

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of the Proposed Canterbury Land
and Water Regional Plan

**REBUTTAL EVIDENCE OF GERARD MATTHEW WILLIS
FOR THE GROUP 1 HEARING**

1. INTRODUCTION

- 1.1 My name is Gerard Matthew Willis. I hold the qualifications and have the experience set out in my primary Statement of Evidence provided to the Council in relation to the Group 1 hearing on 4 February 2013. I again agree to comply with the Code of Conduct for Expert Witnesses.
- 1.2 The purpose of this Statement of Evidence is to respond to evidence lodged with the Council by the Director-General of Conservation and Nelson/Marlborough, North Canterbury and Central South Island Fish & Game Councils. In particular, I have comments in response to the evidence of Messrs Familton (for the Director-General of Conservation) and Percy (for the Fish & Game Councils).

2. EVIDENCE OF HERBERT FAMILTON

- 2.1 Mr Familton, for the Director-General of Conservation, proposes changes to sections 2.4 and 2.8 of the Plan to fundamentally change its scheme and in particular the relationship between the region-wide sections of the Plan and the sub-regional sections of the Plan.
- 2.2 In short, Mr Familton seeks that sub-regional sections be subservient to the region-wide sections of the Plan and in particular the freshwater objectives and limits. As I understand it, under this arrangement sub-regional sections could

only implement the objectives and limits of the already notified section of the Plan, not include catchment-specific objectives and limits that might be “less stringent “ than those of the region-wide sections of the Plan.

2.3 Through pages 16-25 of his evidence Mr Familton sets out a number of reasons for his position concluding that the Plan’s sub-regional approach is “poor planning practice and inconsistent with the fundamental principle of a consistent Canterbury approach as described in the CWMS”.

2.4 I disagree with Mr Familton’s planning analysis.

2.5 I support the basic scheme of the Plan as notified, being that some region-wide provisions act as a default or interim position until such time as more detailed and specific sub-regional provisions are included. In my opinion, that is an understandable and entirely rational approach for the Plan to take. I say that for three primary (and interconnected) reasons.

(a) First, the Plan has been notified with limited planning assessment of the appropriateness of objectives and limits in individual catchments. The ability to enable the greatest economic and social well-being from Canterbury’s land and water resources while recognising and maintaining ecological, cultural and recreational values will require detailed assessment and community engagement at the catchment (or sub-regional) scale. It stands to reason that better information and community feedback will lead to better policy. Sub-regional sections will be developed with that better information and more detailed assessment (through the Zone Implementation Programmes (ZIPs) and First Schedule processes) and it would be counter- intuitive to restrict the scope of what those processes might determine to outcomes set through the more generic region-wide process.

(b) Second, to restrict the scope of the sub-regional sections as proposed is to devalue the very purpose of the Zone Committees and the ZIPs, which are, as I understand it, are a key part of the CMWS implementation. Mr Familton is correct in saying that ZIPs do not have any particular statutory recognition under the RMA. However, with respect, that misses the point. The issue here is that considerable time

and effort has gone into establishing Zone Committees with very clear mandates to forge agreement on outcomes and limits at the zone scale. These must be consistent with the broader CWMS (including the Vision and Principles). While there is no legal obligation to give effect to the ZIPs, my understanding is that the intention has always been that these ZIPs would inform the development of sub-regional limits.¹ To cut across that process by drafting a plan that makes the work of the Zone Committees largely irrelevant is to undermine the integrity of the CMWS process. Given the work that goes into the ZIP processes that cannot constitute good planning practice (in the widest sense of that term).

- (c) Third, the argument that one part of a regional plan must dictate other parts and that a subsequent change to the plan cannot reopen certain matters is not supported by the Act or by planning practice. The Act does create a mechanism that allows certain policy positions to be locked into a regional plan. That mechanism is the Regional Policy Statement (RPS). However, provided a regional plan gives effect to the RPS a council may change it to introduce new and additional provisions at any time – including provisions that over-ride a supposed locking-in of certain outcomes and limits. Hence the long-term certainty of region-wide objectives and limits that Mr Familton seeks is illusory. Even if the provisions were changed in the manner sought by Mr Familton, a subsequent change to introduce sub-regional provisions could simply amend certain provisions so that the sub-regional section prevailed. In short what Mr Familton seeks cannot be delivered by the means he proposes.

- 2.6 I would also point out several of Mr Familton's arguments in support of his position that I consider to be flawed. In particular I note that Mr Familton confuses the concept of integration with that of cross regional consistency (see paragraph 108 of Mr Familton's evidence). In my opinion those are very separate and different concepts.

1. That was, for example, the approach used in the development of the Hurunui-Waiarau Rivers Regional Plan.

- 2.7 Objective 7.2.4 of the RPS focuses on integrated management. That objective focuses on integration in the management of: surface and ground water, of land use and water quantity and quality; on whole catchment management (mountains to seas); and on net benefits of using water.
- 2.8 Policy 7.3.9 of the RPS refers to “integrated solutions to freshwater management”. Method 1 of that policy states that the Regional Council will:
- (1) *Require regional Plans to:*
 - (a) *include a Plan or strategy for the comprehensive management of the freshwater resources of each catchment addressing the issues set out in Appendix 2 which are relevant to each catchment.*
- [my emphasis]
- 2.9 In my opinion, that clearly supports the approach taken by the Plan as proposed.
- 2.10 Finally, much of Mr Familton’s analysis appears to ignore the fact that sub-regional sections of the Plan will be subject to the normal First Schedule process under the Act. They will need to be consistent with superior planning documents (notwithstanding Mr Familton’s concern at paragraph 110) and the outcomes will be subject to Section 32 (notwithstanding Mr Familton’s concerns at paragraph 113). His concern that the outcomes and limits of ZIPs might somehow have too much sway are, in my opinion, unfounded and not supported by the planning framework that exists.
- 2.11 In my opinion the approach taken to sub-regional sections is a pragmatic way of dealing with an very large region and limited information available at the time of Plan development.

3. EVIDENCE OF PHILIP PERCY

- 3.1 Mr Percy has produced planning evidence for the Nelson/Marlborough, North Canterbury and Central South Island Fish and Game Councils. He supports the same position as expressed by Mr Familton. For the reasons given above I therefore also disagree with Mr Percy on that matter.

Policy 4.1 and Tables 1a - c

- 3.2 Mr Percy also proposes very substantial changes to Policy 4.1 and associated Table 1. In brief, those changes would:
- (a) Split (and greatly increase the scope of) Policy 4.1 to become four separate policies;
 - (b) Amend Table 1 so as to introduce a range of additional water quality parameters/standards² and a new set of “purposes of management”;
 - (c) Introduce to the policy a cross reference to a new Schedule of values which is intended as a more specific attribution of freshwater objectives (i.e. to specific water bodies rather than the broader management units of Table 1;
 - (d) Create a policy position of applying the most stringent freshwater limits where there is a conflict between those of the region-wide part of the Plan and those set in a sub-regional section of the Plan.
- 3.3 He also includes references to selected objectives of Section 3 of the Plan (to which he has also proposed very significant changes).
- 3.4 I do not support any of the changes proposed by Mr Percy in relation to these provisions. Subject to comments I made in my evidence in chief, I support Policy 4.1 as included in the Plan as notified. It is, in my opinion, a simple and clear provision that accurately distinguishes between freshwater objectives and limits.
- 3.5 In my opinion, Mr Percy’s provisions:
- (a) Create highly complex and confused framework that mixes up values, objectives, limits and water quality standards within a single policy;
 - (b) Narrowly and selectively defines freshwater objectives;

2. The technical difference between numeric objectives and water quality standards is not acknowledged by Mr Percy but is discussed in the rebuttal evidence of Ms Hayward.

- (c) Potentially makes the setting of limits in sub-regional sections a redundant exercise in which land user stakeholders have no incentive to participate.

Freshwater objectives and limits

- 3.6 I discussed freshwater objectives and limits in my evidence in chief (paragraphs 3.17-3.35). I do not repeat that here. Put simply, the matters listed in Table 1 a-c in the Plan as notified are, in my opinion numeric freshwater objectives. They are outcomes, or end states that are sought in-stream. Just because something has a numeric value does not make it a limit. A limit is the amount of the assimilative capacity of water that is made available for “use”. The obvious example is a nutrient load (often expressed as tonnes/year). In my opinion Mr Percy’s drafted Policy 4.1 creates considerable confusion by referring to the numeric objectives of Table 1 as “limits”.
- 3.7 Mr Percy’s evidence (see page 20) also refers to values as objectives. Again this is inconsistent with the NPSFM which identifies values as broad ranging, encompassing both use and protection interests. As noted at paragraph 3.31 of my evidence in chief the Preface to the NPSFM states that water quality limits must reflect local and national values. Values are not in themselves objectives yet Mr Percy’s policy appears to conflate the two concepts.

Definition of freshwater objectives

- 3.8 One of the key changes proposed by Mr Percy’s redraft of Policy 4.1 is to narrow the matters that determine the setting of limits. Mr Percy’s drafted Policy 4.1 c refers only to the freshwater objectives of:
 - (a) Policy 5A (which I assume should be 3.5A);
 - (b) Table 1; and
 - (c) Schedule XX.
- 3.9 Policy 3.5A refers to a subset of the full set of objectives and specifically excludes consideration of any “use”-related objectives. In effect Mr Percy is saying that the fact that people may value and rely on water for economic and social well-being should be ignored in the setting of limits. I consider that to be

inconsistent with both Section 5 of the RMA and to the obligation to consider a range of national and local values under the NPSFM.

- 3.10 Although described as “Canterbury Water Body Values”, Schedule XX only includes reference to salmonid fisheries, recreation (whitewater and jet boating) and game bird values. It is not clear whether Mr Percy intends that the Schedule include other values.
- 3.11 The net effect of Mr Percy’s policy redraft is to remove any recognition of the relevance or validity of “use” values in the setting or application of freshwater water objectives (or limits). In my opinion that is an overly narrow interpretation of the Act’s requirements for freshwater management.

Primacy of Table 1

- 3.12 Mr Percy’s Table 4.1 d establishes the principle that Table 1 prevails over sections 6-15 (i.e. the sub-regional sections of the Plan) in the event that the limits set in a sub-regional section are less stringent than those of Table 1.
- 3.13 For reasons already articulated I disagree with that approach. However, I would make the additional point that such a policy undermines the very reason for preparing sub-regional sections and would certainly mean that it would be much more difficult to engage sections of the community in developing these sections. That is because, as I understand from the evidence of Ms Hayward, the objectives and limits of Table 1 are already very challenging to achieve given the existing state of the Region’s water bodies.
- 3.14 I do agree with Mr Percy when he states at paragraph 112 that:

The development of sub-regional sections of the Plan is, in my view, a significant opportunity to apply the freshwater limits in a more refined way as catchment communities work together to more accurately define the state and quantum of sustainable resource use.

- 3.15 That statement does, however, seem to contradict the view that any regional objectives/limits may only be more stringent than the objectives of Table 1.

Policies 4.1A , 4.1B and 4.1C

- 3.16 Mr Percy proposes additional policies relating to water quantity and quality limits. He proposes a new structure of defining the allocation status of rivers, lakes aquifers and wetlands (over-allocated, “at risk”, under allocated) and requiring action to cease over-allocation by 2030.
- 3.17 In my opinion the policy approach prescribed in these policies pre-empts a proper understanding of the issues and the viability of ceasing over-allocation (and even defining what over-allocation ought to be). I prefer the approach proposed in the Plan as notified, namely that defining and addressing over-allocation is through individual sub-regional sections.
- 3.18 Although there are aspects of Mr Percy’s proposed policies that may have some planning logic, in my view in the absence of considerably more evidence it would be inappropriate to accept the provisions advanced by Mr Percy. In particular, I am not aware of information on the spatial extent of “over-allocation” as defined by Mr Percy and therefore what the effect of this policy might be on the ability to grant consents to enable land use change. I am also not aware of evidence on the cost of ceasing “over allocation” by 2030. My understanding is that that is precisely the information that the Zone Committee processes are attempting to identify and take into account in the recommendations they make to the Council. Absent that information I am not convinced that the provisions proposed could pass the section 32 tests.
- 3.19 A better resource management approach would be to await the progressive sub-regional processes (clearly programmed in Council’s Long Term Plan). Other provisions of the Plan should and, in my opinion will, provide assurance that pressure on water quality in the Region will be managed responsibly in the interim.

Gerard Willis

13 February 2012