

BEFORE THE INDEPENDENT COMMISSIONERS

UNDER

the Resource Management Act 1991

AND

IN THE MATTER

of the proposed Canterbury Land and Water
Regional Plan

**LEGAL SUBMISSIONS ON BEHALF OF THE ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

10 April 2013

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INTRODUCTION

1. I appear today on behalf of the Environmental Defence Society Incorporated (EDS).
2. EDS's written submission covered topics that have been allocated to Hearing Groups 1, 2 and 3. For efficiency reasons, EDS requested that its appearance be consolidated into one sitting and today's submissions will address all topics.
3. EDS is a national not-for-profit environmental advocacy group. It was established in 1971 with the objective of bringing together the disciplines of law, science and planning to advocate for better environmental outcomes in resource management matters.
4. Today, EDS is part think-tank and part environmental watch-dog. The focus of EDS's work is on achieving good environmental outcomes through improving the quality of New Zealand's legal and policy frameworks and statutory decision-making processes. EDS has been active in assessing the effectiveness of the Resource Management Act 1991 ("RMA") and statutory planning documents in addressing key environmental issues such as landscape protection, coastal management and water quality. It has also actively participated in public interest environmental litigation.
5. EDS supports the intent of the Council in developing an integrated catchment land and water plan to address regionally significant resource management issues. However, EDS submits that the Proposed Plan does not meet the requirements of Part 2 of the RMA, does not give effect to the National Policy Statement for Freshwater Management 2011 ("NPSFM") or the Canterbury Regional Policy Statement ("CRPS") and does not adequately address the significant water quality and quantity issues Canterbury faces.

THE STATE OF CANTERBURY'S WATER AND THE NEED TO ACT

6. The deterioration in the state of Canterbury's freshwater is well known. While water quality is good in rivers and streams draining natural state and alpine areas, lowland parts of Canterbury have poor water quality with low concentrations of dissolved oxygen, poor water clarity, and high concentrations of faecal indicator bacteria and dissolved phosphorus and nitrogen¹. Macroinvertebrate communities, which are indicators of

¹ Roger Young, Evidence in Chief, pg 3

ecosystem health or life supporting capacity in these lowland waterbodies, are degraded.²

7. High country lakes in Canterbury generally have good water quality with low concentrations of nutrients and phytoplankton. However, lowland lakes in Canterbury, suffer from high concentrations of nutrients, phytoplankton and suspended solids. Lake Forsyth/Te Roto o Wairewa also suffers from toxic cyanobacterial blooms most summers which endanger aquatic life, stock, dogs and even people.³
8. When addressing the degrading and degraded nature of the waterways in the Manawatu-Wanganui region the Environment Court noted:

[5-7] We should say, at this early point, that it does not answer that fundamental issue to say, as some did in addressing these appeals, that there is no present need to enhance water quality because the quality of some of the rivers and waterbodies in the region is no worse than average figures for similar water elsewhere in the country. That is an unappealing argument, the logical extension of which would be to say that so long as the natural quality of all of the country's rivers and lakes deteriorates at more or less the same rate, then we need do nothing to improve any of them. In response to such a view, we simply point to Part 2 of the RMA, and its use of phrases such as ... sustaining the potential of natural ... resources; safeguarding the life-supporting capacity of ... water; ... the preservation of the natural character of ... wetlands, and lakes and rivers; and ... intrinsic values of ecosystems.

*[5-8] We should immediately say also that we have little sympathy for the line of argument that we should defer taking decisive action in the field of improving water quality (or, at the very least halting its further decline) because ... the science is not sufficiently understood ... or that ... further analysis could give a more comprehensive process ... or similarly phrased excuses for maintaining more or less the status quo. **We will never know all there is to know. But what we undoubtedly do know is that in many parts of the region the quality of the natural water is degraded to the point of being not potable for humans or stock, unsafe for contact recreation, and its aquatic ecosystems range between sub-optimal and imperilled. We also know what is causing that decline, and we know how to stop it, and reverse it.***

² Russell Death, Evidence in Chief, pgs 8 - 9

³ Roger Young, Evidence in Chief, pg 4

To fail to take available and appropriate steps within the terms of the legislation just cited would be inexcusable [emphasis added]⁴

LEGAL FRAMEWORK

REGIONAL PLANS

9. The purpose of a regional plan is to assist the Council to carry out its functions in order to achieve the purpose of the RMA.⁵
10. The Council is required to prepare a regional plan in accordance with its functions under section 30, the provisions of Part 2 of the RMA, its duty under section 32, and any regulations.⁶
11. In addition, a regional plan must give effect to the New Zealand Coastal Policy Statement, any national policy statement and any regional policy statement. It must not be inconsistent with a water conservation order or any other regional plan for the region.⁷
12. Finally, particular regard must be had to the vision and principles of the Canterbury Water Management Strategy (“CWMS”) when considering any proposed plan.⁸

PART 2

13. The purpose of the RMA is the sustainable management of natural and physical resources.⁹ This means:¹⁰

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety

while

⁴ *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 324 at page 5-5 to 5-6

⁵ RMA, s 63.

⁶ RMA, s 66.

⁷ RMA, s 67.

⁸ Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s 63.

⁹ RMA, s 5(1).

¹⁰ RMA, s 5(2).

sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and avoiding, remedying, or mitigating any adverse effects of activities on the environment.

14. It goes without saying that a decision made under Part 2 of the RMA requires the exercise of an overall broad judgment.
15. Section 5(2) can be separated into two parts, sometimes referred to as 'anthropocentric' and 'ecocentric' parts. EDS submits that section 5 does not require decision makers to 'balance' or 'trade-off' anthropocentric and ecocentric effects, or economy and environment. Sustainable management requires that both the anthropocentric and ecocentric parts of sustainable management are satisfied. The Planning Tribunal has stated:¹¹

Section 5(2)(a), (b), (c) provisions may be considered cumulative safeguards which enure (or exist at the same time) whilst the resource, in this case the land resource, is managed in such a way or rate which enables the people of the community to provide for various aspects of their wellbeing and for their health and safety. These safeguards or qualifications for the purpose of the Act must all be met before the purpose is fulfilled. The promotion of sustainable management has to be determined therefore, in the context of these qualifications which are to be accorded the same weight.

16. One of the 'qualifications' is the requirement to safeguard the life-supporting capacity of air, water, soil and ecosystems. This is particularly relevant to the Proposed Plan. If the objectives, policies and rules of the Proposed Plan will not ensure the life-supporting capacity of freshwater is safeguarded, then the Proposed Plan will not accord with the purpose of sustainable management.
17. As you well know, section 6 of the RMA sets out matters of national importance which must be recognised and provided for and section 7 of the RMA sets out other matters which particular regard must be had to. These principles inform the overall broad judgment as to whether the Proposed Plan will achieve the purpose of the RMA.
18. I would like to bring your attention to just one of these principles - the requirement to have particular regard to the "maintenance and enhancement of the quality of the

¹¹ *Shell Oil NZ Ltd v Auckland City Council* (Planning Tribunal W8/94, 2 February 1994) at 10.

environment”.¹² It requires particular regard to be had to the principle that the quality of the environment must, at the very least, be maintained. It suggests that environmental degradation is not acceptable and enhancement may be appropriate.

19. The Environment Court has made the following comment on this principle:¹³

The RMA does not regard the present Environment – being the sum of all environments – the best of all possible New Zealand's. Section 7 (f)'s reference to enhancement of the quality of the environment requires that improvements may be made in appropriate circumstances. That is consistent with purpose of the Act which requires remedying of the adverse effect of activities, including past effects (of past activities)... It is clearly contemplated by section 7 (f) together with sections 5 (2)(a) to (c) of the RMA that improvements to air and water quality may be very desirable ends of resource management. The same applies to degraded land and related natural resources.

20. EDS submits that current environment in Canterbury is clearly nowhere near “the best” it could be, and that enhancement of the environment is justified and, in our view, required.

SECTION 32

21. The RMA requires an evaluation of:¹⁴

- a. The extent to which each objective is the most appropriate way to achieve the purpose of the RMA, and,
- b. Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.

22. This evaluation must take into account the benefits and costs of policies, rules or other methods.¹⁵

23. Section 32 clearly directs that the primary consideration is whether the objectives are the most appropriate way to achieve the purpose of the Act. As I described earlier, this requires that both the anthropocentric and ecocentric ‘parts’ of sustainable management are satisfied.

¹² RMA, s 7(f).

¹³ *J F Investments Limited v Queenstown Lakes District Council* (NZEnvC C48/06, 27 April 2006) at [28]

¹⁴ RMA, s 32(3)

¹⁵ RMA, s 32(4)(a)

24. Section 32 also requires the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods to be taken into account.¹⁶ This is a form of ‘the precautionary principle’ – a key environmental management principle. It’s most well-known enunciation is contained in the Rio Declaration:¹⁷

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

25. A further evaluation of the Proposed Plan must be made before a decision is made.¹⁸ EDS submits that the precautionary principle must be kept in mind throughout the evaluation of the Proposed Plan.

NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT 2011

26. The Proposed Plan must give effect to the NPSFM.¹⁹ The "give effect to" relationship has been discussed by the Environment Court in the context of a regional policy statement:²⁰

[50] Section 75(3) requires that the Plan Change “must give effect to” the operative Regional Policy Statement. We agree with Mr Allan, that with respect to Section 75(3) of the Act, the change in the test from “not inconsistent with” to “must give effect to” is significant. The former test allowed a degree of neutrality. A plan change that did not offend the superior planning instrument could be acceptable. The current test requires a positive implementation of the superior instrument...

[51] The phrase “give effect to” is a strong direction. This is understandably so for two reasons: [a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and [b] The Regional Policy Statement, having passed through the Resource Management Act process, is deemed to give effect to Part 2 matters.

27. The NPSFM requires plans to, *inter alia*:

¹⁶ RMA, s 32(4)(b)

¹⁷ Rio Declaration on Environment and Development, principle 15

¹⁸ RMA, s 32(2)(a)

¹⁹ RMA, s 67

²⁰ *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211

- a. Establish freshwater objectives for all bodies of fresh water²¹
 - b. Set freshwater quality limits and establish methods (including rules) to avoid over-allocation²²
 - c. When water bodies do not meet the freshwater objectives, specify targets and implement methods to assist the improvement of water quality in the water bodies, to meet those targets, and within a defined timeframe²³
 - d. Set environmental flow and/or levels for all bodies of fresh water²⁴
 - e. Provide for the efficient allocation of fresh water to activities, within the limits set²⁵
 - f. Ensure no decision will likely result in future over-allocation²⁶
 - g. Set defined timeframes and methods by which over-allocation must be phased out²⁷
28. EDS submits that the Proposed Plan does not give effect to the NPSFM. This is because it does not establish clear freshwater objectives, it does not set hard limits for water quality or in many cases water quantity, and it will allow over-allocation, or further over-allocation.
29. Further the NPSFM requires council to manage fresh water and land use and development in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects.²⁸ However, given that key parts of the Proposed Plan are incomplete, such as the sub-regional chapters, it does not deliver on integrated management.

CANTERBURY REGIONAL POLICY STATEMENT

30. The CRPS provides an overview of the resource management issues affecting Canterbury and policies and methods to achieve integrated management of its natural

²¹ NPSFM, policies A1 and B1

²² NPSFM, policy A1

²³ NPSFM, policy A2

²⁴ NPSFM, policy B1

²⁵ NPSFM, policy B2

²⁶ NPSFM, policy B5

²⁷ NPSFM, policy B6

²⁸ NPSFM, policy C1

and physical resources.²⁹ As discussed above in relation to the NPSFM, the requirement to give effect to the CRPS is a strong direction.

31. The fresh water objectives of the CRPS include:

The region's fresh water resources are sustainably managed to enable people and communities to provide for their economic and social wellbeing through abstracting and/or using water for irrigation, hydro-electricity generation and other economic activities, and for recreational and amenity values, and any economic and social activities associated with those values, providing:

(1) the life-supporting capacity ecosystem processes, and indigenous species and their associated freshwater ecosystems and mauri of the fresh water is safe-guarded;

(2) the natural character values of wetlands, lakes and rivers and their margins are preserved and these areas are protected from inappropriate subdivision, use and development and where appropriate restored or enhanced; and

(3) any actual or reasonably foreseeable requirements for community and stockwater supplies and customary uses, are provided for.³⁰

Abstraction of water and the development of water infrastructure in the region occurs in parallel with:

(1) improvements in the efficiency with which water is allocated for abstraction, the way it is abstracted and conveyed, and its application or use;

(2) the maintenance of water quality where it is of a high standard and the improvement of water quality in catchments where it is degraded; and

(3) the restoration or enhancement of degraded fresh water bodies and their surroundings.³¹

²⁹ RMA, s 59

³⁰ CRPS, objective 7.2.1

³¹ CRPS, objective 7.2.2

*The overall quality of freshwater in the region is maintained or improved, and the life supporting capacity, ecosystem processes and indigenous species and their associated fresh water ecosystems are safeguarded.*³²

32. EDS submits that the Proposed Plan will not achieve these objectives. This is because it does not establish clear freshwater objectives, it does not set hard limits for water quality or in many cases water quantity, it will allow over-allocation, or further over-allocation, and does not adequately provide for the improvement/restoration/enhancement of degraded fresh water.

CANTERBURY WATER MANAGEMENT STRATEGY

33. The ECan Act requires that you have particular regard to the vision and principles of the CWMS. These are set out in Schedule 1 of the ECan Act:

Vision: 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.

Primary principles

Sustainable management: Water is a public resource which must be managed in accordance with sustainability principles and be consistent with the Resource Management and Local Government Acts.

Regional approach: The planning of natural water use is guided by the following:

- *first order priority considerations: the environment, customary uses, community supplies and stock water*
- *second order priority considerations: irrigation, renewable electricity generation, recreation, tourism and amenity*
- *A consistent regulatory approach to water is applied throughout the Canterbury region, recognising these principles*
- *Both surface and groundwater are given equal importance*

³² CRPS, objective 7.2.3

- *Further development of scientific knowledge of the region's water resources and the impacts of climate change are given priority*
- *The actual or potential cumulative effects the taking and using water can have on waterways are recognised and managed within defined standards*
- *A cautious approach is taken when information is uncertain, unreliable, or inadequate*
- *The need for efficient use of water in existing and new infrastructure is recognised*
- *There is strong emphasis on the integration of water and land management including protection of indigenous biodiversity and enhancement of water quality*
- *Current and potential effects of land use intensification is an integral part of decision-making on water takes. This may mean amending regional and district plans.*

Kaitiakitanga: *The exercise of kaitiakitanga by Ngai Tahu applies to all water and lakes, rivers, hapua, waterways and wetlands, and shall be carried out in accordance with tikanga Maori.*

Supporting principles

Natural character: *The natural character (mauri¹) of Canterbury's rivers, streams, lakes, groundwater and wetlands is preserved and enhanced:*

- *natural flow regimes of rivers are maintained and, where they have been adversely affected by takes, enhanced where possible*
- *the dynamic processes of Canterbury's braided rivers define their character and are protected*
- *environmental flow regimes are established for every waterway where abstraction occurs*
- *that restoration of natural character and biodiversity, is a priority for degraded waterways, particularly lowland streams and lowland catchments*
- *the interdependence of waterways and coastal ecosystems is recognised.*

Indigenous biodiversity: *Indigenous flora and fauna and their habitats in rivers, streams, lakes, groundwater and wetlands are protected and valued. The aims of the Canterbury Biodiversity Strategy are recognised and supported.*

Access: *Public access to and along rivers, lakes, waterways and wetlands is maintained and, where appropriate, enhanced. Access may need to be limited in situations including where environmental risk, public safety, security of assets, cultural values, biodiversity and farm management require.*

Quality drinking water: *All those living in Canterbury have access to high quality drinking water: The region's high quality aquifer-sourced drinking water is protected. Where Canterbury's drinking water is currently untreated and safe for drinking, it is maintained at that high standard*

Recreational and amenity opportunities: *Rivers, lakes, groundwater and wetlands provide opportunities for enjoyment, recreation and tourism:*

- *High quality water ensures contact recreation such as swimming, fishing, boating and other water sports are able to be enjoyed throughout Canterbury.*
- *Adequate environmental flows should ensure that recreational users and tourists can enjoy Canterbury rivers.*
- *Eco-tourism opportunities are recognised and encouraged.*

Community and commercial use: *Water resources are used sustainably to enhance quality of life:*

- *where water is abstracted, it is used effectively and efficiently:*
- *land use, industry, and business practices to not adversely impact on natural water quality:*
- *discharges to waterways are minimised and do not compromise quality:*
- *land use practices are monitored and best practice approaches are required:*
- *agricultural stock is excluded from all waterways in catchments where irrigated farming is practised and all lowland streams:*
- *where acclimatised wildlife in lowland streams cause contamination, they are appropriately managed:*

- *degraded waahi taonga are enhanced to restore tangata whenua cultural wellbeing.*
34. The duty to have “particular regard” also arises in relation to section 7 of the RMA. The High Court has described that obligation as creating “not just an obligation to hear and understand what is said, but also to bring what is said into the mix of decision-making”.³³ This duty sits below the Councils’ duty to prepare the plan in accordance with Part 2 of the RMA, and to give effect to the NPSFW and the CRPS .
35. There are three aspects of the vision and principles of the CWMS that EDS wishes to highlight:
- a. The Vision requires the establishment of an *environmentally sustainable* framework. The Proposed Plan which must put in place that framework.
 - b. Principle 2 sets out first order and second order priorities. The first order priorities are the *environment*, customary uses and drinking water. These are to be prioritised ahead of: irrigation, renewable electricity generation, recreation, tourism and amenity.
 - c. Principle 2 also emphasises the need for caution where information is inadequate, unreliable or uncertain.
36. EDS submits that the Proposed Plan does not establish an environmentally sustainable framework, does not give effect to the first order and second order priorities and does not give effect to the need for precaution.

THE ECAN APPROACH

37. The Proposed Plan is, in reality, only a partial plan. Significant portions of the plan will need to be introduced through plan changes, a process which is likely to result in a hodgepodge of provisions which are not consistent or integrated. The process also creates significant uncertainty for the community and will impose a large cost on those parties involved in planning processes. It is clearly inefficient and fails to provide certainty to any party.

³³ *Takamore Trustees v Kapiti Coast District Council* [2003] NZRMA 433 at 455

POLICIES AND RULES

CERTAINTY IN POLICIES

38. Objectives, policies and rules must give decision makers clear direction. Provisions which provide certainty are likely to be more efficient and effective at achieving the objectives of the plan.³⁴
39. The Quality Planning website states:³⁵

Policies are implemented through methods (often plan rules) so policies need to be worded to provide clear direction to those making decisions on rules and those implementing methods.

40. Similarly:³⁶

Rules should be worded clearly enough to enable the plan user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it.

41. EDS submits that terms which reduce the certainty of policies and rules should be avoided, these include terms such as “generally” and “where appropriate”. For example, Policy 4.6 reads:

*resource consents will **generally** not be granted if the granting would cause the limit to be breached or further over-allocation to occur [emphasis added]*

42. This policy dictates what will occur where a resource consent is applied for an activity that would cause a limit to be breached. The NPSFM provides clear direction, it requires limits to be met.³⁷ However, the term “generally” means this policy is uncertain. The uncertainty is amplified because it does not describe what activities consent may be granted for.
43. EDS submits that this policy is inconsistent with the NPSFM and fails to give certain policy direction.

USE OF PROHIBITED ACTIVITY STATUS

³⁴ RMA, s 32(3)(b)

³⁵ www.qualityplanning.org.nz/index.php/plan-steps/writing-plans/writing-issues-objectives-and-policies

³⁶ www.qualityplanning.org.nz/index.php/plan-steps/writing-plans/writing-effective-and-enforceable-rules

³⁷ NPSFM, policies A3 and B5

44. The use of permitted and prohibited activity statuses provides parties with certainty.
45. The Court of Appeal has addressed when prohibited activity status should be used. The Court held that an activity need not be forbidden outright, with no contemplation of any change or exception, before prohibited activity status is appropriate. Further, the Court recognised that a precautionary approach is one reason for choosing to use a prohibited activity classification.³⁸
46. EDS submits that prohibited activity status an important method that can be used to give effect to the NPSFM. An alternative, and potentially more sophisticated, mechanism is a trading regime which can reallocate within a limit, however the Proposed Plan has not made any steps towards establishing such a regime.
47. The Proposed Plan includes the following rule:

5.98 The taking and use of surface water from a river or lake that does not meet condition 1 in Rule 5.96 is a prohibited activity.

48. Condition 1 of rule 5.96 provides:

... the take, in addition to all existing resource consented takes, complies with any rate of take and seasonal or annual volume limits set in Sections 6-15 for that surface water body

49. The use of prohibited activity status in rule 5.98 is supported by EDS. Prohibited activity status is a method that will ensure further over-allocation is avoided. Although, we note our concern that this will only be effective once limits are set in the sub-regional sections.
50. EDS does, however, have concerns about rule 5.96 which provides:

The taking and use of surface water from a river or lake is a restricted discretionary activity, provided the following conditions are met:

- 1. Unless the proposed take or diversion is the replacement of a lawfully established activity affected by the provisions of section 124 of the RMA, the take, in addition to all existing resource consented takes, complies with any rate of take and seasonal or annual volume limits set in Sections 6-15 for that surface water body... [emphasis added]***

³⁸ *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* [2008] 1 NZLR 562 at [41] and [45]

51. EDS submitted that the statements “Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124 of the RMA” should be deleted as it seemed to presume that replacement consents will be granted.

52. The Staff Report stated:

It is considered that this Rule does not assure the granting of replacement consents, as the activity is classified as a restricted discretionary activity and not permitted. Accordingly no change is recommended...

53. This is accepted. However, what the rule does do is provide a restricted discretionary activity status for replacement consents where they do not meet the limits set in the sub-regional sections. Restricted discretionary activity status is inappropriate for any activity that will not comply with limits. There is no certainty that this activity status will ensure limits are met. EDS submits that replacement consents which will not meet the limits must also have prohibited activity status.

REPLACEMENT CONSENTS

54. Sections 124A – 124C give priority to resource consent applications lodged by existing consent holders, over those lodged by other applicants. However, the replacement consent application must be determined in accordance with the efficiency of the person's use of the resource, the use of industry good practice by the person, and consideration of any enforcement orders, as well as the general provisions of the RMA.³⁹

55. Under the general provisions of the RMA, the NPSFM must be considered when assessing a resource consent application. The NPSFM requires the phase out of existing over-allocation.⁴⁰ This is a basis on which a resource consent sought by an existing consent holder may be declined. A replacement resource consent may also be declined due to inadequate efficiency or use of industry good practice.

56. The RMA contains no assumption that a replacement resource consent will be granted and, in addition, the RMA allows a plan to exclude the application of sections 124B and

³⁹ RMA, s 124B(4)

⁴⁰ NPSFM, objective B2

124C.⁴¹ EDS submits that it is inappropriate to predetermine the resource consent process and doing so may be inconsistent with the NPSFM and Part 2 of the RMA.

57. Policy 4.48, as notified, reads:

Existing hydro-generation and irrigation schemes are recognised as a part of the existing environment. In reconsenting the schemes, it is expected that 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.

58. This policy appears to suggest that existing hydro-generation and irrigation schemes cannot be refused renewal of consent. EDS submits that this policy must indicate that consent may be declined for existing activities.

OFFAL PITS AND FARM RUBBISH PITS

59. In regard to rules relating to offal pits and farm rubbish pits, the Staff Report states:⁴²

DOC has sought requirements that information be provided to council on the number, location and volume of both offal pits and farm rubbish pits. This is a similar framework to the NRRP. Anecdotal evidence would suggest that this is not occurring under the current framework, and is a condition that is not being presently actively enforced by the CRC. On this basis, it is not recommended that these submission points be accepted.

60. EDS submits that a current lack of compliance and/or enforcement is not a valid reason to reject a condition. This condition would provide useful information to Council that would inform Council of the environmental effects of offal pits and farm rubbish pits and inform future policy settings. EDS submits that a historic lack of compliance and/or enforcement should not be justification for rejecting an appropriate method.

STOCK EXCLUSION

61. Stock exclusion is a well-known environmental management technique. The Dairying and Clean Streams Accord 2003 set a target of:⁴³

⁴¹ RMA, s 124A(3)

⁴² Staff Report, vol 2, pg 22

Dairy cattle excluded from 50% of streams, rivers and lakes by 2007, 90% by 2012.

62. The dairy industry has had the expectation of stock exclusion in place for ten years. This industry has had ten years to voluntarily exclude stock from 90% of streams, rivers and lakes. Those who have not yet undertaken measures to exclude stock from waterways could be described as 'stragglers'. EDS therefore submits that regulation is required to ensure full compliance.
63. For these reasons EDS supports the following rule:

5.133 The use and disturbance of the bed of a lake or river or a wetland by outdoor intensively farmed livestock for temporary or permanent stocking or temporary access is a prohibited activity.

NUTRIENT MANAGEMENT

64. EDS was concerned that the nutrient management policies and rules contained in the Proposed Plan were insufficient to ensure consistency with Part 2 of the RMA, the NPSFM and the CRPS. EDS submits that the recommendations contained in the Staff Report will further weaken the policies and rules.
65. The Proposed Plan contains policies 4.33 and 4.34 which address management in areas where water quality outcomes are at risk of not being met (orange) and areas where water quality outcomes are not being met (red):

Prior to 1 July 2017, to minimise the risk of the outcomes in Policy 4.1 not being achieved the loss of nitrogen to water from any change in farming activities in an area coloured green, orange or light blue on the Planning Maps, will be managed through resource consent conditions requiring, as a minimum, the preparation and implementation of a farm environment plan and the regular audit of that plan.

Prior to 1 July 2017, to minimise the loss of nitrogen to water from any change in farming activities in an area coloured red or within a Lake Zone as shown on the Planning Maps, an applicant for resource consent must demonstrate that the nitrogen loss from the proposed activity, when assessed in combination with the effects of other land uses or discharges, will not prevent the water quality

⁴³ www.mfe.govt.nz/issues/land/rural/dairying-accord-may03.pdf

outcomes of Policy 4.1 being achieved and show that the nitrogen discharges from the property are a significant and enduring reduction from existing levels.

66. Policy 4.1 provides:

Lakes, rivers, wetlands and aquifers will meet the fresh water outcomes set in Sections 6-15. If outcomes have not been established for a catchment, then each type of lake, river or aquifer will meet the outcomes set out in Table 1.

67. The Staff Report recommends the following replacement policies:

In areas where regional water quality outcomes are at risk of not being met, as shown by an Orange colouring on the Series A Planning Maps, a changed or new farming activity will be required to show that there is no net increase in nutrients discharged from the property or that advanced mitigation farming practices are applied such that the property operates in the top quartile of nutrient discharge minimisation practices when measured against practices in the relevant farming industry, and that in any event the regional water quality outcomes are still being met.⁴⁴

In areas where regional water quality outcomes are not being met, as shown by a Red colouring on the Series A Planning Maps and in Lake Zones as shown on the Series A Planning Maps, a changed or new farming activity will be required to show that there is no net increase in nutrients discharged from the property or that advanced mitigation farming practices are applied such that the property operates in the top 10% of nutrient discharge minimisation practices when measured against practices in the relevant farming industry.⁴⁵

68. In summary, the Proposed Plan required activities in orange areas to prepare and audit a farm environment plan and activities in red areas were required to demonstrate that the activity would not prevent the outcomes in Table 1 or Sections 6-15 to be achieved.

69. The Staff Report recommendations would require activities in orange and red areas to show that there will be no net increase in nutrient discharge or that “advanced mitigation farming practices” are applied to a high standard.

70. The recommended definition of “advanced mitigation farming practices” is:

⁴⁴ Staff Report, vol 1, pg 105

⁴⁵ Staff Report, vol 1, pg 106

Advanced mitigation measures means the adoption of multiple techniques from the following list to minimise nutrient losses from a property:

- 1. Winter shelter*
- 2. Restricted grazing*
- 3. No winter grazed fodder crops*
- 4. Reduced stocking rates*
- 5. Low N feed*
- 6. Reduced/Nil fertiliser*
- 7. Improved animal efficiency*
- 8. Improved irrigation efficiency (better than 80%)*
- 9. Nitrification inhibitors*
- 10. Optimum Olsen P*
- 11. Low solubility P fertiliser*
- 12. Effluent management*
- 13. Reduced water use*
- 14. Catch cropping*
- 15. Improved soil physical condition to reduce erosion*
- 16. Natural wetlands*
- 17. Floodplain wetlands*
- 18. Constructed wetlands*
- 19. Riparian margins*
- 20. Grass buffers*
- 21. Swales*
- 22. Sediment traps/ponds*

71. The Staff Report acknowledges that almost all farming activities are likely to incorporate one or more aspect of advanced mitigation in any event.⁴⁶
72. EDS is concerned that significant adoption of advanced mitigation techniques does not necessarily means that there will be better nutrient discharge performance. As a result, these policies may allow allow further degradation of water quality, inconsistent with the NPSFM.

DISCHARGE RULES

73. EDS was concerned that the discharge rules in the Proposed Plan were inconsistent with the NPSFM. The Staff Report recommendations weaken the Proposed Plan significantly, including through an exception for smaller properties and weakening the requirements for existing activities.
74. EDS would like to see robust scientific evidence that justifies an exception for smaller properties. Without this, it is unclear whether an exception for smaller properties is consistent with Part 2 of the RMA, the NPSFM and CRPS.
75. EDS is concerned by the weakening of requirements for existing activities. Existing uses are a key component of the existing freshwater issues in Canterbury. They must be part of the solution.
76. The Staff Report recommends:
 - a. Existing farming activities are permitted in orange, green and pale blue areas provided information on the farming activity is provided to Council.⁴⁷
 - b. Existing farming activities are permitted in red areas provided information on the farming activity is provided to Council or, if there is a high nutrient risk farming activity occurring on the property, a farm environment plan is prepared and audited.⁴⁸
77. The recommended definition of “high nutrient risk farming activity” is.⁴⁹

High nutrient risk farming activity means any one or more of:

⁴⁶ Staff Report, vol 2, pg 86

⁴⁷ Staff Report, vol 2, pg 129

⁴⁸ Staff Report, vol 2, pg 129

⁴⁹ Staff Report, vol 2, pg 87

1. *feeding cattle on a fodder crop that has been established on irrigated land;*
 2. *arable farming or horticulture (excluding grapes);*
 3. *farmed pigs; or*
 4. *irrigated dairy.*
78. The requirement to prepare and audit a farm environment plan does not necessarily ensure a standard is achieved. In red areas it is necessary to ensure there is no increase in nutrient discharges. EDS submits that existing activities should be permitted only if it can be shown that there will be no net increase in nutrients discharged from the property.
79. EDS is concerned that the rules proposed for changed activities are inadequate.
80. The Staff Report recommends:
- a. Changed farming activities in orange areas are restricted discretionary activities if a farm environment plan is prepared and audited.⁵⁰
 - b. Changed farming activities in red areas are discretionary activities.⁵¹
81. The recommended definition of “changed” is:⁵²

Change in farming activity means any one or more of:

1. *irrigation of all, or any part of, a property that was un-irrigated at 11 August 2012;*
2. *an increase in the consented volume of water available to be used on the property compared with that consented at 11 August 2012;*
3. *greater than a 10% increase in the annual average stock units carried on the property, compared with the annual average stock units averaged over 1 July 2010 to 30 June 2013; or*
4. *greater than a 20% increase in the annual horticultural or arable yield, compared with the annual horticultural or arable yield averaged over the period 1 July 2010 to 30 June 2013.*

and “Changed” in relation to the nutrient management policies and rules has the same meaning.

⁵⁰ Staff Report, vol 2, pg 130

⁵¹ Staff Report, vol 2, pg 130

⁵² Staff Report, vol 2, pg 82-83

82. EDS submits that changed farming activities in red areas should be prohibited activities, unless a maintenance or reduction of nutrient discharges can be proven. If the plan provides otherwise it will be inconsistent with Part 2 of the RMA, the NPSFM and the CRPS.

GENERAL POINTS

SECTIONS 6 TO 15

83. EDS supports the development of region-wide and catchment-specific provisions. However, EDS is alarmed that the sub-regional sections do not yet contain limits and are not expected to do so until 1 July 2017. Inconsistently, the Staff Report indicates that some sub-regional chapters are not expected to be notified until 2019/20.⁵³
84. The NPSFM requires Councils to establish freshwater objectives and set freshwater quality limits and environmental flows and/or levels for all bodies of fresh water in their regions.⁵⁴ This recognises that hard limits are required to ensure freshwater objectives are achieved and that ad hoc, reactive resource consenting processes cannot adequately manage freshwater.
85. The objectives of the Proposed Plan and Canterbury RPS will not be achieved without limits. For this reason EDS submitted that the Proposed Plan needs to set a more ambitious timeframe for the establishment of limits.

RELATIONSHIP WITH OTHER REGIONAL PLANS

86. There are currently a number of regional plans that control specific aspects of land and water separately. These will continue to operate separately from the Proposed Plan until they are reviewed, or a catchment specific collaborative process is undertaken to review limits. In the interim, the relevant separate plan prevails over the Proposed Plan.
87. Some of these plans (such as the Waimakariri River Regional Plan 2004) are a number of years old and pre-date preparation of the CWMS and the NPSFM. A regional plan must not be inconsistent with any other separate regional plan on the same subject matter.⁵⁵ In these cases EDS submits that the general policies and rules contained in the

⁵³ Staff Report, vol 1, pg 37-38

⁵⁴ NPSFM, policy A1 and B1

⁵⁵ RMA, s 67(4)

Proposed Plan provide a more up-to-date management regime and therefore should prevail over the separate plan.

ECONOMIC WELLBEING

88. The role of the council under the RMA in regards to economic, social and cultural wellbeing is essentially a passive one. It is to enable people and communities to provide for their wellbeing, not to direct how that is to be achieved.⁵⁶ Therefore while it is appropriate to ensure that regulation is not so onerous as to prevent people and communities providing for their wellbeing, it is not the role of the Council to direct how people and communities should provide for their wellbeing. It is up to the market and other forces to inform people and communities how best to provide for their wellbeing.
89. The RMA requires plans to *enable* sustainable development. EDS requests that the distinction between enabling, and promoting, is kept in mind when decisions are made on the Proposed Plan.

CONCLUSION

90. It is EDS's submission that the Proposed Plan does not give effect to Part 2 of the RMA, the NPSFM, and the CRPS. Furthermore, it does not give particular regard to the CWMS or adequately provide for the need for a cautionary approach.
91. Significant amendments are required to provide for these matters. EDS has addressed a number of these matters today and would also like to acknowledge the matters raised by Fish and Game earlier this week.

DATED this 10th day of April 2013

Nicola de Wit
Legal Advisor, Environmental Defence Society

⁵⁶ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59