

Tabled at Hearing 23/04/2013

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF: the Resource Management Act
1991

AND

IN THE MATTER OF: a submission on the Proposed
Canterbury Land and Water
Regional Plan

LEGAL SUBMISSIONS FOR THE DIRECTOR-GENERAL OF CONSERVATION

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LEGAL SUBMISSIONS

OVERVIEW

- 1 These legal submissions are organised under 4 heads. The first considers the extent to which the proposed Plan answers the procedural obligations imposed by the National Policy Statement – Freshwater Management 2011. The second heading is “Structure – Regional Versus Sub-Regional Approach”. In that section I present legal submissions regarding the plan’s structure, specifically the pan-regional versus sub-regional approach taken. The third head is titled “Natural State, High Naturalness Waterbodies, Wetlands and Schedule 17 Sites”. In this section I explain the Director-General’s concerns regarding how the proposed Plan identifies or describes areas which warrant special protection.
- 2 The final section, headed “Topic-Related Matters”, raises a series of specific points, narrower in their focus than those raised under the first three heads. In this section I will consider the following topic-related matters:

Regarding Topic 3

- Rule 5.96 (Take and Use of Surface Water)

Regarding Topics 4 and 5

- New rules sought by the Director-General with respect to fire fighting activities
- Permitted activity Rule 5.128 enabling dams and diversions

Regarding Topic 6

- Biodiversity off-setting in the wetlands context.

- 3 With respect, I have not troubled the Commissioners with a detailed explanation of the Director-General’s statutory duties and interests. Where appropriate however I have briefly explained the rationale for his involvement on a particular point.

THE NATIONAL POLICY STATEMENT – FRESHWATER MANAGEMENT 2011

- 4 The Director-General is concerned to ensure that the Proposed Land and Water Regional Plan (pLWRP) satisfies the procedural obligations imposed by the Resource Management Act 1991. In particular, whether the requirements of the National Policy Statement – Freshwater Management 2011 (NPSFM) have been met. The RMA requires that the proposed plan give effect to the NPSFM.¹
- 5 In my submission the plan's approach to the NPSFM presents a number of legal difficulties. Those difficulties are sufficiently serious as to mean that the Plan does not fully comply with this National Policy Statement. I will explain why shortly but first I will set out the legal tests required by the NPSFM and the relevant matrix of facts.

The Legal Tests

- 6 The NPSFM requires Regional Councils to implement a series of freshwater policies and to do so within specified timeframes. In these proceedings Policies A1, A2 and E are pertinent. For convenience they are reproduced in full in **Appendix 1**.
- 7 Policy A1 requires Environment Canterbury to do three things:
- (a) establish freshwater quality objectives for all waterbodies in Canterbury;
 - (b) establish freshwater quality limits for all waterbodies in Canterbury; and
 - (c) establish methods to avoid over-allocation.
- 8 Policy A2 is concerned with setting targets and methods for waterbodies which fail to meet the objectives determined in accordance with A1 (i.e. which are deemed to be over-allocated). Policy E sets out the timeframes for implementing the NPSFM and offers two pathways: full implementation by 2014 or staged implementation by 2030. If the staged approach is to be preferred then the Council must have formally adopted such a programme by 12 November last year.
- 9 The NPSFM Implementation Guide, issued by Ministry for the Environment, confirms that interpretation:

¹ 5.67(3)(b) Resource Management Act 1991

"...While full implementation is required by 31 December 2030, a regional council must either implement the policies in the NPSFM by December 2014 or formally adopt a staged implementation programme. If staged implementation is to be used, the regional council must develop a formal programme setting out the stages and time frames, formally adopt the programme, and publicly notify that the programme has been adopted." [my emphasis]²

- 10 The Implementation Guide also anticipates that regional councils may formally adopt the staged approach using their Long Term Council Community Plans as the vehicle.³
- 11 Before moving on to look at how Environment Canterbury has addressed its duties under the NPSFM I should set out two definitions from the NPSFM since they are referred to in Policy A1 above and are relevant to these submissions.

"'Freshwater objective' describes the intended environmental outcome(s).

"'Limit' is the maximum amount of resource use available, which allows a freshwater objective to be met."⁴

- 12 The Implementation Guide goes on to offer interpretation guidance of the terms.

Regarding freshwater objectives:

"A freshwater objective is the environmental outcome sought for the waterbody. This describes the environmental state required to enable community values and wishes to be achieved. The development of an environmental objective will therefore encompass two steps. First, determining the desired community outcomes; for example, retention of a healthy trout fishery; retention of mauri; ability to swim in the river in summer; ability to use the water for stock watering without treatment; or ability to use the water for municipal water supply with only chlorination. Second, determining what environmental state is needed for those outcomes to be achieved.

In determining community objectives, the list of national values of freshwater set out in the preamble (and in Appendix B) is relevant.

Freshwater objectives can be set at a variety of scales and levels of detail and may be narrative or numeric. Further explanation and examples on freshwater objectives is provided in the discussion of Policies A1 and B1 in section 2.3 of this guidance."⁵

...

"RPSs and regional plans should identify the objectives and policies that are freshwater objectives for the purpose of giving [effect] to the NPSFM."⁶

Regarding limits:

"A limit is a specific quantifiable amount. Limits can be set at a range of scales to fit regional circumstances. Limits can cover a range of matters, and will clearly specify the maximum or minimum that relates to that matter (eg, maximum cadmium levels entering a waterbody; minimum

² National Policy Statement for Freshwater Management 2011: Implementation Guide, p43.

³ National Policy Statement for Freshwater Management 2011: Implementation Guide, p43

⁴ National Policy Statement for Freshwater Management 2011, p. 5

⁵ National Policy Statement Freshwater Management 2011: Implementation Guide, p9.

⁶ National Policy Statement Freshwater Management 2011: Implementation Guide, p9

water levels). A limit may apply to a water *quality* parameter (the assimilative capacity of waterbodies or cumulative limit below which discharges can be sustainably managed), or a water *quantity* parameter (limits on take). Limits can be specific to a waterbody or part of a waterbody (eg, blocks or sections of a river), or can cover a number of waterbodies with similar characteristics (a default **limit**). Further explanation of limits is provided in the discussion of Policies A1 and B1 in section 2.3”

...

“A water quality limit will require a quantifiable total or “allocation” for a resource from all sources of a contaminant. An example of this is Lake Taupo, where the total amount of nitrogen load in the catchment surrounding the lake is cumulatively controlled and limited to achieve the freshwater quality objective for the lake.

Limits can be set at a range of scales to fit regional circumstances, but must cover all waterbodies within a region. Limits can be waterbody-specific, or can cover a number of waterbodies (a default limit).”⁷ [my emphasis]

- 13 There are no unequivocal instructions as to what a limit should look like nor how one ought to be drafted. However, I submit that they will need to be measurable and readily understandable since exceedances of the limit are what determine if a waterbody is over-allocated and therefore whether Policy A2 is triggered. Furthermore, section 70 of the Resource Management Act 1991 (RMA) circumscribes the council’s ability to create discharge rules. It may be inferred from that section that in order for the council to know whether a particular rules offend the section it will have to understand, with some precision, what limits the water body can tolerate.

- 14 The Third Report of the Land and Water Forum reiterates the need for transparency and, under the heading “accounting for contaminants”, adds:

“...The limit setting process will have identified the contaminants of concern in the catchment and set limits for these. It is important to identify the total load of each contaminant of concern and all sources of that contaminant and maintain a catchment contaminant account (or database)...”⁸

- 15 One commentator has put it thus:

“Water quality limits must be understandable. A wide range of stakeholders have a keen interest in water quality and the way in which it is measured. Limits must have meaning for those stakeholders. Equally, the way that water quality is measured must be transparent. Water quality measures that are “black-box” will probably fail to provide sufficient reassurance to stakeholders that they are not subject to interference or Jerrymandering.”⁹

- 16 That same commentator then goes on to explore three possible means of setting freshwater quality limits. There are three methods which are considered to satisfy the NPS and thus be

⁷ National Policy Statement Freshwater Management 2011: Implementation Guide, p15

⁸ Land and Water forum, 2012. *Third Report of the Land and Water Forum: Managing Water Quality and Allocating Water*, p20, para 81.

⁹ Peter Winder, *Freshwater Objectives and Limits and Implementing the National Policy Statement for Freshwater Management 2011*, January 2012, p11.

vires. They are: (a) setting physiochemical limits (eg temperature or dissolved oxygen), (b) using ecological health indices (eg Macroinvertebrate Community Index); and (c) setting catchment input limits (such as Nitrogen input limits for a catchment).¹⁰

Relevant Facts

Freshwater objectives

- 17 In section 2.5 the pLWRP explains its approach to the setting of freshwater objectives. It says that the objectives, in terms of the NPSFM, are to be found in section 3 of the document and in Policy 4.1 or, where they exist, in the sub-regional chapters.

"2.5 Fresh water Objectives

Both the objectives in Section 3 and Policy 4.1 in this Plan form the 'fresh water objectives' for the Canterbury Region, as described by the Freshwater NPS.

The objectives in this Plan provide the narrative outcomes sought to be achieved for, or from, freshwater across the whole of the Canterbury region.

The specific fresh water in-stream outcomes (numeric and descriptive) to achieve the Plan's objectives are set out in Table 1 to Policy 4.1, or in the relevant sub-regional section."¹¹ [My emphasis]

- 18 Section 3 of the pLWRP contains the over-arching narrative objectives. Policy 4.1 on the other hand contains three tables of numeric and descriptive "outcomes" for different classes of waterbody. Table 1(a) covers rivers, Table 1(b) covers lakes and Table 1(c) covers aquifers. Wetlands are not covered by any of the tables although Objectives 3.5, 3.6 and 3.8 within Section 3 of the pLWRP do specifically refer to wetlands.
- 19 Although section 2.5 refers to there being objectives set in the sub-regional sections there are in fact none. Rather, each sub-regional chapter contains a heading "Fresh water Outcomes" and in all 10 cases the there are no outcomes specified. There is simply a reference back to Table 1, Policy 4.1.
- 20 Section 2.5 of the Plan makes it clear that Section 3 and Policy 4.1 do provide the NPSFM objectives however that position has been nuanced since the proposed plan was notified.

¹⁰ Peter Winder, *Freshwater Objectives and Limits and Implementing the National Policy Statement for Freshwater Management 2011*, January 2012, p11. Drawing on the legal advice referred to within the paper and authored by Dr RJ Somerville QC, *How to give legal effect in regional plans to the national policy statement for freshwater Management 2011*.

¹¹ Proposed Canterbury Land and Water Regional Plan, August 2012, section 2 –page 2

- 21 For instance, the Section 42A Report appended a memorandum from Dr Adrian Meredith, Environment Canterbury's Principal Water Quality Scientist.¹² Dr Meredith explained the intended role of the "outcomes" contained in Tables 1(a)-(c) as:

"...The table(s) identify 'outcomes' for Canterbury rivers and lakes, which may at times be aspirational. They are not however, intended as output tables (such as water quality guidelines or standards) that set numerical limits at specific points as for consent compliance purposes.

The indicators in Table 1(a,b) are therefore composed of parameters of relevance to observable environmental states or parameters of direct relevance to maintaining life supporting capacity. Therefore, they do not include detailed parameters such as chemical water quality parameters that can contribute to achievement of these states, but generally act in unison with other parameters and over extended periods of time.

Therefore, first, Table 1(a-b) is an important part of the Plan in setting higher level outcomes. Its deletion would leave the Plan without a context of measurable outcomes to be achieved over the life of the Plan."

- 22 Dr Meredith reiterated his view that the tables are aspirational in oral evidence on Day 1 of the hearing.
- 23 The Section 42A Report also addresses, somewhat paradoxically, the role of Policy 4.1 and its associated Tables:

"Policy 4.1 and the references to Table 1 were deliberately included, in the pLWRP, at a "policy" level, rather than elevating them to an objective. This is because the pLWRP is set up to have a single set of objectives, with the sub-regional sections able to set policies specific to the sub-regions to achieve the objectives. Elevating this policy to an objective would "lock-in" Table 1, which is not the intention in drafting the pLWRP. On this basis the submissions are recommended to be rejected.

It is acknowledged that the Table 1 water quality and quantity states are not achieved universally at present. On this basis, submissions seeking timeframes for this policy are reasonable, and a date, selected from the submissions will also enable the development in the interim period of sub-regional sections which may modify the outcomes sought locally."¹³ [My emphasis]

- 24 In this regard the Officers appear to be treating Policy 4.1 as an objective-setting device but one which is not intended to operate until some later date (in this case 2023). The expectation apparently is that sub-regions will produce their own objectives in the intervening decade.

Freshwater Quality Limits

- 25 Section 2.6 of the Plan explains that the "Limits", in the sense that this term is used in the NPSFM, are provided via the rules in the pLWRP and not via the objectives in Section 3 of the Plan nor via Policy 4.1. It may be inferred here that limits referred to in section 2.6 are both for quality and quantity.

¹² Proposed Canterbury Land & Water Regional Plan, Section 42A Report - Volume 1, January 2012, p 453

¹³ Proposed Canterbury Land & Water Regional Plan, Section 42A Report - Volume 1, January 2012, p. 101

26 Section 2.6 says:

“Section 2.6 – Limits

Limits as required by the Freshwater NPS, are included in the rules to this Plan.

Limits in this Plan are set to achieve the Plan’s objectives and the in-stream fresh water outcomes described in Table 1 to Policy 4.1, or in the relevant sub-regional section [as explained above there are no fresh water outcomes set in the sub-regional sections]

The Plan’s limits either:

1. Set out the maximum amount of a resource that can be allocated to those using the resource within a catchment; or
2. Control activities by:
 - (a) Permitting activities that the Council has determined can cumulatively occur while still ensuring that the objectives and the in-stream fresh water outcomes sought by the Plan will be achieved;
 - (b) Prohibiting activities that the Council has determined will not enable the objectives and the in-stream fresh water outcomes sought by the Plan to be achieved;
 - (c) Requiring resource consents for activities where the Council has determined that a case-by-case assessment is required to assess whether the objectives and the in-stream fresh water outcomes sought by the Plan will be achieved.”¹⁴

27 In this submission I refer to the strategy described at bullet point 1 above as one whereby “explicit” limits are set. The approach adopted at bullet points 2(a), (b) and (c) is, by contrast, an “implicit” strategy: the limit is to be inferred from the status of the activity rather than by reference to a stand-alone threshold.

Staged Implementation of the NPSFM

28 The section 42A Report explains how the pLWRP is intended to meet the procedural duties of the NPSFM. At page 37 the Report explains:

“The RPS 2013, the pLWRP as notified, along with existing catchment plans in the region will fully implement all but 2 policies (Policies A2 and B6) of the Freshwater NPS, prior to December 2014.”

29 I note here that Policy A2 of the NPSFM is only relevant to catchments which are over-allocated and Policy B6 pertains to phasing out over-allocation of water quantity. The Section 42A Report goes on to explain how Policies A2 and B6 will be addressed in the future.

“Canterbury Regional Council has a program to collaboratively work with communities in partnership with Canterbury Water Management Zone Committees and Ngai Tahu to develop targets, methods and defined timeframes to eliminate over-allocation of surface and groundwater where it has occurred.

¹⁴ Proposed Canterbury Land and Water Regional Plan, August 2012, section 2 –page 2

The first stage of this program is recorded in the 'Level of service for setting environmental limits for water quality and quantity' outlined on page 108 of the Canterbury Regional Council's Long Term Plan 2012-2022."¹⁵

- 30 The Long Term Plan was formally adopted in June last year. The Report then goes on to offer a simplified version of the content of page 108 of the Long Term Plan. I have reproduced the original as **Appendix 2** since its precise wording is important. What is noteworthy is that the entry on Page 108 of the LTP stipulates that there will be:

"A Regional Land and Water Plan that sets **freshwater objectives**, environmental flows and **water quality limits** as required by the National Policy Statement on Freshwater Management."
[my emphasis]

- 31 The Report also explains that on 7 November 2012 the Council resolved to update the staged programme referred to in the Long Term Plan in order that it could fully implement Policies A2 and B6. I should mention that the meeting in fact took place on 1 November 2012 rather than 7 November. I also attach a copy of the Council's agenda item from the meeting at which the matter was discussed along with a copy of the public notice released on 10 November 2012 formally adopting the staged-implementation approach for policies A2 and B6. Copies are contained in **Appendix 3 and 4** respectively.
- 32 In summary, the Council has adopted a staged implementation approach for Policies A2 and B6. However, it has not adopted a stage implementation approach for Policy A1 nor for any other policies created by the NPSFM.

Issues Arising

- 33 In my submission the legal issue is whether or not this proposed plan satisfies the NPSFM by stipulating freshwater quality objectives for all waterbodies in Canterbury and by setting freshwater quality limits for all waterbodies in Canterbury. In my submission it does not.
- 34 I have explained that the Council has not adopted a staged implementation approach for Policy A1. Its decision not to do so means that it must have all its freshwater objectives and freshwater quality limits in place by December next year. It is evident from the Council's Long Term Plan and its subsequent meeting on 1 November last year that this proposed Plan is the vehicle by which those two ends are to be delivered. *This* Plan must therefore contain *both* the freshwater objectives for all waterbodies in Canterbury and the freshwater quality limits for all

¹⁵ Proposed Canterbury Land & Water Regional Plan, Section 42A Report - Volume 1, January 2012, p. 37-38.

waterbodies in Canterbury. It must also establish methods to avoid over-allocation occurring. (Policy A1(b)).

- 35 In my submission this proposed Plan likely fails the first requirement and certainly fails the second. I will make submissions on the third point at Hearing Group 2. My reasons are as follows.

Regarding the Freshwater Objectives

- 36 The first difficulty is the approach of Policy 4.1 to allowing the sub-regional chapters to set the freshwater quality outcomes. That delayed inception would have been appropriate had the Council determined to adopt a staged implementation regime with respect to Policy A1 of the NPS. It did not.
- 37 It is therefore *this* Plan which must specify what the freshwater quality objectives are. Accordingly, setting of the outcomes cannot be deferred. Simply, the outcomes in Policy 4.1 are either “objectives” for the purposes of the NPS or they are not. In my submission this should not be obfuscated.
- 38 If the outcomes in Policy 4.1 are *not* intended to act as objectives, in the sense that that word is used by the NPS, then the only other source of freshwater quality objectives offered by this plan is to be found in Section 3. In my submission those objectives offer little in the way of tangible guidance to the public and do not fulfil the expectations expressed in the Implementation Guide. I refer the Commissioners to the quotation I provided earlier in which the Implementation Guide explains what the term “freshwater objective” means. It requires a two-staged approach: first, determining the community’s desired outcomes (such as ability to swim in a river); second, determining what environmental state is needed for those outcomes to be achieved. It is this second stage which, I submit, the broad Section 3 objectives fail to fulfil.

Regarding Freshwater Quality Limits

- 39 As discussed above, the Regional Council chose not to take a staged implementation approach where freshwater quality limits were concerned but rather to set those limits in this Plan.
- 40 As noted earlier, Section 2.6 of the pLWRP tells us that the “limits” are to be found in the *Rules*. By implication, Tables 1(a)-(c) are not therefore limits. It goes on to explain that the

limits will either be provided explicitly (by specifying a maximum amount of the resource which can be used) or implicitly (by permitting/prohibiting/requiring consent) an activity.

- 41 I submit that the NPSFM expects **explicit** limit setting. Further, that the implicit approach used in this proposed Plan is not in keeping with the spirit of the National Policy Statement since it fails to set "...a specific quantifiable amount".¹⁶
- 42 The good sense in setting explicit, measurable limits is obvious. By analogy, no vehicle driver would be expected to infer from his surroundings what the speed limit might be. Rather the road rules and the signage make the limits plain, unequivocal, explicit. I submit, that is how it ought to be with freshwater quality limits.
- 43 Moreover, for the implicit approach to be capable of operating as a *de facto* limit setting device one would need to be confident that activities which do exceed the limits actually are prohibited as a consequence. This is demonstrably not the case.
- 44 For instance, the nutrient discharge rules operate so as to allow (as a permitted activity) the discharge of Nitrogen into waters which are already known to be over-allocated. If the implicit strategy to limit setting was actually reflected in these rules then discharges in the areas shown red on the Planning maps would be prohibited (or at least non-complying) not permitted.
- 45 Likewise, waterbodies described in the pLWRP as "Natural State" would need to have rules associated with them which precluded their water quality from being affected at all since that is the outcome required where waterbodies are identified in regional plans as Natural State. In fact, reference to Natural State bodies is made in the rules on only two occasions (Rule 5.72 regarding stormwater discharges and Rule 5.77 other minor contaminant discharges). In neither case are discharges to Natural State bodies deemed to be prohibited as one might expect if their natural water quality was to remain unaltered.¹⁷
- 46 In my submission, the activity status has not been consistently used as a *de facto* means of setting water quality limits by this plan.

¹⁶ National Policy for Freshwater Management 2011: Implementation Guide, p10.

¹⁷ The Plan does identify some waterbodies as being "Natural State". It is actually unclear whether that is an intentional reference to the description "NS" used in Schedule 3 of the RMA. If it is then section 69 and Schedule 3 require that the natural quality of the water in those bodies is not altered.

- 47 If the status of the activity is not, in itself, an accurate predictor of what a limit is then the only other place one might locate these numeric or quantifiable limits is in the conditions attached to the rules.
- 48 One example of where that does occur is in the land drainage water rule, Rule 5.57. The rule stipulates that if a discharge is to qualify as a permitted activity it must, among other matters, not result in a concentration of total suspended solids in excess of 50g/m³.
- 49 Two further examples are offered by Rule 5.72(6) (regarding stormwater discharges) and by Rule 5.77 (regarding other minor contaminant discharges). In both cases the rule requires that discharges not result in the receiving waters exceeding the standards specified in Schedule 5. Although Schedule 5 appears to offer a suite of parameters or “limits” which might well satisfy the NPSFM limit requirements reference is only made to the need to comply with those requirements twice in the entire plan.¹⁸
- 50 On the face of it the conditions associated with the three rules mentioned above do have links to quantifiable limits. However, they are the exception rather than the norm. My review of the Plan’s rules indicates that although numeric or quantifiable limits are embedded in the conditions of some rules their treatment is ad hoc, inconsistent and, at times, simply meaningless. In other cases they are entirely absent.
- 51 For instance, Rule 5.52 makes it a permitted activity to discharge unlimited quantities of fertiliser to land in circumstances where it might enter water. The only conditions are that the discharge is not be undertaken when water is ponding on the surface and nor should it be applied within certain set-back distances of water bodies.
- 52 Although fertiliser is known to contain a number of nutrient and non-nutrient contaminants (e.g. cadmium) the rule does not contain any reference to a numeric or quantitative water quality limit.
- 53 I have set out a range of other examples to demonstrate this point in **Appendix 5**.

¹⁸ Schedule 5 contains two tables. The first sets out “water quality standards for waters not classified as Natural”. The second table appears to offer a comprehensive list of chemicals or chemical classes and specific concentrations or “limits”. It is headed up “Toxicant water quality standards for all water classes except class NATURAL”.

Precautionary approach

- 54 It may be that setting clear measurable limits is difficult or raises issues of scientific uncertainty. Indeed, the RMA,¹⁹ the NPSFM Implementation Guide²⁰, The Canterbury RPS²¹ and the Canterbury Water Management Strategy²² all anticipate the difficulties of setting limits. None however countenances turning away from that duty simply because it is difficult. Rather they advocate precaution in limit setting.

The Relief

- 55 My analysis demonstrates the legal problems encountered by this Plan in so far as the NPSFM is concerned. As I explained, it is my submission that the Council has not elected to follow a staged implementation approach to the creation of freshwater quality outcomes nor freshwater quality limits. In light of that the Regional Council must have in place objectives and limits for all waterbodies no later than December 2014.
- 56 Although this proposed plan may partially satisfy the first test it I submit that it fails the second. If the Commissioners join me in that conclusion then there are three remedies available to the Council. The Council, through this hearing process, may adopt a final version of the pLWRP which does impose the objectives and limits; or the Plan is withdrawn and an amended version is re-notified; or a Plan change/variation is notified. Whichever option is settled upon the amendments will need to be made prior to December 2014.
- 57 The Director-General's approach has been to support the setting of default water quality limits and outcomes in this plan.²³ In addition, the Director-General supported the submissions of Forest and Bird regarding amending the content of Table 1.²⁴ He also supported the revised

¹⁹ Section 32(4)(b) that the risk of acting or not acting be evaluated if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods

²⁰ NPSFM Implementation Guide: "...Experience nationally and internationally suggests that limit setting, particularly in water quality, will be difficult to get right the first time. Once a limit is set, it is likely to be modified and fine-tuned by subsequent plan changes as better information is obtained." p15

²¹ Canterbury Regional Policy Statement, Policy 7.3.12 (p68). The regional council will "...take a precautionary approach to the allocation of water for abstraction, the damming or diversion of water, or the intensification of land uses or discharge of contaminants, in circumstances where the effects of those activities of freshwater bodies, singularly or cumulatively, are unknown or uncertain."

²² The Canterbury Water Management Strategy also anticipates that uncertainty will be encountered on the path to sustainably managing water quality and it advocates:

"A cautious approach is taken when information is uncertain, unreliable, or inadequate." (Primary Principle 2 – Regional Approach).

²³ For instance, the Director-General of Conservation, Original Submission regarding Policy 4.1, p13

²⁴ Director-General of Conservation, Further Submission in support of Royal Forest and Bird Protection Society of New Zealand Inc, p4 . Also, Director-General of Conservation, Further Submission in support of Nga Runanga

objectives and policies of Ngai Tahu and Fish and Game which sought, amongst other matters, that water quantity and quality be managed through setting allocation regimes or limits on a catchment basis and that the limits be set in a way that the freshwater objectives of section 3 and Table 1 be given effect.

STRUCTURE – REGIONAL VERSUS SUB-REGIONAL APPROACH

- 58 Section 2.4 of the pLWRP explains that the plan is intended to operate at two levels. The region-wide section contains objectives, policies and rules that are to operate across the region (or pan-regionally). The 10 sub-regional chapters are intended to amend and update the pan-regional policies and rules over time.
- 59 For the reasons discussed at length in the previous section the sub-regional chapters cannot be utilised to “fix” this Plan’s failure to set objectives and limits unless those chapters come to fruition and are adopted before the end of December 2014. In this regard the sub-regional approach is no solution to the immediate problems presented by this Plan and, in any event, the indicative timeframe for rolling out the sub-regional chapters is over the next 7 or more years.
- 60 However, that is not to say that the sub-regional chapters could not, over time, amend the limits, objectives, rules, policies and so forth in this Plan. There is in fact nothing to prevent that occurring so long as some bottom lines are set before December next year. Indeed, the NPS Implementation Guide anticipates that freshwater objectives and limits will gradually be amended as better information comes to hand. In this respect the sub-regional approach is not precluded by the NPSFM.
- 61 More generally though, the pan-regional versus sub-regional strategy does present other legal and planning problems. Those were touched on by Counsel for Fish and Game.²⁵ Mr FAMILTON’s evidence²⁶ picks up on these too, pointing out that the approach has the potential to lead to Canterbury being managed as ten individual areas. He also comments on a matter which you addressed on day 1 of the Hearing. It was that the overall thrust of the pan-regional

of Canterbury and Te Runanga o Ngai Tahu, p4. Also, Director-General of Conservation, Further Submission in support of Fish and Game Council, p4.

²⁵ Legal Submissions on behalf of Nelson/Marlborough, Central South Island and North Canterbury Fish and Game Councils, paras 90-93

²⁶ Evidence in Chief of Herbert FAMILTON for the Director-General of Conservation, 4 February 2013, paras 79-124.

versus sub-regional approach appeared to have been led by a desire to give effect to the wishes of non-statutory CWMS Zone Committees.

62 I note that the Council has since revised its approach to this matter and agrees that the intentions of those Committees cannot usurp the RMA processes. The Council's position is now that the Zone Committees merely provide an informed starting point for the RMA process. And, I submit, that must be correct.

63 The essence of Mr Familton's concern is that the approach here imperils the regional consistency that *regional* planning is intended to produce. In my submission the potential for things to go awry is amplified here since there is an additional complication. Namely, that the sub-regional plans are likely to be notified and adopted under a much amended RMA scheme. That very real possibility underlines the concerns expressed by Mr Familton and by Counsel for Fish and Game. It also underscores the Director-General's submission and further submission that bottom lines need to be set by this plan.²⁷

NATURAL STATE WATERBODIES , HIGH NATURALNESS WATERBODIES, WETLANDS AND SCHEDULE 17 SITES

64 I now turn to another headline issue: how this proposed plan plucks out certain types of waterbodies and affords them extra protection under the rules. The Director-General's interest here is to ensure that the Plan's method is coherent and scientifically sound.

65 I approach this issue by briefly re-stating the main legal tests then considering how this Plan has answered those legal tests. Finally, I will identify the problems with the pLWRP's approach and explain how and why the Director-General's submission addresses them.

The Legal Tests

66 An overall broad judgment²⁸ must be made as to whether this Plan does in fact achieve sustainable management and, in reaching that decision, the 3 essential considerations of s5(2)(a)-(c) will need to be met. Specifically, does the Plan:

²⁷ Director -General of Conservation - Original Submission dated 5 October 2012 – regrading Policy 4.1 at p13. Also Director-General of Conservation, Further Submission in support of Fish and Game, in relation to Development and Review of Sub-Regional Sections, p1 and in relation to policies 4.1-4.4, p4.

²⁸ *North Shore CC v Auckland RC* (1996) 2 ELRNZ 305; [1997] NZRMA 59, in particular at p94.

- (a) sustain the potential of natural and physical resources so that the needs of future generations may be met;
 - (b) safeguard the life-supporting capacity of air, water, soil and ecosystems; and
 - (c) avoid, remedy or mitigate the adverse effects of activities?
- 67 In my submission section 5 speaks of intergenerational fairness. It recognises that booms come and go: one day it may be logging, the next trout guiding, the next viticulture. It requires that a line be held to enable today's and tomorrow's generations to ride out those boom/bust cycles and to emerge equipped with the tools and resources they need. After all, what is marginally valued today may be highly prized tomorrow.
- 68 Informing that overall judgment will be the extent to which the pLWRP's provisions adequately recognise and provide for matters of national importance. To paraphrase, those matters include considerations of an ecological hue:
- (a) The need to preserve the natural character of certain resources including wetlands, lakes, rivers and their margins and to protect it from inappropriate use subdivision, use or development.²⁹;
 - (b) The need to protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna. What is "significant" is a matter for the Council to make an informed judgment about but reference will need to be had to the 4 criteria set out in Appendix 3 to the RPS. Namely, representativeness, rarity or distinctiveness, diversity and pattern and ecological context. A site which qualifies under *one* or more of those criteria is deemed to be significant.
- 69 Naturally, certain matters of national importance will, at times, conflict with one-another. In this regard the Act does not pick winners or losers. Rather it leaves it to decision-makers to determine, on the facts before them, which components need to be augmented, kept safe or compromised in order to achieve sustainable management.
- 70 Section 7 of course adds additional matters which the Council must have particular regard to. From the Director-General's point of view the following are of special interest:
- (a) The ethic of stewardship and, with it, the notion of intergenerational responsibility³⁰;

²⁹ This obligation persists even though the wetland, river or other body is no longer pristine *Akaroa Civic Trust v Christchurch CC* [2010] NZEnvC 110. Furthermore, natural character is considered worthy of protection for its own sake *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC* EnvC WO25/02.

³⁰ *Day v Manawatu-Wanganui RC* [2012] NZEnvC 182 p5-75 at para 5-213.

- (b) The efficient use and development of natural and physical resources;
- (c) The maintenance and enhancement of amenity values;
- (d) The intrinsic values of ecosystems;
- (e) The finite characteristics of natural and physical resources;

- 71 In addition to sections 5, 6 and 7 the Regional Policy Statement must also be given effect to.³¹
For the purposes of this discussion numerous provisions of the RPS are relevant and I have summarised their content in **Appendix 6**.
- 72 The most pertinent provisions are: Issue 7.1.2, Objective 7.3.1, Policy 7.3.1, Policy 7.3.3, Policy 7.3.4, Objective 9.2.1, Policy 9.3.1, Policy 9.3.2, Policy 9.3.5, Policy 10.3.2.

Relevant Facts

- 73 The Regional Policy Statement requires that certain types of waterbody warrant extra protection (and in some cases, enhancement or restoration). The RPS makes it clear that in order to achieve those ends one must first be able to locate those special areas. That is one of the overarching themes to emerge from Chapters 7, 9 and 10.
- 74 Ecologically significant wetlands, waterbodies with natural character values, locations with significant indigenous biodiversity values, and places where threatened or at risk species live require identification first and , thereafter, protection, maintenance or improvement.
- 75 For its part, the pLWRP locates certain special or vulnerable waterbodies and affords them added protection from many different activity types (e.g. water takes and use, damming, physical modification, discharges and so forth). In my submission there are four special categories of waterbody described by the proposed plan which are repeatedly referred to in the rules. The 4 classes are:
- “Natural State Waterbodies”
 - “high naturalness waterbodies”;
 - “natural wetlands” (or areas within a “wetland boundary”); and
 - “Schedule 17 sites”.
- 76 Objective 3.5 of the pLWRP does, obliquely, refer to these classes by providing: “Outstanding freshwater bodies and hapua and their margins are maintained in their existing state or

³¹ S.67(3)(c) Resource Management Act 1991

restored where degraded.”. Outstanding freshwater bodies are themselves defined in the pLWRP as “includes hapua, natural wetlands, natural state waterbodies and high naturalness waterbodies listed in Sections 6-15 of this Plan and waterbodies subject to Water Conservation Orders.”

- 77 Many of the rules refer to one or a combination of those special waterbody classes as a means of determining what status an activity ought to have. In fact, the classification system has a pervasive effect on the Plan’s rules which is demonstrated by the table in my **Appendix 7**. One illustrative example is the surface water take and use rule, Rule 5.96. It is a restricted discretionary activity rule enabling takes to occur to in certain situations. Condition 3 of the rule stipulates that if the take is from a natural wetland, hapua, or high naturalness river listed in sections 6-15 then the activity will become non-complying. Qualifying as a “natural wetland or a high naturalness river listed in a sub-regional chapter” therefore acts to gate-keep the activity status.

Natural State Waterbodies

- 78 These are defined as:
“...rivers, lakes and natural wetlands within lands administered for conservation purposes by the Director-General of Conservation.”
- 79 It is not clear whether the use of this term “Natural State” is an intentional reference to the class “NS” for which water quality standards are set by Schedule 3 of the RMA itself.

High Naturalness Waterbodies

- 80 The pLWRP does not offer a definition for “high naturalness waterbodies”. Instead, entry into this class depends on whether the body concerned is specifically referred to in one or other of the 10 sub-regional chapters. The sub-regional chapters presently list a total of 5 rivers and 21 lakes. No wetlands are included in the lists however.
- 81 In fact, there is no detailed explanation offered as to the genesis of this category and it is entirely unclear how the “high naturalness” relates to the notion of “natural character” as used in the RMA and the RPS. In the absence of any clear explanation the Director-General has approached the matter on the basis that these waterbodies are meant to reflect areas where the ecological and habitat integrity of the waterbody is relatively high in terms of diversity or quality or both. This seems justified since the explanation which accompanies Chapter 7 of the RPS interprets natural character as including “the aquatic ecosystems which the water body supports including the diversity and abundance of indigenous species...”.

Wetlands

82 The terms “wetland”, “natural wetland” and “wetland boundary” are used in the proposed Plan. The wetland definition matches that found in the RMA³² while the others are defined in Section 3 of this plan.

83 However, one’s understanding of what a wetland is is altered by the following 2 provisions of the pLWRP:

“Note 3 - Wetlands, including the margins of rivers, lakes and artificial watercourses, that are contiguous with a river, lake or artificial water course and within the bed of the river, lake or artificial watercourse are not considered wetlands for the purposes of Rules 5.76-5.100.”³³

84 Rules 5.76 -5.100 cover the following matters: Other Minor Contaminant Discharges, Bores, Small and Community Water Takes, Water for Construction and Maintenance, Water From Canals or Water Storage, Take and Use Surface Water.

85 A similar carve-out occurs later in the Rules section:

“Rule 5.138 Unless specified otherwise in Sections 6-15, wetlands, including the margins of rivers, lakes and artificial watercourses, that are contiguous with a river, lake or artificial water course and within the bed of the river, lake or artificial watercourse are not considered wetlands for the purposes of Rules 5.139 to 5.142.”³⁴

86 Rules 139-142 are the Wetlands rules.

Schedule 17 Sites

87 Finally, Schedule 17 comprises a list of spawning sites for salmon and inanga. The only indigenous fish species referred to in the Schedule is inanga. There are only 4 inanga spawning sites mentioned in the Schedule. Three of those are on Banks Peninsula.

Issues Arising

88 The Director-General’s difficulty is this: protection under many of the rules in the proposed plan boils down to whether or not the waterbody concerned qualifies under one of the 4 heads mentioned above.

89 It is the Director-General’s submission that it is essential that the 4 special categories do in fact include the species, habitats and locations which need to be provided for or had regard to. In addition, the rules will need to give voice to Objective 3.5, mentioned earlier.

³² Section 2 RMA 1991

³³ Proposed Canterbury Land and Water Regional Plan, Volume 1, section 5 p20.

³⁴ Proposed Canterbury Land and Water Regional Plan, Volume 1, section 5 p31.

90 Natural State Waterbodies - In the case of Natural State Waterbodies the rules only refer to them on 2 occasions (in Rule 5.72³⁵ and Rule 5.77³⁶). I submit that, in reality, no comprehensive protection is afforded to them by the Rules at all.

91 High naturalness waterbodies - In the case of high naturalness waterbodies the problem is not so much with the bodies that have made it onto the shortlists but with the lack of explanation for why others have not. The evidence of the Director-General's witness, Dr West³⁷, demonstrates that if one applies a scientifically robust tool to analyse the ecological values of waterbodies in Canterbury then one finds that the lists in the sub-regional chapters are simply not comprehensive or rational.

92 Dr West explains that there are ways of locating waterbodies using scientific tools (such as Freshwater Ecosystems of New Zealand or "FENZ") which will produce results that reflect the waterbodies' natural character and ecological importance. Those tools have not been used by this Plan. Had they been used the lists of high naturalness waterbodies in the sub-regional chapters would be different.

93 Wetlands - Regarding wetlands, the rules seem to inexplicably draw a distinction between those which are wholly outside a river or lake and those which are within them. Protection for the former is higher than it is for the latter. As you will hear from the Director General's witnesses, Dr Dunn³⁸ and Dr Gerbeaux³⁹, that delineation is not scientifically sound. Furthermore, the distinction poses practical problems of interpretation since the carve-outs are defined in a way that leaves more questions than answers.⁴⁰

94 Giving pre-eminence to some wetlands and not to others simply because of their location (within or without a riverbed/lakebed) rather than the values they represent is not, I submit, consistent with the RPS. The RPS instead requires that wetlands, which are ecologically significant, need protecting and so too do the buffer areas which adjoin them and which contribute to their health. In the absence of a clear list of wetlands which are ecologically significant (and there is none provided by this Plan) the appropriate thing to do, in the

³⁵ Stormwater Discharges

³⁶ Other Minor Contaminant Discharges

³⁷ Evidence in chief of Dr David West for the Director-General of Conservation, dated 4 February 2014.

³⁸ Evidence in chief of Dr Nicholas Dunn for the Director-General of Conservation, dated 4 February 2014, paras 69-75

³⁹ Evidence in chief of Dr Philippe Gerbeaux for the Director-General of Conservation, dated 4 February 2014, paras 89-114

⁴⁰ For instance, the reference to "bed" and "margin".

Director-General's submission, is to ensure that all wetlands are treated as warranting protection by triggering the need for a consent and, in some instances, increasing the activity status of the resource consent application.⁴¹

95 The Director-General acknowledges that not all wetlands will display values which would justify restricting an activity. However, The rules should be structured to instigate an investigation if an activity is proposed in a wetland.. It may transpire that investigations demonstrate that the wetland concerned is not, for instance, "ecologically significant" after all. The point though is to cast the net wide in the first instance.

96 Schedule 17 - Finally, protection is granted by the Rules to a very, very limited number of locations where inanga are known to spawn. There are, in fact, only 4 listed. What Dr Dunn's evidence does is to demonstrate, firstly, that there are many more known inanga spawning sites than the four listed here.⁴² Indeed, work commissioned by Environment Canterbury⁴³ itself clearly demonstrated that to be the case. Dr Dunn's evidence goes further though and points out that there is no reason why inanga alone should be afforded the protection of Schedule 17. Inanga are just one species of indigenous freshwater fish in Canterbury which is classified as threatened or at risk. There are a further 17 species of indigenous fish which, in his view, warrant the same protection. His evidence also points to the New Zealand Biodiversity Strategy 2000 and the Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land 2007 in support of the Director-General's approach.

97 His evidence also points out that it is not only indigenous freshwater fish species whose aquatic habitats need protecting. Rather, there are numerous indigenous invertebrate species whose habitats are within or alongside waterbodies. The revised Schedule 17 proposed by the Director General presents a list of those indigenous species all of whom are also threatened or at risk and provides their locations.

⁴¹ Director-General of Conservation - Original Submission dated 5 October 2012 – regarding Wetland Rule 5.138 at p43 and re new wetland objective p13. Also Director-General of Conservation, Further Submissions in support of Fish and Game's general relief point 33.11, p1, Further Submissions in Opposition of Ngai Tahu re 5.138 and in support of 5.141 p12 and in partial support of Meridian Energy regarding Rule 5.141 p12.

⁴² Evidence in chief of Dr Nicholas Dunn for the Director-General of Conservation, dated 4 February 2014

⁴³ Golder Associates 2012: *Proposed Land and Water Plan. Potential submissions regarding the provision of inanga spawning sites*. Client Report to CRC, Golder Associates, Chch, NZ. Included as Appendix A to Evidence in Chief of Dr Nicholas Dunn for the Director-General of Conservation, dated 4 February 2014..

The Relief

- 98 The Director-General of Conservation's submission seeks to expand the four classes so that the clutch of waterbodies captured by the definitions is wider.
- 99 Regarding Natural State Waterbodies - The Director-General has not, via its submissions, specifically asked for additional rules or amendment to the rules to give further added protection to the "Natural State Waterbodies" though it did support Objective 3.5 of the pLWRP which sought to protect Natural State Waterbodies (and other defined bodies) in their existing state and to restore them where degraded. You will recall that Natural State Waterbodies are those deemed to lie within (or pass through) conservation land.
- 100 It remains to be said that just because a waterbody passes through conservation land it cannot be assumed that that fact alone will ensure its protection. The body will remain vulnerable to the actions of landholders up-stream and down-stream and elsewhere in the catchment. For many of these waterbodies whether they are protected or not will depend on the activities in them being effectively managed through these rules.
- 101 Regarding high naturalness waterbodies - Dr West discusses a method (FENZ) for identifying waterbodies in the region which *do* represent important ecological values. There is overlap between the bodies which that tool selects and those identified as High Naturalness Waterbodies in the sub-regional chapters. However, Dr West explains that the FENZ approach offers a more robust selection process. Dr West's evidence does not say that FENZ is the only answer but that it is a *better* answer than the one offered currently by the pLWRP.
- 102 If the desired end points are protecting the life-supporting capacity of water, and sustaining it for future generations then I submit it is essential to know where any damage to its quality will be most keenly felt. The FENZ approach allows the scientific community to draw upon its collective knowledge to locate those places.
- 103 Regarding Wetlands - The Director-General seeks to ensure that all wetlands (palustrine, lacustrine, riverine) are identified in the rules as triggering the need for more detailed thought in the consenting process and, where appropriate, elevating the activity status.
- 104 In the absence of a list identifying wetlands (as the proposed plan does for high naturalness waterbodies) protection of any and all wetlands turns on whether they qualify under the Plan's wetland definition or (in some cases wetland boundary or natural wetland definitions). As described above the plan's definitions relating to wetlands, especially the carve-outs, lead to

some peculiar outcomes. Dr Gerbeaux explains that such an approach is simply not scientifically logical.

- 105 Because being deemed a wetland (or not, as the case may be) is central to how the rules operate the Director-General's approach considers the starting point must be that all wetlands are captured. The Director-General acknowledges that while most wetlands in Canterbury will warrant protection (perhaps because of the need to preserve their natural character or their "significance" in terms of s6(c) and Appendix 3 of the RPS) there will be exceptions: the proverbial "puddle in a paddock".
- 106 A number of submitters proposed simple tests to exclude wetlands below a particular size (for instance 1ha). However, Dr Gerbeaux's evidence is that such a simplistic approach may result in certain significant wetlands failing to meet the test. He points out that there are tools which can be applied to weed-out those which do not warrant added concern. I acknowledge at this point that Dr Gerbeaux's discussion passes beyond the strict confines of the Director-General's submission. You may, nonetheless, find his evidence of assistance. The tool he refers to is the one proposed by the Horizons One Plan to determine whether a particular habitat was "significant" or not for the purposes of that plan. In his view applying such a test could resolve the anxieties of some submitters that puddle in paddocks do not warrant extra thought or protection while giving comfort to Environment Canterbury that the ones which do get captured by the criteria reflect the "significance" criteria set out in the RPS and in section 6(c).
- 107 Regarding Schedule 17- The Director-General's proposal will ensure that Schedule 17 is expanded to include the aquatic locations which are known to be important for threatened/at risk indigenous fish and threatened/at risk indigenous invertebrates. Currently Schedule 17 fails to achieve that.
- 108 I submit that the Director-General's approach would more appropriately answer the higher level tests of Part 2 but also the very specific tests of RPS Policies 7.3.1 and 9.3.2.
- 109 I note that the Section 42A Report acknowledged that the list of inanga sites in the pLWRP was "known to be quite deficient". It went on to say that:

"Because the inclusion of spawning sites into the PLWRP has implications for the number of activities controlled through the pLWRP it is considered that it is most appropriately achieved through a formal variation or change to the pLWRP so that all people affected by the additions will have a good opportunity to be consulted..."⁴⁴

⁴⁴ Proposed Canterbury Land and Water Regional Plan - Section 42A Report – Volume 1 For Hearing Group 1, p360.

- 110 In fact, everyone who had an interest in the sites proposed by the Director-General in its submission did have an opportunity to further submit in relation to it.

TOPIC-RELATED MATTERS

Regarding Topic 3

Rule 5.96 Take and Use of Surface Water

- 111 The Director-General's submission sought a different default water take and use condition to the one provided by Rule 5.96. The one proposed by Director-General, and discussed further by Mr Stewart⁴⁵, draws a distinction between rivers which have a 7DMA1F below 5 cumecs and those above that threshold.
- 112 There appears to be some confusion in the Section 42A Report's response to the Director-General's request. The confusion arises because, at page 278 of the Section 42A Report, the Director-General's submission is seemingly dismissed yet the recommendation actually includes the Director-General's revised test.
- 113 It is unclear therefore what the Report's view is on this matter and whether the Director-General's request has found support.
- 114 There is a further issue related to Rule 5.96. The rule is a restricted discretionary activity rule which combines an entitlement to take water with the right to use it. The Director-General's submission sought that three additions be made to the matters of discretion:
- That the rate and timing of the take be added;
 - That the impacts of the water use on adjacent dryland habitats be added;
 - That effects on aquatic ecosystems, in-stream habitat, wetlands and so forth be considered.⁴⁶
- 115 The Director-General's further submission also supported the Ecan Staff submission by seeking that the "the proximity of the water use to significant indigenous biodiversity" be added.⁴⁷

⁴⁵ Evidence in chief of David Stewart for the Director General of Conservation, dated 4 February 2013.

⁴⁶ Director-General of Conservation, Original Submission dated 5 October 2012 – regarding Rule 5.96 at p33.

- 116 Regarding the effects of water use on significant indigenous biodiversity, the Section 42A Report did pick up on the Ecan Staff submission and agreed the rule should be amended. However, it then failed to make the necessary amendment to the rule.
- 117 Regarding the effects of water use on dryland habitats, the Section 42A Report fails to mention the Director-General's request that this matter of discretion be added to Rule 5.96. I submit that this is inconsistent with the approach taken in relation to Rule 5.99 (non-consumptive take and use of water) where the Director-General's request has been included in the recommended rewording..
- 118 Since this rule affords the sole opportunity to consider what impact water use might have on significant indigenous biodiversity (which might include dryland vegetation) the Director-General considers it important that the matter is pursued and that the requested changes to the matters of discretion are adopted. In my submission granting this relief is consistent with RPS Policy .⁴⁸
- 119 Before moving on from this rule I should add that the point made by the Director-General about being enabled to consider rate and timing of the water take is essential for reasons explored by Dr Dunn's evidence⁴⁹. If the matter is not capable of being considered by the Council when processing a consent then it will be difficult, if not impossible, for suitable consent conditions to be imposed. This failure to specify rate and timing of takes as a matter of discretion is anomalous given that one of the matters of discretion which has survived in the Section 42A Report is the "reduction in the rate of take in time of low flow." I submit that it is difficult to see how that matter can exist if rate and timing of take have not been considered in the first place. The general rule, Rule 5.4, does not plug this gap.

Regarding Topics 4 and 5

New rules sought by the Director-General with respect to fire fighting activities

⁴⁷ Director-General of Conservation, Further Submissions in support of Ecan Staff Submission regarding Rule 5.96 p11.,

⁴⁸ The proposal does not offend the Statement of Local Authority Responsibilities on p64 of the Canterbury Regional Policy Statement 2013 since the rules concerned relate to water take and use and are not land use rules.

⁴⁹ Evidence in chief of Dr Nicholas Dunn for the Director-General of Conservation, 4 February 2013, p18 para51

- 120 Mr Teeling's evidence⁵⁰ explains that the Minister of Conservation is a Rural Fire Authority⁵¹. The Department is therefore engaged in planning for and responding to fire emergencies. In order to further its work the Director-General has asked for several changes to the pLWRP. Two particular points are noted here.
- 121 First, the Director-General seeks provisions to enable modest infiltration galleries to be created in riverbeds and lakebeds in order to capture water during a fire emergency. That is the intention of the Director-General's proposed new rule 5.79A.⁵² Unless such a permitted activity rule is created those works would require consent.⁵³
- 122 The Council responded to that request in its Section 42A report by saying that the problem was resolved by section 30 of the Fire Services Act 1975⁵⁴ and that no amendment was required as a result. In fact, section 30 of the Fire Service Act is of limited application since it only permits the *use* of water and not interference with the riverbed or lakebed.⁵⁵
- 123 With respect, there seems to be some confusion here. Although take and use of water for fire fighting are specifically exempted by section 14(3)(e) of the RMA that section does not expressly enable the disturbance of the lakebed or riverbed.
- 124 I acknowledge that Section 341 does allow for a defence to be raised where a breach of section 13 occurs and the actions were intended to protect life and property. In my submission though it is preferable for the Plan to be upfront about permitting infiltration galleries so that the prospect of prosecution is eliminated
- 125 A similar issue arises in relation to the damming provisions. Again, the Director-General has requested that a new rule be provided to enable temporary dams to be created in order to collect water for fire fighting.⁵⁶ Section 14(3)(e) provides:

⁵⁰ Evidence in chief of Anthony Michael Teeling for the Director-General of Conservation, 4 February 2013, p3 para8.

⁵¹ Forest and Rural Fires Act 1977

⁵² Submission of the Director-General of Conservation - submission point regarding proposed new Rule 5.79A, p32.

⁵³ Section 13(1)(b) precludes interference with lakebeds and riverbeds unless it is expressly allowed by the Plan, an NES or a resource consent

⁵⁴ Proposed Canterbury Land & Water Regional Plan: Section 42A Report, Volume 1 for Hearing Group 1, p358.

⁵⁵ Section 30(1)(b) enables the "...use of all water in any river, creek, stream, watercourse, channel, lake, lagoon, well, tank, or other source of water supply whatsoever for the purpose of extinguishing any fire [or stabilising or rendering safe any hazardous substance emergency].

⁵⁶ Submission of the Director-General of Conservation - submission point regarding Rules 5.128-5.129, p37.

"A person is not prohibited by [subsection 2] from taking, using, damming or diverting any water, heat or energy if - ...(e) The water is required to be **taken or used** for fire fighting purposes." [my emphasis]

- 126 There is, I submit, some room for uncertainty about whether (e) enables not just the taking and use of the water but also the damming and diversion of it.
- 127 This uncertainty could be remedied in this proposed plan by either amending the definition of "dam" or by adding a further condition to the permitted activity Rule 5.128. I note that the Section 42A Report has recommended that the definition of "dam" be altered to refer only to those structures which block the body's full flow. It is conceivable that some temporary dams created for fire-fighting might still qualify under this rule, particularly if the waterbody is small, hence my submission that the change is still needed notwithstanding the Officer's recommendations.

Permitted activity Rule 5.128 enabling dams and diversions

- 128 The Director-General's overall approach to the damming rules is to say that dams should not be a permitted activity.⁵⁷ Essentially, the Director-General's concerns are that the potential impacts on ecology are significant and warrant scrutiny from the Regional Council. This is true of the in-stream ecology and also the ecology along its margins. Dams have the capacity to submerge riparian habitats behind the dam and expose those down-stream of it. This is particularly concerning in this instance because the permitted activity rule also operates to enable dams which would capture up to 99.9% of the flow since condition 2(c) only operates to exclude dams which would block the "full flow".
- 129 Another point raised by the Director-General is that by failing to require consents from the Regional Council there is an increased risk that dams will be installed without people being reminded that consents from the Director-General or Land Information New Zealand will also likely be needed.
- 130 The above issues are discussed in the evidence of Mr Stewart⁵⁸, Mr FAMILTON, Mr Head⁵⁹ and Dr Dunn⁶⁰.

⁵⁷Submission of the Director-General of Conservation - submission point regarding proposed Rule 5.128 & 5.129 p36-37

⁵⁸ Evidence in chief of Mr David Stewart for the Director-General of Conservation, 4 February 2013, p3 paras 6-18

⁵⁹ Evidence in chief of Mr Nicholas Head for the Director-General of Conservation, 4 February 2013, paras 25-33

⁶⁰ Evidence in chief of Dr Nicholas Dunn for the Director-General of Conservation, 4 February 2013, p21 paras 65-68

131 The issue which I wish to focus on however is the failure of this rule to account for future effects and cumulative effects. None of the conditions attached to this rule would require a would-be 'dammer' to seek consent for a series of dams on a single segment of river. The cumulative effects of such a sequence may serve to exacerbate the concerns already canvassed by the Director-General's witnesses.

132 In my submission this approach fails to give effect to the Policy 7.3.12 of the RPS and is therefore a breach of section 67(3)(c) of the RMA.

"Policy 7.3.12 – Precautionary approach to allocation without a planning framework – To take a precautionary approach to the allocation of water for abstraction, **the damming or diversion of water**, or the intensification of land uses or discharge of contaminants, in circumstances where the **effects** of those activities on freshwater bodies, singularly or **cumulatively**, are unknown or **uncertain**." [my emphasis]

133 Also, proposed Policy 4.2 of the pLWRP requires that:

"The management of lakes, rivers and wetlands and aquifers will take account of the **cumulative effects** of land uses, discharges and abstractions in order in order to meet the freshwater outcomes in accordance with Policy 4.1." [my emphasis]

134 In my submission the Director-General's witnesses shows that it cannot be assumed that the impacts of successive dams (or individual dams for that matter) will be minor. Accordingly, the approach to damming should be cautious whereby individual applications and locations can be scrutinised and the cumulative (and individual) effects assessed. That cannot be achieved under the current permitted activity regime.

135 I would add here that section 5 requires that sustainable management will be achievable only where adverse effects are avoided, remedied or mitigated. The permitted activity rule is simply too permissive to adequately address the potential adverse future effects and cumulative effects.⁶¹

Regarding Topic 6

Biodiversity off-setting.

136 The matter of environmental mitigation or "offsetting" is raised only twice by this proposed plan: in Rule 5.14 as matter of discretion No. 3 and in Policy 4.80. They provide:

⁶¹ The word "effects" is not to be taken in isolation or allowed ridiculous scope; rather, it must be understood in context, and read broadly in light of the scheme and purpose of the Act as a whole: *Canterbury RC v Newman* [2002] 1 NZLR 289; (2001) 7 ELRNZ 137 (CA).

“Policy 4.80 - Modification of natural wetlands, hapua, coastal lakes and lagoons may occur if the activity is necessary to provide for the installation of infrastructure and any significant effects are off-set by other improvement or expansion of the same wetland, hapua coastal lake or lagoon.”⁶² [my emphasis]

Rule 5.141, discretionary matter No.3 – “Any off-setting of the effects through the enhancement or creation of additional wetland area.”⁶³ [my emphasis]

- 137 Those two references are partially inconsistent with one-another. Of more concern though, in my submission, is their failure to adequately reflect the principles laid down in Policy 9.3.6 of the RPS.⁶⁴

“Policy 9.3.6 – Limitations on the Use of Biodiversity Offsets

The following criteria will apply to the use of biodiversity offsets:

1. the off set will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;
2. the residual adverse effects on biodiversity are capable of being off set and will be fully compensated by the off set to ensure no net loss of biodiversity;
3. where the area to be off set is identified as a national priority for protection under Policy 9.3.2, the off set must deliver a net gain for biodiversity;
4. there is a strong likelihood that the off sets will be achieved in perpetuity; and
5. where the off set involves the ongoing protection of a separate site, it will deliver no net loss, and preferably a net gain for indigenous biodiversity conservation.

Off sets should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity.”

- 138 As I explained earlier, many wetlands and other areas of interest to the Director-General will qualify as national priorities in terms of RPS Policy 9.3.2.
- 139 The Director-General did not submit directly on discretionary matter 3 of Rule 5.141 but he did seek that the status of the activity covered by that rule (i.e. reductions of wetlands for infrastructure purposes) be upgraded from restricted discretionary to discretionary.⁶⁵ If that proposal was accepted by the Council it would remove discretionary matter 3 altogether.
- 140 However, the concern here is broader than simply whether discretion matter 3 is allowed to remain or not. A wider issues is the Plan’s failure to specify, with any precision, when offsetting will be entertained and what criteria an off-set will need to meet.

⁶² Proposed Canterbury Land and Water Regional Plan, Volume 1, section 4 p14.

⁶³ Proposed Canterbury Land and Water Regional Plan, Volume 1, section 5 p32.

⁶⁴ Canterbury Regional Policy Statement 2013, at p97.

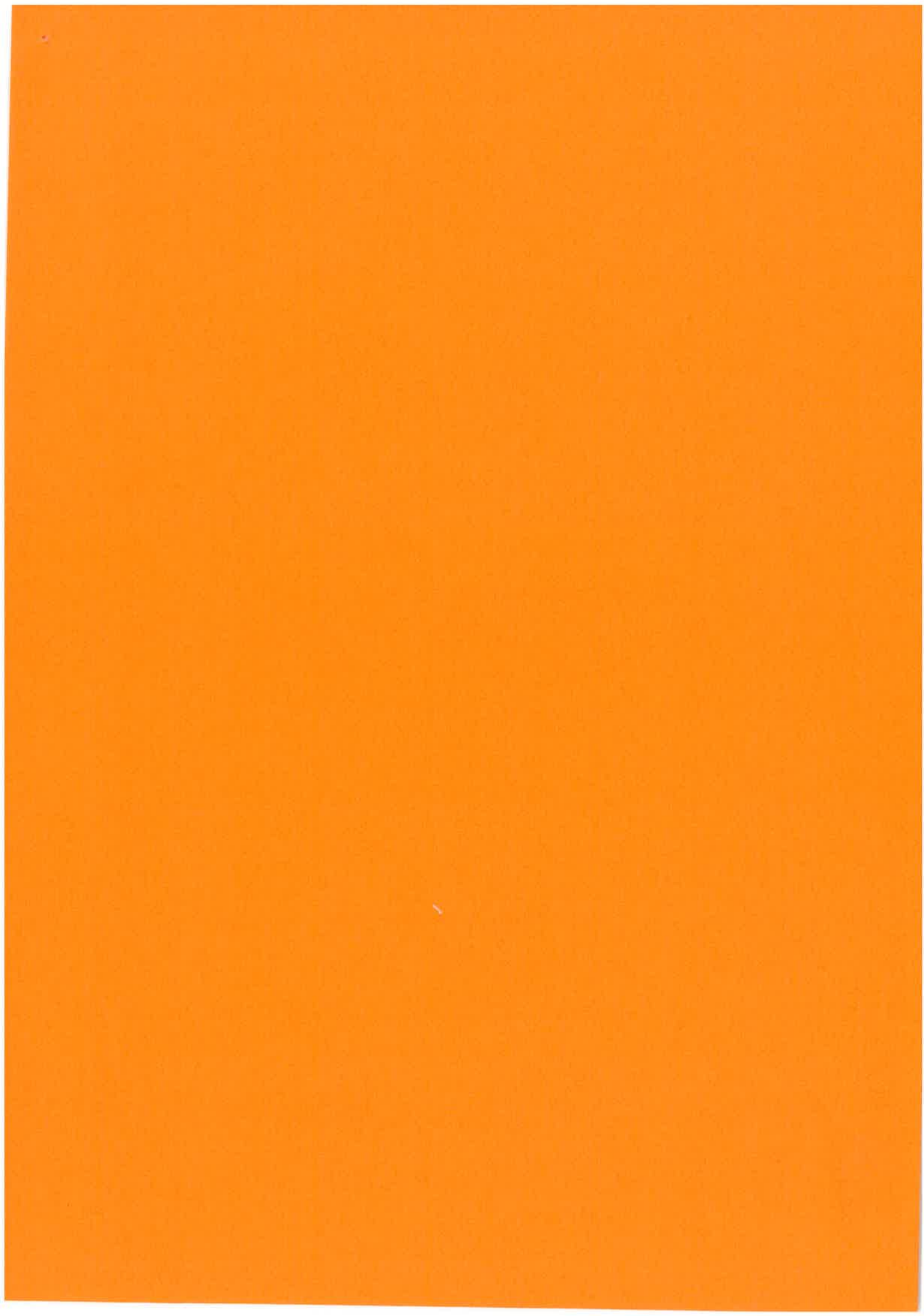
⁶⁵ Director-General of Conservation’s Further Submission in support of the Submission of Nga Runanga of Canterbury and Te Runanga o Ngai Tahu, p17 and 18.

- 141 The Director-General's submission proposed a new policy which would guide future decision-makers as to when an offset might be offered. He also proposed a definition for "indigenous biodiversity off-set" which could be used to inform the interpretation of the new policy.⁶⁶
- 142 Dr Gerbeaux, discusses biodiversity offsets in relation to the wetlands rules. His view is that off-setting needs to be carefully considered and guided by certain underpinning requirements: such as "like-for-like". Also, that there will be occasions where offsetting is simply not appropriate because the locations is particularly, vulnerable, rare or irreplaceable. I submit that the Director-General's approach is a preferable position to take than the one currently adopted by the pLWRP which offers very little guidance on the matter and more closely reflects the requirements of the Regional Policy Statement.

WITNESSES

- 143 The Director-General has lodged evidence from 8 expert witnesses. Their evidence covers the following matters:
- (a) Mr Herbert Familton – Regarding planning evidence.
 - (b) Mr Nicholas Head – Regarding indigenous vegetation.
 - (c) Dr Philippe Gerbeaux – Regarding wetlands.
 - (d) Mr Nicholas Dunn – Regarding freshwater fish species.
 - (e) Dr David West – Regarding classification of freshwater systems in Canterbury in terms of their ecology and biodiversity.
 - (f) Mr David Stewart – Regarding hydrological concerns.
 - (g) Mr Keith Briden – Regarding weeds and hazardous chemicals.
 - (h) Mr Anthony Teeling – Regarding fire fighting provisions.
 - (i) Dr Jeffrey Dally – Regarding greywater discharges and pit/composting toilets.

⁶⁶ Director-General of Conservation – Original Submission dated 5 October 2012 at p7 and at p17.





Appendix 1

Excerpts from the National Policy Statement – Freshwater Management 2011

"A. Water quality

...

Policy A1

By every regional council making or changing regional plans to the extent needed to ensure the plans:

- a. establish freshwater objectives and set freshwater quality limits for all bodies of fresh water in their regions to give effect to the objectives in this national policy statement, having regard to at least the following:
 - i. the reasonably foreseeable impacts of climate change
 - ii. the connection between water bodies
- b. establish methods (including rules) to avoid over-allocation.

Policy A2

Where water bodies do not meet the freshwater objectives made pursuant to Policy A1, every regional council is to specify targets and implement methods (either or both regulatory and non-regulatory) to assist the improvement of water quality in the water bodies, to meet those targets, and **within** a defined timeframe...

E. Progressive implementation programme

Policy E1

- b. This policy applies to the implementation by a regional council of a policy of this national policy statement.
- c. Every regional council is to implement the policy as promptly as is reasonable in the circumstances, and so it is fully completed by no later than 31 December 2030.
- d. Where a regional council is satisfied that it is impracticable for it to complete implementation of a policy fully by 31 December 2014, the council may implement it by a programme of defined time-limited stages by which it is to be fully implemented by 31 December 2030.
- e. Any programme of time-limited stages is to be formally adopted by the council within 18 months of the date of gazetting of this national policy statement, and publicly notified.
- f. Where a regional council has adopted a programme of staged implementation, it is to publicly report, in every year, on the extent to which the programme has been implemented. "

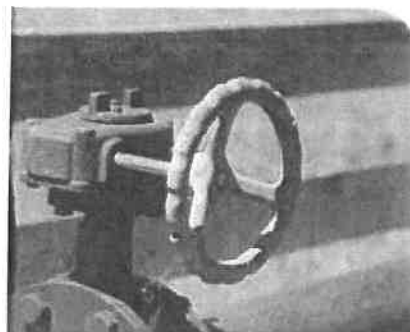
Appendix 2

Page 108, Canterbury Regional Council's Long Term Council Community Plan 2012-2022

Levels of service

Levels of service show you how effective our work programmes are in delivering measurable benefits to ratepayers and the region.

Measures & Targets – Canterbury Water Management Strategy



Level of Service 1: Set environmental limits for water quality and quantity in Canterbury

Measure: A schedule of notified RMA plans is implemented.

Target: See table. *Achieved in 2010/11.*

Target	Notification
A Regional Land and Water Plan that sets freshwater objectives, environmental flows and water quality limits as required by the National Policy Statement on Freshwater Management	2012/13
Sub-regional components of the Regional Land and Water Plan to set environmental flows in the Ashburton river, the Orari River and Waihao River	2012/13
A sub-regional chapter for integrated land and water management in the Selwyn-Waihora catchment	2012/13
A sub-regional chapter for integrated land and water management in Hinds River and Ashburton-Rangitata groundwater	2013/14
A sub-regional chapter for integrated land and water management for Wairewa/Lake Forsyth	2013/14
A sub-regional chapter for integrated land and water management in Coastal South Canterbury streams, and Morven Glenavy groundwater	2013/14
A sub-regional chapter for integrated land and water management in the Waitaki catchment	2014/15
A sub-regional chapter for integrated land and water management for rivers and groundwater in the Orari-Opihi-Pareora zone	2017/18
A sub-regional chapter for integrated land and water management for the Ashley River and Waimakariri zone groundwater	2017/18

Level of service 2: Effectively identify and manage risks associated with quality of community water supplies

Measure 1: Information is available on an annual basis about the percentage of monitored groundwater wells where nitrate-nitrogen concentrations are at or below the maximum acceptable value of 11.3 milligrams of nitrate per litre of water.

Measure 2: A joint work programme is developed with water supply and health authorities and CWMS committees.

Target 2: A joint work programme is produced and agreed.

This is a new level of service. We have changed this level of service to reflect how we identify and help manage these risks, to help ensure that nitrate concentrations meet the limits identified in level of service 1 above.

Target 1: Information is up to date.

Level of service 3: Effectively identify and manage health risks at recreational water sites

Measure: Annual freshwater recreational water monitoring programme is implemented, incorporating microbiological quality and surveys for potentially toxic cyanobacteria.

Target: Monitoring information on our website is up-to-date.

This is a new level of service for this Long-Term Plan. It has been changed to reflect how we monitor, communicate and work with others.

Appendix 3

Regional Council Committee Agenda Items Regarding Implementation of NPSFM from Committee Meeting on 1 November 2012

**401st MEETING OF THE
CANTERBURY REGIONAL COUNCIL**

COUNCIL MEETING

**TO THE CHAIR AND COMMISSIONERS OF THE
CANTERBURY REGIONAL COUNCIL**

MEMBERSHIP OF THE COUNCIL

Dame Margaret Bazley (Chair)

David Caygill (Deputy Chair)

David Bedford

Donald Couch

Tom Lambie

Peter Skelton

Rex Williams

The 46th meeting of the Canterbury Regional Council Commissioners will be held on

Thursday, 1 November 2012 at 10.00 a.m.

VENUE: Tutaepatu Room
Ground Floor
Matthew Fraser House
5 Sir William Pickering Drive
Burnside
CHRISTCHURCH

BUSINESS: As per Order Paper attached.
Agendas are available on our website three days prior to the date of the meeting -
<http://ecan.govt.nz/news-and-notices/minutes/Pages/Default.aspx>

Bill Bayfield
CHIEF EXECUTIVE

**RECOMMENDATIONS IN REPORTS ARE NOT TO BE TAKEN AS COUNCIL
POLICY UNTIL ADOPTED BY THE COUNCIL**

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in the Canterbury region

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**Environment
Canterbury
Regional Council**
Kaitiaki Take Kōwhiri

AGENDA ITEM NO: 7.	SUBJECT MATTER: NOTIFICATION OF NATIONAL POLICY STATEMENT IMPLEMENTATION PROGRAMME
REPORT: Council	DATE OF MEETING: 1 November 2012
REPORT BY: Tami Woods, Principal Planning Advisor	ENDORSED BY: Don Rule, Director of Planning and Consents
COMMISSIONER: Peter Skelton	

PURPOSE

The purpose of this report is to seek Commissioners' approval to publicly notify Canterbury Regional Council's staged program for implementing Policies A2 and B6 to the National Policy Statement: Freshwater Management 2011.

ATTACHMENT

1. Canterbury Regional Council's Staged program for implementing Policies A2 and B6 of the National Policy Statement: Freshwater Management 2011.

BACKGROUND

Every Regional Council is to implement the National Policy Statement for Freshwater as promptly as is reasonable in the circumstances, and so it is fully implemented by no later than 31 December 2030.

Where a regional council is satisfied that it is impracticable for it to fully complete implementation of a policy in the National Policy Statement by 31 December 2014, the Council may implement it by a programme of defined time-limited stages by which it is to be fully implemented by 31 December 2030.

Fully implemented is described in the Ministry for Environment Implementation Guide as a fully operative change to a policy statement or plan.

Under Clause 17 and 20 of the First Schedule to the Resource Management Act a plan or policy statement becomes operative after decisions have been released on a plan, any appeals resolved and the Council has approved to the Plan and resolved to make it operative.

Any programme of time limited stages needs to be formally adopted by Council within 18 months of the date of gazetting of the National Policy Statement, and publically notified.

Any staged implementation of policies in the National Policy Statement therefore would need to be notified prior to 12 November 2012.

Where a regional council adopts a programme of staged implementation, it is to publicly report, in every year, on the extent to which the programme has been implemented.

CANTERBURY REGIONAL COUNCIL IMPLEMENTATION

The proposed Regional Policy Statement, the proposed Land and Water Regional Plan along with existing catchment plans in the region will fully implement all but two policies (Policies A2 and B6) in the National Policy Statement for Freshwater prior to December 2014.

Policy A2 requires that where the quality of water in a water body does not meet a plans freshwater objective that targets and methods to improve water quality, within defined timeframes, are to be specified. Policy B6 requires that methods be set out in plans to phase out over-allocation of surface and groundwater quantity within defined timeframes.

Canterbury Regional Council has a program to collaboratively work with communities in partnership with Canterbury Water Management Zone Committees and Ngai Tahu to develop targets, methods and defined timeframes to eliminate over allocation of surface and groundwater where it has occurred. The first stage of this programme is recorded in the 'Level of service for setting environmental limits for water quality and quantity' outlined on page 108 of Canterbury Regional Council's Long-Term Plan 2012 to 2022. The second stage of the program is set out in Attachment 1.

Annual reporting of implementation of the Programme will form part of the Council's Annual Report under the Local Government Act, 2002.

RECOMMENDATION

1. *That the Canterbury Regional Council notes, in accordance with Policy E1 of the National Policy Statement: Freshwater Management 2011, that Canterbury Regional Council will fully implement all but two policies (Policies A2 and B6) to the National Policy Statement, by 31 December 2014.*
2. *That the Canterbury Regional Council resolves to notify, in accordance with Policy E1(d) of the National Policy Statement: Freshwater Management 2011, the attached Canterbury Regional Council's Staged Program of developing Sub-regional Sections to the Proposed Land and Water Regional Plan that will implement Policies A2 and B6 to the National Policy Statement: Freshwater Management 2011, on 10 November 2012.*

Attachment 1: Canterbury Regional Council's Staged Programme for Implementing Policies A2 and B6 to the National Policy Statement: Freshwater Management 2011

Stages	Target	Notification
Stage 1 (as set out in the Canterbury Regional Council Long Term Plan 2012 -2022)	A sub-regional chapter for integrated land and water management for the Selwyn-Waihora Catchment	2012/2013
	A sub-regional chapter for integrated land and water management in Hinds River and Ashburton-Rangitata Groundwater Zone	2013/2014
	A sub-regional chapter for integrated land and water management for Waiwera/Lake Forsyth	2013/2014
	A sub-regional chapter for integrated land and water management in South Canterbury streams and Morven Glenavy groundwater	2013/2014
	A sub-regional chapter for integrated land and water management in the Waitaki catchment	2014/15
	A sub-regional chapter for integrated land and water management for rivers and groundwater in the Orari-Opihi-Pareora zone	2017/18
	A sub-regional chapter for integrated land and water management for the Ashley River and Waimakariri zone	2017/18
Stage 2	A sub-regional chapter for integrated land and water management for the Ashburton-Rakaia Groundwater Zone	2018/19
	A sub-regional chapter for integrated land and water management for the Hurunui Waiau zone	2018/19
	A sub-regional chapter for integrated land and water management for the Kaikoura zone	2019/20
	A sub-regional chapter for integrated land and water management for the Christchurch West Melton zone	2019/20

Appendix 4

Public Notice of Staged Implementation Approach with Respect to Policies A2 and B6 of the NPSFM

PUBLIC NOTICE

Canterbury Regional Council's Staged Programme for Implementing Policies A2 and B6 to the National Policy Statement: Freshwater Management 2011

Pursuant to Policy E1 of the National Policy Statement: Freshwater Management 2011, the Canterbury Regional Council (Environment Canterbury) gives public notice of its Staged Programme for Implementing Policies A2 and B6 to the National Policy Statement: Freshwater Management 2011.

Canterbury Regional Council's programme involves collaboratively working with communities in partnership with Canterbury Water Management Zone Committees and TRONT to develop targets, methods and defined timeframes to eliminate over allocation of surface and groundwater. The first stage of this programme is recorded in the 'Level of service for setting environmental limits for water quality and quantity' outlined on page 108 of Canterbury Regional Council's 2012 Long-Term Plan 2012 to 2022. The full programme is available for public inspection at:

- The offices of Environment Canterbury at:
 - Ellesmere Centre, 24 Edward Street Lincoln;
 - 75 Church Street, Timaru; and
 - 73 Beach Road, Kaikoura.
- The Environment Canterbury website: www.ecan.govt.nz

Annual reporting on the Staged Implementation Programme will be described annually in the Council's Annual Report prepared under the Local Government Act 2002.

Mr Bill Bayfield
CHIEF EXECUTIVE



**Environment
Canterbury**
Regional Council
Kaunihera Taiao ki Waitaha

Appendix 5

Examples of Rules whose conditions fail to specify any (or any meaningful) water quality limits.

Nutrient discharges

The suite of pre-2017 nutrient rules contain no quantitative or numeric limits by which to assess whether the discharges permitted by the rules are within or outside specified thresholds. Post-2017 the notion of a 20 kgN/ha/yr threshold is introduced but this relates solely to Nitrogen and not to other contaminants (such as bacteria or Phosphorous for instance).

Animal Effluent

Rule 5.35 makes discharges of animal effluent to land, where it might enter water, a restricted discretionary activity. None of the conditions associated with the rule refer to numeric or quantitative limits in terms of their effects on receiving waters.

Stock access to wetlands

In the case of wetlands an example of the absence of water quality limits is offered by Rule 5.135 – a permitted activity rule to allow certain stock access to wetlands and other waterbodies. The only condition associated with the rule which relates to wetlands is the 4th condition: “the disturbance of the wetland shall not result in: (a) a conspicuous change in colour or clarity of the water; any clearly visible pugging or trampling of land”. There is no reference to any other water quality limits or parameters such as the E.Coli concentration test posed in condition 2. That particular test does not apply to wetlands since Mixing Zones are described in Schedule 5 to only refer to lakes and rivers, not to wetlands.

Reduction in wetland size

Another wetlands example is provided by Rule 5.141. That rule enables wetlands to be reduced in size as a restricted discretionary activity if the reduction is to accommodate infrastructure works such as telecommunications. The rule combines a land use and discharge rule into one and therefore allows discharges of water into the wetland and for the wetland to be drained. There is however no reference to any quantitative or numeric water quality limit at all in this rule.

Stormwater discharges

Rule 5.72 is still a further example of the absence of water quality limits being set for wetlands. The rule allows, as a permitted activity, the discharge of stormwater into lakes, rivers, artificial watercourses and wetlands. Condition 6 requires that the discharge not exceed the discharge standards specified in Schedule 5 after reasonable mixing has occurred. However, Schedule 5 is applicable only to rivers and lakes so condition 6 does not apply to wetlands at all. And there are no other water quality limits or cross-references in that rule.

Appendix 6

Summary of Canterbury Regional Policy Statement 2013 Provisions Relevant to Natural State waterbodies, high naturalness waterbodies, wetlands and Schedule 17 sites.

- 1 Issue 7.1.2 - That natural character includes aquatic ecosystems which the water body supports, including the diversity and abundance of indigenous species, the presence of healthy and resilient margins, and its surroundings, including landforms and vegetation.
- 2 Objective 7.3.1 - That freshwater is managed to ensure first order uses and values are provided for. Those first order values include safeguarding of life supporting capacity, preserving natural character and protecting waterbodies from inappropriate use, development and subdivision. The second order values include economic activities, recreational, and amenity values.
- 3 Policy 7.3.1 says that the Regional Plan will identify waterbodies which are valued because of their natural character and will either protect them (if unmodified, maintain them if they are modified and improve them where they are degraded to unacceptable levels. The first requirement is therefore to ensure that waterbodies which are valued for their natural character are properly identified so that appropriate mechanisms can be put in place to protect, maintain or improve them.
- 4 Policy 7.3.3 Requires that sites with threatened indigenous flora and fauna species are identified and protected. Furthermore, that wetlands lakes, hapua/lagoons and other outstanding waterbodies are identified and protected. That indigenous biodiversity, inland basin ecosystems and riparian zones are maintained or enhanced. The Regional Council and district councils are then instructed to use their regional/district plans to identify and protect these locations.
- 5 Policy 7.3.4 deals with water quantity and states that flows, freshes and flow variability is to be protected to safeguard life supporting capacity of the waterbodies, ecosystem processes and indigenous species and to protect the natural character values of the body as well. A similar policy requirement is imposed by 7.3.6 with respect to water quality.
- 6 Objective 9.2.1 – The decline in the quality and quantity of Canterbury’s ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded.
- 7 Policy 9.3.1 requires the Regional Council to provide for the identification and protection of areas of significant indigenous vegetation and significant habitats of fauna in waterbodies

including wetlands. Significance is to be assessed against the 4 criteria in Appendix 3 of the RPS. A site which qualifies under any one or more of those criteria is deemed to be significant. The policy also requires the Regional Council to provide guidelines to assist with determining which areas qualify as significant.

- 8 Policy 9.3.2 offers a mechanism for prioritising which areas need protection. There are 4 types of location prioritised in this way. Wetlands are specifically listed and so too are habitats of threatened and at risk indigenous species.
- 9 Policy 9.3.5 deals specifically with wetlands and says that the natural, physical, cultural amenity and recreational values of ecologically significant wetlands are to be protected but also that their enhancement, and maintenance is promoted. The policy also recognises the need to protect not just the wetland but the land adjoining it which may not itself be ecologically significant but which buffers the wetland zone.
- 10 Policy 10.3.2 requires the Regional Council to set objectives, policies (and rules if appropriate) to preserve the natural character of the riverbeds, lakebeds and margins.

Appendix 7

Table identifying all the rules where Natural State Waterbody, high naturalness waterbody, natural wetland/wetland boundary or Schedule 17 sites are referred to.

Key:

NS = Natural State waterbody

HNWB = high naturalness waterbody

W/NW/WB = Wetland / natural wetland / wetland boundary

Sch17 = Schedule 17

Topic Covered by Rule(s)	Rule No.s	Classification referred to by the rule	Nature of reference to classification	Consequence
Swimming pool and spa water	5.11	W	Condition to permitted activity rule	Upgrade to restricted discretionary
Pest control - Vertebrate toxic agent via land-based methods	5.21	WB	Condition to permitted activity rule	Upgrade to discretionary
Pest control - Vertebrate toxic agent discharged from aircraft	5.23	WB	Condition to controlled activity rule	Upgrade to discretionary
Discharge of diquat/glyphosate	5.27	W	Condition to permitted activity rule	Upgrade to restricted discretionary
Discharge of fertilizer aerially or by land	5.52 & 5.53	WB	Condition to permitted activity rule	Upgrade to discretionary
Land drainage water into wetland	5.57	NW	Condition to permitted activity rule	Upgrade to discretionary
Discharge of treated sewage to natural wetland	5.63	NW	Non-complying activity rule	
Discharge of untreated sewage to natural wetland	5.66	W	Prohibited activity rule	
Discharge of stormwater to waterbody or to land	5.72	W, NS	Conditions to permitted activity rule	Upgrade to non-complying
Other minor contaminant discharges	5.77	NS	Condition to permitted activity rule	Upgrade to discretionary activity
Small and community water takes	5.84	NW	Condition to permitted activity rule	Upgrade to discretionary activity
Water take for construction or maintenance	5.89	NW	Condition to permitted activity rule	Upgrade to discretionary activity
Take and use of surface water	5.96	NW, HNWB (rivers only)	Condition to restricted discretionary activity	Upgrade to non-complying

Non-consumptive take and use of water	5.99	NW, HNWB (lakes or rivers)	Condition to restricted discretionary activity	Upgrade to non-complying
Structures (pipes cables, wires etc)	5.113	HNWB (river or lake)	Condition to permitted activity rule	Upgrade to discretionary activity
Drilling, tunneling disturbing lakebed or riverbed	5.114	HNWB (lakes only)	Condition to permitted activity rule	Upgrade to discretionary activity
Installation, removal etc of bridges, culverts	5.115	Sch17	Condition to permitted activity rule	Upgrade to discretionary activity
Installation, removal etc of flood protection works	5.116	HNWB (river or lake)	Condition to permitted activity rule	Upgrade to discretionary activity
Temporary structures and diversions	5.118	Sch17	Condition to permitted activity rule	Upgrade to discretionary activity
Temporary discharges associated to land/water associated bed structures or gravel extraction	5.119	Sch17	Condition to permitted activity rule	Upgrade to discretionary activity
Gravel extraction	5.124	Sch17, HNWB (river or lake)	Condition to permitted activity rule	Upgrade to discretionary activity
Damming water outside or within waterbody	5.128	HNWB (rivers only)	Condition to permitted activity rule	Upgrade to discretionary activity
Damming of water outside or within waterbody	5.129	HNWB (rivers or lakes)	Condition to discretionary activity rule	Upgrade to non-complying
Exclusion of cattle/farmed deer from lakes, rivers, wetlands	5.133	W, Sch17	Prohibited activity if sch17 site involved	
Exclusion of other livestock from lakes, rivers, wetlands	5.135	W	Condition to permitted activity rule	Upgrade to discretionary activity
Wetlands in lakes rivers not wetlands for purposes of wetland rules 5.139-5.142	5.138	---		
Planting in beds of rivers or lakes	5.143	HNWB (river or lake), Sch17	Conditions to permitted activity rule	Upgrade to restricted discretionary activity
Vegetation clearance in riparian areas	5.147	NW, Sch17	Conditions to permitted activity rule	Upgrade to restricted discretionary activity
Earthworks and cultivation in riparian areas	5.148	WB, NW, W Sch17	Conditions to permitted activity rule	Upgrade to restricted discretionary activity
Vegetation clearance, earthworks, cultivation in riparian areas	5.149	WB, NW	Conditions to restricted discretionary activity rule	If doesn't qualify then dealt with as discretionary activity
Excavation and deposit of material over aquifers	5.155	WB	Conditions to permitted activity rule	Upgrade to discretionary activity

Excavation of material above coastal confined aquifer	5.157	WB	Conditions to permitted activity rule	Upgrade to discretionary activity
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