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*in the matter:* of a submission on the Proposed Canterbury Land and Water Regional Plan clause 6 of the First Schedule of the Resource Management Act 1991 by

Kaikoura District Council  
Hurunui District Council  
Waimakariri District Council  
Selwyn District Council  
Timaru District Council  
Mackenzie District Council  
Waimate District Council  
Waitaki District Council

*to:* Environment Canterbury

Brief of evidence of **Jane Whyte**

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Dated: 4 February 2013

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## **BRIEF OF EVIDENCE OF JANE WHYTE**

### **QUALIFICATIONS AND EXPERIENCE**

- 1 My full name is **Margaret Jane Whyte**
- 2 I hold the degrees of Bachelor of Arts and Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute e.t.
- 3 I am currently a Director of ResponsePlanning Consultants Limited, a consultancy specialising in planning and resource management. I have been a Director of this company since 2004. Prior to this I was the Environmental Services Manager at Banks Peninsula District Council. I have twenty years planning and resource management experience working as both a local government planner and as a consultant.
- 4 I have worked throughout New Zealand. Since 1997 I have been based in Christchurch and much of my work has been within the Canterbury Region. In a professional capacity, I have undertaken work in every District within the Canterbury Region.
- 5 A core area of my planning and resource management practice is policy development and the evaluation of statutory planning documents prepared under the Resource Management Act. I have written, and been involved in the preparation of district plans, plan changes and variations (including privately requested plan changes). I have also evaluated a number of Regional Policy Statements, Regional Plans and District Plans. I have prepared submissions, further submissions and evidence on these. I am engaged for this work by both private clients and local authorities. Some examples of projects I have worked on are:
  - 5.1 Evaluating and preparing submissions on the Proposed Waikato Regional Policy Statement, the Proposed Southland Regional Policy Statement, the Proposed Southland District Plan and Proposed Plan Changes to the Clutha District Plan.
  - 5.2 Preparing submissions and evidence on the Canterbury Proposed Regional Policy Statement.
  - 5.3 Preparing submissions, further submissions and presenting evidence for nine of the Canterbury local authorities on the Proposed Canterbury Natural Resources Regional Plan chapters addressing, Water Quality, Water Quantity, Beds of Lakes and Rivers, Wetlands, and Soil Conservation.
  - 5.4 Preparing private plan change applications to rezone land within the Waimakariri District.

- 5.5 As part of a three person team completing an evaluation of the effectiveness and efficiency of the Christchurch City Plan. As the sole author undertaking a similar project addressing four resource management topics in the Banks Peninsula District Plan.
- 6 Another area of my practice is on the preparation and evaluation of assessments of effects and resource consent applications. This has provided me with the experience of implementing statutory planning documents, including Regional Policy Statements, Regional Plans and City and District Plans. I have worked on a range of projects and have sought and obtained land use consents, subdivision consents, water permits and discharge consents. I have experience with infrastructure projects within Canterbury.
- 7 I am well versed in the challenges of preparing effective statutory policy and the difficulties of implementing statutory documents that have not been properly prepared, ultimately increasing costs for applicants, submitters and councils.
- 8 I have read the Code of Conduct for Expert Witnesses and agree to comply with it. I confirm that I have complied with it in the preparation of this statement of evidence.
- 9 In preparing my evidence I have reviewed:
- 9.1 The Operative Canterbury Regional Policy Statement;
  - 9.2 The Summary of Decisions Requested Report;
  - 9.3 The relevant Section 42A reports;
  - 9.4 The submissions prepared by over 20 of the other submitters to the Proposed Canterbury Land and Water Regional Plan;
  - 9.5 The New Zealand Coastal Policy Statement 2010 (NZCPS) and the National Policy Statement Freshwater Management 2011 (NPSFM) the Natural Resources Regional Plan (NRRP), the Waimakariri River Regional Plan (WRRP), the Opihi River Regional Plan (ORRP) and the Waitaki Catchment Water Allocation Plan (WAP).

## **REPRESENTATION**

- 10 I have been asked to prepare evidence in support of submissions and further submissions to the Canterbury Land and Water Regional Plan for those matters of common interest being addressed for Hearing Group 1 lodged by the following territorial authorities:

- 10.1 Kaikoura District Council (submitter 86)
- 10.2 Hurunui District Council (submitter 125)
- 10.3 Waimakariri District Council (submitter 94)
- 10.4 Selwyn District Council (submitter 230)
- 10.5 Timaru District Council ( submitter 160)
- 10.6 Mackenzie District Council (submitter 161)
- 10.7 Waimate District Council (submitter 268)
- 10.8 Waitaki District Council (submitter157)

- 11 Hereafter the above territory authorities are referred to in my evidence as "the Councils".
- 12 I provided assistance to the Councils in preparing their submissions and further submissions.
- 13 For some matters evidence beyond those of common concern are addressed. Where any matters in my evidence relate to an individual submitter this is identified. In addition there are some matters where information, rather than evidence will be presented to the Commissioners at the hearing appearance by individual submitters.

## **EVIDENCE AND BACKGROUND**

### **Background**

- 14 I assisted the Councils in the development of their submissions and further submissions to the Proposed Land and Water Regional Plan (*PLWRP*). A number of the issues addressed are similar to issues that arose through the development of the NRRP.
- 15 I provided consultancy services to the Councils on the NRRP. I coordinated the preparation of submissions, further submissions and the development of the evidence presented at the individual hearings, including project managing and co-ordinating the preparation of evidence of other consultants. There were approximately 34 separate hearing stages for the NRRP and my recollection is that the Councils participated in at least 27 of these. The high level of involvement illustrates how important the issues addressed in both the NRRP and the PLWRP are to the Councils.
- 16 The NRRP and the PLWRP have a significant influence on the way the Councils fulfil their functions under the Local Government Act and the Resource Management Act. Key impacts are on the asset

management service delivery functions of the Councils. In particular the provisions that affect the provision of community water supplies, and the provisions applying to wastewater and stormwater systems.

- 17 The provision of these essential services provide for the social and economic wellbeing and the health and safety of people and communities within the Canterbury region.

### **SCOPE OF EVIDENCE**

- 18 I have been asked by the Councils to prepare evidence at this stage 1 hearing in relation to four key topics on the PLWRP, specifically:

18.1 Whether the PLWRP appropriately addresses and provides for water allocation with respect to community water supplies.

18.2 Whether the PLWRP appropriately addresses and provides for the protection of community water supplies from discharges that may adversely impact drinking water quality.

18.3 How the PLWRP addresses the management of stormwater discharges and community wastewater activities and whether adequate consideration has been given to the practical implications of these provisions in the Plan.

18.4 Whether there PLWRP appropriately provide for on-site wastewater systems.

- 19 In my evidence I have not addressed all of the matters raised and changes sought in the submissions by the Councils to the PLWRP. Under a fifth topic of "other matters" I have listed some of the other submissions where the recommendations in the Section 42A report are specifically supported.

- 20 In addition I am providing evidence specific to the submission of Kaikoura District Council on Rule 5.150 relating to earthworks. The key area of concern in the submission is the implications of this rule for the Ocean Ridge Development in Kaikoura.

- 21 I have also briefly addressed the timing of consents being required for land drainage schemes which is a submission particular to Selwyn District Council.

- 22 In preparing my evidence I have considered the statutory context within the Resource Management Act (RMA) that influences the development of a Regional Plan. This includes Sections 63-70, Sections 30, 31, 32 and the overarching Sections 5, 6, 7 and 8 (Part 2).

### **Community Water Supplies, Group Drinking Water Supplies and Community Drinking Water Supplies**

- 23 The Councils<sup>1</sup> submissions sought to ensure that the provisions of the PLWRP as they apply to community water supplies, group drinking water supplies and community drinking water supplies are internally consistent; give effect to the Regional Policy Statement (RPS) and have regard to the principles of the Canterbury Water Management Strategy (CWMS). The key matter is that appropriate priority be provided to community water supplies.
- 24 The supply of water to communities is fundamental to promoting the sustainable management of natural and physical resources. Community water supply schemes serve the needs of multiple water uses including drinking water, water for hygiene, stock water, fire fighting capacity, essential services such as hospitals, commercial and industrial activities, and other domestic needs. These activities are important contributors to social and economic well-being of people and communities.
- 25 The importance of water for these activities and the priority to be provided for these activities are recognised in both the RPS for example in Objective 7.2.1(3) and Policy 7.3.4 and within the CWMS where community and stock water supplies are identified as first order priorities.
- 26 The provisions within the NRRP properly recognised the importance of community water supplies and contain objectives, policies, rules and other provisions that enabled community water needs to be provided for, from both a water allocation and a water quality perspective.
- 27 From reading the PLWRP it appears that the intent of the plan provisions were to provide for these important activities in a similar manner as they had been provided for within the NRRP. This approach would provide:
- 27.1 making provision for water to meet the current and future demand for water for communities,
- 27.2 A regime that would provide appropriate priority for the taking of water for community supplies at times when low flows or the availability of water is restricted.

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<sup>1</sup> The submission of the Waitaki District Council does not seek a change in the size of a group drinking water supply. This evidence does not address the submission of the Waitaki District Council with respect to the size of Group Drinking Water Supplies.

- 27.3 From a water quality perspective potential adverse effects of discharges on community drinking water supplies are managed.
- 28 While the above may have been the intent – the way certain terms have been used in the PLWRP mean that the actual outcomes are somewhat different.
- 29 The PLWRP does not use the terms community water supply, group drinking water supply and community drinking water supply in a consistent manner. This has significant, albeit perhaps unintended consequences, for how the provisions within the PLWRP apply. The definitions provided in the PLWRP and the inconsistent use of terms throughout the plan has meant that the provisions as notified do not give effect to the RPS and do not have appropriate regard to the principles of the CWMS. The key consequence is that not all community water supplies are afforded the priority identified in the RPS and CWMS.
- 30 The submissions lodged have sought to redress these issues and ensure that the provisions are internally consistent and the terms and definitions used are consistent with the RPS provisions.
- 31 The submissions seek the following specific relief:
- 31.1 Changes to the definition of group drinking water supply and community drinking water supply to ensure that all drinking water supplies are afforded appropriate consideration within the plan provisions;
- 31.2 A new definition for community water supply be added that incorporates both group and community drinking water supplies, and provides for the range of important activities that are provided for within a community water supply.
- 31.3 Changes be made to some specific provisions to ensure consistent terminology is used throughout the plan when addressing water quantity and water quality matters.
- 32 The section 42A report has addressed the submissions in a number of locations. The changes recommended, subject to some additional minor amendment I identify below are generally appropriate and do address the key areas of concern raised in the submissions. In particular the following recommendations are supported:
- 32.1 Changes of the definition of “Group Drinking Water Supply” so that it is not limited to water supplies are provided only for more than 25 people. (Recommendation R2.10.71 and recommendation RS1.1 pages 203-204)

- 32.2 Insertion of a new definition for "community water supply", subject to further amendment identified below. (Recommendation RN16 and R2.10.26 and 71 pages 213 and 214).
- 32.3 Modification of Policy 4.46 which relates to the taking of group or community water at the time of restrictions, subject to further amendment identified below. (Recommendation R4.46 page 224).
- 32.4 Modification to Policy 4.20 which is to protect sources of drinking water. (Recommendation R4.20 page 150).
- 33 In section 32.2 I identified that the inclusion of a definition for "community water supply" is supported. However, I do not fully support the actual definition recommended. The definition recommended in the Section 42A report is:
- means water taken primarily for group drinking water supply and includes group drinking water supply, and community drinking water supply but that may also be used for other purposes such as supply to institutional, industrial, processing, stock water, or amenity irrigation use and firefighting.
- 34 The definition sought to be included by the submission is the definition currently within the NRRP. This definition is:
- water taken primarily for drinking water and includes group drinking water supply, community drinking water supply and community stockwater supply but that may also be used for other purposes such as supply to institutional, industrial, processing, or amenity irrigation use and fire-fighting.
- 35 There are two differences in these definitions. I prefer the definition currently within the NRRP as it better incorporates all of the relevant components that constitute a community water supply. I also consider it has greater clarity than the recommended definition.
- 36 The first difference is that clearer recognition of community stock water supplies is provided in the NRRP definition, as it is recognised as an activity in itself, rather than only as a component of community drinking water. The second difference appears to be a typographical error in the Section 42A recommended definition. This detracts from the readability and clarity of the definition. It appears that the first reference to "group" is an error. If this is not an error then the definition reads that all components of water to communities must be a subset of a group drinking water supply. Given the narrow definition of a group drinking water supply this is not appropriate.



- 37 Even if the Commissioners decision is to prefer the Section 42A recommended definition then the first reference to "group" should be deleted.
- 38 Turning now to alterations I suggest to Policy 4.46 (identified in paragraph 32.3 of this evidence). The Section 42A recommendation is to accept in part the submissions lodged by the Councils. The accept in part is that additional wording is proposed to be added to the policy. The wording of the recommended policy in the Section 42A report is:
- 4.46 Enable the taking of water for group or community ~~drinking~~ water supplies by not requiring compliance with any minimum or residual flow or partial restriction conditions and the environmental flow and allocation regime or groundwater allocation block, provided the water supply is managed to restrict the use of water from those supplies during periods of low flow or water levels, with priority given to drinking water and stock water needs.
- 39 The recommended changes go some way towards achieving the submissions but further modification could improve the clarity of the policy. The change to the first sentence deleting the word "drinking" is supported as this does provide for the overall activities associated with community water supplies including for example important institutional needs such as hospitals and firefighting capability.
- 40 In the previous section of my evidence I addressed the need for a new definition of community water supply. With the inclusion of this definition it is not necessary to retain separate references to both group and community supplies within the policy. As such the word "group" could be deleted from the policy.
- 41 The recommended additions "with priority given to drinking water and stock water need" is not needed within this policy. The policy already requires that the water supply is managed to restrict the use of water during periods of low flow water levels. The specific restrictions that will apply will be determined depending on the specific needs and circumstances that apply at the time of water shortage. Most likely this will be through the development and implementation of a water supply strategy<sup>2</sup>.
- 42 I do not consider it necessary to add the last sentence to the policy as proposed. I consider the policy could be more clearly worded as follows:

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<sup>2</sup> If a water supply strategy is not provided in support of a resource consent application then the current rules mean that any application would be considered as a non-complying activity.

- 4.46 Enable the taking of water for ~~group or~~ community drinking water supplies by not requiring compliance with any minimum or residual flow or partial restriction conditions and the environmental flow and allocation regime or groundwater allocation block, provided the water supply is managed to restrict the use of water from those supplies during periods of low flow or water levels, ~~with priority given to drinking water and stock water needs.~~
- 43 There is one other matter relating to community water supplies and community drinking water supply provisions in the PLWRP that has arisen out of the recommendations in the Section 42A report. This relates to Objective 3.14 in the PLWRP. This objective states "3.14 High quality fresh water is available to meet actual and reasonably foreseeable needs for community drinking water supplies."
- 44 As a result of Recommendation R3.0 on pages 97-99 of the Section 42A report it appears that this objective is to be deleted. There is no other objective that directly addresses community drinking water.
- 45 The submissions lodged by the Councils are addressed on page 86 of the Section 42A report. In reading all of the submissions lodged on this objective it is not clear why it has been deleted. My best interpretation of why this may have happened is that changes to other enabling objectives may also enable consideration of community water supplies. However, given the specific policies and other provisions within the PLWRP that apply specifically to community water<sup>3</sup> I consider that a specific objective should be retained.
- 46 My experience in plan drafting has shown me that it is important that strong linkages are evident between objectives, policies, rules and other methods within plans. There are specific policies and rules addressing community water supplies and the protection of community drinking water supplies. Given this I believe there should be a clear link from these provisions to an objective. This was achieved in the PLWRP through Objective 3.14. The deletion of Objective 3.14 means that it is no longer clear which objective the resulting policies and rules are intended to achieve.
- 47 Objective 3.14 should be reinstated with minor modification to read:
- 3.14 High quality fresh water is available to meet actual and reasonably foreseeable needs for community ~~drinking~~ water supplies.

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<sup>3</sup> For example policies 4.4, 4.20 and 4.46

- 48 I support the Councils submissions relating to the provisions and definitions associated with community water supply and group drinking water supply.

### **Stormwater**

- 49 The focus of these submissions are on ensuring appropriate provisions exist in relation to the discharge of stormwater from an urban area to surface water.
- 50 This management approach for stormwater from urban areas, especially existing urban areas was a key issue of concern for the Councils in the preparation of the NRRP and was subject to substantial evidence presented jointly between the Councils and Christchurch City Council.
- 51 The key area of concern with the provisions in the NRRP was that for point source discharges for stormwater there was a lack of understanding or appreciation of the existing environment of the waterbody, how this may change over time and the context of why the discharge of stormwater was occurring in the first instances. The result was that for an urban situation it would be near impossible, and if possible prohibitively expensive to have achieved the water quality outcomes specified in the NRRP as notified. A key criticism I had with the NRRP as notified was that it contained aspirational objectives with respect to water quality to be achieved (particularly for degraded waterways) but lacked sufficient guidance as to the pathway to get there and recognition of the time it might take to get there.
- 52 The decisions on submissions to the NRRP importantly introduced some temporal consideration to the achievement of water quality standards in waterbodies associated with stormwater discharges. In addition the decisions recognised that for urban waterbodies that applying the standards for contact recreation was not appropriate.
- 53 The principles behind the submissions of the Councils in relation to the management of stormwater have not changed from the NRRP.
- 54 The key principles are that the Councils accept that urban stormwater should be subject to control by Environment Canterbury. Also the Councils are not seeking in any way to degrade existing water quality through stormwater discharges. They also do not oppose the improvement of the existing water quality over time. As a planner I consider that these principles provide an appropriate basis for consideration of stormwater discharges under the Resource Management Act.
- 55 The provisions applying to stormwater management in the PLWRP are much simpler than those in the NRRP, particularly the rules, and this is supported. The activity status for the discharge of

stormwater from urban areas to surface water is a restricted discretionary activity. This activity status has not been challenged in the submissions even though under the NRRP there was potential for resource consents to be considered a controlled activity.

- 56 The changes sought to the provisions in the PLWRP relate to timing of applying for consents and timing with respect to the ability to achieve water quality standards, particularly when retrofitting treatment into existing urban areas is necessary. The submission addresses seek five key outcomes being:
- 56.1 Objective 3.13 seeking contact recreation standards is not appropriate for urban waterways.
  - 56.2 Policy 4.13(b) be amended so that the treatment options are not restricted to only land based treatment or wetland treatment.
  - 56.3 Policy 4.1.3(c) be amended to recognise that there may be a temporal element to achieving the water quality outcomes.
  - 56.4 That more explicit policies be added to address temporal elements associated with stormwater management and recognise best practicable options in the management of discharges.
  - 56.5 That rule 5.71 requiring consents for community or public stormwater systems not require consent to be lodged for a period of five years from the date the plan becomes operative.
- 57 I now address these matters in my evidence.

### **Contact Recreation**

- 58 Objective 3.14 in the PLWRP (Policy 3.18 in the Section 42A report) is "Those parts of lakes and rivers that are valued by the community for recreation are suitable for contact recreation".
- 59 The submissions of the Councils sought that the objective been modified to be consistent with the final decisions relating to contact recreation and waterbodies in the NRRP.
- 60 The Councils are not presenting technical evidence relating to the achievement or otherwise of contact recreation standards. Christchurch City Council has presented evidence addressing this matter from the perspective of waterways within Christchurch City. From my knowledge of waterbodies within the region I am aware that similar issues exist within other urban waterbodies as exist within Christchurch City. In particular, within Timaru there are a number of waterbodies, which while people may value and seek the suitable for contact recreation these waterbodies would not be able to meet those standards.

- 61 As a planner I have a concern with the wording of the notified objective and how it will be applied. The wording seeks that those parts of lakes and rivers that *are valued* (my emphasis) by the community for recreation are suitable for contact recreation. The concern I have is whether this objective only applies to areas that have existing values for contact recreation or whether there is an aspirational aspect that regardless of the current water quality and use if some part of the community values any part of a waterbody for contact recreation that this is standard of water quality that should be achieved..
- 62 Throughout the NRRP hearing process this matter was specifically put before the commissioners. The decision was that in some circumstances, particularly within urban areas, regardless of whether or not the waterbody might be valued by the community for recreation that there would be no ability for those waterbodies to actually achieve a contact recreation standard.
- 63 While I understand none of those decisions are binding I am not aware of any changes that mean a different outcome is now appropriate.
- 64 I have no objection to having aspirational objectives within a regional plan. However, aspirational or not it is important that the objective is able to be achieved. Unless an aspiration objective is supported by more practical policies and provisions that identify the path and timing for the objective to be achieved then this will result in difficulties in implementing the provisions. This will be the case for consent authorities in implementing the plan; but especially for consent applicants who will be faced with the expectation where any activity will likely be contrary to or inconsistent with an objective that cannot be achieved within the timeframe of the Regional Plan.
- 65 When addressing contact recreation values, particularly in urban areas, I do not consider there are sufficient policies and other provisions to support the appropriate implementation of this aspirational objective. Within Table 1a Outcomes for Canterbury Rivers for urban waterbodies there is no value set with respect to suitability for contact recreation. I consider that the objective needs to be consistent with the Outcomes in Table 1a and exclude urban waterways.
- 66 I support the submission of the Councils to exclude waterbodies within urban areas from this objective through seeking that the words "other than within urban areas" be inserted after the words "lakes and rivers" within Objective 3.13 (renumbered to 3.18 in the Section 42A report).

**Policy 4.1.3(b)**

- 67 The submissions seek to amend Policy 4.13(b) so that any treatment options for stormwater are not restricted to only a land-

based treatment or wetland treatment. From reading the evaluation in the Section 42A report it appears that this issue has come about as an unintended consequence of the wording of the provision rather than a specific desire to limit any possible treatment options to only land-based treatment or wetland treatment.

- 68 As appropriately recognised in the Section 42A report within existing urban areas there may be limited options for retrofitting treatment systems to existing stormwater reticulation and infrastructure. It is important therefore that the full range of potential alternatives are available. The relief sought in the submission was that subclause (b) be deleted from the policy. The alternative wording in the section 42A report (Recommendation R 4.13 page 149) achieves the same outcome sought in the submission by an alternative means.

### **Policy 4.1.3(c) and additional Policies**

- 69 The submission sought that Policy 4.13(b) be amended to provide temporal recognition that for some existing urban areas it may not be practicable or possible to immediately achieve the water quality standards due to potential difficulties in retrofitting existing stormwater systems with treatment options, and/or the timing associated with the development and implementation of treatment options.
- 70 The submissions also sought that a more explicit policy be added to address temporal elements associated with stormwater management by reinserting a policy that was in the final NRRP decisions. In addition a new policy was sought that discharges from important infrastructure activities recognise that discharges should be managed in accordance with the best practicable option.
- 71 The officer report in my view correctly acknowledges some of the difficulties that will be involved with stormwater discharges from existing urban areas.
- 72 The recommended change to Policy 4.13(c) by introducing the words "or will meet" will provide a basis or taking into account temporal aspects when considering stormwater discharges and the water quality standards. This change is important and will assist in the more effective implementation of the Regional Plan.
- 73 The Section 42A report does not recommend introducing any new policies. In my view it is beneficial to introduce additional policy guidance for activities such as stormwater discharges.
- 74 The range of national values of freshwater as expressed in the preamble to the NPSFM includes commercial and industrial processes and cleaning, dilution and disposal of waste. The current provisions in the PLWRP do not adequately address all of the

national values of freshwater. In particular in my view the policies do not provide enough specific guidance as to how the aspirational water quality outcomes will be worked towards over the life of this Regional Plan. In my view the current provisions are deficient in providing guidance as the rate of improvement that can be and should be achieved.

- 75 It was for this reason that the submission sought a policy which mirrored Policy WQL(2)(b)(iii) of the NRRP be inserted. This policy specifically recognised that for an existing discharge from a local authority network where the existing water quality is degraded that it may take some time to achieve improvements. The policy provides that any discharge cannot occur in a way that will prevent the water quality outcomes being achieved, but recognises that for a number of existing urban areas improvement will only be able to be achieved over time. The policy sought is:

Where the discharge is from existing local authority network and there is a substantial commitment to progressively improve the quality of the discharge so that, as soon as practicable but no later than year 2025, the discharge will not breach the water quality standards for the receiving water, or prevent achievement of the outcomes in Table 1a for a river or Table 1b for a lake.

- 76 At present within the Plan provisions there is limited to no recognition that the existing ambient water quality of some water bodies are degraded below that quality specified. As a consequence the provisions provide no guidance on the 'rate' of improvement required to meet the objectives. It also does not recognise that if the quality of a point source discharge is improved, the quality of the water body may not be materially improved because of the existing water body environment.
- 77 Different rates of improvement will require different capital expenditure by those undertaking the discharge. It is accepted that an individual discharge should not significantly contribute to non-achievement of the relevant water quality standards. However, when investment is required, this should be affordable and result in meaningful improvements to the water quality of the lake or river. It is important that some consideration be given to adopting the best practicable option and ensuring that there is also a balance between the environmental benefit which can be reasonably achieved within an appropriate timeframe and the potential cost to communities of achieving it.
- 78 Within the policy regime acknowledging best practicable option for treatment of discharges seeks to provide specific recognition within the policies that there are a range of considerations that will be

important in determining what the appropriate discharge quality is. The use of the term best practicable option is a term used in the NPSFM<sup>4</sup>.

- 79 The officer has identified in the section 42A report that the use of the term Regionally Significant Infrastructure, referred to in the submission, has a specific meaning within the RPS. I accept that given the use of this terminology in the now operative RPS that this it may not be the best terminology to use within the policy. However, I consider a policy such as that sought is still important. I consider minor amendment to the wording sought in the submission would be beneficial. A potential policy is:

Discharges from infrastructure activities should be managed so that the quality of the discharge is consistent with the best practicable option.

- 80 I consider that the changes to the policies sought in the submissions are appropriate. They will provide greater guidance that improving water quality where it is presently degraded may take some time. Having policies that recognise this is appropriate as they give specific consideration to the concept of "at a rate" which is an important part of sustainable management.

### **Rule 5.71**

- 81 The submission to Rule 5.71 seeks that the default timing within the Resource Management Act of a resource consent application needing to be lodged within 6 months of the rule becoming operative not apply to Rule 5.71. The submissions seek a period of five years.
- 82 The reason for the additional time is that the development of stormwater consents for urban areas, and the development of stormwater management plans cannot be achieved for all townships within the region within six months.
- 83 The Section 42A recommendations are accepting of this and I support the recommendation to give additional time<sup>5</sup>. I am not supportive of only providing three years as recommended<sup>6</sup> rather than the five years sought.

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<sup>4</sup> Policy A3b) states "where permissible, making rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge....."

<sup>5</sup> Discussed on page 148 of the Section 42A report under a CCC submission and in Recommendation R5.71 page 198.

<sup>6</sup> Recommendation R5.71 page 198



- 84 The rationale for the three years rather than five in the Section 42A report is that the NRRP provided five years and two years has now passed. Therefore providing three years from the PLWRP being operative is the same as the five years from the NRRP being operative.
- 85 With all due respect this is not the appropriate evaluation. The logic behind the three years would work if there had been a stable regulatory environment, and certainty as to what the water quality outcomes and plan provisions would be. This would have then provided local authorities with the confidence that the outcomes that the Plan sought to proceed in the development of the Stormwater Management Plans and applying for resource consents. However this has not been the situation.
- 86 The NRRP became operative on 11 June 2011. On 9 August 2011 Environment Canterbury had publicity on its website seeking community involvement in the development of the new Land and Water Regional Plan which was to replace the those parts of the NRPP which at that point had been operative for less than two months.
- 87 This and the consultation that occurred with the development of the Land and Water Regional Plan did nothing to instil confidence in local authorities to advance at speed the implementation of stormwater consents in accordance with the provisions of the NRRP. Early consultation indicated that there would be significant differences between the NRRP approach and the PLWRP. This has proven to be correct.
- 88 Given the history and the lack of stability in the provisions I consider that five years is more appropriate to provide for the implementation of Rule 5.71. This will still enable the objectives of the plan to be achieved and it will not undermine the implementation of the Regional Plan.
- 89 The provision of 5 years will also fit better with the proposed review timing of parts of the PLWRP. The way the Plan is set up is that water quality limits determined in the individual chapters are to prevail over the default regional limits. In the case of Section 14 Orari-Opihi-Pareora the limits are not proposed to be completed until after 2017/2018. The result of this is that even more uncertainty is created as to what the appropriate limits will be for the Orari-Opihi-Pareora. In addition the review relating to the Waimakariri River Regional Plan<sup>7</sup> is scheduled for a similar time. I consider it more efficient and effective to enable the coordination of

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<sup>7</sup> It is recognised that the LWRRP's objectives, policies and rules do not apply to the matters controlled by the Waimakariri River Regional Plan 2004. A further complication is that some Rangiora stormwater discharges into the Cam system and is covered under the Waimakariri River Regional Plan while the remainder goes to the Ashley system and is covered under the PLWRP

the development of stormwater consents and stormwater management plans with the specific limits that will be set which will take local conditions into account.

- 90 An addition recommended in the Section 42A report (paragraph 3 page 77) to be included in Section 2 of the Plan reinforces my point that the five years is more appropriate. When addressing water outcomes and limits the recommendation is to incorporate the following "The intention of the region-wide limits is not to introduce any preconception of what limits should be determined at the catchment level. It is vital that communities in those catchments openly consider analyses of social, bio-physical, economic and cultural costs and benefits under a range of limits specific to that catchment before deciding on a desired end point. In this way, communities can determine the best solutions for their catchments."

I have no concerns with this statement being included in the Plan, however, it does raise questions over the effectiveness and efficiency of seeking local authorities go through the complex and expensive process of seeking consents and developing stormwater management plans on the basis that the water quality outcomes for some waterbodies are still to be determined.

- 91 In my view the reasons for seeking a period of five years before applications under Rule 5.71 are sound. They will provide the effective and efficient implementation of the Plan and will enable applications to be completed in a comprehensive and logical manner.

- 92 I support the submissions lodged seeking five years.

#### ***Reticulated Wastewater Systems***

- 93 A number of the Councils lodged further submissions in support of Christchurch City Council's submission on the provisions applying to wastewater systems. The issues that have been identified by Christchurch City Council are also applicable to other urban areas throughout the region.

- 94 The evidence provided by Christchurch City Council is supported.

#### ***On-site Wastewater***

- 95 The Councils lodged submissions on the provisions for on-site wastewater. The focus of the submissions is concerned with the provisions relating to Septic Tank Suitability Areas and the identification and mapping of these areas.

- 96 Submissions were lodged on Rule 5.7 and 5.9. The Section 42A report recommends that the submission on Rule 5.7 be accepted

and reference to Septic tank suitability – Area A be deleted. This is supported. The key concern with this rule is that it would require any person who currently has an on-site wastewater system within any part of the region outside of the identified suitability are to apply for a resource consent, even people who have very recently installed systems. It is considered that this would result in significant compliance costs for individuals without a proportional environmental benefit. This is not considered an effective or effective approach.

- 97 The deletion of condition 5 in Rule 5.7 recommended in the Section 42A report (Recommendation 5.7 page 158) is appropriate.
- 98 There are still issues with Rule 5.9 and this rule is not supported. The key issue of concern remains the identification of suitability areas and the mapping associated with this.
- 99 The recommendation in the Section 42A report is to accept the submission of Environment Canterbury to amend the mapping. While the further submission period was available this only enables a submitter to support or oppose the original submission. I do not think it provided the real ability for submitters to seek changes and modifications to the areas identified on the maps. Further in writing this evidence it is apparent that it is very difficult from looking at the map to determine where a consent will be needed and where it is not. Additional versions of the maps at a greater scale have needed to be sourced to enable the implications of this recommendation to be considered. This has made evaluating the implications of the recommended change very difficult.
- 100 I understand from reading the Section 42A report that there is still mapping to be completed and that future plan changes will be developed to introduce further changes to mapped areas. I have a concern that when combined with the current rule this cannot be an effective and efficient approach. This approach will result in increased uncertainty until the mapping is completed for people as to whether the land is suitable for on-site wastewater disposal as a permitted activity. Because the mapping has not been completed to the same standard throughout the region this does undermine confidence that can be had to the rule. Further, given the importance placed on the mapping as a technique for determining areas that are appropriate or otherwise there is no guidance in the policies that will assist in the evaluation of subsequent resource consent applications that are required.
- 101 An outcome sought in the submissions of the Council's is that Rule 5.9 be replaced with the existing rule applying to new systems in the NRRP. Once the mapping has been completed to the same standard throughout the region then a comprehensive plan change could be undertaken that would enable parties to consider the full

implications of the provisions and how and when they apply to land. In undertaking this approach it may be that once the mapping is completed it may be more appropriate for the rules to be tailored to specific areas within the region through introducing these provisions in the sub-regional chapters rather than a general rule.

- 102 Given the uncertainty that remains over the robustness and appropriateness of the mapping I support the submission of the Councils seeking that Condition 2 on 5.9 be deleted, or the current rule for new systems in the NRRP be inserted into the PLWRP until all information needed for the effective implementation of the rule is collated.
- 103 If Rule 5.9 is to be retained then the officer recommendation to incorporate a new condition 3(h) which provides consideration of the level to groundwater addresses a key issue of concern of Mackenzie District Council.

#### **OTHER MATTERS**

- 104 The submissions of the Council addressed a range of matters. I have not addressed all of these in my evidence. The reasons for the submission and changes sought are set out in the original submissions and further submissions.
- 105 In some cases the submissions are recommended to be accepted in the Section 42A report. While not providing evidence I have reviewed the officer report and provide my support for the following recommendations:
- 105.1 Table 1A in Schedule 1 – recognition of protecting from discharges a lateral distance of 50m from the bed. (Recommendation S1.2 page 205).
- 105.2 Rule 5.73 Stormwater – change in activity status from non-complying to discretionary. (Recommendation 5.73 page 195).
- 105.3 Definition Outstanding natural features and landscapes – deletion of definition. (Recommendation R2.10.130 page 127).
- 105.4 Rule 5.113 Structures in the beds of rivers and lakes – deletion of condition 3. (Recommendation R5.113 page 338).

**KAIKOURA DISTRICT COUNCIL**

- 106 This section of my evidence addresses an issue specific to the submission of Kaikoura District Council. The submission sought modification of Rule 5.150 - Vegetation Clearance and Earthworks in Erosion-prone Areas. The implementation of this rule is based on maps identifying erosion prone areas.
- 107 The concern is that these maps and the rule apply to some urban areas within the Kaikoura District. In the PLWRP as notified two urban areas within the Kaikoura District were identified as being within the erosion areas identified. The recommended changes in the Section 42A report mean that now only one area is still impacted on. This is the area known as Ocean Ridge which is located just to the south of main Kaikoura Township.
- 108 The effect of the rule is that as a permitted activity earthworks are limited to 10m<sup>3</sup>. Given that this rule applies within urban areas in Kaikoura this means that earthworks associated with the establishment of building sites will require a resource consent.
- 109 It is accepted that the limitation of earthworks is the same as existed in the Land and Vegetation Plan Management Regional Plan Part I: Earthworks and Vegetation Clearance Kaikoura East Coast (L&V). The key difference is that the Ocean Ridge Land was not part of the urban development of Kaikoura at the time the Land L&V Plan was developed. The land was rural and therefore the overall number of buildings that would be developed and require consent was less.
- 110 My reading of the rules, the relevant objectives and policies and the Section 32 prepared gives an overall feeling that these provisions more appropriately apply to rural areas rather than in an urban context. The section 32 documentation has no mention of any erosion issues within urban areas.
- 111 Rule 5.150 is a rule is to implement Policy 4.17. This policy states "on erosion-prone land any medium and large-scale earthworks, harvesting of forestry or other clearance of vegetation is undertaken in a manner which minimises the exposure of soil to erosion, controls sediment run-off and re-establishes vegetation cover as quickly as possible."
- 112 This policy again to my reading would apply better to a rural situation than urban. It seeks to ensure medium and large-scale earthworks are undertaken in a manner which minimises the exposure of soil erosion, controls sediment run-off and re-establishes vegetation cover.

- 113 In an urban context I do not consider that any earthworks associated with the development of a building site would be considered medium to large scale earthworks. The purpose of the establishment of a building site is to facilitate the establishment of a building or buildings. In the case of a building platform there will be no intention for vegetative cover to be established quickly or otherwise. Therefore I have some concerns regarding the effectiveness of this policy when it comes to evaluating resource consent applications for earthworks within urban areas.
- 114 In the case of Ocean Ridge – the land was rezoned from Rural to a special Ocean Ridge Comprehensive Development Zone. The process began in 2004 and has been subject to two plan change processes with the latest one becoming operative in March 2011. The zone provides for the establishment of up to 336 dwellings to be established.
- 115 To date Kaikoura District Council has approved subdivision consent to create approximately 150 sections. Of these approximately 30 dwellings have been established. At the time of subdivision the implications of earthworks and site works associated with the development were considered. Engineering reports are needed to satisfy the Kaikoura District Council that the matters in Section 106 of the Act are met. Section 106 of the Resource Management Act makes it clear that subdivision should not be granted if: “Any subsequent use that is likely to be made of the land is likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence, slippage, or inundation from any source.”<sup>8</sup>
- 116 It is acknowledged that for Ocean Ridge the geotechnical reports provided to support the plan changes and subdivision consents have identified various geotechnical constraints. However, these matters have been and are capable of being adequately addressed at the time Kaikoura District Council considers subdivision consent.
- 117 Following the subdivision stage Kaikoura District Council also has obligations and duties under the Building Act 2004. Effectively where site works are associated with a building consent, they must comply with the Building Act. The definition of site works means “work on a building site, including earthworks, preparatory to, or associated with, the construction, alteration, demolition, or removal of a building.”
- 118 Further under Section 71 of the Building Act a building consent authority must refuse to grant a building consent for construction of a building, or major alterations if the building is subject to or is likely to be subject to 1 or more natural hazards or building work is

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<sup>8</sup> Section 106(1)(b) of the Resource Management Act

likely to accelerate, worsen or result in a natural hazard on that land or any other property. Natural hazard includes erosion.

- 119 The Building Code also requires that surface water collected or concentrated by buildings or sitework shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property.
- 120 A building consent application must be made and approved before work can commence onsite.
- 121 Given the above I support the submission of Kaikoura District Council that it is not effective or efficient for Rule 5.150 to apply to building sites within urban areas. In my view the rule is not going to result in any improved environmental outcomes over those that will be achieved through Kaikoura District Council fulfilling its functions under the Resource Management Act and the Building Act.
- 122 The result of Rule 5.150 for the urban area within Kaikoura is that approximately three hundred resource consents will be required to enable earthworks associated with individual dwellings. As the earthworks for each dwelling are likely to exceed 10m<sup>3</sup>. The experience so far in the development of Ocean Ridge is that the development of dwellings and buildings has not resulted in increased erosion. Given this I consider the most effective approach would be to remove the Ocean Ridge area from the maps showing erosion prone areas, or provide a specific exemption in Rule 5.150 for building sites where a building consent has been obtained.

### **SELWYN DISTRICT COUNCIL**

- 123 This section of my evidence addresses an issue specific to the submission of Selwyn District Council. The submission relates to the Land Drainage provisions particularly Rule 5.58. Rule 5.58 provides for "The discharge of water that may contain contaminants from sub-surface or surface drains into a river, lake or natural wetland that does not meet the condition of Rule 5.57 is a discretionary activity".
- 124 The submission of Selwyn District Council is to seek an extension to the period by which resource consent has to be applied for, in respect of those systems that were permitted but would now need consent under Rule 5.58. The submission seeks a period of five years be provided rather than six months. This submission is assessed in the Section 42A report on page 176.
- 125 The section 42A reports identifies that the PLWRP rule is the same as the NRRP where systems that existed prior to the 3 July 2004 were permitted, whilst any new ones or extensions require consent. The Section 42A report identifies that it is unclear why an extension

to the six month timeframe under Section 20A(2)(c) of the RMA is sought.

- 126 The reasons for the extension in time is being sought is as a direct consequence of the experience of Selwyn District Council in developing resource consents within six months of the NRRP rule being operative.
- 127 The Selwyn District Council lodged a resource consent under the NRRP addressing the following land drainage districts within the Selwyn District, being the:
- Ellesmere Drainage District
  - Greenpark Drainage District
  - Leeston Drainage District
  - L2 Drainage District
  - Osbornes Drainage District
  - Taumutu Drainage District
  - Wairiri Valley Drainage District.
- 128 My company provided assistance in preparing a resource consent application to meet the six month time restriction. The resource consent application has been lodged but it has remained 'on hold' since lodgement. The experience of Selwyn District Council has shown that a six month timeframe is not sufficient to enable meaningful consultation to occur with interested parties, or for outcomes to be agreed with interested and affected parties prior to the lodgement of the application.
- 129 Selwyn District Council is seeking to undertake an open process which will enable it to work through issues with interested and affected parties.
- 130 In October 2011, a Land Drainage Working Party was established to facilitate a better understanding between stakeholders of land drainage in the Selwyn District. Invitations to attend the Land Drainage Working Party were sent to representatives of the Department of Conservation (DOC), Environment Canterbury (ECAN), Selwyn District Council (SDC), Fish and Game (F&G) and Ngāi Tahu. The development of the Land Drainage Working Party has formed the primary vehicle for information sharing, issue identification and discussion and ultimately consultation with key stakeholders.
- 131 I understand that the Te Waihora Management Board have expressed the view that the most important aspect is the establishment of a relationship between the Board, Selwyn District Council and the Working Party with a collective purpose to improving the discharge into Te Waihora and contributing to the overall improvement of water quality within the lake in general.



- 132 The submission of Selwyn District Council seeks that an appropriate timeframe is inserted into the Proposed Land and Water Regional Plan to provide a timeline for consents that will enable effective consultation and working with interested parties to occur and not be limited by an arbitrary timeframe of six months. Experience has shown that requiring consents within six months of the rule becoming operative means that Selwyn District Council has no option but to put forward mitigation options and an approach in the consent documentation that has not been worked through with relevant parties. In my view this is not a desirable outcome. I support the submission by Selwyn District Council seeking a period of five years before consents must be lodged.

### **CONCLUSIONS**

- 133 Overall it is my conclusion that the Proposed Land and Water Regional Plan should be changed to:
- 133.1 Ensure appropriate priority is provided to Community Water Supplies, this includes Group Drinking Water Supplies and Community Drinking Water Supplies
  - 133.2 Appropriate protection is provided from discharges in the vicinity of drinking water supply sources;
  - 133.3 Not seek contact recreation standards as an objective for urban waterways;
  - 133.4 That consideration is given to the rate of change in achieving water quality outcomes where stormwater discharges occur;
  - 133.5 That consideration is given to the best practical option in discharges from infrastructure activities;
  - 133.6 Appropriate time is provided to enable the development of stormwater consents and stormwater management plans;
  - 133.7 That the provisions applying to on-site wastewater disposal are effective and efficient; and
  - 133.8 Appropriate provisions are in place for earthworks within the Ocean Ridge Urban Area.
  - 133.9 A longer time is provided before land drainage consents must be applied for.

Dated: 4 February 2013

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Margaret Jane Whyte