

Tabled at Hearing 14/03/2013

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

SUMMARY OF EVIDENCE OF NIGEL ROLAND BRYCE

INTRODUCTION

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;
- 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.

FLOW AND ALLOCATION REGIMES

The RDRML made a submission¹ 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.

The Officer in addressing the RDRML's submission "*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.*"²

I generally agree with the Officer on this point and 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.

I specifically address Rule 5.96 in my rebuttal evidence (refer section 3.0) where I note that the sentence sought to be deleted by Mr Percy (on behalf of Fish and Game), does not provide for existing consented takes simply to be 'rolled over', but rather offers an opportunity for them to be considered as a restricted discretionary activity. Put another way, Rule 5.96, in my opinion does not provide for any specific support for continuing over-allocation, where this exists.

In relation to Rule 5.96, I note the Panel's questioning of the Council Officers' relating to the matters to which restriction is limited, questioned whether investment should form part of this discretion. I

¹ Submissions 197.1, 197.14, 197.16, 197.17 and Further Submission F623.56.

² Page 228

would support an amendment to the matters of discretion to Rule 5.96 to include investment considerations, as clearly this accords with section 104(2A) of the Act.

RECOGNITION GIVEN TO THE MAINTENANCE & UPGRADING OF EXISTING INFRASTRUCTURE

Maintenance, Repair, Development and Upgrading of Existing Infrastructure

The RDRML made a submission,³ a key thrust of which was that the Plan recognises and provides for the ongoing operation, maintenance, development and upgrading of existing lawfully established and consented infrastructure.

The Officer supports a submission for the term 'maintenance'⁴ to be defined and included within the Plan, noting 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."⁵

I am of the opinion that defining the term 'maintenance' in the manner proposed is appropriate. I am, however, concerned that when this definition is applied to both a policy context and those controlled⁶ and discretionary activity rules (such as Rule 5.90) which include maintenance and upgrade activities that the definition of 'maintenance' (and the restrictions relating to 'upgrading') do not unduly restrict or limit the extent of upgrade works that may be carried out on the ground.

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."

Section 1.2.6

The RDRML made a further submission⁷ to Section 1.2.6 of the pL&WRP regarding the reference to "...the activity must be reassessed as if new.." in addressing renewal processes.

In my opinion, Section 1.2.6 (as presently worded) fails to accurately reflect the resource management processes associated with reconsenting under the provisions of Act, and supporting statutory planning documents such as the RPS and the pL&WRP itself through Policy 4.48. Given the foregoing, I consider that the statement should be amended as follows:

*"...the activity must be reassessed **as if new**.."*

Policy 4.47

The RDRML made a submission⁸ that opposed (in part) Policy 4.47, on the basis that there is an inconsistency between the outcomes sought by Policy 4.47 relating 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.

I note that Policy 7.3.4(2) of the RPS does not require "significant and enduring reductions in adverse effects" and in addressing the adverse effects of over-allocation, seeks an interim response, which provides for the 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

³ Submission 197.12

⁴ 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).

⁵ Page 346.

⁶ Rule 5.132 refers to 'maintenance'

⁷ Further submission F623.50

⁸ Submission 197.37

catchment specific timeframe to ensure over-allocation ceases). This is reinforced by the principal reasons and explanation to Policy 7.3.4(2).

In addressing efficiency improvements, Policy 7.3.8 of the RPS 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;"*. As such, the key 'goal' is for infrastructure and water use to be "highly efficient" relative to the nature of the activity.

In my opinion, Policy 4.47 seeks to 'lift the bar' on implementing efficiency improvements and provides less flexibility associated with implementing these improvements. Further, the policy does not appropriately acknowledge the potential limitations for larger scale infrastructure to achieve the efficiency improvements and reductions in adverse effects sought.

I have suggested amendments which 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 as part of any re-consenting process.

Policy 4.48

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 provide for the following matters:

- to provide specific reference to Principal Water Supply Schemes, such as the RDR, so as to provide a greater level of certainty;
- include reference to water storage infrastructure; and
- that the policy acknowledge that improvements in the efficiency of water use and conveyance and reductions in any adverse effects on flows and levels are provided for, where appropriate.

I note that my amendment to Policy 4.48 in my Annexure C did not include the addition of 'water storage infrastructure' and such I include this in my suggested amendments to Policy 4.48 below.

Policy 4.48 Existing hydro-electricity, ~~and~~ irrigation, water storage infrastructure 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."

Reconsenting Provisions with Section 5.0

The Company's key concern⁹ is that the rules governing infrastructure do not adequately reflect the level of certainty needed to govern reconsenting of infrastructure within the pL&WRP.

The Officer acknowledges the RDRML's submission on this point and notes that dams associated with existing hydroelectric 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. I note here that Mr Paul White (the Council's reporting officer) in addressing during Week 1 presentations to the Panel stated *"that a controlled activity is not accepted as there is a need to apply a precautionary approach to reconsenting processes"*. The justification for a precautionary approach is, as I understand it, is based on the NPS FM that could potentially alter some flow regimes.¹⁰

In my opinion, the effects of existing large-scale infrastructure are generally well understood, so I do not understand why a precautionary approach is required. While I appreciate that some precaution

⁹ Submission 197.57 and 197.89

¹⁰ As stated in Week 1 and at paragraph 15 of Mr Whyte's Summary Evidence.

may be warranted when dealing with changes to the operating regimes for such schemes, these are matters over which the Council can extend its control (including flow and allocation regimes).

While I appreciate that the pL&WRP provides for a number of rules that accommodate the use of existing structures as a controlled activity¹¹, when re consenting large scale infrastructure the bundling principle normally applies, which elevates the potential for renewals to be advanced under a more onerous consenting regime.¹² This has the potential to reduce certainty for infrastructure providers.

I recommend a controlled activity consent which is guided by similar provisions contained within other regional plans throughout New Zealand and that provide for renewal of existing infrastructure as controlled activity. To offset any issues relating to the need to take a precautionary approach, the matters over which I have recommended control are intentionally very broad. I also note that this condition has been prepared having regard to the matters set out in Rule 5.4.

MANAGEMENT OF ADVERSE EFFECTS (SECTION 8)

Policies 4.41, 4.52, 4.89, 4.91 and Rule 5.99

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”;¹³
- Policy 4.52 – the RDRML sought the inclusion of words “results in unacceptable adverse effects”;¹⁴
- Policy 4.89 – the RDRML sought the inclusion of words “results in unacceptable adverse effects”¹⁵
- 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”;¹⁶
- Rule 5.99(condition 2) – the RDRML sought the inclusion of the words “no unacceptable adverse effects” on the limits set out in condition 2.¹⁷

Both Policy 4.41 and 4.52 have been amended to include reference to “not have more than a negligible adverse effect on...”. I note that the term ‘negligible’ is defined in the New Oxford American Dictionary as “so small or unimportant as to be not worth considering”.¹⁸ In the context of a policy or rule framework governing such infrastructure, I find the use of such terminology to be highly questionable. I note that the term is not frequently used in resource management instruments, such as the RPS or NPS FM and could leave the provisions open to divergent interpretation by parties seeking to give effect to them.

I support the RDRML’s relief to include reference to “unacceptable’ adverse effects” which I understand to be 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. 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).

To this end, I recommend amendments to policies 4.41, 4.52, 4.89 and 4.91 of the Regional Plan that

¹¹ Rule 5.132

¹² 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).

¹³ Submission 197.36

¹⁴ Submission 197.40

¹⁵ Submission 197.52

¹⁶ Submission 197.43

¹⁷ Submission 197.78

¹⁸ New Oxford American Dictionary. (electronic version)

- retain the reference to unacceptable adverse effects in Policy 4.41 and Policy 4.52 and Rule 5.99;
- note that it is 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 that other effects be remedied or mitigated or appropriately controlled in accordance with section 5(2)(c) of the Act (and that this approach reflects the central thrust of the higher order statutory planning documents).

EXISTING INFRASTRUCTURE AND EFFICIENCY IMPROVEMENTS

Policy 4.70

The RDRML made a submission¹⁹ which supports (in part) Policy 4.70 but considers 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.

I am generally supportive of the amendments that the Officer has recommended to Policy 4.70(a), but remain 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.

I note that maintenance and upgrade works to improve the efficiency of the RDR are already provided for within the RDRML's existing consents and under the NRRP rule provisions and therefore form part of the existing environment. In my opinion, Policy 4.70 should be further amended by deleting reference to existing takes under clause (b) as this cuts across the efficiency outcomes envisaged within Policy 4.47 and is not needed to give effect to Rule 5.96 which refers to "any other authorised takes or diversions".

TRANSFER OF WATER PERMITS

Rule 5.107 & 108

The RDRML made a submission²⁰ 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.

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).

I conclude that Rule 5.108 be amended such that non-compliance with one or conditions of Rule 5.107 is a discretionary activity as opposed to a non-complying activity which acts as a disincentive for water transfers. In concluding this, I note that 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.

Lastly, I note that 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. 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, however this should be advanced by way of a controlled activity rule.

PROHIBITED ACTIVITY FOR NON-COMPLIANCE WITH (MINIMUM FLOWS)

¹⁹ Submission 197.43

²⁰ Submission 197.81

Rule 5.98 and Rule 5.96(1)

The RDRML made a submission²¹ seeking Rule 5.98 be deleted and that non-compliance with Condition 1 supporting Rule 5.96 be a non-complying activity.

I note that prohibited activity status should be applied sparingly and for the most part to those more objectionable activities. I note 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 been promulgated or that this science has not been subject to rigorous assessment. A prohibited activity also forecloses the ability for an applicant to argue, based on new science, that there would not be any adverse environmental outcomes as a result of the limits being breached. Once set, the only alternative option, 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.

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.

THE PRIORITISATION OF VARIOUS 'VALUES' UNDER THE PLAN

Strategic Policy 4.4

The RDRML made a submission²² opposing Policy 4.4 and sought the deletion of the priority of values in the policy.

I note for completeness that this priority is reflected within one of the principles of the CWMS and that 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 reinforce, 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.

I recommend amendments to Section 2.6 that reinforce 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.

Further, I note that the definition of Community Water Supply has been amended to include “industrial and processing”. I am concerned that this definition has the potential to elevate industrial and processing activities into first order priorities under Policy 4.4, potentially ahead of other primary sector abstraction activities. In my opinion this is a departure from the term ‘community water supplies’ used in Policy 7.3.4 of the RPS.

SURFACE TAKES OF WATER AND THEIR 'CONVERSIONS' FROM 'RUN OF RIVER' ABSTRACTIONS TO 'ABSTRACTIONS TO STORAGE'

Policy 4.67

The RDRML made a submission²³ opposing Policy 4.67 and seeking its deletion.

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

²¹ Submission 197.77

²² Submission 197.19

²³ Submission 197.19

I accept that the policy does not explicitly preclude water being stored during the irrigation season, it does not specifically provide for this. Given that, operationally, the RDR is unique (given that it plays a dual role in relation to the abstraction and conveyance of water) I agree with the RDRML 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.

SURFACE TAKES AND THE ASSOCIATED DISCHARGE OF WATER

Rule 5.99

The RDRML made a submission²⁴ 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. 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 reconsenting process.

When comparing the discharge distances from the point of take provided for under the Rangitata Water Conservation Order 2006 against the 250 metre distance provided for under Rule 5.99(3), it is clearly evident the Regional Plan is significantly more onerous. I therefore recommend that condition 3 be deleted.

WATER QUALITY AND TABLE 1

Policy 4.1 and Table 1

The RDRML made a number of submissions²⁵ relating to Policy 4.1 and Table 1 of the pL&WRP. The Company is concerned with the manner in which the Table 1 standards are to be applied given that they are based on 'aspirational but achievable objectives'. 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" to take account of lawfully consented discharges.

Dr Ryder²⁶ on behalf of Trust Power Ltd and Ms Hayward²⁷ on behalf of Fonterra (whose evidence I have relied upon) 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. Therefore, 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.

²⁴ Submission 197.78

²⁵ not included within the summary of submissions.

²⁶ Refer Section 2.0 of Dr Ryder's evidence.

²⁷ Refer Section 2.0 of Dr Ryder's evidence.