

## Submission on Proposed Land and Water Regional Plan

1. My name is Peter Tasman Ross. I was previously employed by Environment Canterbury as a Senior Resource Management Planner.
2. Until my retirement in 2007 I provided wetland, wider ecological, and landscape policy advice to the council at various times from 1991.
3. I was the principal author of Chapter 7 Wetlands of the Natural Resources Regional Plan, which I took through all the hearing stages.
4. Naturally I have taken an interest in the proposed Land and Water Regional Plan.
5. It is common ground that Canterbury wetlands are critically depleted and that those that remain are further threatened, in terms of both their ecological values and their very existence.
6. For someone as acutely aware as I am of this it is disturbing to see weaker objectives, policies and rules replacing stronger more focused ones.
7. In my written submission I cited Objectives 3.6 and 3.8 as the only ones specific to resolving wetland issues.
8. I have no particular concern with 3.8 but the "are protected" wording of 3.6, which requires regulation, is too vague and imprecise.

*The significant indigenous biodiversity values of natural wetlands and hāpua are protected and wetlands in Canterbury that contribute to cultural and community values, biodiversity, water quality, mahinga kai or ecosystem services are enhanced.*
9. In this regard it seems at odds with Volume 1 of the s42A report, which says in part (under 1.2 Plan Structure, p17):

*"... these objectives are written as a succinct statement of environmental outcomes.*

*... Guidance on the attainment of the objectives, or the road map that will lead to that attainment, is found in the policies set out in Section 4 of the pLWRP. As with the objectives, to the maximum extent possible, these policies have also been written as statements of outcome rather than statements of process. This too is deliberate. Only when written in this manner will these policies be of assistance to a decision-maker, and that is the style of this Plan – it is a consenting instrument."*
10. I submit that "natural wetlands and hāpua are protected" while it may be succinct, is at best a very uncertain outcome.
11. It is an unfortunate fact of life that protection is almost always qualified in some way. It therefore fails in the stated intention to "be of assistance to a decision-maker". The objective needs to state a much more finite aim.
12. For comparison, part of the comparable objective from the NRRP is:

*"No overall reduction in the area of moderate or higher significance wetlands in the region ..."*
13. And from RPS 2013 (Policy 9.3.1 - Protecting significant natural areas)

*... no net loss of indigenous biodiversity or indigenous biodiversity values as a result of land use activities. (My emphasis.)*
14. My point being that unlike "are protected" these objectives are finite and can be measured.
15. The NRRP also saw it as necessary at objective level to recognise the need to **enable** the taking, use, damming and diversion of water. This for the very good reason that otherwise a lot of unnecessary resource consents are required. We need

to be very clear that unlike the use of land under s9, activities involving water under s14, unless authorised in some other way must have resource consent.

16. It is thus incumbent on a water plan to permit such activities subject to appropriate safeguards. The pLWRP does this in other areas but not in respect of wetlands.

#### **S42A report**

17. It is concerning that your s42A advisor seems not to understand the relevant NRRP provisions, my submission having been summarised as follows:

*Peter Ross ... seeks a return to a framework, including objectives, policies and rules, more akin to the NRRP approach, which included provision for protection of identified and listed wetlands.*

18. Contrary to those last words (emphasis added), the NRRP did not in fact provide for protection of identified and listed wetlands, desirable as this would have been.

19. The NRRP policy and rules actually provided for the **removal** of protection from wetlands once the significant ones had been identified in order to permit activities that under s14 would otherwise have required resource consent.

20. This lack of understanding continues on page 383 of the s42A report:

*"Of primary significance is a change from the NRRP process, which relied on identification, categorisation and scheduling of individual wetlands for some of the rules to apply. As has occurred in many situations with rules of this nature, the identification, categorisation and scheduling of wetlands has never occurred, leaving the relevant rules somewhat redundant. The pLWRP addresses this by starting from a premise of the protection of wetlands as a primary position."*

21. This paragraph is actually the very opposite of the truth.

22. The tragedy of the lack of a wetlands inventory was not that the rules were redundant but that they applied more widely than they need have. Without an inventory **any** reduction of wetland area required resource consent, regardless of its significance, which was left to be established by the consent process.

23. These may seem relatively minor points but unfortunately they demonstrate that the reporting officer, and possibly the LWRP authors themselves, had not understood the plan they thought they were improving upon.

#### **LWRP Policy**

24. The relevant policy appears to be Policy 4.79:

*Any take, use, damming or diversion of water, any discharge of contaminants onto land or into water, or any earthworks, structures, planting, vegetation removal or other land uses within a natural wetland boundary, do not adversely affect the significant indigenous biodiversity values of natural wetlands, hāpua, coastal lakes and lagoons, except for ...*

25. Other than its poor English I have no great problem here, except with the lack of any qualification of the term "adversely affect".
26. We are told in the s42A report that the policies are to be seen as a "road map that will lead to" attainment of the objectives. Compounding the felony of an imprecise objective we now have an imprecise policy.
27. As a wetland sympathiser I quite like the idea of no adverse effects being allowed. But I'm also a realist. I know some degree of adverse effects will ultimately be allowed so I would like the policy to define a limit.

### LWRP Rules

28. There appears to be only one relevant rule:

*5.142 Reducing the area of a natural wetland by the taking, use, damming or diversion (including draining) of water or other means, including vegetation clearance, burning or earthworks, except as provided for in Rule 5.141 is a non-complying activity.*

29. We now see how critical the lack of guidance from both the objective and the policy is because this rule creates a non-complying activity. Unlike restricted discretionary activities, non-complying activities provide no guidance to the applicant or the decision-maker, but rely entirely on external compass points. These include firstly the objectives and policies of the plan itself, but also any other relevant objectives and policies.
30. Due to the subtleties of different plan structures and wording, just what information to provide with the application and what mitigation to offer can soon get very confusing—just as equally for the decision-maker as for the applicant.
31. There is a real risk of inconsistent decision-making where policies lack specifics. It is very likely in the absence of a policy threshold for adverse effects that different decisions will apply different limits.
32. Given the extent of wetland loss in Canterbury and the policy position set out in RPS 2013, this level of uncertainty is unacceptable. The RPS, remember, calls not just for protection but for **no net loss**. (My emphasis,)
33. Non-complying activity rules inherently lead to *ad hoc* decisions. They are not therefore a good way to achieve specific outcomes.
34. The actual wording is adrift by the way. The policy was concerned with adverse effects on significant biodiversity values. Reducing the area of a natural wetland, however, is not necessarily the same thing. As recognised in Policy 9.3.5 of RPS 2013, many areas that are now accepted as farmland fall within the broad definition of natural wetland. Reducing their area would have no adverse effects of the type envisaged in Policy 4.79, but under Rule 5.142 would require resource consent.

### Wetland inventory conundrum

35. While this example of turning a Nelsonian eye on a problem is really inexcusable, a solution is certainly hard to find. There really appears to be only one, a proper inventory of the region's significant wetlands.
36. This is something that landholders, whose mistaken belief that the lack of identification makes regulation difficult or impossible, have steadfastly resisted.
37. That view may be true for other significant natural areas, but definitely not for anything that affects water in wetlands. The status quo is that any area that meets the definition of a wetland already has protection under sections 14 and 15.
38. Landholders would therefore clearly benefit from having significant wetlands identified because that would make way for a permitted activity rule to give them greater freedom over activities affecting wetlands that were not significant.
39. Such an inventory could not and would not have to be put in place overnight. What we did in the NRRP was set up an inventory as a long-term goal.
40. Along with this we put in permitted activity rules that would apply once wetlands in an area had been assessed. Limited areas of wetland could also be privately assessed and come under the permitted activity rules.
41. Where areas had not been assessed, the assumption was that all wetlands had significant ecological and/or hydrological values. Just as in Rule 5.142, any activity that would reduce their area, required resource consent. The difference was that this was for a restricted discretionary activity.

42. While elaborate in appearance, this rule provided a very wide range of options for mitigation of any adverse effects, including offsetting wetlands. And here is the bottom line. If none of these options was acceptable, the proposed activity was prohibited.
43. In other words, the plan provided very wide flexibility but put a line under any further loss of significant wetland.
44. Unless our present wetland stock is to die by a thousand cuts a similar approach is still necessary.

**Remedies sought**

45. I thus seek the following changes:
46. Reword objective 3.6 along the following lines:  
*No net loss of significant indigenous biodiversity values of natural wetlands and hāpua, and wetlands in Canterbury that contribute to cultural and community values, biodiversity, water quality, mahinga kai or ecosystem services are enhanced.*
47. Amend Policy 4.79 to provide guidance on the degree of adverse effects permitted under the policy.
48. Replace Rule 5.142 with a restricted activity rule that sets out a range of conditions and mitigation measures together with criteria for the circumstances in which the various measures are appropriate.
49. Back this up with a rule prohibiting activities that do not comply with the restricted activity rule.
50. Add as a method the preparation of an inventory of the region's significant wetlands as assessed using the criteria in Appendix 3, RPS 2013.

*Peter Ross, 9 April 2013*