
in the matter of: the Resource Management Act 1991

and: submissions and further submissions in relation to
proposed Variation 1 to the proposed Canterbury Land
and Water Regional Plan

and: **Fonterra Co-operative Group Limited**
Submitter

and: **Dairy NZ**
Submitter

Rebuttal evidence of Gerard Matthew Willis (planning)

Dated: 8 September 2014

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REBUTTAL EVIDENCE OF GERARD MATTHEW WILLIS

INTRODUCTION

- 1 My full name is Gerard Matthew Willis.
- 2 My qualifications and experience are set out in my statement of evidence (*EIC*) dated 29 August 2014 (*EIC*).

SCOPE

- 3 In this statement of evidence I respond to the evidence of:
 - 3.1 Scott Pearson, who appears for the North Canterbury Fish and Game Council and the Royal Forest and Bird Society; and
 - 3.2 Cathy Begley, who appears for Te Runanga O Ngāi Tahu
- 4 As with my *EIC* I confirm I that have read the Environment Court practice note and have complied with it in preparing this rebuttal evidence.

EVIDENCE OF SCOTT PEARSON ON BEHALF OF NORTH CANTERBURY FISH AND GAME COUNCIL AND THE ROYAL FOREST AND BIRD PROTECTION SOCIETY

- 5 A considerable part of Mr Pearson's evidence appears based on the belief that the correct starting point for water quality management is the "current state". By that I mean that in various parts of his evidence (see paragraphs 35-45), Mr Pearson asserts that full allocation is represented by the current state (paragraph 35) and that additional nutrient allocation should only be allowed "*once allocation space has been created below the 'current state' defined limits*" (paragraph 45). He further infers that Variation 1 allows nutrient allocation in an over-allocated catchment by virtue of nutrient load being allowed to increase from current state (paragraph 39).
- 6 With respect, in my opinion that logic is flawed and inconsistent with the national and regional water planning policy framework. Councils, working with their communities, are entitled to determine the outcomes they want for their water bodies on the basis of the values that exist and all the matters relevant under Part 2 of the Resource Management Act (the Act). Further the proposed Land and Water Regional Plan (pLWRP) specifically provides for sub regional chapters to (re)define what full application is by setting new limits that replace or complement those of the pLWRP (that may be more or less stringent – subject to some bottomlines as set out in the National Policy Statement for Freshwater Management (NPS-FM), RPS and pLWRP strategic objectives and policies).

7 As noted in my evidence-in-chief, the NPS-FM requires regional councils to establish freshwater outcomes and set freshwater limits according to a process of identifying values and applying the national objectives framework. It does not rely on simply managing to current state.

8 This approach is appropriately reflected in the Canterbury Regional Policy Statement (CRPS). Policy 7.3.6 says, in relation to water quality:

(2) to manage activities which may affect water quality (including land use), singularly or cumulatively, to maintain water quality at or above the minimum standard set for that water body

9 The key point is that the obligation set by the CRPS is to manage to minimum standards (limits) set for the waterbody and not simply to current state. While the limit may be set at the current state Policy 7.3.6 does not presume that they will be.

10 The pLWRP is very specific about the ability for sub regional plans to redefine what full allocation is by setting limits, including limits that that depart from those of the pLWRP.

11 Policy 4.2 is specific on this point. It states:

The management of lakes, rivers, wetlands and aquifers will take account of the freshwater outcomes, water quantity limits and the individual and cumulative effects of land uses, discharge and abstraction will meet the water quality limits set in Sections 6 to 15 **or** Schedule 8 and the individual and cumulative effects of abstractions will meet the water quantity limits in sections 6 to 15.
[my emphasis]

12 For this discussion the relevant part of that policy is the "or" between the "sections 6 or 15" and Schedule 8. In other words the scheme of the pLWRP is that full allocation can be redefined in sub regional chapters based on Part 2 of the Act and after considering the best overall means to achieve the objectives of the NPS-FM.

13 In brief there is no presumption in the national or regional water planning framework that current state of water represents full allocation – even if water (or assimilative) might have been regarded as fully allocated prior to Variation 1.

14 This is relevant because Mr Pearson's contention that water quality should be maintained at "*current state*" underpins his planning recommendations for:

14.1 New Policy 11.4.14B that would not allow any farming activity to increase above its nitrogen baseline unless nitrogen

headroom was freed up in the catchment (i.e. nitrogen loss rates fell below the current load);

- 14.2 The nitrogen load to be set at 3366 tonnes/year to be met by 2017 (based on Ms Dewes' modelled output of current load); and
- 14.3 Deletion of any specific nitrogen load provision for Central Plains Water (CPW).
- 15 With regard to 14.1 above, in my opinion, the approach is potentially highly inequitable and highly problematic in a planning sense. Whether an application for a farming activity would be a discretionary activity or prohibited activity would depend on whether, at any particular point of time, council records show any headroom. This could lead to an application lodged and rejected as a prohibited activity one week while, by dint pure luck with regard to the timing some accounting adjustment, an application by a neighbouring farm lodged the following week could be accepted and approved as a discretionary activity. In my opinion such a proposal, while undoubtedly well intended is simply unworkable¹.
- 16 With regard to 14.2 above, based on the EIC and rebuttal of Ms Hayward, the figure used for the current catchment nitrogen load of 3366 tonnes/year is not correct. In fact the current load, according to Ms Hayward, is 4529 tonnes/year only marginally below the load provided for as the catchment limit (4830 tonnes/year). I understand that this slight (7%) increase in load is justified on the basis that it allows for the development of CPW scheme and the benefits in terms of reduced pressure on groundwater, improved surface water flows and greater dilution of nutrients. (As well as the schemes' contribution to the catchment vision (in part) of thriving communities). I note also that Variation 1's catchment nitrogen load is proposed in the context of lake interventions to improve in lake environmental quality.
- 17 The other major strand of Mr Pearson's proposed planning approach is the additional 20% reduction in nitrogen loss from farming activities (over and above that required by Variation 1 as notified - Mr Pearson's new Policy 11.4.14A).
- 18 For dairy farming that means a 50% reduction (from GMP) in nitrogen leaching by 2037. The amendments proposed to Table 11(i) show interim loads for 2022, 2037 and 2050. These are expressed as the current load less the reductions achieved by 2022 and 2037 respectively. Thus the problem identified above with the under acknowledgement of current load would be progressively compounded by this proposal.

¹ Because nitrogen loss above baseline is ordinarily prohibited (under the Variation as proposed) applications could not even queue as is currently common practice for water take applications in fully allocated catchments.

- 19 More importantly, the justification for a further 20% reduction (2022-2037) is not apparent to me. Nor is the cost of such a reduction. Mr Pearson's proposal for a target to be met by 2050 is puzzling as the limit is not specified other than as the "*final load to achieve ecosystem health*) [sic] *less amount allocated to community sewerage systems and industrial or trade process below*".
- 20 The load considered to achieve ecosystem health is not given. As noted in my EIC there currently is no national bottomline for ecosystem health for intermittently opening and closing lagoons (ICOLs) such as Selwyn Waihora, although the Ministry for the Environment (MfE) has suggested one could be developed in the future.
- 21 In my opinion, while a signal about the on-going need for continuous improvement in nutrient management may be appropriate, this ought not be in the form of objectives (outcomes) policies, rules, or limits. This is because:
- 21.1 the timeframes specified (36 years out) are well outside the normal planning period and outside the likely term of most resource consents; and
- 21.2 there are the multiple uncertainties involved (in terms of catchment modelling, possible future ICOL bottom lines in the NPS-FM and future land use 36 years hence).
- 22 Given those factors it would be speculative and of no material value.

EVIDENCE OF CATHY BEGLEY ON BEHALF ON TE RUNANGA O NGĀI TAHU

- 23 Ms Begley's evidence supports a range of changes to the proposed planning provisions controlling farming activities as set out in the Ngāi Tahu submission.
- 24 At a general level I appreciate Ngāi Tahu's concerns and I acknowledge the need for a long-term approach. I also accept that in the longer term further reductions in N leaching may be possible and appropriate to reflect Ngāi Tahu and others' interests and values.
- 25 Against the above, and although it is not clear from the Ngāi Tahu submission, it appears Ms Begley is proposing a regime whereby farming activities losing more the 15 kg N/ha/year reduce to 15 kg N/ha/year over time (i.e. beyond the levels proposed in Variation 1 if necessary to achieve a uniform 15kg kg N/ha/year leaching rate) (see paragraph 76 of her evidence).

- 26 I do not support such an approach at this time. An “*equal allocation*” of 15kg N regardless of land use or physical factors (such as soil type and drainage) has potentially significant social and economic implications and has not been properly costed. While again acknowledging the need for a long-term approach, I consider that reductions in N leaching from existing farms beyond the 14% required to achieve the catchment load set in Table 11(i) of Variation 1 would be premature.
- 27 With regard to the changes sought to Schedule 7, Part B (paragraph 84 of Ms Begley’s evidence), I would simply note that, for dairy at least, information on the location of dairy sheds and associated infrastructure will already be held by the Council as part of dairy shed consent applications. Therefore requiring that this information be provided again as part of farm environment plan (*FEP*) is superfluous.
- 28 More significantly, the proposal for environmental risk assessment(s) to be undertaken by an independent person seems to be to be problematic from a practical perspective. I acknowledge that risk assessment is required (Sch 7, Part B, 4) and that self-assessment may be perceived to present some risks of under-reporting, the reference to “independent persons” lacks clarity. It begs the question whether a farm adviser employed by a farmer to prepare a FEP would be regarded as an “*independent person*”.
- 29 While I acknowledge the issue sought to be addressed by Ngāi Tahu, I consider that a preferable way to address the risk is for Council to exercise discretion over the quality of FEPs at the time of the resource consent application. This will allow Council to consider the comprehensiveness and accuracy of risk assessments as part of the consenting process. I note that matter of discretion 1 under Rule 11.5.9 already addresses this point and hence the proposal of Ngāi Tahu is, in my opinion, unnecessary.
- 30 Ms Begley’s evidence also supports the inclusion of various additional matters in Schedule 24 (see paragraphs 86-87 of her evidence).
- 31 I have a number of concerns with these matters. However the overriding point is that Schedule 24 is intended to identify specific practices to be undertaken on farm. None of the additional matters raised by the Ngāi Tahu submission are specific implementable practices. Therefore it is very difficult to understand how a farmer is to give effect to the provisions. The matters raised are matters to be considered in deciding what practices to employ and may therefore be relevant to the development of a FEP (although I consider Schedule 7 already addresses the points). The one potentially specific practice listed is the use of a “paddock selection tool”. This may be an appropriate practice but it is not clear to me that such a tool currently exists.

32 The final point I would make is that the Ngāi Tahu proposals refer in multiple places (including in the amendments proposed to Schedule 24) to the Matrix of Good Management Practices. As I noted in my evidence in chief, it is my understanding that this tool does not currently exist and hence it is inappropriate for it to be referred to in Variation 1 at this time.

Dated: 8 September 2014

Gerard Willis