

Tabled at Hearing 20/05/2013

BEFORE THE CANTERBURY REGIONAL COUNCIL

Under the Resource Management Act

In the matter of the Proposed Canterbury Land and Water Regional Plan

LEGAL SUBMISSIONS ON BEHALF OF HURUNUI WATER PROJECT LIMITED
20 May 2013

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Introduction

1. Hurunui Water Project Limited (“HWP”) is currently in the process of seeking resource consents to irrigate 58,500 ha in the Hurunui, Waipara and Kowai Catchments.
2. There is significant potential for enhanced productivity if the irrigation of the land within the command area can be realised.
3. In summary the key issues for HWP are:
 - 3.1 Uncertainty as to whether the Proposed Canterbury Land and Water Regional Plan (PCLWRP) provisions apply to the area covered by the Proposed Hurunui and Waiau River Regional Plan (PHWRRP);
 - 3.2 Red “zoning” of the Waipara;
 - 3.3 The rules which will apply to farming in the Waipara and the Kowai (areas not covered by the PHWRRP).

Uncertainty as the area covered by the PCLWRP

4. The maps included in the PCLWRP show different areas are covered by the PHWRRP. The nutrient zone map¹ is not consistent with the sub-regional map².
5. Mr Chris Hansen covered this issue in his evidence and will elaborate on it shortly.

The “subject matter” in the Hurunui and Waiau covered by the PCLWRP

6. The PCLWRP states³:

“The Proposed Hurunui and Waiau River Regional Plan has objectives, policies and rules to manage fresh water resources in the Hurunui and Waiau and Jed River Catchments. It includes objectives, policies and rules on surface and groundwater allocation and the effects of land use on water quality in the area

¹Section 4 page 8 of the PCLWRP

² Section 7 page 1 of the PCLWRP

³ Section 2 page 3 of the PCLWRP

covered by the Proposed Hurunui and Waiau River Regional Plan. Any objective, policy or rule on the same subject matter in the Proposed Hurunui and Waiau River Regional Plan prevails over the objectives, policies and rules contained in this Plan.”

7. It is submitted it is not clear what the term “subject matter” means. Based on the above explanation from the PCLWRP, it appears, as the PHWRRP deals with the effects of land use on water quality, there would be no need to also look at the PCLWRP for this subject. However, the Canterbury Regional Council (the Council) has raised with HWP that its shareholders may also need to apply for discharge consents under Rule 5.51.
8. Rules 5.50 and 5.51 read:
 - 5.50 The discharge of nutrients onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene s15(1) of the RMA is a permitted activity, provided the following condition is met:*
 - 1. The land use activity associated with the discharge is authorised under Rules 5.39 to 5.49.*
 - 5.51 The discharge of nutrients onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene s15(1) of the RMA and does not meet the condition in Rule 5.50 is a discretionary activity.*
9. The position advanced by the Council to HWP was that a discharge consent for the discharge of waste directly from animals to pasture would be required under Rule 5.51 as the land use was not permitted by Rules 5.39 to 5.49.
10. This approach would create an absurd situation as although the land use activity is controlled by the PHWRRP a further discharge consent may also be required. I do not consider the purpose of this rule is to control the direct discharge of animal waste to pasture and even if it is I consider the direct discharge of waste to pasture is a “subject matter” controlled by the PHWRRP and therefore these rules do not apply.

11. HWP agree that the effects of land use on water quality cannot be ignored but it is onerous and achieves no purpose to require a party to obtain a range of consents which will address the same issue. For example, the HWP is currently seeking a consent to take and use water for irrigation. That consent, if granted will have nutrient conditions – then a change of land use in terms of a particular farm may also be required at a future date under the PHWRRP – it would seem pointless then to require a landowner to obtain a discharge consent under the PCLWRP to address effects which have already been dealt with.
12. I note that the Officer’s Report identifies that other submitters sought a further condition to Rule 5.50 to ensure consent was only required for the discharge of waste from farm animals where the densities and locations required but that the adoption of this change is not recommended by the Officer’s Report⁴.
13. A second example, of HWP’s concern in relation to the term “subject matter” is the transfer of surface water from one catchment to another. It appears the taking of the water is dealt with under the PHWRRP but that the discharge is controlled by the PCLWRP as the PHWRRP does not deal with the discharge of water into a different water body from that which it originated. Both plans have policies which will be applicable to the transfer.
14. It would be of assistance if the PCLWRP made it clear what is meant by “subject matter”. I am assuming it is broader than the term activity or otherwise it would have been logical for this term to have been used. It is not clear whether the “subject matter” referred to is the land use or the issue which is being controlled.

Red Zoning of the Waipara

15. HWP seeks that the Waipara is zoned “orange” as although the water quality outcomes contained in the PCLWRP are not met this is not due to current land use activities.

⁴ Officer’s Report page 128

16. HWP relies on the evidence of Ms Shirley Hayward on behalf of Dairy NZ in respect of the Waipara⁵.
17. It is submitted providing a pathway for irrigation and land use change to occur in the Waipara may actually facilitate the improvement of water quality in the Waipara. HWP is proposing to augment the flow of the Waipara as part of its proposal to provide water to the area.
18. Environmental gains can also be obtained through collaboration and land use development. HWP is proposing a management approach based on an overall environmental strategy which will utilise farm management plans and ensure industry articulated good management practices are adopted.

Rules for farming

19. HWP accepts that the development of Schedule 8 will take time but it opposes any approach which prevents landowners who have not yet developed their land from doing so.
20. The Officer's Report has recommended a changed approach to land use activities. The recommendation that a change in land use in an orange area is a restricted discretionary activity and any change in a red zone is discretionary⁶ is supported by the HWP.

Dated 20 May 2013

Sarah Watson

⁵ Evidence of Shirley Haywood for the Group 2 hearing page 3 paragraph 4.6

⁶ Officer's Report page 130