juvenile salmon are excluded from the body of the diversion race and are returned to the river. To that end:
 - a. Within 18 months from the commencement of this consent the consent holder shall install and commission a Bio-acoustic Fish Guidance system for the purpose of diverting as far as practicable migrating salmon smolt to the Rangitata River. That system shall be generally as outlined in the evidence presented on 14 February 2003 by Charles Paul Mitchell, Consultant Biologist;
 - b. Within three years of the commencement of this consent the consent holder shall provide the consent authority with a report, prepared by a person appropriately qualified and experienced in freshwater fisheries biology, detailing the extent to which the system referred to in paragraph (a) above is meeting the object of this condition and making recommendations, if such are thought by that person to be necessary, as to the way in which that object may better be met;
 - c. At any time within the fourth year of this consent and during every fourth year thereafter the consent authority may review this condition (pursuant to section 128) for the purpose of determining what steps should be taken by the consent holder so as better to achieve the object of this condition;
 - d. The consent holder may at any time apply to the consent authority for a change to this condition, but for the sole purpose of the better achievement of its object.
- 6 The term of this consent shall be 35 years.

Annexure H – Showing Location of the RDR BAFF and Sediment Trap

