

**BEFORE**

**The Hearing Commissioners appointed  
by the Canterbury Regional Council**

**IN THE MATTER OF**

**The Resource Management Act 1991**

**AND**

**IN THE MATTER OF**

**The Proposed Canterbury Land and  
Water Regional Plan**

**SUMMARY OF OPENING LEGAL SUBMISSIONS  
OF COUNSEL FOR THE CANTERBURY REGIONAL COUNCIL**

1. Management of land and water resources in Canterbury raises a number of significant issues and challenges, including competing demands for water and the interconnectedness of water and land resources. Other significant issues include the conservation of soils, the use and development of gravel resources, management of biodiversity, wetlands and riparian margins, and natural hazards.
2. The proposed Land and Water Regional Plan manages those issues and resources, using the following key responses:
  - management in accordance with RMA principles, to achieve sustainable management of natural and physical resources;
  - approaches developed through the Canterbury Water Management Strategy, including parallel processes of development and enhancement / restoration; and
  - partnership, with key stakeholders being involved in managing land and water.
3. The planning process enables the longer-term, proactive, integrated management of natural and physical resources – as opposed to an ad-hoc, reactive approach to individual proposals. Managing land and water resources through a plan encompasses recognition of the effects which the use and development of one resource may have upon other resources, as well as

the cumulative effects which the overall use, development and protection of resources may have. Recognition of these effects informs the process of making decisions about the way, and the rate at which resources should be used, developed and protected.

4. Through the provision of objectives, policies and rules, the pLWRP achieves the purpose of the RMA by guiding resource consent decision-making, or enabling permitted activities, so that the resources of the region are sustainably managed.
5. The objectives in the pLWRP form a comprehensive suite of resource management outcomes to be attained. Those objectives are to be implemented by two forms of policies, either strategic or specific.
6. The strategic policies apply to all activities and provide an overall direction for the integrated management of land and water in the region. Specific "activity and resource" policies apply to particular activities and resources, providing guidance for decision-making on resource consent applications, providing the rationale for rules, and defining the status which is given to activities in the rules. As with the objectives, the policies are intended to apply as a comprehensive suite, and are to be read and considered together.
7. The rules in the pLWRP implement the policies, and in doing so, they need to utilise the full spectrum of categories of rules which are available to councils under the RMA. The pLWRP is constructed to create a strong relationship between the status of an activity, the effects which are managed by the policies, and the environmental outcomes to be attained by the policies and objectives, as follows:
  - permitted and controlled activities are acceptable in all cases;
  - controlled activities require resource consent to enable specific assessment of identified matters and additional resource consent conditions;
  - restricted discretionary and discretionary activities may or may not be appropriate in any given circumstance, depending on the effects of the activity;
  - non-complying activities are generally inappropriate, though there may be exceptional cases when a resource consent could be granted;
  - prohibited activities are not appropriate in any circumstances.
8. One of the significant issues which the pLWRP manages is the cumulative effects of land use on water quality. The pLWRP contains land use rules under section 9(2) of the Act, rather

than simply relying on controlling discharges associated with land uses, under section 15(1) of the Act. This approach was endorsed by the Environment Court as an appropriate means of controlling nutrient losses in the Lake Taupo catchment, in the Court's decisions on Variations 5 and 6 to the Waikato Regional Plan. Section 30(1)(c)(ii) expressly enables a regional council to control the use of land for the purpose of the maintenance and enhancement of the quality of water in a water body.

9. The pLWRP has also adopted the concept of 'rule bundling', where several permissions which may be required under sections 9 and 13 to 15 of the RMA are combined into one rule, so that only one application for resource consent is required. The Council will assess and determine the activities separately, in accordance with the RMA, and any resource consent granted will specify the relevant provisions of the RMA under which the consent has been issued. Again, this approach has been sanctioned by the Environment Court, in the Court's decisions on Variations 5 and 6 to the Waikato Regional Plan.
10. Another source of some contention has been the utilisation of the OVERSEER Model in the rules of the pLWRP. This method was also accepted as appropriate by the Environment Court in its decisions on Variations 5 and 6 to the Waikato Regional Plan, and in the decisions on the Manawatu – Wanganui Regional Council Proposed One Plan appeals.
11. Finally, an issue in contention is the extent to which the pLWRP seeks to implement the Canterbury Water Management Strategy. The Council is required, by the ECan Act, to have particular regard to the vision and principles of the CWMS in making decisions on RMA plans.
12. The CWMS is the outcome of extensive consultation and community participation aimed at reaching a consensus as to how to best manage the freshwater resource in Canterbury. It has been endorsed by all 10 territorial authorities in the region, as well as the Regional Council, and was designed to be implemented through the planning instruments of the region. As such, it provides valuable guidance about how the people and communities of Canterbury wish to see provision for their wellbeings and health and safety, through the management of the use, development and protection of resources, including water and land.
13. Although there is no statutory requirement for the pLWRP to incorporate or give effect to the CWMS, the document as a whole is an important component in determining the most appropriate way of achieving the purpose of the RMA.

14. So, in preparing the pLWRP the Council has had particular regard to the vision and principles of the CWMS, together with all other mandatory and relevant considerations. The vision, in particular, being:

*"To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework."*

is entirely consistent with the principle of sustainable management of resources under section 5 of the RMA. It aims to strike the balance between the appropriate use and development of water resources for social, economic and cultural wellbeing and the need to protect key environmental and cultural values.

15. The pLWRP manages the use, development and protection of land, water and other resources in particular ways, and at particular rates, which will enable people and communities to provide for their well-being, health and safety. In doing so, it also sustains the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, safeguards the life-supporting capacity of air, water, soil and ecosystems, and avoids, remedies or mitigates adverse effects of activities on the environment.
16. The Hearing Commissioners and submitters have been provided with a report, prepared under section 42A of the RMA, in relation to the matters contained in Hearing Group 1. My full opening legal submissions are contained in Section 1.4 of that document. I and the other people who prepared that report are present today to answer questions in relation to that report, as follows:
- Mr McCallum-Clarke, Sections 1, 2, 3, 4, 9 and 11
  - Ms Harte, Sections 5, 7 and 10
  - Ms Fenemor, Section 6
  - Mr Whyte, Section 8.
17. Although the writers of the section 42A report have reviewed the evidence of submitters, with a view to identifying the main issues in contention, it is understood that the Council's response to all evidence and legal submissions of submitters will be presented in the final week of the hearing.

18. Several other Council officers and consultants are present today. As persons with whom the report writers have consulted in preparing the section 42A report, these other officers and consultants may be of assistance in relation to any questions which the Hearing Commissioners may have today. They may also be involved in preparing the Council's evidence in response to the submitters' evidence.

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M Perpick, Counsel for the Canterbury Regional Council

25 February 2013