

**BEFORE THE INDEPENDENT COMMISSIONERS**

**UNDER** the Resource Management Act  
1991

**IN THE MATTER** of the proposed Canterbury Land  
and Water Regional Plan

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**LEGAL SUBMISSIONS ON BEHALF OF NELSON/MARLBOROUGH,  
CENTRAL SOUTH ISLAND AND NORTH CANTERBURY FISH AND GAME  
COUNCILS**

**8 APRIL 2013**

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## INTRODUCTION

1. Canterbury is one of the key regions in the country for sports fishing and game bird hunting opportunity<sup>1</sup>. Rivers, streams, wetlands and lakes in Canterbury are highly valued by Fish and Game, and the anglers and hunters that it represents, for their nationally and regionally significant trout and salmon fisheries, game bird habitat, and outstanding scenic and amenity values. Many water bodies in the Canterbury region have become partially or severely degraded, largely as a result of water abstraction and land use intensification.
2. Fish and Game is the statutory manager for sports fisheries and game birds and as such has been involved in numerous planning processes in Canterbury to achieve an appropriate management of freshwater resources. This has included submissions on variations to the Natural Resources Regional Plan ("NRRP") involvement in the Canterbury Water Management Strategy ("CWMS"), the Regional Policy Statement ("RPS"), the National Policy Statement on Freshwater Management ("NPSFW") and various water conservation order applications in Canterbury.
3. Fish and Game supports the intent of Environment Canterbury in developing an integrated catchment land and water plan to address the regionally significant resource management issues. However Fish and Game submits that the pCLWRP does not meet the requirements of Part 2 of the Resource Management Act 1991 ("RMA"), does not give effect to the NPSFW or the RPS and does not adequately address the significant water quality and quantity issues Canterbury faces.
4. Fish and Game acknowledges that freshwater, and its consumptive use, is a key driver of the local and regional economy. It also has intrinsic and non-consumptive values such as aquatic ecosystems values including sustaining the diversity of aquatic species that inhabit it, life supporting capacity, amenity and recreational values.

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<sup>1</sup> 30% of the fishing licences sold nationally are sold in Canterbury

Freshwater in a healthy state provides for tourism which is significant to the region, promotes peoples' wellbeing and also provides a resource for future generations.

5. Fish and Game seeks an outcome that enables people to provide for their social, economic and cultural wellbeing, while ensuring that these rivers, lakes and wetlands continue to be available for future generations to enjoy, that their life-supporting capacity is safeguarded and that the degradation that so many other rivers in New Zealand have suffered is avoided.
6. Fish and Game's key concerns with the proposed Canterbury Land and Water Regional Plan ("pCLWRP") are that it establishes an "interim" regime that will be in place for an unknown period that has material shortcomings:
  - a. Values of waterbodies are not identified such as trout fishery, trout spawning, wildlife habitat, wetlands, contact recreation, amenity, aesthetics and natural state.
  - b. Enforceable water quality and quantity limits have either not been set or are not set at a level sufficient to protect the values of waterbodies (such as instream DRP and SIN concentrations, minimum flows, core allocations).
  - c. Water quality is not likely to be maintained where it is currently in a good or adequate state. Contamination from diffuse and point sources will be increased rather than phased out.
  - d. Water quality is not likely to be restored where it is currently degraded.
  - e. Water takes are likely to be allowed above sustainable levels that will compromise ecosystem and recreation values. Over-allocation is not likely to be phased out.
  - f. There is no meaningful incentive for efficiency of water use.
  - g. There will likely be unsustainable land use and intensification.
  - h. Life-supporting capacity will not be safe-guarded.

7. What compounds these shortcomings is the fact that critical policies and rules refer to, and rely upon, parts of the plan that are yet to be developed and go through the Schedule 1 process. Key strategic policies refer to water quality and quantity limits set in Sections 6 – 15, as providing the means by which fresh water outcomes will be achieved – however in most cases these sections are yet to be completed.<sup>2</sup> 'Activity and Resource' policies are also reliant on the yet to be drafted sub-regional sections, or strategic policies such as 4.1 that rely on those sections.<sup>3</sup> Therefore the effectiveness of these policies simply cannot be assessed. These policies are reliant on rules and provisions that do not exist.
8. And in the interim, for both water quality and quantity, the default reference is simply Table 1 (a – c), which contains water quality standards, and narrative objectives in respect of flow regimes. Yet the rules make no connection to Table 1 (a – c) – its limits are not imposed directly, it is not referred to as a matter of discretion – it is not integrated into the rule framework.
9. Fish and Game is not opposed to agricultural production in Canterbury, but submit that it must occur within natural resource limits. Fish & Game want a sustainable outcome not a total ban on any particular activity. The framework Fish and Game propose that will allow for further sustainable development will be detailed in Hearing Group 2.
10. Fish and Game's primary aims in regards to this process is to ensure **this** Plan (and not future plan changes):
  - a. Safeguards life supporting capacity;
  - b. Protects natural character;
  - c. Identifies all wetlands as significant and protects them;

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<sup>2</sup> pCLWRP, policies 4.1, 4.5, 4.6, 4.7

<sup>3</sup> Ibid, policies 4.11, 4.13, 4.28, 4.31, 4.32, 4.33, 4.34, 4.37, 4.38, 4.43, 4.64,

- d. Includes schedules which clearly identifies important values of waterbodies;
  - e. Establishes numerical limits to protect these values
  - f. Maintains water quality and water quantity (hydrology) where it is currently at a state sufficient to provide for these values and
  - g. Where degraded or overallocated improves water quality and addresses overallocation.
11. Fish and Game's relief for the Plan is therefore intended to:
- a. Identify values relevant to section 6 and 7 principles supported by water bodies.
  - b. Specify the objectives in respect of freshwater generally, and values specifically, that give effect to the purpose of the Act and the NPSFW requirements.
  - c. Set limits that will achieve the overarching objectives as well as the objectives in respect of specific values.
  - d. Establish a policy and rule framework that will improve outcomes for freshwater:
    - i. Where water quality and quantity is not in breach of limits, allow for efficient use of the water, while ensuring limits are not breached.
    - ii. Where water quality or quantity are in breach of limits, set up a framework that phases out over allocation and contamination of freshwater, and works towards the limit as a target to be reached over time.
  - e. This framework needs to be a complete, integrated planning regime that can be shown to be an efficient and effective means of achieving the purpose of the Act and relevant statutory tests.
  - f. This framework also needs to enable and sustain on-going use of water by communities and businesses.

12. By way of contrast the pCLWRP:
- a. Does not identify relevant section 6 and 7 values.
  - b. Does not set "hard" enforceable limits aimed at protecting life supporting capacity or other values.
  - c. Does not establish an integrated, whole effective planning regime.
  - d. Is not backed up by scientific or technical information that can be used to assess the effectiveness of efficiency of the plan framework.
  - e. Does not give effect to the purpose of the Act, the NPSFW nor the RPS.
  - f. Includes policies and rules which are reliant on yet to be drafted sub regional sections and Schedule 8 (industry derived nitrogen discharge allowances). These provisions will be unable to be implemented.
13. Because of these fundamental concerns, Fish and Game not only submitted seeking a very detailed re-draft of the plan. Fish and Game also sought at point 33.27 of its submission that the plan be withdrawn. Fish and Game remain of the view that given what it considers fundamental flaws in the plan, and the process by which it was developed, that it should be withdrawn.
14. These are Fish and Game's main concerns with the pCLWRP regarding Hearing Group 1 issues. Other issues addressed in the Hearing Group 1 context include technical detail relating to definitions,<sup>4</sup> discharges (not farming) particularly with regards to effects on wetlands,<sup>5</sup> water takes,<sup>6</sup> beds of lakes and rivers,<sup>7</sup> damming and diversion.<sup>8</sup>

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<sup>4</sup> Philip Percy, Evidence in Chief February 2013, page 48 - 50

<sup>5</sup> Ibid, pages 50 – 55 and 61 - 65

<sup>6</sup> Ibid, pages 55 - 58

## STATE OF CANTERBURY'S WATER

15. The picture is grim. 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 nitrogen<sup>9</sup>. Macroinvertebrate communities, which are indicators of ecosystem health or life supporting capacity in these lowland waterbodies, are degraded.<sup>10</sup> This is from intensification of agriculture in the lower reaches of these systems. Banks Peninsula streams are currently in reasonable state but trending down.
16. High country lakes in Canterbury generally have good water quality with low concentrations of nutrients and phytoplankton. However, lowland lakes in Canterbury, such as Ellesmere/Te Waihora and Forsyth/Te Roto o Wairewa, 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<sup>11</sup>.
17. The pattern of increasing degradation due to increased nutrient concentration has also been observed elsewhere around New Zealand and is consistent with pastoral expansion and intensification and the increased use of nitrogenous fertilisers<sup>12</sup>.
18. The poor state of Canterbury's lowland rivers and lakes is a serious concern and appears to be getting worse. Ecosystem health in many of these systems is degraded and needs severe and urgent attention if

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<sup>7</sup> Ibid, page 58

<sup>8</sup> Ibid, pages 58 - 61

<sup>9</sup> Roger Young, Evidence in Chief pCLWRP February 2013, page 3

<sup>10</sup> Russell Death, Evidence in Chief, pCLWRP, February 2013, pages 8 - 9

<sup>11</sup> Roger Young, Evidence in Chief, page 4

<sup>12</sup> Ibid, page 4

it is to be improved<sup>13</sup>.. This state of affairs is disappointing and requires action now, not later, to remedy it. The current state of freshwater resources in Canterbury are a reflection of historic and current unsustainable management. Canterbury is not unique in this regard. There is widespread decline of aquatic biodiversity and water quality in New Zealand<sup>14</sup>.

19. As noted by the New Zealand Freshwater Science Society at their annual conference in 2012 (**Appendix 1**), "*failure to act with decisiveness and urgency risks further environmental degradation and erosion of our international environment reputation and branding. The possibilities of more waterborne illness, serious contamination and depletion of groundwater aquifers, and the extinction of native fish species will depend on reversing strong detrimental trends*"<sup>15</sup>. Fish and Game submit that the pCLWRP is far from a decisive and urgent act. It will allow degradation to continue rather than halting it, let alone reversing it.
20. When addressing the degrading and degraded nature of the waterways in the Manawatu-Wanganui region, in the context of the One Plan, Judge Thompson's division of 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***

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<sup>13</sup> Roger Young, Evidence in Chief, paragraph 14

<sup>14</sup> New Zealand Freshwater Science Society – key closing messages. 10 December 2012. <http://freshwater.science.org.nz/index.php/news/media-statement-nzfss-key-closing-messages/>

**Appendix 1.**

<sup>15</sup> <http://freshwater.science.org.nz/index.php/news/media-statement-nzfss-key-closing-messages/>



*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. To fail to take available and appropriate steps within the terms of the legislation just cited would be inexcusable<sup>16</sup>.*

21. In this regard Canterbury is in a similar situation to the Manawatu-Wanganui region. Decisive action is required:

*[5-217] But we are convinced by the evidence we heard and accept that decisive action on the planning front is necessary now to minimise the risk of serious damage to the ecosystems which support plant, animal and human life, which contribute greatly to the economic, social and cultural wellbeing of the region and its communities.<sup>17</sup>*

## **VALUES – CANTERBURY'S FISHERIES AND WILDLIFE**

22. Before moving onto the legal framework and Fish and Game's proposed amendments to the plan, I want to firstly detail the values that Fish and Game are trying to protect. Despite the degradation referred to above. Canterbury has a highly popular and diverse sport fishery compared to many parts of New Zealand. The region is best known nationally and internationally for its impressive Chinook salmon fishery and has widespread brown and rainbow trout fisheries. The fisheries in the lowland streams have been degraded but are still valued, and the high country angling is still of a very high quality and reputation<sup>18</sup>. Around 30,000 sports fishery licenses are issued in Canterbury each year<sup>19</sup> representing about 30% of the number of sports fishing licences nationally. This number of licences issued equates to a minimum of about 43,000 participants in Canterbury when taking into account that multiple participants are listed on a family licence. Gamebird hunting is also a popular recreation in Canterbury<sup>20</sup>.

23. The values and uses of freshwater in respect of which Fish and Game advocate are:
- a. Life supporting capacity;

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<sup>16</sup> *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 324 at page 5-5 to 5-6

<sup>17</sup> *Day v Manawatu-Wanganui Regional Council*, page 5-76

<sup>18</sup> Neil Deans, Evidence in Chief pCLWRP February 2013, pages 7 – 8

<sup>19</sup> Mark Webb, Evidence in Chief pCLWRP February 2013, page 2

<sup>20</sup> Neil Deans, Evidence in Chief, page 8 – 9, 17 and 45

- b. Trout and salmon habitat;
  - c. Amenity values; and
  - d. Natural character.
24. Identifying values as the starting point in this exercise is the foundation upon which the planning framework can be based, as defining objectives and setting limits cannot be done in the absence of knowing what values are present, what state they are in and what is required to provide for them.
25. The pCLWRP as notified has very limited identification of values supported by waterbodies – Schedule 17 only identifies salmon and inanga spawning values, and limited water bodies are identified in some of the sub regional chapters in sections 6 – 15 as having "high naturalness" and other characteristics (i.e. values). The NRRP previously identified which management units should be managed for values such as aquatic ecosystems, significant habitat for salmonids, amenity values, contact recreation, Ngāi Tahu cultural values, stock water drinking, healthy estuaries and coastal lakes.<sup>21</sup> The pCLWRP inexplicably did not carry through this general identification of the values supported by the different management units in Table 1.
26. Fish and Game propose identification of values in two parts of the plan. Firstly, similar to the NRRP's Table WQL5, we propose reinsertion of the values for which the various management units should be managed into Table 1a. Secondly, Fish and Game proposes insertion of a new detailed Schedule XX that identifies the relative importance of a water body, and whether it supports salmonid habitat, naturalness and amenity values such as angling, kayaking and jetboating (developed in consultation with kayaking and jetboating submitters).

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<sup>21</sup> Table WQL5 Water Quality Outcomes, page 4 – 27, Natural Resources Regional Plan

27. The process of developing Schedule XX utilised the extensive experience and knowledge of Fish and Game staff. In the North Canterbury, Nelson/Marlborough and Central South Island regions, Fish and Game staff collectively assessed each water body to select the values applicable to them in Schedule XX<sup>22</sup>. Staff considered available research, management plans and expert evidence to select the values for each water body.<sup>23</sup>
28. It is acknowledged that Schedule XX is not fully propagated for the whole region at this time. Further work is required from additional groups but it is submitted that Schedule XX could still be introduced at this stage of the plan making process<sup>24</sup>. The absence of information from other parties is not a reason to include relevant information which is available. Fish and Game has however liaised with Whitewater New Zealand and Jetboating New Zealand to include recognition of their values in the schedule. It is noted that some of the "ticks" for values were omitted from the version as appended to Neil Deans' and Phillip Percy's evidence. These have now been remedied and a correct version is tabled to replace that in the evidence.
29. Schedule XX will provide a useful reference for decision-makers and for people considering undertaking activities<sup>25</sup>. Schedule XX will also provide a template for the refinement of other freshwater objectives/outcomes that are identified and will assist in the development of the sub-regional chapters.<sup>26</sup> Additionally, Schedule XX can serve as a base document as plan changes are prepared over time, the specific environmental outcomes for each sub-region can be determined and included in Schedule XX. Schedule XX will allow for refinement as need be and assist in targeting specific management actions at identified key areas. It is submitted that this level of specificity will assist the integrated management of freshwater outcomes<sup>27</sup>.

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<sup>22</sup> Ross Millichamp Evidence in Chief pCLWRP February 2013, page 27 at [70]

<sup>23</sup> Neil Deans Evidence in Chief, page 41 at [97]

<sup>24</sup> Philip Percy Evidence in Chief pCLWRP February 2013, page 47 at [130]

<sup>25</sup> Ibid, page 47 at [130]

<sup>26</sup> Ibid, page 47 at [132]

<sup>27</sup> Ibid, page 47 at [132]

30. With the values identified, the following can then be undertaken:
- a. Objectives in respect of the values specified
  - b. Limits set to achieve the objectives, with reference to values
  - c. Rules established in the Plan that provide for management within the limits or, where limits are exceeded, towards the limits as targets.; and
  - d. Specific consent decisions or allocations made for water, its instream assimilative capacity or for instream activities, with reference to values that may be affected.
31. Without these values identified, appropriate limits cannot be set and the on-going degradation of these values is likely to occur such as alluded to in the evidence of Fish and Game's witnesses.

## LEGAL FRAMEWORK

32. A succinct working summary of the matters to be taken into account in assessing and approving regional plans is found the Court's decision in respect of the proposed "One Plan" appeals:

*[1-13]Drawn from the Act, we set out a working summary of the matters to be taken into account in assessing and approving Regional Policy Statements and Regional Plans:*

...

### **Regional Plans**

*1. The purpose of a regional plan is to assist a regional council to carry out its functions in order to achieve the purpose of the Act (s 63).*

*2. When preparing its regional plan the regional council must give effect to any national policy statement or New Zealand Coastal Policy Statement (s 67(3)).*

*3. The regional plan must not be inconsistent with any other regional plan for the region or a water conservation order or a determination of the Chief Executive of the Ministry of Fisheries about aquaculture permits (s 67(4)).*

*4. When preparing its regional plan the regional council shall:*

*(a) have regard to any proposed regional policy statement in the region (s 66(2));*

*(b) give effect to any operative regional policy statement (s 67(3)(c));*

*(c) have regard to the extent to which the plan needs to be consistent with the regional policy statements and plans or proposed regional policy statements and plans of adjacent regional councils (s 66(2)(d)).*

5.A regional plan must also record how it has allocated a natural resource under s 30(1)(fa) or (fb) and (4), if it has done so (s 67(4)).

6. When preparing its regional plan the regional council shall also:

- have regard to the Crown's interests in land of the Crown in the CMA (s 66(2)(b));
- have regard to any management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations (s 66(2)(c));
- take into account any relevant planning document recognised by an iwi authority (s 66(2A)(a)); and
- not have regard to trade competition (s 66(3)).

7.A regional council must prepare a regional plan in accordance with its functions under s 30, the provisions of Part 2, any direction given by the Minister for the Environment, and its duty under s 32 and any regulations (s 66).

8.A regional plan must also state its objectives, policies to implement the objectives and the rules (if any) (s 67(1)) and may (s 67(2)) state other matters.

9.the rules (if any) are for the purpose of carrying out its functions (other than those in s 30(1)(a) and (b)) and achieving the objectives and implementing the policies of the plan (s 67(1)(c) and s 68(1)).

10. In making a rule the regional council shall have regard to the actual or potential effect on the environment of activities (s 68(3)).<sup>28</sup>

## Part 2 matters

33. The sustainable management purpose of the Act requires that the use, development, and protection of natural and physical resources is managed in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing only while and to the extent that<sup>29</sup> the matters set out in subsections 5(2)(a) and (b) are achieved, namely:
- a. Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
  - b. Safeguarding the life supporting capacity of air, water, soil and ecosystems
34. Section 5 is therefore interpreted as requiring that management of resources for the enabling elements of section 5 are "*constrained by the sustaining, safeguarding and effects based elements in paragraph*

<sup>28</sup> *Day v Manawatu-Wanganui Regional Council*, page 1-6

<sup>29</sup> Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management, January 2010 at para 36

(a), (b) and (c)."<sup>30</sup> The summary of the relationship between the parts of section 5 from the One Plan decision is of assistance in this regard:

*[5-215...]There can be no doubt of course that enabling ... people and communities to provide for their ... economic ... wellbeing ... includes so enabling the farmers and communities of the region. But that part of the purpose is not absolute, or necessarily even predominant. It must be able to coexist with the purposes in subparas a), b) and c). For the reasons already traversed, unless effective and thorough steps are taken to manage N leaching from the region's farms, none of those three purposes will be met.*<sup>31</sup>

35. Sections 6 and 7 are there to "inform and guide" your ultimate decision as to whether the plan will enable the council to exercise its functions and achieve the purpose of the Act. As stated by Judge Whiting's division when considering Trustpower's proposed hydro scheme on the Wairau:

*"This exercise is not a mechanistic checklist or simple score sheet. Nor do we consider s 6 matters to somehow trump or override s 7 matters. We must take all these matters into careful consideration."*<sup>32</sup>

36. Section 6 (a), (b) and (c) require decision-makers to recognise and provide for the preservation of the natural character of wetlands, lakes, rivers and their margins; protection of outstanding natural features and landscapes; and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as matters of national importance. As noted by Judge Thompson in the One Plan decision:

*[5-214] ...The natural character of wetlands, lakes and rivers will certainly not be preserved from inappropriate use if they are made to decline in quality to the point of unusability and even toxicity by inadequate management of activities on the surrounding land. Nor will the indigenous vegetation, and particularly the indigenous fauna which have their habitats in that water, be protected.*<sup>33</sup>

37. The Court in *Kuku Mara Partnership v MDC*<sup>34</sup> accepted the definition of "natural character" as:

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<sup>30</sup> Ibid, para 24

<sup>31</sup> *Day v Manawatu-Wanganui Regional Council*, page 5-76

<sup>32</sup> *Director General of Conservation v Marlborough District Council*, 403, para 760

<sup>33</sup> *Day v Manawatu-Wanganui Regional Council*, page 5-75, TBC

<sup>34</sup> *Kuku Mara Partnership v MDC* (unreported, Environment Court, W037/05, 27 April 2005, Thompson J and Commissioners Howie and Mills) at paragraph 26 and *Pigeon Bay Aquaculture Limited v Canterbury Regional Council* (unreported, Environment Court, C179/03, 17 June 2004, Jackson and Commissioner Howie

- [26] *Natural character is the term used to describe the natural elements of all coastal environments. The degree or level within an area depends on:*
- 1 *The extent to which natural elements, patterns and processes occur;*
  - 2 *The nature, and extent of modifications to the ecosystems and landscape/seascape;*
  - 3 *The highest degree of natural character (greatest naturalness) occurs where there is less modification;*
  - 4 *The effect of different types of modification upon natural character varies with context and may be perceived differently by different parts of the community.*

38. In respect of rivers and lakes the water and the flow regime are very important aspects of natural character. If water quality is significantly degraded, or if abstraction has resulted in significant changes to mean and median flows<sup>35</sup>, the adverse effects on natural character are correspondingly significant.

39. Section 6(c) is particularly relevant to Fish and Game due to the importance of wetlands as habitats for gamebirds, and areas that provide recreational amenity opportunities. As recorded by the High Court in the *Shearer*<sup>36</sup> case in respect of the *West Coast*:

*"[5] The management of wetlands is a crucial biodiversity issue in many parts of New Zealand. Up to 90% of New Zealand's wetlands have been lost since 1840."*

### Section 7

40. Section 7(aa), (c), (d), (f), (g), and (h) also require decision-makers to have particular regard to the ethic of stewardship; the maintenance and enhancement of amenity values; the intrinsic values of ecosystems; the maintenance and enhancement of the quality of the environment; and the protection of the habitat of trout and salmon. When addressing the matters under s 7 (a) (aa), (b), (c), (d), (f), (g) and (h) Judge Thompson in the One Plan decision noted:

*[5-213]...  
Kaitiakitanga and the ethic of stewardship both embrace the concept that the present generation should husband natural and physical resources both for their own sake and for the sake of future generations — a concept that re-emerges in s 5. **Allowing water resources to deteriorate to the point of being unusable and even toxic is the antithesis of that.** Nor is it efficient to use and develop the land and water resource in such a way that one's usefulness is destroyed by management practices, or the lack of them, on*

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<sup>35</sup> *Director General of Conservation v Marlborough District Council*, para 607

<sup>36</sup> *West Coast Regional Council v Shearer*, CIV-2010-409-002466

*the other. Amenity values and the quality of the environment will not be maintained, and certainly not enhanced, by such profligate use. The capacity of the region's water to withstand such treatment is finite, and the overloading of waterways with nutrients lost from farming activities will eventually destroy the habitat of trout in many of them.*<sup>37</sup>

41. The Board of Inquiry's Report and Recommendations into the Proposed National Policy Statement for Freshwater Management listed instances of intrinsic values of freshwater as they relate to safeguarding the life-supporting capacity of freshwater and sustaining its potential to meet the reasonably foreseeable needs of future generations. The Report helpfully observed that:

*[41] Intrinsic values of freshwater are substantial in themselves. Maintenance, restoration and enhancement of them is not subordinate to economic values of freshwater for potential use for people and communities' wellbeing.*

#### *Enhancement*

42. Maintaining and enhancing amenity values and the quality of the environment generally feeds directly into the s 5 requirement that people's cultural, social and economic wellbeing be enabled. The recreation, leisure and even businesses of kayakers, rafters, river bugging enthusiasts, anglers, jetboaters, hunters, picnickers, dog walkers and tourism operators are all reliant on the maintenance and enhancement of healthy water bodies.
43. In *Rangitata South Irrigation Ltd v New Zealand and Central South Island Fish and Game Council*<sup>38</sup>, Judge Jackson (when discussing Part IX of the Act Water Conservation Orders) confirms that Part II allows for the **enhancement** of the environment both in the planning and consenting process:

*[51] A regional water plan is prepared subject to Part 2 of the Act without modification, so different, and more familiar tests apply under sections 5 to 8 of the Act. **They authorise remedying of adverse effects and enhancement of resources (where appropriate).***

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<sup>37</sup> *Day v Manawatu-Wanganui Regional Council*, page 5-75

<sup>38</sup> (Unreported, C109/2004, Environment Court, 5 August 2004, Judge Jackson)



44. The Court in *Re Talley MA and Others*<sup>39</sup> affirms *Rangitata* and the argument that Part II provides for the enhancement of water resources.

[51] *We keep in mind, of course, that the [Part 9] conservation purpose does not encompass the enhancement or improvement of the waterway and thus potential for improvement to the riparian margins or the like are not matters which impact upon the conservation purpose. This is one of the significant differences between the Resource Management Act general provisions under Part 2 and the specific water conservation provisions under Part 9.*

45. This point was also made by the Court in *J F Investments Limited v Queenstown Lakes District Council* C 48/2006 at paragraph 28, quoted previously in these submissions.

[28] *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). For example air and water quality were in the past regarded as public goods, people could pollute water nearly (subject to the common law of nuisance) as much as they wished. 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.*

46. Counsel submits that current environment in this case is clearly nowhere near “the best” it could be, and that a Plan that ensures enhancement, in accordance with these principally in section 7, is justified.

#### *General comment*

47. Comprehensive identification of values in the manner proposed by Fish and Game is the first step towards ensuring the values identified in sections 6 and 7 can first be **recognised** then provided for (or had regard). For example the requirement in s 7(h) that particular regard be had to the protection of habitat of trout and salmon of necessity

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<sup>39</sup> Unreported, C102/07, Environment Court, 3 August 2007, Judge Smith

requires specification of where it applies and what is required to achieve that protection.

48. If values are not identified at the outset, it is difficult to effectively give the matters those principles address appropriate weight

### **NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT**

49. Fish and Game submits that the pCLWRP fails to give effect to the NPSFW for the following reasons.

- a. It does not establish clear freshwater objectives that define environmental outcomes;
- b. It does not set limits for water quality or in many cases water quantity, albeit it does include some limits for water quantity in the sub-regional chapters for specific water bodies;
- c. The pCLWRP allows for further degradation in water quality either through permitted activity rules or via resource consents,<sup>40</sup> and

50. To understand why the pCLWRP fails in the above ways it is important to mention the very basics of planning. The objectives of a plan identify the resource management outcomes. The policies are the defined courses of action to implement the plan's objectives.<sup>41</sup> Then the rules in a plan implement the policies.

#### *Values*

51. To give effect to the NPSFW values need to be identified. Policies A1 and B1 require that plans establish freshwater objectives. A "freshwater objective" is defined as describing the "intended environmental outcome", which Fish and Game submits relates directly back to what the environmental values are.

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<sup>40</sup> Phillip Percy, Evidence in Chief pCLWRP February 2013, page 9 at [34]

<sup>41</sup> *Auckland Regional Council v North Shore City Council* [1995], 3 NZLR 18, 22f; [1995] NZRMA 424, 430, 1 BELRNZ 426, 433

*Water quality*

52. The NPSFW sets objectives directing Councils to safeguard the life supporting capacity of fresh water, and to maintain and improve overall water quality<sup>42</sup>.
53. The related policies require Councils to ensure regional plans:
- a. Establish freshwater objectives and set freshwater quality limits to give effect to the NPSFW objectives;<sup>43</sup>
  - b. Establish methods (including rules) to avoid over-allocation<sup>44</sup>;
  - c. Where water bodies do not meet the freshwater objectives, to specify targets and implement methods to assist the improvement of water quality, and meet those targets in a defined timeframe<sup>45</sup>. "Target' is a limit which must be met at a defined time in the future"<sup>46</sup>;
54. However, the pCLWRP states that its rules are the "limits" to be used to achieve the objectives and outcomes<sup>47</sup>. However, a **rule** cannot also be a target. It is submitted that the PCLWRP cannot give effect to the NPS policies A1 or A2 because limits and targets are not specified in an appropriate and workable way. Another difficulty with the use of rules as a way of defining limits is when accounting for the activity status hierarchy and the way in which resource consent decisions are made.<sup>48</sup>. The rules do not act as "hard" limits, but instead trigger a different resource consent status. The permitted activity rules include numerical conditions or standards, which could be described as limits where those standards were not able to be exceeded. However, non-compliance with permitted activities standards will simply indicate that a resource consent is necessary because the activity is now discretionary. No hard limits are imposed in the pCLWRP to protect life-supporting capacity or other values. This is left to be addressed on a case-by-case basis.

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<sup>42</sup> Objectives A1 and A2

<sup>43</sup> Policy A1(a)

<sup>44</sup> Policy A1(b)

<sup>45</sup> Policy A2

<sup>46</sup> NPSFW interpretation

<sup>47</sup> Section 2.6 pCLWRP

<sup>48</sup> Phillip Percy, Evidence in Chief, page 23 at [64]

55. Having variable limits (i.e. open ended rules) makes identifying situations of over allocation problematic if not impossible in a NPSFW context.<sup>49</sup>

*Water quantity*

56. The NPSFW sets objectives directing Councils to safeguard the life-supporting capacity and ecosystem processes of fresh water in sustainably managing the taking, use, damming and diverting of fresh water, and to avoid, and phase out any existing, over-allocation<sup>50</sup>.
57. The related policies require Councils to ensure regional plans:
- a. Establish freshwater objectives and set environmental flows and/levels for all water bodies to give effect to the NPSFW objectives<sup>51</sup>;
  - b. Provide for efficient allocation within these limits<sup>52</sup>;
  - c. Ensure that no decision will likely result in any future over-allocation<sup>53</sup>;
  - d. Set defined timeframes and methods to phase out any existing over-allocation<sup>54</sup>.
58. In the pCLWRP there are no policies that set out a meaningful "course of action" to phase out over-allocation and set environmental flows.

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<sup>49</sup> Ibid, page 24 at [65]

<sup>50</sup> Objectives B1 and B2

<sup>51</sup> Policy B1

<sup>52</sup> Policy B2

<sup>53</sup> Policy B5

<sup>54</sup> Policy B6

### *Integrated management*

59. The NPSFW includes objectives and policies directing Councils to improve integrated management of fresh water and land use and development<sup>55</sup>. However, given that key parts of the pCLWRP structure are not complete, such as the empty Schedule 8 that will set out nutrient discharge allowances, and the sub-regional chapters, it cannot be concluded that the pCLWRP gives effect to the integrated management requirements of the NPSFW. These rules have legal effect, but cannot in reality be applied.<sup>56</sup>
60. While it is possible to conclude that the pCLWRP sets up a *framework* for region wide integrated management, it does not deliver it. The staggered introduction of sub regional sections and key instruments such as Schedule 8 risks the creation of a disjointed, dysfunctional plan, unless there is a directive region-wide frame work that will "marshall" all future sub-regional sections as a sort of "touchstone".<sup>57</sup>

### *Conclusion*

61. To give effect to the NPSFW, it is submitted that three things need to occur in relation to the objectives in the pCLWRP and Table 1 (and other limits):
- a. The limits need to be set at the level at which the values (purposes for management) and other freshwater objectives will be met;
  - b. The objectives in the plan need to reinforce the mandatory nature of the limits, albeit that the limits may not be achievable in the short to medium term (in which case they are targets in accordance with the NPSFW);
  - c. A set of timeframes (targets) should be established for appropriate management units (which may be catchments, sub-catchments or some other applicable unit) which specify

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<sup>55</sup> Objective C1 and Policies C1 and C2

<sup>56</sup> For example see rule 5.46

<sup>57</sup> Phillip Percy, Evidence in Chief, February 2013, paragraph 47.

the point in time when the limits must be met so that the likelihood of meeting limits at a point in time can be periodically assessed<sup>58</sup>.

62. It is submitted that the changes proposed by Fish and Game will give effect to the NPSFW in this way.

### **CANTERBURY REGIONAL POLICY STATEMENT (RPS)**

63. The RPS establishes a clear set of outcomes<sup>59</sup> which the pCLWRP must give effect to<sup>60</sup>. Fish and Game submits that the pCLWRP generally does not give effect to the RPS<sup>61</sup> for similar reasons as set out above. Of particular relevance to Fish and Game in relation to water quality and quantity are Objectives 7.2.1, 7.2.2, 7.2.3, 7.2.4; and Policies 7.3.1, 7.3.3, 7.3.4, 7.3.6, 7.3.7, 7.3.8 and 7.3.12.:

64. The RPS requires that the following be identified:
- a. Natural character values of fresh water bodies and their margins (policy 7.3.1); and
  - b. Significant indigenous vegetation, habitats, significant cultural values, wetlands, lakes, lagoons and other outstanding water bodies (policy 7.3.3 (1)).

65. It is submitted these values are not identified in the pCLWRP.

66. The pCLWRP does not give effect to the RPS because its Objectives 3.6, 3.7 and 3.10 do not achieve the RPS' requirements in the chapter on ecosystems (Objectives 9.2.1 – 9.3.2). This includes **halting the decline** in the quality and quantity of Canterbury's ecosystems, safeguarding of life-supporting capacity restoration or enhancement, protection, setting the criteria and the priorities for protection. The

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<sup>58</sup> Phillip Percy, Evidence in Chief pCLWRP February 2013, page 32 at [87]

<sup>59</sup> Ibid, page 14 at [52]

<sup>60</sup> Section 67(3) RMA

<sup>61</sup> Fish and Game submission at [20]

pCLWRP's objectives only discuss protection and enhancement of wetlands, maintenance or enhancement of the health of ecosystems in wetlands, etc. Nowhere in the pCLWRP's objectives is 'halt the decline' mentioned or does it set any priorities for protection nor is it apparent will it now, and in the future, safeguard life-supporting capacity.

67. In order to give effect to the RPS the pCLWRP must have a path of action that is clearly going to be effective at "halting the decline", and safeguarding life supporting capacity.
68. Objective 7.2.1 of the proposed RPS enables use of water provided that life supporting capacity, ecosystem processes and natural character are safeguarded. Supporting policies<sup>62</sup> refer specifically to protecting the flows, freshes and flow variability required to achieve this objective and direct a precautionary approach to allocation where effects of water use are unknown or uncertain. Flow variability in this regard is not given sufficient weight in the setting of flow regimes in the pCLWRP<sup>63</sup>, and Rule 5.96 which sets the default minimum flow trigger at 50% of MALF for restricted discretionary activities, is certainly not an application of the precautionary principle<sup>64</sup>.
69. Policy 7.3.1 requires the identification of the natural character values of freshwater bodies and their margins and to preserve, maintain or improve those values, depending on the current state of those values, unless modification of those values is otherwise provided for as part of an integrated solution to water management in a catchment.

## **CANTERBURY WATER MANAGEMENT STRATEGY**

70. Section 63 of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 ("ECan Act")) requires that you have particular regard to the vision and principles of the

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<sup>62</sup> Policies 7.3.4(1)(c) and 7.3.12, RPS

<sup>63</sup> Policy 4.43, pCLWRP

<sup>64</sup> Roger Young, Evidence in Chief, page 5 – 6

CWMS. In terms of the hierarchy of matters for your consideration, the CWMS sits below Part 2 of the Act, the NPSFW and, in Fish and Game's submission, the RPS.

71. The vision of the CWMS generally reflects and is consistent with the sustainable management purpose of Part 2 contained in section 5, although of relevance to Fish and Game it specifically refers to recreational benefits, although these are accorded a lower status which is equivalent to those waters used for abstractive purposes.
72. The CWMS has three primary principles – sustainable management, regional approach and tangata whenua. The CWMS has deliberately set priorities within the primary principle of "sustainable management"<sup>65</sup>. The first order priorities include the environment, which aligns with the NPSFW direction to safeguard the life-supporting capacity of freshwater.
73. Second order priorities identify instream (recreation, amenity) and out of stream (irrigation, renewable energy) values and uses which of course potentially conflict with one another. Supporting principles are natural character, indigenous biodiversity, access, quality drinking water, recreational opportunities, and community and commercial use. A number of the second order priorities and supporting principles within the CWMS reflect section 6, 7 and 8 matters. However, some section 6 and 7 matters are absent from the CWMS<sup>66</sup>, or the weight ascribed to them<sup>67</sup> is different under the CWMS. The weight to be given to those matters should be subject to Councils' duty to prepare the plan in accordance with Part 2 and to give effect to the NPSFW.
74. Counsel for ECan submitted that the hearing panel may consider the entire CWMS, although only the vision and principles have statutory

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<sup>65</sup> Canterbury Water Management Strategy, Strategic Framework – November 2009, page 21

<sup>66</sup> For example, the requirement to have particular regard to the protection of the habitat of trout and salmon under section 7(h).

<sup>67</sup> For example, preservation of natural character and maintenance of public access are matters to be recognised and provided for under s6, but are supporting principles under the CWMS.



weight. We agree that the hearing panel may have regard to the rest of the contents of the CWMS as relevant background material<sup>68</sup>. It should however be given less weight than the vision and principles. In any event, there is nothing in the remainder of the CWMS which Fish and Game particularly wishes to draw the hearing panel's attention to.

### **CHANGES SOUGHT TO THE pCLWRP BY FISH AND GAME**

75. An overview of the changes that Fish and Game seeks to the Hearing Group 1 provisions of the pCLWRP follows. The changes proposed for Hearing Group 1 matters in respect of Objectives, Policies, values and limits in particular form the building blocks for the farming-related rule framework we propose under the Hearing Group 2 heading. Also covered under the Hearing Group 1 heading are policies and rules in relation to abstraction.
76. The proposed changes are explained and set out in detail in the planning evidence of Mr Percy.
77. In some instances, Mr Percy has recommended specific changes to the pCLWRP that were not specifically sought in Fish and Game's submission or further submission but that are generally within the scope of what you may consider. A schedule is **attached** as appendix 2 to my legal submissions setting out where scope derives for each of the changes detailed in Mr Percy's evidence. In some instances, while the identical wording was not sought in the submission, the scope arising from the submission is incredibly broad – particularly in section 33 of the submission, pages 12 – 14, which seeks that a wide range of concerns be addressed by amendments to the plan, and ends by seeking that the plan be withdrawn. In this regard I also adopt the submission of Counsel for Te Rūnanga o Ngāi Tahu on this point, at paragraph 2.3.

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<sup>68</sup> *West Coast Regional Council v The Friends of Shearer Swamp* [2012] NZRMA 45.

78. Fish and Game propose a framework based on the NPSFW structure of Objectives (which describe the environmental outcomes), limits and targets. Emphasis is placed on Tables 1a to 1c in Section 4 of the pCLWRP defining the water quality limits, and a detailed Environmental Flow and Allocation limits policy (Policy 4.1A) that guides defining water quantity limits in Chapters 6-15. Fish and Game also sought the inclusion of Schedule XX, which is intended to define the values for the various water bodies to assist with accurate limit-setting.
79. Fish and Game propose a hierarchy of freshwater objectives specifying intended environmental outcomes. The hierarchy does not indicate relative importance – it is a cascade from general to specific. At the general end of the spectrum are overarching objectives such as safeguarding life-supporting capacity, protecting intrinsic values, safeguarding ecosystem processes, protecting outstanding water bodies, enhancing degraded water bodies and maintaining all other water bodies. These high-level objectives include the narrative objectives in Section 3 of the pCLWRP.
80. The next level identifies in broad terms, the environmental values of water bodies and objectives in respect of those values. This is primarily done in the column proposed for insertion in Table 1a entitled "Freshwater Objectives". The values and objectives in respect of them for the management units are:
- 1 Ensure diverse and abundant aquatic ecosystems of indigenous flora and fauna*
  - 2 Protect habitat of salmonids (trout or salmon)*
  - 3 Maintain amenity values*
  - 4 Ensure water quality is safe for contact recreation*
  - 5 Ensure water is suitable for secondary contact recreation*
  - 6 Safe guard Ngai Tahu cultural values including; mauri, mahinga kai, wahi tapu and wahi taonga*
  - 7 Ensure water is suitable for stock drinking water supply*
  - 8 Support the functioning and health of estuaries and coastal lagoons*

81. Moving down to the next level of specificity relevant to Fish and Game are the set of values identified in Schedule XX. Schedule XX has also had values added to it by the parties representing white water recreation and jetboating. The intended environmental outcome is that the freshwater fishery, angling amenity values and recreation values identified for specific water bodies in Schedule XX are protected/maintained. Where those values have been degraded, the objective is to restore them.
82. Fish and Game submit that all of the above environmental outcomes are "Freshwater Objectives" in the context of the NPSFW, ranging from the general, through to the specific.
83. Limits that describe, and which are needed to achieve, the environmental outcomes are articulated numerically in Fish and Game's versions of Tables 1a to 1c (previously labelled as 'Indicators' in the pCLWRP) and also, in the case of water quantity, in new Policy 4.1A (and Sections 6-15 of the Plan (water flow and allocation regimes). Fish and Game's experts have provided scientifically defensible water quality limits for each of the management units that represent a pragmatic bottom line (limit) for these parameters. In the opinion of Fish and Game's experts the proposed limits balance consideration of current condition, resource use and protection of ecological health values in these waterbodies,<sup>69</sup> and are not the optima that would be advocated if the focus were entirely on ecological values. In Hearing Group 2 Fish and Game proposes a set of rules, that have been tested and modelled, to illustrate that the use of instream limits as targets in an over allocated catchment does not necessarily mean no more development. Enabling the use and development of resources **is** contemplated as part of the complete package proposed by Fish and Game.

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<sup>69</sup> Roger Young, Evidence in Chief, pages 6 – 7, Russell Death, Evidence in Chief, pages 3 - 4

84. When the limits in Tables 1a to 1c are met, then the environmental outcomes are achieved. When the limits are not met, then the environmental outcomes are not achieved and the focus should be on managing fresh water so as to improve to the point where the limits are at least achieved. Where the limits are not currently achieved, then they are seen as "targets" in the context of the NPSFW, and will need to be met at a defined time in the future.
85. Where the environmental outcomes are provided for and the limits are not exceeded, the balance of the fresh water resource may be available for consumptive use if all other relevant RMA tests can be met. In this way, the Table 1a – c and proposed policy 4.1A limits define the amount of resource use available.
86. Recognising that the Management Unit approach of identifying water bodies is a little coarse, Fish & Game proposed in its submission to introduce a new Schedule into the Plan (Schedule XX) that identifies the values of water bodies requiring protection, maintenance or enhancement. This schedule fulfils three purposes:
- a. It identifies the water bodies that have salmonid habitat and angling, whitewater and jet boating amenity values relevant to Tables 1a – 1c freshwater objectives.
  - b. This schedule will form the basis of a finer-grained mechanism for defining the environmental outcomes for specific water bodies, which is to be completed as the more specific sub-regional sections of the Plan are populated. Fish & Game is able to propagate Schedule XX with environmental outcomes that fall within their mandated role (salmonid values) and this will provide certainty for the communities involved in developing the sub-regional chapters of the Plan (the outcomes relevant to Fish & Game will already be provided) and is an efficient way for Fish & Game to articulate its mandated outcomes into the Plan.
  - c. It will inform consent applicants and decision makers of the existence of values in the specified bodies, as a matter that will

need to be addressed in the resource consent process until the sub-regional chapters are operative.

87. The evidence of Neil Deans sets out in more detail the relationship between the objectives established in Table 1 and salmonid fishery values defined in Schedule XX.<sup>70</sup>

## **WATER ALLOCATION**

88. Key considerations for Fish and Game in relation to flow regimes:
- a. Minimum flows that enable fish passage;
  - b. Flow variability and the frequency and duration of flood and fresh events that are important for salmon migration and trout and salmon condition and numbers;
  - c. Angling flows;
  - d. Maintaining water quality.
  - e. Maintaining natural character
89. In addition to angling flows, which are generally higher than habitat-related minimum flows, Fish and Game has similar interests to other recreational bodies such as Whitewater New Zealand and Jet Boating New Zealand who in their evidence have gone to careful effort to explain why protecting a range of flows, specific to each water body, is necessary if environmental flows supporting amenity values are to be maintained. The main pCLWRP provisions where Fish and Game proposes changes to give effect to these matters are new policy 4.1A and rule 5.96.

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<sup>70</sup> Neil Deans, Evidence in Chief, pages 40 - 47

**ECAN'S APPROACH**

90. The pCLWRP as notified is only in reality a partial plan, and there will not necessarily be any connection or integration between the main plan and the sub-regional sections. ECan's intention is that the gaps in the pCLWRP will be filled in over time as Zone Committees develop management approaches for their particular zones and those are promoted via plan changes. ECan also proposes to add in other essential components of the pCLWRP (such as Schedule 8) via plan changes sometime in the future. The pCLWRP will therefore be a moving feast for many years as each plan change opens up parts of the pCLWRP for further change. There is nothing preventing each plan change from introducing each zone committee's preferences seeking to modify objectives and policies of the pCLWRP in order to suit the specific outcomes of that zone committee.
91. Granted there is always the opportunity for a privately initiated plan change in the normal course of a plan's lifetime, however the Council has set up a plan framework that necessitates on-going modifications to the pCLWRP. This will create significant uncertainty for the community at large and any parties, including Fish & Game, who are particularly concerned about ensuring sound resource management. It will also incur a large cost on the community as each plan change proceeds through the First Schedule process. It is wishful thinking that zone committees will recommend plan change approaches that will be non-controversial. The continuous re-litigation of the pCLWRP is not efficient, and the risk of constant change provides no certainty, and will not give plan users the confidence they need to plan ahead, make investment, or in any respect act in reliance on the pCWLWRP as it is today.
92. By way of contrast Fish and Game have proposed a planning framework and set of provisions (in Hearing Group 1 and Hearing Group 2) that it intends are suitable to perform as an effective planning regime that does not require further plan changes to be complete. Fish & Game accepts that the zone committee process may result in some adjustments or refinements being desirable, and there is no desire to prevent such adjustments being put forward in the usual way.

93. As noted previously in these submissions, the pCLWRP does not identify relevant section 6 and 7 values and protect them and life-supporting capacity generally by setting limits (s 5, 6 and 7 and NPS).
94. ECan has failed in its section 30 functions:
- a. The pCLWRP will not assist Ecan to achieve the purpose of the Act;
  - b. The pCLWRP will not control land to maintain or enhance quality of water, or control discharge of contaminants;
  - c. The pCLWRP does not set rules to allocate the capacity of water to assimilate contaminants.
95. While Table 1a at first glance appears to set limits, that turns out not to be the case. They are apparently mere high level<sup>71</sup> "aspirations",<sup>72</sup> however this explanation does not actually make sense, particularly when one considers strategic policies 4.1 and 4.2 as notified. It is apparent from those strategic policies that the intent **was** for Table 1 (a – c) to act as limits, and targets. The fundamental failing is that there is no follow on in the more detailed 'course of action' policies, rules and methods to actually implement Table 1 (a – c) in this manner. The rules in particular do not take account of the effects of ongoing and increasing non-point source discharges and the effects of life supporting capacity and instream values. There is no mechanical provisions or connection that will achieve the required environmental outcome. Rules are not targeted to meet any specified instream outcomes. The dots do not join up.
96. Not only that, but as will be addressed in more detail in Hearing Group 2, some of the permitted discharge and permitted activity farming rules breach section 70 and are therefore unlawful.

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<sup>71</sup> Response to Hearing Group 1 Questions of Clarification to Environment Canterbury, page 2.

<sup>72</sup> Section 42A Report, Memorandum of Adrian Meredith, 17 January 2013

97. The pCLWRP is a complete change in approach compared NRRP, but no significant new information was used to justify to the change.<sup>73</sup>
98. The science and assessment of likely effectiveness of the pCLWRP is absent. Effectiveness cannot be properly assessed because of the fundamental gaps. As will be addressed, to the extent that its likely environmental results can be predicted, it is likely to allow further degradation due to both existing activities and further intensification.

### **Section 32**

99. Each proposed objective in a regional plan is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.<sup>74</sup> Additionally, each proposed policy, rule or method is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate for achieving the objectives.<sup>75</sup> The evaluations must take into account:
- a. The benefits and costs of the proposed policies, rules or other methods; and
  - b. 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.<sup>76</sup>
100. The basic premise of a section 32 evaluation is that it requires input and certainty on how objectives, policies, and rules in a plan will function. In this instance the pCLWRP has introduced Rule 5.2. Rule 5.2 states that any rule on the same subject matter in sections 6 – 15 will prevail over the relevant rule of section 5. The problem here is that sections 6 – 15 do not have rules at present. It is submitted that since there are no rules in place in sections 6 – 15 if and when they

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<sup>73</sup> A review of the answer to Question of Clarification to Environment Canterbury, no 2, pages 1 and 2, illustrates the absence of new information.

<sup>74</sup> Section 32(3)(a) RMA

<sup>75</sup> Section 32(3)(b) RMA

<sup>76</sup> Section 32(4) RMA



are created they will trump the proposed section 5 rules there is no way to determine what impact those future rules might have on the effectiveness of the plan.

101. The requirement in section 32 is to evaluate the appropriateness of the Plan that has been proposed, and that cannot be done if there is no certainty about the way in which the rules will perform in the future. Therefore it is submitted the section 32 report completed for the pCLWRP cannot have been completed adequately and ECan has failed in its obligations both in terms of the Plan and in terms of the section 32 analysis, as it did not acknowledge or assess the impossibility of assessing the efficiency and effectiveness of a Plan with key sections missing.
  
102. Fish and Game specifically submitted that the section 32 has not been complied with in its original submission<sup>77</sup> and challenged its adequacy.<sup>78</sup> The hearings committee should take into account Fish and Game's criticisms.<sup>79</sup> The normal course of events would be for the hearing committee to resolve any defect in the s32 analysis<sup>80</sup> before making a decision whether or not to modify the pCLWRP. However, it is more complicated in this instance, given that in the absence of the sub-regional chapters and Schedule 8 for example, the section 32 analysis simply cannot be completed, because the efficiency and effectiveness of the plan cannot be assessed in its current state.

## EVIDENCE

103. As a result of the ECan Act this hearing is the only opportunity to present and test the evidence on the values of Canterbury's lakes, rivers and wetlands and how they should be managed to achieve the

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<sup>77</sup> Fish and Game Submission on the pCLWRP at [30] page 10

<sup>78</sup> In accordance with section 32A RMA and *Kirkland v Dunedin CC* [2001] NZRMA 529 at [17] and *Omokoroa Ratepayers Association Inc v Western Bay of Plenty District Council*, ENC Auckland, A019/2004 16 February 2004 at [23]

<sup>79</sup> *Kirkland v Dunedin CC* [2001] NZRMA 529 (CA) at [17]

<sup>80</sup> *Naturally Best New Zealand Ltd v Queenstown Lakes District Council* ENC Christchurch, C49/2004, 23 April 2004 at [36]

requirements of Part 2 of the Act. Fish and Game has therefore committed considerable resources and expertise to presenting their evidence to this hearing panel in support of the changes that it seeks to the pCLWRP.

104. This includes:

*Hearing Group 1 Experts*

- a. **Mr Neil Deans**, Manager of the Nelson Marlborough Fish and Game Council ("NMFGC") and the National Resource Management Coordinator who gives evidence summarising the statutory role of this organisation, a summary of the structure and development of Sports Fish and Game Bird Management Plans and their relevance to the pCLWRP, outlines the sports fish and game bird species and their relevance to the RMA's management of species' habitat, outlines the habitat requirements of the species administered by Fish and Game and summarises the values and significance of many of the water bodies in the Canterbury region from a Fish and Game perspective as they relate to Schedule XX;
- b. **Mr Ross Millichamp**, former Regional Manager of North Canterbury Fish and Game and currently a part-time Field Officer with Fish and Game New Zealand, who gives evidence summarising the known life cycle of salmon in New Zealand, the size and geographical distribution of the fishery and the angling activity associated with it as it relates in part to Schedule XX; and opinion on the requirements for the protection of the salmon fishery and recreational salmon angling;
- c. **Mr Mark Webb**, Field Officer for Fish and Game within the Central South Island Region, who gives evidence on freshwater angling in New Zealand, freshwater angling in Canterbury and Central South Island water body values, particularly as they relate to Schedule XX; Mr Webb's

evidence also addresses the particular changes sought to the flow regime for the Ashburton River, in sub regional section 13 of the pCLWRP;

- d. **Dr Russell Death**, Associate Professor in Freshwater Ecology at Massey University, who gives evidence in relation to freshwater ecology, water body ecological health and salmonid fisheries in Canterbury rivers and streams;
- e. **Dr Roger Young**, Freshwater Ecologist at the Cawthorn Institute who gives evidence in relation to the state and trends in water quality in Canterbury, factors affecting water quality in Canterbury, Environmental flow regimes and approaches for managing water allocation while maintaining instream values and limits that could be used to protect key values identified in the Canterbury Region; and
- f. **Mr Phillip Percy**, Planner, Director of Perception Planning Limited who gives evidence that begins with a high level analysis of the structure of the pCLWRP and how it relates to key national and regional policy document; and then includes an analysis of the specific plan provisions and comments on the section 42a Report.

*Hearing Group 1 lay witnesses*

- 105. **Tony Hawker**, field officer for Fish and Game in the North Canterbury Region, addresses the habitat and angling values of the North Canterbury Region, as they relate to Schedule XX;
- 106. **Peter Robinson** is an avid salmon angler, and addresses salmon angling values in the region from his personal experience, particularly in the North Canterbury region.
- 107. **Matthew Hall** is a passionate angler, and addresses angling values generally, particularly in the Central South Island region.

**DATED** this 8<sup>th</sup> day of April 2013

A handwritten signature in cursive script, appearing to read "M A Baker-Galloway".

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M A Baker-Galloway

Counsel for Fish and Game

**APPENDIX 1**

<http://freshwater.science.org.nz/index.php/news/media-statement-nzfss-key-closing-messages/> (held 3 – 7 December 2012)

**Media Statement****New Zealand Freshwater Sciences Society – Key closing messages**

The New Zealand Freshwater Sciences Society concluded its annual meeting, held in Dunedin last week, with a warning about the widespread decline of aquatic biodiversity and water quality in NZ. The Society is a professional body that supports scientifically-informed decision making for freshwater management in NZ. It has issued a series of recommendations to address key issues. The Society was addressed by world-renowned expert in freshwater conservation, Professor David Dudgeon from the University of Hong Kong. He presented a grim picture for the future of freshwater species globally in his plenary talk, with species losses in freshwater occurring at roughly twice the rate of any other ecosystem type. He expressed extreme surprise to find that endemic freshwater species in NZ were even more severely threatened than elsewhere. None of these unique freshwater species, even critically endangered species, has any formal legal protection in NZ.

A recurring theme in the conference was not only a clear record of decline in the quality, health and resilience of a number of freshwater ecosystems in NZ but also a pointer to the underlying causal factors. Land-use intensification was a central focus; it has often been associated with water abstractions, irrigation, wetland drainage, increasing levels of nutrients and sediments, higher stock numbers and nutrient application practices, as well as expansion of urban land use. Invasive species such as didymo in the South Island and koi carp in the North Island, as well as exotic weeds, continue to compromise the integrity of freshwaters. However, several presentations in the conference showed clear benefits of best practice measures to restore degraded systems or mitigate the effects of unsustainable water resource use. NZ science programmes have demonstrated over the last three decades techniques by which many of these problems can be mitigated and minimised. Some landowners and businesses have already adopted them with success and have demonstrated that production and pollution do not need to go hand in hand, or cause loss of profits. What is lacking is the political will nationally to ensure

widespread use of these techniques and to moderate the practices that cause the problems.

Failure to act with decisiveness and urgency risks further environmental degradation and erosion of our international environmental reputation and branding. The possibilities of more waterborne illness, serious contamination and depletion of groundwater aquifers, and extinction of native fish species will depend on reversing strong detrimental trends. Otherwise, New Zealanders will be left with a sad environmental legacy and a serious financial burden from the current generation. This will happen unless restoration costs needed to protect and recover freshwater resources and invaluable ecosystem services provided by freshwater, are met with urgent, science-led improvements.

Members of the New Zealand Freshwater Sciences Society are confident that given appropriate and adequate support, important improvements can be achieved. The Society's recommendations to address the current situation include:

- That the Government give effect to all of the recommendations of the Land & Water Forum as a high priority and with urgency in order to reverse these negative trends. The Land & Water Forum brought together many disparate groups and stakeholders and agreed on a strategy to manage a sustainable future for land and water in NZ. The Forum took account of the strategic advantage that NZ has with its freshwater resources, the evolving and important role of iwi in freshwater management, and the need to set and manage within limits on a catchment-by-catchment basis throughout NZ.
- There is an urgent need to put in place a statutory requirement for NZ to have national State of the Environment (SOE) Reporting. NZ is now the only country in the OECD that does not have such a requirement embedded in law. Delay in adoption of SOE reporting will further damage New Zealand's reputation in environmental management.
- There is an urgent need for consistency in national SOE monitoring to ensure NZ has a sound basis for reporting. The government needs to ensure the current work on National Environmental Monitoring and Reporting is adopted and implemented. This work supports the Ministry of Environment and Ministry for Primary Industries, concerning the National Objectives Framework for Water. It is also a

critical component of the limit-setting process recommended by the Land and Water Forum.

- The Government builds on existing national freshwater monitoring networks to help ensure effective containment and eradication of both new and existing invasive pest species that cost the country millions of dollars each year.

- At least one of the upcoming National Science Challenges focuses on the declining freshwater health and loss of biodiversity associated with demands on use of freshwater and land use intensification, as well as the impacts of invasive species. This should be complemented by a commitment to long-term monitoring to ensure that the objectives for restoration and management are met.