

Before the Independent Commissioners

Canterbury Regional Council

In the Matter of the Resource Management Act 1991

And

In the Matter of a Regional Plan

And

In the matter of Submissions and Further submissions by Fulton Hogan
Limited Winstone Aggregates Limited and Canterbury
Aggregate Producers Group

**Legal Submissions on behalf of Fulton
Hogan, CAPG, and Winstone Aggregates**

Dated: 8 April 2013

Lane Neave
LAWYERS

137 Victoria Street
PO Box 13149
Christchurch
Solicitor Acting: David Caldwell / Jane
Walsh
Phone: 03 379 3720
Fax: 03 379 8370

Introduction

1. I appear on behalf of a number of submitters which have a common interest in the extraction of aggregate in the Canterbury region.

The Submitters

2. Fulton Hogan Limited (**FH**) is one of New Zealand's largest roading and infrastructure companies. Its activities and contribution to the regional economy is outlined in the evidence and in its submission. It operates commercial aggregate quarries throughout New Zealand and also holds consents to operate land and river based extraction activities throughout Canterbury.
3. FH has filed a comprehensive primary submission addressing a range of concerns and specifying its preferred relief.
4. Winstone Aggregates (**WA**) is a division of Fletcher Concrete and Infrastructure Limited. It is New Zealand's largest manufacturer and distributor of aggregates and sand to roading, ready mixed concrete, concrete product manufacturers, and to building and civil engineering customers. Within the Canterbury region, it operates land and river based gravel extraction activities.
5. The Canterbury Aggregate Producers Group (**CAPG**) is a collective of aggregate producers. Its members are Blackstone Quarries, Christchurch Readymix Concrete Limited, FH, Isaac Construction Co Limited, KB Contracting and Quarries Limited, Road Metals Limited, Selwyn Quarries Limited, Taggart Earthmoving Limited and WA.
6. In combination, the submitters have considerable interests both in land and river based extraction activities throughout the region.
7. The submitters acknowledge the importance of the proposed Land and Water Regional Plan (**pLWRP** or **Plan**). At a general level they are supportive of it. However, that support is qualified by a number of specific concerns, as recorded in the submissions and further submissions filed. Those submissions are maintained in their entirety.
8. The submitters seek to achieve an outcome which better achieves the Act, and gives effect to the Canterbury Regional Policy Statement and the

National Policy Statement for Freshwater Management, while recognising the critical importance of aggregate extraction to the Canterbury region, and to the rebuilding of Christchurch in particular.

9. The submitters, of course, recognise the task the Commissioners must undertake involves a consideration of a broad range of values, including those identified in Part 2 of the Act (ss6 and 7).
10. The submitters wish to ensure that the overall broad judgment decision makers are required to make, both at this stage of the process, and on subsequent resource consent applications, is informed as to the relative significance of the extraction and use of aggregates.
11. Canterbury is fortunate in that it contains significant aggregate resources. However, their availability for extraction is subject to various physical, cultural, consenting and economic constraints.
12. Aggregate extraction by its very nature depletes the consented resource and new sources must be found from time to time. This involves a consenting process, with potentially long lead-in periods.
13. Aggregates play a vital role in the growth and prosperity of the region and the well-being of its communities. Aggregates are critical for the development of regionally significant infrastructure. They are a fundamental component of almost all development. At present, with the rebuild of Christchurch, their importance is heightened.
14. Mr Richard English provides evidence on the role of aggregates in development, addresses the constraints on its availability and use, and particularly the importance and benefits of extraction close to end use. Mr English has noted that under present post earthquake conditions, the quantities of aggregates being produced and their value has increased significantly above the medium term average. His evidence provides a very important context for your consideration of the changes which are suggested by Mr Daniel Murray in his evidence, and the changes sought in the original and further submissions filed.
15. Mr Bob Willis, in his evidence, provides further context, and an explanation as to the processes involved in extraction activities, and the issues which they face.

Key Factors Underlying the Submissions

16. Very much in summary, underlying the submissions are the following fundamentals:
- (a) The ability to supply quality aggregate extracted close to areas of demand is critical to the well-being of the communities within the region.
 - (b) The availability of existing and future aggregate extraction areas is limited. Controls which exclude the ability to extract and process aggregate close to areas of demand impose a significant cost on communities.
 - (c) The submitters are concerned that the focus on allocation issues arising from irrigation, particularly the proposed prohibition on groundwater takes (except for group and community water) from the Christchurch-West Melton Zone, could have a significant impact on the future well-being of Christchurch for little, if any, environmental gain.
 - (d) While it is accepted that the use and development of land for aggregate extraction can generate adverse effects, and that the objectives, policies and rules must recognise that, the Act does not mandate a no effects regime. Adverse effects of gravel extraction are often over stated and can be appropriately avoided, remedied or mitigated.

Statutory Framework

17. The Commissioners have had the benefit of considerable submissions on the statutory framework and it is not intended to spend any time on that here. The purpose of a regional plan is to assist the Council to carry out its functions in order to achieve the purpose of the Resource Management Act 1991 (**RMA**).
18. A regional plan is to be prepared in accordance with the Council's functions under section 30, the provisions of Part 2, its duty under section 32 and any regulations.

19. The plan making functions are subject to Part 2, and particularly the Purpose of the Act:

“5 Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, **sustainable management** means 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 –*
- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life supporting capacity of air, water, soil and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

20. The High Court has considered the exclusion of minerals in section 5(2)(a) and concluded:

“[24] The exclusion of minerals from s5(2)(a), is recognition that minerals are finite and cannot be sustained for future generations.

...

the values enshrined in s5 apply as much to the activity of mining for minerals as to any other land-related activity, save the future sustainability of the resources is not, for obvious reasons, an obtainable goal.¹”

Appropriate Recognition

21. Historically, there has been a failure of the statutory planning documents to recognise the importance of aggregate extraction. While the Christchurch

¹ *Gebbie v Banks Peninsula District Council* [2000] NZRMA 553 (HC).

City Plan contains a Rural Quarry Zone, that zone provides only limited further development opportunities. Of course, the City Plan only addresses land use issues from a territorial perspective.

22. This zone contains a number of the larger scale quarries, some of which are reaching the end of their productive life. The zone contains land yet developed, but within the Christchurch-West Melton Groundwater Zone, where it is proposed that further water takes, except for group or community water supply, are to be prohibited.
23. The changes proposed by the submitters, are directed at ensuring that the benefits achievable from the efficient use and development of aggregates are properly considered within the decision making process. They are seeking to ensure an appropriate planning framework is achieved.
24. The need for an appropriate planning framework is illustrated by the Environment Court's *Road Metals* [2006] decision².
25. The Court observed:
 - (a) quarrying activities tend to generate a high level of opposition with a consequent effect on lead in times³;
 - (b) aggregate material is important to the district, regional and national economies;⁴
 - (c) certainty as to where aggregate will come from is needed to support infrastructural development and the future growth of Christchurch⁵;
 - (d) there is a future aggregate shortage in the Christchurch area which needs to be addressed to ensure the planning process and quarry development enables on-going adequate aggregate supply.⁶

² *Road Metals Company Limited v Christchurch City Council and Canterbury Regional Council* C163/2006 (4/12/2006)

³ At para [88] and [111]

⁴ At para [89] "We recognise the importance of this aggregate material to the district, regional and national economies. There is frequently a suggestion that these materials can be imported from elsewhere. Putting aside the question of cost, the Court has begun to wonder what particular area would be able to supply the materials. The response of local communities in various parts of New Zealand to date has been consistent in opposing aggregate extraction in their neighbourhood..."

⁵ At para [111].

⁶ [110]

26. The Plan as notified has gone some way to addressing the lack of recognition. The issue of quarrying gravel outside of riverbeds is identified at page 1-4 of the notified version (although the focus of the issue identified relates to perceived adverse effects).
27. In terms of gravel extraction from rivers, the issue is addressed at page 1-5 under Natural Hazards. This identifies the removal of accumulations of gravels is important for flood management; notes that demand for gravel is expected to increase with the rebuilding of greater Christchurch; and the rate and location at which gravel is removed needs to be well managed due to erosion, protection of infrastructure and in stream values.
28. The issue is again addressed in the Objectives, in so far as it relates to extraction from the beds of rivers⁷.
29. Policies 4.90 and 4.91 provide a degree of explicit recognition. As notified 4.90 reads:
- “Recognise the value of gravel extraction for regionally significant infrastructure, for economic activity and for the rebuild of Christchurch and enable the maximum extraction from the land without affecting groundwater quality and require remediation to avoid the risk of contamination”.*
30. Policy 4.91 provides:
- “For all gravel removal from the beds of rivers:*
- (a) The rate of gravel extraction does not exceed the rate of gravel recharge, except where stored gravel is available for extraction and in that case short-term extraction of stored gravel may occur at a rate that exceeds gravel recharge rates only to the point that gravel levels reach gravel recharge rates; and*
 - (b) The activity is undertaken in ways which do not induce erosion, adversely affect water quality, significant indigenous biodiversity, disturb wildlife habitat or sites of cultural significance to Ngai Tahu, or affect access and recreational values”.*

⁷ Objectives 3.18 and 3.20.

31. The officers have recommended that Policy 4.90 be split into two parts to recognise the value of gravel extraction and to enable the maximum extraction of gravel without affecting groundwater quality and require remediation to avoid the risk of contamination⁸.
32. The changes suggested by the officers go some way to meeting the submitters' concerns, but still reflect an inappropriate focus on avoiding effects.

Objectives and Policies

33. The Act requires an overall broad judgment to be undertaken as to whether the provisions promote the sustainable management of natural and physical resources. As noted in *North Shore City Council v Auckland Regional Council*⁹ such a judgement “allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome”.
34. There is a concern that a number of objectives and policies display an inappropriate emphasis on the avoidance of effects and protection of environmental values. This has resulted in provisions which mandate:
 - (a) no adverse effects¹⁰;
 - (b) a preference to “avoid” adverse effects over remedying or mitigating¹¹; and
 - (c) the unqualified “protection” of certain values and requirement to achieve “maximum” social and economic benefits¹².
35. The Act does not impose a hierarchy of avoidance, remedying or mitigation of effects. They are to be read conjunctively and with equal importance.¹³
36. It is accepted that there may be circumstances where the significant values present, or a likelihood of significant adverse effects on those values,

⁸ Page 353 of S42A Report.

⁹ *North Shore City Council v Auckland Regional Council* 2 ELRNZ 59 at page 347

¹⁰ Such as Objective 3.20 as notified or renumbered and altered as Objective 3.17 in Volume 1 S42A, and Policies 4.19, 4.41, 4.52 and 4.91(b).

¹¹ Policy 4.10

¹² Objective 3.3, Objective 3.9 and renumbered Objective 3.14 in Volume 1 S42A, Objective 3.10 as notified and renumbered 3.13 in Volume 1 S42A, Policy 4.3, and Policy 4.90 as notified and Policy 4.90A as listed in Volume 1 S42A

¹³ *Winstone Aggregates Limited v Papakura DC* A049/02, para 24

renders avoidance of effects appropriate in the first instance, or justifies a higher degree of protection¹⁴.

37. That however, is quite different to a requirement for no adverse effects which is apparent in a number of the objectives and policies in the Plan. Those objectives and policies which seek such an outcome, in my submission, would preclude the decision maker from considering an application on its merits. It would require all effects to be avoided, regardless of their degree and does not allow for a discussion as to whether effects could also be remedied or mitigated. That precludes the decision-maker from exercising its discretion.
38. That reasoning was adopted in *Carter Holt Harvey Limited v Waikato Regional Council* [2011] NZEnvC 380, where the Court agreed with the witness that such an approach would not only be impracticable but would preclude the exercise of discretion¹⁵.
39. Mr Murray has examined those objectives and policies and does not consider that they warrant such a stringent test.
40. He concludes that the wording is not the most appropriate, for a variety of reasons, including:
 - (a) The Plan goes further than the NPS Freshwater and CRPS and imports a higher threshold not supported by the superior policy instruments; and
 - (b) The Plan goes further than Part 2 by importing an unqualified protection at all costs approach in certain provisions (such as objectives 3.3, 3.9, and 3.10).
41. The protection of natural and physical resources by a prohibition on any adverse effects, without qualification, clearly does not meet the purpose of the Act, and is not appropriate.
42. The case law is clear that activities with very significant effects may be granted consent¹⁶. The scale of the effects is a matter which goes to the overall evaluation required under Part 2, but is not determinative of it.

¹⁴ See paras [2-39] and [3-64] *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182

¹⁵ See paras 254 – 259 of that decision, page 79

¹⁶ *Upland Landscape Protection Society v Clutha District Council* C85/08, 25 July 2008 at para [94]

43. The approach taken, in so far as it relates to aggregate extraction, appears to be reflective of a commonly held but largely unfounded concern as to the effects on groundwater in particular of gravel extraction.
44. In the *Road Metals* [2006] case (supra), the Court stated:
- “[36] There appears to have been a general assumption by the Regional Council, at least, that quarries must contaminate groundwater. However, when this matter was addressed the issue seemed to revolve on whether or not back fill was placed in the excavation site. This was originally proposed but has been deleted from the proposals. In most circumstances we can see no basis:
- (a) Upon which there could be any contamination during the excavation; and
- (b) That there could be any contamination from landfill if that is not permitted.”
45. The Court addressed post excavation rehabilitation and finally concluded:
- “[42A] Overall, we conclude that, with the imposition of appropriate consent conditions, all adverse effects of the activity could be reduced to a level where they are insignificant and difficult to detect at all beyond the existing and permitted uses within the area. We keep in mind that, even in the Rural 2 land, dust and noise can be created by various farming practices including ploughing, feeding out, general farm, earthworks and like. We also note that some permitted activities had potential to contaminate groundwater i.e. dairying, farming and offal pits.”
46. In my submission, those comments by the Environment Court are supported by the evidence of Mr English. While groundwater contamination is theoretically possible from quarrying operations, despite a number of searches of a worldwide nature he has been unable to identify any recorded instances of groundwater contamination attributable to alluvial quarrying operations.¹⁷

¹⁷ Para 102.

47. In terms of the placement of inappropriate materials in quarries, Mr English acknowledges that it is an additional and potentially the most significant source of groundwater contamination and that pre-planning for an appropriate end use is essential. These effects are now addressed by the Clean Fill Bylaw and consent conditions.
48. The amendments proposed by the Submitters are the most appropriate when considered overall.

Rules 5.98 and 5.104 and sub-regional rules prohibiting abstractions

49. In my submission the Court of Appeal decision of *Coromandel Watchdog*¹⁸ is clear that the fundamental test for prohibited activity status remains: whether that is the most appropriate in the circumstances¹⁹. That conclusion can only be reached after a comparative evaluation under section 32.²⁰
50. The submitters are opposed to the proposed prohibited activity status for any additional abstraction from zones which are “over allocated”. Non complying or an alternative to exclude aggregate based activities, is considered the most appropriate for the reasons addressed in the evidence of Mr Murray.²¹
51. Mr English and Mr Willis outline the primary uses of groundwater by the aggregate industry, being for dust suppression and product washing. The overall use is largely non-consumptive.
52. Policy 4.55 provides that non-consumptive takes will not be subject to any groundwater allocation limits provided the water either remains in the aquifer or is returned to the same aquifer in 24hrs and is protected from contamination.
53. In the case of water for product washing and processing, Mr English notes that while this is non-consumptive it might be that it is returned to the aquifer within 24hrs or slightly longer. Accordingly, appropriate changes are sought to reflect that as detailed by Mr Murray.

¹⁸ *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development and Anor* CA285/05

¹⁹ In particular see paras [37] of *Coromandel Watchdog* and [45] of *Thacker v CCC* C026/2009

²⁰ See *Thacker* at [49]-[50]

²¹ At paras 136 - 152

54. Whether a take is truly non-consumptive is a matter which would be determined on the facts of any particular application. The Court in *Road Metals Company Limited v Selwyn District Council and Canterbury Regional Council* [2012] NZEnvC 214 analysed this in the context of a proposed quarry in the over-allocated Selwyn-Waimakariri groundwater zone. Although a part of the overall take was for consumptive purposes the Court accepted that as the proposal was likely to achieve a “*positive water balance*” it was thus non-consumptive in the overall sense²².
55. The proposed prohibition on additional takes in the Christchurch-West Melton Groundwater zone in effect, sterilises the use of land in that area, including land zoned for quarry purposes.
56. Mr English raises particular concerns in relation to Rule 9.6.2 in the Christchurch-West Melton Groundwater zone, given this area is otherwise eminently suitable for new quarries to establish and meet forecast demand within Christchurch. He notes that the ramifications of being unable to even apply for the relatively small quantities of water required for quarrying purposes would result in material additional costs for the region.²³
57. Such a constraint, given the significance of transportation costs in relation to aggregate extracted, is critical. Mr English notes that if, as a result of planning constraints, new quarries need to be developed at say a 30km radius from the City, then the additional cost to Christchurch alone over the next 30 years would be at least \$0.5billion. This is without allowance for the additional infrastructural and environmental costs that would be incurred.²⁴
58. Mr English again notes that without water, despite the implementation of best practice efficiency use methodologies, it will not be possible to produce the aggregates that are required for the region’s future infrastructural maintenance and development.²⁵
59. The siting of quarries is to a degree self-selecting in that the activity must occur where the minerals occur (as recognised in *Road Metals* [2012]²⁶).

²² See in particular para [155] in the discussion at paras [148] – [157]

²³ Para 115

²⁴ Para 118.

²⁵ Para 126.

²⁶ At para 268

60. If the prohibition extends through other zones, then the question becomes, as the Environment Court has previously raised, where do they come from?²⁷
61. There is no doubt as to the economic importance of aggregates to the region. This is more acutely so since the earthquakes. Therefore, provision for extraction close to demand should not be foreclosed unless there is sufficient and compelling reason to do so.

“Giving effect to” the NPS

62. Opportunity is therefore sought to provide for activities which create important social and economic benefits, but where effects can still be closely scrutinised as inevitably required in a non-complying regime. In light of the stronger direction provided for in the Plan when compared to the NRRP, Council will have ample opportunity to decline consent and still ensure the provisions of the NPS are given effect to.
63. A key question in considering what is the most appropriate outcome, is whether the prohibited activity status is required to give effect to the NPS. In particular Objective B2 which seeks to avoid further over-allocation. The corollary to that is whether implementing a non-complying status will not give effect to the NPS.
64. In my submission, prohibited activity status does not give effect to the NPS, particularly in the case of the Christchurch-West Melton groundwater zone because the resource has not been established to be over-allocated.
65. Mr Murray notes the anomaly in the Plan as to the “limit” for the Christchurch West Melton groundwater zone, in that no quantifiable limit is specified. Rule 9.6.2 simply notes that “*no additional water is to be allocated*”. This creates obvious inconsistencies with the policy and rule framework which uses the term “limit” and requires that limit to not be exceeded.
66. The definition of “limits” in the Plan fails to shed any light. It: “*includes any environmental flow and allocation regime in Sections 6-15 of this Plan and groundwater allocations in Sections 6-15 of this Plan*”.

²⁷ As per *Road Metals* [2006] at para [4]

67. “Limit” is defined in the NPS as “*the maximum amount of resource use available, which allows a freshwater objective to be met*”. And “over-allocation” is defined as the situation where the resource:
- (a) Has been allocated to users beyond a limit or
 - (b) Is being used to a point where a freshwater objective is no longer being met.
68. It cannot be said to be over-allocated because there is no limit, and there is nothing which shows that the freshwater objectives are no longer being met.
69. In respect of sub-regions which have established limits, and considering the process provided for under the NPS, one would have expected those limits to have been determined after a consideration of the national and local values and the freshwater objectives being established. The Freshwater NPS is very clear that a top down approach is to occur.
70. The importance of recognising what water is valued for was discussed by the Court in *Road Metals* [2012]. The Court noted that the list of values in the NPS Preamble was “*helpful in understanding the relative values of freshwater and understanding that all of these values are important*”²⁸.
71. The Court in *Carter Holt Harvey*²⁹ also discussed the importance of recognising values of freshwater and particularly their role in establishing limits:

“[64] *The National Policy Statement on Freshwater Management was issued by notice in the Gazette on 12 May 2011 and took effect on 1 July 2011. It sets out objectives and policies that direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits. Such limits are to reflect local and national values underlain by the best available scientific and socioeconomic knowledge to ensure adequate environmental flows.*

²⁸ At para [59]

²⁹ *Carter Holt Harvey v Waikato Regional Council* [2011] NZEnvC 380

[65] Once limits are set water needs to be allocated to users, and if allocation exceeds the point where national and local values are not met, then such allocation is to be reduced over time”.

72. The Preamble further states that “*water quality and quantity limits must reflect local and national values*”³⁰.
73. It recognises as a “national value” that water is valued for “*commercial and industrial processes*”, “*transport and access*”, “*cleaning, dilution and disposal of waste*” as well for its intrinsic values.
74. There is no doubt that water is also valued in Canterbury for those same uses.
75. Accordingly, if the proposed freshwater objectives are not drafted with due reflection on all of the relevant national and local values, then neither will the provisions that follow them.
76. It is the submitters’ position that this top down focussing of the values and the freshwater objectives has not driven the establishment of the limits. There is no discussion in any of the Council Officers’ reports as to the importance of, for example, the Christchurch West Melton Groundwater zone for its supply of aggregates and in turn, the importance of quarrying to the region.

Proposed transfer rule and associated policies

77. The Officers’ justification for the automatic surrender of water on transfer relies primarily on their view that the resource is over-allocated, that the rule will give effect to the NPS,³¹ and will improve efficiencies and encourage more effective distribution of water to meet economic and social outcomes³².
78. In my submission, you should treat this view with caution. Much of the above submissions also relate to the justification for the transfer rules. If the allocation limits themselves are not defensible or based on the best available information, the justification for surrendering water on transfer is also questionable (as they are a direct response to over-allocation).

³⁰ Page 3 Freshwater NPS

³¹ At page 42 of the S42A

³² At page 42

79. It is Mr Murrays' view that there is no analysis or justification for the surrender on transfer requirement.
80. We understand that Ngai Tahu have presented an alternative to Rule 5.107(5) to the Commission. We have only just received confirmation from Ecan as to the wording and would like to review that further, possibly with expert input. However it does appear in principle, to be a step in the right direction.

Rule 5.124 – 124A to 124C – Not to apply to resource consents to extract gravel from rivers in Canterbury

81. The submissions of FH and CAPG both seek the deletion of Rule 5.124 which provides that sections 124A to 124C are not to apply to resource consents to extract gravel from rivers in Canterbury.
82. Those sections provide a statutory exception to the first in first served approach. They require the consent authority to determine certain renewal applications prior to a new application for the same resource, in circumstances where the new application was lodged prior to the renewal.
83. The application of Sections 124A -124C to gravel extraction from the Waimakariri River was addressed by the High Court in *Christchurch Readymix Concrete Limited v Canterbury Regional Council*³³.
84. The High Court determined that ownership of gravel was not relevant as to whether it could be allocated by way of consents under section 13. It held that sections 124A-124C applied to renewal applications to undertake activities controlled by s13. The High Court held that the prior consents to excavate gravel had the effect of allocating it.
85. That declaration arose out of an application by FH for consent over an area which was consented to Christchurch Readymix Concrete Limited. FH and the Regional Council were of the view that sections 124A-124C did not apply. The Environment Court agreed with that view, but the High Court on appeal did not.
86. The Act expressly enables a Plan to state that these sections do not apply.³⁴

³³ [2012] NZRMA 196 (HC).

87. This provides:

“Sections 124B and 124C do not apply to an application affected by section 124 if, when application is made, the relevant plan expressly says that sections 124A to 124C do not apply.”

88. It appears that the exclusion of those sections arises from the desire of the Regional Council to direct and control where river gravel is to be removed.

89. The Regional Council has recently adopted the Canterbury Regional River Gravel Management Strategy.

90. The Strategy includes a statement that sections 124A to 124C will not apply to gravel extraction in Canterbury. The Strategy also notes that authorisations will be given under a permitted activity rule, extraction will be governed by a Gravel Extraction Code of Practice (which we understand has not as yet been prepared), and further controls the duration and volume of authorised takes through the Canterbury region and for the Waimakariri River.

91. The s32 report (pg125) records that the pLWRP policy and rule is intended to give effect to the preferred approach under the Gravel Management Strategy. There is no requirement that a regional plan gives effect to any strategy prepared under other legislation. You are required to have regard to it, but not to give effect to it.

92. FH and a number of the members of CAPG submitted and appeared in opposition to the Regional Gravel Management Strategy.

93. That opposition to the approach remains. The duration based consent process which has applied throughout most of the region provides greater certainty to operators. This facilitates investment in infrastructure, access and machinery, and assists in certainty of supply.

94. The submitters consider that the approach now promulgated is not the most appropriate. It will cause uncertainty, which essentially places operators in a situation where they will need to pursue land based facilities to provide the appropriate security required. Moreover, the increased frequency and attendant uncertainties to obtain approvals under this

³⁴ s124A(3).

regime will substantially increase costs for river-based abstraction. It will not mean that operators will take from those areas where flood hazards require removal, unless it is economically feasible for them to do so.

95. This could have significant ramifications for the region. The costs of the removal of gravel for flood management purposes will fall on Canterbury Regional Council and its ratepayers.

96. While it is accepted that inefficient use and banking of gravel are matters which may be of concern to CRC, Section 124B enables concerns in relation to efficiency of use to be addressed. Section 124B(4) provides:

“The Authority must determine an application described in subsection (1)(b) report, at page by applying all of the relevant provisions of this Act and the following criteria:

- (a) The efficiency of the persons use of the resource; and*
- (b) The use of industry good practice by the person; and*
- (c) If the person has been served with an enforcement order not later cancelled under section 321, or has been convicted of an offence under section 338...”*

97. Those provisions, together with appropriate review provisions, enable the issues of efficiency and gravel “banking” to be addressed while minimising the risk operators will look elsewhere, and the costs that would impose.

98. Mr Willis addresses this issue from the operators’ perspective in paragraphs 77 through to 84 of his evidence.

99. The inclusion of Rule 5.124 also produces a somewhat strange result in that the rule would not apply to the Waimakariri River, which is of course subject to the Waimakariri River Regional Plan. Those operators with consents for the Waimakariri River, where most of the significant river based extraction activities are, would continue to enjoy the protection of sections 124A - 124C.

Permitted Activity – Rules 5.116 – 5.120, 5.125, 5.126

100. Rules 5.116, 5.120, 5.125 and 5.126 provide a series of rules containing permitted activity conditions relying on authorisation and certification by the CRC.
101. The submitters seek deletion of Rule 5.126. This provides an exclusive permitted activity for the extraction of gravel and the ancillary deposition of substances from or on the bed of a lake or river, without any volume limits, provided the conditions of Rule 5.125 are met, and the extraction of gravel is undertaken by Canterbury Regional Council or persons acting under written authority of Canterbury Regional Council.
102. There is little justification for that Rule in the Section 32 Report (pages 125-127). Again, there is a general reliance on the Section 32 Report prepared for the NRRP in 2004 for when decisions were released.
103. There is no equivalent of Rule 5.126 in the NRRP. Indeed, this particular Rule appears not to have been analysed in the Section 32 Report.
104. The Section 42A Report on this issue at page 356³⁵ notes Canterbury Regional Council has prepared the Canterbury Regional River Gravel Management Strategy and that sets up a process for obtaining written authorisation, including volume, duration and terms of engagement. Those matters are not however recorded in the Rule.
105. The Rule appears to enable the taking of any volume from any location (other than those locations excluded by 5.125 conditions) and essentially subject only to the authority of the Canterbury Regional Council.
106. A permitted activity is one which is always appropriate. In the absence of volume limitations, in my submission that cannot be said of this proposed Rule. It does not appear that the Rule is effects based. Permitted activity status of course excludes an assessment of environmental effects.
107. The Rule requires no consideration of the effects on existing consents. The permitted activity status enables existing rights to be significantly eroded.

³⁵ Section 42A Report, Volume 1.

108. Again, these uncertainties will encourage the more significant operators to move towards land based extraction. Indeed the smaller players may be encouraged to do the same to ensure that they have appropriate supplies for maintenance and other contracts.
109. At the very least, the permitted activity status must be restricted to the removal of gravel only where it is necessary for flood management.

Changes sought

110. You will note that the changes sought in the document produced by Mr Murray have altered in some respects from the original submissions. This is as a result of further consideration of these issues as the plan change process has progressed, including as a result of reviewing the S42A Report.
111. The submitters trust the evidence will assist the Commissioners in their task.
112. The submissions and evidence are not lead to support an argument that water takes for gravel extraction should automatically be allowed on the basis of its importance. Rather, what is being sought is that its importance is recognised by evaluating the costs of foreclosing the ability to extract in areas close to demand.
113. It is important that these costs should not be borne by the region, unless that significant cost is truly justified by the benefits of that foreclosure.

David Caldwell/Jane Walsh
Counsel for the Submitters

8 April 2013