

**BEFORE THE INDEPENDENT COMMISSIONERS**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of Variation 2 to the proposed Canterbury Land and Water Regional Plan

---

**LEGAL SUBMISSIONS ON BEHALF OF CENTRAL SOUTH ISLAND FISH  
AND GAME COUNCIL**

**DATED 2 JULY 2015**

---

---

**ANDERSON LLOYD  
LAWYERS  
QUEENSTOWN**

Solicitor: M A Baker-Galloway / J E St John  
(maree.baker-galloway@andersonlloyd.co.nz /  
jackie.stjohn@andersonlloyd.co.nz)

Level 2,  
13 Camp Street,  
PO Box 201,  
QUEENSTOWN 9348  
DX ZP95010  
Tel 03 450 0700  
Fax 03 450 0799

## INTRODUCTION

1. Central South Island Fish and Game Council ("Fish and Game") submitted<sup>1</sup> and further submitted<sup>2</sup> on Variation 2 to the proposed Canterbury Land and Water Regional Plan ("Variation 2"). It was also a party to the submission made by New Zealand Fish and Game Council on the Proposed Canterbury Land & Water Regional Plan – General Plan & Section 1 ("pLWRP").<sup>3</sup>
2. The Hinds River has value as a prominent recreational trout fishery. There is no doubt that the ecosystem health of the Hinds River has continuously deteriorated since the mid 1980's<sup>4</sup>. An unequivocal link is created between intensive agriculture and utter degradation of an ecosystem.
3. ECan and most parties acknowledge the degradation and its cause, and the fact it is critical for Variation 2 provisions to encompass an array of changes in response to this crisis. In recent years a significant decline in the health of macroinvertebrate communities has resulted from excessive long-term deterioration of this environment, which once supported a healthy fishery. The magnitude of change required cannot be underestimated if degradation is to be reversed, and continuing productive use made of the land.
4. In realistic terms what comes with a long-term environmental decline is quite obviously a long-term plan for reinstatement. With this in mind, Fish and Game's submission is that we should place confidence on short term goals at present.

---

<sup>1</sup> Submitter 53274; Submission reference C14C/197259-02 dated 24 October 2014

<sup>2</sup> Further submission 54541 reference C15C/10508-02 dated 30 January 2015

<sup>3</sup> Submitter 347; Further submitter 615. Any submission or further submission on the pLWRP that is on one of the provisions being substituted by Variation 2 is deemed to be a submission or further submission on Variation 2. A decision has not been made as to whether, and if so, to what extent, any submission on the pLWRP is on one of the provisions being substituted by Variation 2.

<sup>4</sup> This increased degradation due to significant over-allocation is well established in the s42A report.

5. It can be difficult to imagine the reinstatement of fishery values in the Hinds, when the current array of detrimental effects flow from such a long term decline. However, with an improvement of river flow and water quality the Hinds River could be reinstated to the healthy ecosystem it once was pre – 1980's. Fish and Game experts agree that to achieve this there has to be a reduction in nutrient enrichment, and sediment and faecal contamination; and an improvement in the management of riparian margins and flows.
6. These submissions will cover:
  - a. Fish and Game's statutory functions;
  - b. A summary of Fish and Game's position on Variation 2;
  - c. The state of the Hinds' catchment water;
  - d. The values of the Hinds' fisheries;
  - e. The legal framework;
  - f. Changes sought to Variation 2 by Fish and Game;
  - g. Water Allocation;
  - h. ECan's approach;
  - i. Fish and Game's evidence.

## **FUNCTIONS OF FISH AND GAME**

7. Central South Island Fish and Game is the statutory manager for sports fisheries and game birds in part of Canterbury from the south bank of the Rakaia River in the North, to Moeraki in the South It has a statutory function "*to manage, maintain and enhance the sports fish and game bird resource in the recreational interests of anglers and hunters*", "*to represent the interests and aspirations of anglers and hunters in the statutory planning process*" and "*to advocate the interests of the [New Zealand Fish and Game] Council, including its interests in habitats*"<sup>5</sup>. As such it has been involved in numerous planning processes in Canterbury to achieve an appropriate management of freshwater resources. This has included submissions on variations to the Natural Resources Regional Plan ("NRRP"),

---

<sup>5</sup> Section 26Q Conservation Act 1987

involvement in the Canterbury Water Management Strategy ("CWMS"), the Regional Policy Statement ("RPS"), the National Policy Statement on Freshwater Management ("NPSFM"), the full proposed Land and Water Regional Plan ("pLWRP") and various water conservation order applications in Canterbury.

## **SUMMARY OF FISH AND GAME'S POSITION ON VARIATION 2**

8. Fish and Game acknowledges that freshwater, and its consumptive use, is a key driver of the local and regional economy. It also has intrinsic and non-consumptive values such as aquatic ecosystems values including sustaining the diversity of aquatic species that inhabit it, life supporting capacity, amenity and recreational values.
9. Fish and Game seeks an outcome from Variation 2 that enables people to provide for their social, economic and cultural wellbeing, while ensuring that these rivers, lakes and wetlands continue to be available for future generations to enjoy, that life-supporting capacity is safeguarded, and in the case of the Hinds in particular, that the degradation is repaired over an appropriate, practicable and fair timeframe.
10. Fish and Game's key points in respect of Variation 2 are:
  - a. Values of waterbodies are not identified such as trout fishery, trout spawning, wildlife habitat, wetlands, contact recreation, amenity, aesthetics and natural state.
  - b. Fish and Game is seeking substantial change to 'Table 13(a) Freshwater Outcomes' and does not accept the used of single nutrient management 'targets' in 'Table 13 (j) Targets for surface waterbodies'. Amendments are proposed to set targets for other contaminants.
  - c. There has been a significant underestimate of current leaching in the catchment and this means the allowance made in Variation 2 for future irrigation expansion in the catchment should be reconsidered. Rules allowing expansion should be removed as imprudent. When there is a proven trajectory of improvement underway they could be re-introduced (for instance in the 2023/24 plan change).

- d. Other changes sought by Fish and Game are summarised later in these submissions, and are attached to Mr Wilson's evidence in chief at Appendix 1.
11. What compounds the shortcomings in Variation 2 is the fact that critical provisions refer to, and rely upon parts of the plan that are yet to be developed and go through the Schedule 1 process. This is particularly the case with the reliance in table 13 (h) on using "good management practice" as the otherwise undefined starting point for targeted reductions in nitrogen leaching. Fish and Game propose deletion of that table. Instead the nitrogen reduction target for the purpose of this interim plan is set out in policy 13.4.13.
12. Variation 2 by necessity is an interim regime. It was notified on 27 September 2014. Shortly before it was notified the NPSFM was amended<sup>6</sup> and the amended 2014 version took immediate effect on 1 August 2014. The NPSFM 2014 as it now applies contains significantly different new policy and process requirements in section C and Appendices 1 and 2 relating to the National Objectives Framework and setting of attribute states for identified values. It would have been impractical for ECan to try to retrofit Variation 2 to the NPSFM 2014 due to the fundamental differences, both process wise and technically. ECan therefore acted sensibly in accordance with Policy E1 of the NPSFM and clarified that in the Hinds' Catchment, the NPSFM 2014 would be implemented by 2023/2024:
- c) Where a regional council is satisfied that it is impracticable for it to complete implementation of a policy fully by 31 December 2015, the council may implement it by a programme of defined time-limited stages by which it is to be fully implemented by 31 December 2025 or 31 December 2030 if Policy E1(ba) applies.*
13. Fish and Game supports the staged implementation of the NPSFM in the Hinds' Catchment. There are detailed community based process requirements set out in section C of the Policy that have not been complied with due to the timing of preparation of Variation 2. It is much more appropriate that the community based process for identifying values and setting attribute states be undertaken between now and 2023/24. This will also give ECan the time it needs to attain

---

<sup>6</sup> The NPSFM 2014 was gazetted on 4 July 2014 and came into effect 28 days later

the data and understanding required to more accurately assess the leaching and load calculations for the catchment, which Fish and Game experts advise is currently significantly under estimated<sup>7</sup>.

14. Therefore, Fish and Game views Variation 2 as an interim regime that will be replaced in 2023/24 by a plan change that gives full effect to the NPSFM. For this reason, the provisions advanced by Fish and Game are intended to plug the gap for this interim period, while also meeting the requisite legal tests and giving weight where it is due to relevant matters.
15. Fish and Game's relief for the Variation is therefore intended to:
  - a. Set limits/targets that will introduce dual and multiple contaminant management which is required in order to safeguard the life supporting capacity and ecosystem health of the Hinds catchment and achieve the NPSFM objectives.
  - b. Establish a policy and rule framework that will improve outcomes for freshwater:
    - i. Maintain water quality at a minimum<sup>8</sup>.
    - ii. Improve water quality where it is currently degraded<sup>9</sup>.
    - iii. Where water quality and quantity is not in breach of limits, allow for efficient use of the water, while ensuring limits are not breached.
    - iv. Where water quality or quantity are in breach of limits, set up an **interim** framework that at the very least holds the line and begins the process of phasing out over-allocation and contamination of freshwater. It is anticipated that in 2023/24 a plan change will fully implement the requirements of the NPSFM and provide for further improvements.
  - c. An essential element for safeguarding the ecological health of the Hinds' is an assured flow of water. Fish and Game support

---

<sup>7</sup> Refer to paragraph 37 of Peter Wilson evidence

<sup>8</sup> section 30 of the Resource Management Act 1991

<sup>9</sup> Ibid

having established means for restoring river flows through targeted stream augmentation, and review of aquifer management in the Hinds Catchment and drains areas, and implementation of progressively more stringent minimum flows and allocation limits through future plan changes, or other means. With improved flows, and reductions in nutrient enrichment, the ecological health of the Hinds catchment and drains can be reinstated.

- d. The framework needs to be a complete, integrated planning regime that can be shown to be an efficient and effective means of achieving the purpose of the Act and relevant statutory tests.
- e. The framework also needs to enable and sustain on-going use of water by communities and businesses, at the same time as maintaining and restoring the life supporting capacity and ecological health of the catchment.

#### **STATE OF HINDS' CATCHMENT WATER**

- 16. The current state of the environment in the Hinds River is worse than 78 percent of other monitoring sites in rivers around the country<sup>10</sup>. The current nitrogen loads are far too high and result in stream concentrations exceeding the healthy limit, and thus proving noxious for the ecosystem.
- 17. Recreational trout fishing is non-existent in the current state<sup>11</sup>. Basically, the current state of the river is detrimental to the ecosystem because it is excessively weedy, has high contaminant loads and supports an extremely low flow in comparison to the pre-1980's. Evidence of this is quite clear when looking at the Hinds drains<sup>12</sup>.

---

<sup>10</sup> 2012 data obtained from Northland Regional Council, Waikato Regional Council, Hawkes Bay Regional Council, Manawhatu – Wanganui Regional Council, Taranaki Regional Council, Bay of Plenty Regional Council, Greater Wellington Regional Council, Tasman Regional Council, West Coast Regional Council, Canterbury Regional Council, Otago Regional Council, Southland Regional Council.

<sup>11</sup> In 1994 there were 210 angler days, compare to last survey 2008 (until now) there are zero.

<sup>12</sup> Survey in Aug/Sept 2014 by Webb

Deterioration has resulted in changes to the substrate, an excessive coverage of periphyton on the bed, and a poor invertebrate community.

18. In both the Hinds River and drains there has been a gradual degradation of ecosystem health and associated loss of trout fishery and habitat values from the mid 1980's to 2000's<sup>13</sup>. The major decline period for freshwater ecosystem health generally has been from the early 2000's until today. It is entirely possible to reinstate the Hinds as a healthy and prosperous ecosystem, but it may take a similarly long time to do this.
19. The primary causes of ecosystem degradation are visible following a long term occurrence, and are summarised as:
  - a. High turbidity and deposited sediment;
  - b. High water temperatures;
  - c. Excessive periphyton growth;
  - d. Ineffectual riparian buffer;
  - e. Ineffectual nutrient management;
  - f. Water quantity over allocation and low minimum flows.

The latter will be further explained and quantified by Dr Canning.

20. ECan and most parties accept there is now a requirement to restore degraded water bodies. The cases I cite below provide assistance, and show that consistently the Courts and Boards of Inquiry are finding in favour of the obligation of regional councils to maintain and restore water bodies to a healthy state. In the case of One Plan, Judge Thompson's division of the Environment Court noted:

*[5-8] We should immediately say also that we have little sympathy for the line of argument that we should defer taking decisive action in the field of improving water quality (or, at the very least halting its further decline) because ... the science is not sufficiently understood ... or that ... further analysis could give a more comprehensive process ... or similarly phrased excuses for maintaining more or less the status quo. We will never know all there is to know. But what we*

---

<sup>13</sup> EIC of Mr Webb paragraph 9

***undoubtedly do know is that in many parts of the region the quality of the natural water is degraded to the point of being not potable for humans or stock, unsafe for contact recreation, and its aquatic ecosystems range between sub-optimal and imperilled. We also know what is causing that decline, and we know how to stop it, and reverse it. To fail to take available and appropriate steps within the terms of the legislation just cited would be inexcusable.***<sup>14</sup>

21. There are additional cases of assistance issued recently. In particular recent authority has supported this theme. Judge Thompson has reiterated and clarified the legal position<sup>15</sup>:

*[29] It is a function of every regional council to control the use of land to maintain and enhance the quality of water in water bodies and to control the discharges of contaminants into water. This function is not optional – it is something a regional council is required to do.*

*[69] This [time lag for effects] lack of precise knowledge is not a reason to restrain from taking any step to try to maintain, and indeed improve the quality of the water in any acquirer. While maintaining water quality may be something of a moving target, the requirement is to strive for management practices that will prevent degradation, and to strive to ensure that quality is, at a minimum, maintained. That is a plain requirement of s30.*

*[70] If historical causes of water quality lead to decline later, and are causes which cannot be foreseen or controlled then that will have to be dealt with at the time the quality decline is identified and its extent becomes known.*

*[71] The frequent use in the hierarchy of planning documents of terms such as enhancement , see s7 RMA, or improve, see objective A2 of the NPSFM, inherently recognise that there will be situations where, from whatever cause, water or other aspects of the environment may be degraded to some degree from their pristine states.*

---

<sup>14</sup> *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182 at page 5-5 to 5-6

<sup>15</sup> *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* [2015] NZEnvC 50

*[73] What we can predict, and can, and should be planning for, by way of objectives and policies is the effect of current anthropogenic activities affecting waterbodies.*

*[74] Having a sub- optimal present is not an excuse for failing to strive for an optimal, or at least closer to optimal future.*

*[77] Not being able to remedy the poor practices of the past is not a good reason to allow the same errors to be made in the future...technology and best practice needs to be developed to maintain and where degraded, enhance the environment to ensure that the sustainability principles of the RMA are fulfilled.*

*[78] The possibility of an objective of maintenance or enhancement being partly unfulfilled is not an excuse for not trying at all.*

22. Judge Smith concurs in another recent decision:<sup>16</sup>

*[373] The [river] is degraded by human activities" "We conclude that the [river] is over-allocated because the regional documents provide a clear direction towards reduction of contaminants and enhancement. Further, the [river], through its interaction with the Tarawera River, is contributing to the reduction of health and mauri of that river. These compulsory values would seem to put the [river] clearly in the frame of the directives of the Freshwater Policy Statement for maintenance and enhancement.*

*[375] Further, there are the Regional Council's functions as set out in s30 RMA, the most relevant parts for current purposes, we set out here...This section indicates towards maintenance or improvement of all water bodies.*

*[377] This raises the issue of cumulative effects and long term effects. Once we consider the primary objective to safeguard the life supporting capacity we conclude that maintenance at least must be assumed. Adding to an existing background level albeit degraded, will not achieve maintenance. By increasing the level of contamination of the [river], there is the potential for the overall input from this source to the Tarawera River to increase and therefore to have a negative impact on the river.*

---

<sup>16</sup> *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90

*[381] If the suggestion is that the Freshwater Policy Statement provides some permit to drive to the bottom line, or a licence to pollute, then that concept is entirely rejected by the court.*

23. The Tukituki Catchment proposal faced similar difficulties to the Hinds and the Board of Inquiry decision mirrors the position of the Courts:<sup>17</sup>

*[328] Where the quality of freshwater has been degraded by human activities to such an extent that OBJ TT1 is not being achieved, water quality should not be allowed to degrade further. Rather, water quality should be improved progressively over time so that OBJ TT1 is achievable by 2030 (the year by which the NPSFM is to be implemented).*

*[663] PC6 is intended to provide an integrated approach to the management of land use and water. Amongst other things it contains a minimum flow regime that is designed to sustain river ecosystems and in-stream values. Improved quality as a result of the nutrient approach in the plan will also sustain these values. The Board is satisfied that PC6 gives effect to the NPSFM by appropriately addressing freshwater ecology.*

*[808] The NPSFM requires overall water quality to be maintained or improved within a region. It also requires councils to safeguard the life-supporting capacity, ecosystem processes and indigenous species (including their associated ecosystems) of fresh water. Councils are also required to manage fresh water efficiently within set limits and to address over-allocation.*

24. The Board's final decision in relation to Ruataniwha is a useful summary. In particular it highlights the issues of single nutrient management and prefers dual nutrient management to safeguard life supporting capacity and ecosystem health, and it rejects the concept of setting nitrogen limits at toxicity<sup>18</sup>.

---

<sup>17</sup> Tukituki Board of Inquiry final decision 18 June 2014

<sup>18</sup> Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal: Volume 1 of 3: Report and Decisions, 18 June 2014, at paragraphs 359 – 373 and 451 to 453.

*[360] The single nutrient approach seems to involve a high level of risk. Dr Ausseil acknowledged that the general scientific position was 'clear' in that managing both nitrogen and phosphorus "is a more environmentally conservative approach and that in not doing so, that is, managing only one nutrient incurs a number of risks".*

*[372] And the Board is of the view that the relatively 'hands off' approach to the control of nitrogen currently proposed in PC6 would not give effect to the NPSFM, particularly the policy of establishing methods to avoid over-allocation.*

*[373] Under those circumstances the Board has concluded that the 'single nutrient' management approach in PC6, which is based on managing nitrogen for toxicity effects only, is unsustainable. A 'dual nutrient' management approach addressing both phosphorus and nitrogen is required.*

## **VALUES – HINDS' FISHERIES**

25. The Hinds River has gone through a major transformation over the last 30 years. Before 1985 the river was a prominent and productive fishery and enjoyed by a vast number of keen recreational anglers. It was, among other networks, the perfect spot for the sport. In stark contrast, the fishery it once was is now completely non-existent. Furthermore, the previous aesthetically pleasing spot is clouded with excessive periphyton growth, making recreational activities unpleasant. The reason for this is purely due to ecological degradation to the point that fish cannot survive in the river as it is today.
26. The decline from a previously healthy ecosystem to an unhealthy, uninhabitable ecosystem, ranked one of the worst in the country calls for something to be done. In some cases, the maximum allowance for nitrate in shallow groundwater even exceeds the NZ drinking water standard.
27. Identifying values as the starting point in this exercise is the foundation<sup>19</sup> upon which the planning framework can be based, as defining objectives and setting limits cannot be done in the absence of knowing what values are present, what state they are in, and what is required to provide for them.

---

<sup>19</sup> Of course the compulsory values established in the NPSFM - Te Hauora o te Wai / the health and mauri of water i.e. life supporting capacity and ecosystem health - have to be provided for in regional plans.

## LEGAL FRAMEWORK

28. A succinct working summary of the matters to be taken into account in assessing and approving regional plans is found in the Court's decision in respect of the proposed "One Plan" appeals:

*[1-13] Drawn from the Act, we set out a working summary of the matters to be taken into account in assessing and approving Regional Policy Statements and Regional Plans:*

...

### ***Regional Plans***

*1. The purpose of a regional plan is to assist a regional council to carry out its functions in order to achieve the purpose of the Act (s 63).*

*2. When preparing its regional plan the regional council must give effect to any national policy statement or New Zealand Coastal Policy Statement (s 67(3)).*

*3. The regional plan must not be inconsistent with any other regional plan for the region or a water conservation order or a determination of the Chief Executive of the Ministry of Fisheries about aquaculture permits (s 67(4)).*

*4. When preparing its regional plan the regional council shall:*

*(a) have regard to any proposed regional policy statement in the region (s 66(2));*

*(b) give effect to any operative regional policy statement (s 67(3)(c));*

*(c) have regard to the extent to which the plan needs to be consistent with the regional policy statements and plans or proposed regional policy statements and plans of adjacent regional councils (s 66(2)(d)).*

*5. A regional plan must also record how it has allocated a natural resource under s 30(1)(fa) or (fb) and (4), if it has done so (s 67(4)).*

*6. When preparing its regional plan the regional council shall also:*

*• have regard to the Crown's interests in land of the Crown in the CMA (s 66(2)(b));*

- *have regard to any management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations (s 66(2)(c));*
- *take into account any relevant planning document recognised by an iwi authority (s 66(2A)(a)); and*
- *not have regard to trade competition (s 66(3)).*

*7. A regional council must prepare a regional plan in accordance with its functions under s 30, the provisions of Part 2, any direction given by the Minister for the Environment, and its duty under s 32 and any regulations (s 66).*

*8. A regional plan must also state its objectives, policies to implement the objectives and the rules (if any) (s 67(1)) and may (s 67(2)) state other matters.*

*9. The rules (if any) are for the purpose of carrying out its functions (other than those in s 30(1)(a) and (b)) and achieving the objectives and implementing the policies of the plan (s 67(1)(c) and s 68(1)).*

*10. In making a rule the regional council shall have regard to the actual or potential effect on the environment of activities (s 68(3)).”<sup>20</sup>*

29. Accordingly Variation 2 must:

- a. be prepared in accordance with the regional council's functions under section 30 of the Act<sup>21</sup>, which include section 30(1)(c):

*the control of the use of land for the purpose of—*

*(i) soil conservation:*

*(ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:*

*(iii) the maintenance of the quantity of water in water bodies and coastal water:*

*(iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:*

---

<sup>20</sup> *Day v Manawatu-Wanganui Regional Council*, page 1-6

<sup>21</sup> Section 66(1)(a) of the Act

...

- b. "give effect to" the NPSFM<sup>22</sup>. However, I note for the Hinds, technically you are not required to "give effect to" the Policies in the NPSFM as the implementation of its policies has been legitimately staged and effectively deferred until 2023, using Policy E1<sup>23</sup>. The Objectives of the NPSFM are still however, relevant (for instance Objective A1 of safeguarding life supporting capacity and ecosystem processes; Objective A2 of maintaining or improving overall freshwater quality while protecting significant values and improving water quality in degraded and over-allocated water bodies) and under section 67(3) of the Act, should be given effect. In section 67 "give effect to" means implement<sup>24</sup>.
- c. Give effect to the Canterbury Regional Policy Statement, in other words, be consistent with and appropriate to implement relevant region-wide Objectives and Policies.<sup>25</sup>
- d. Have regard to any management plans and strategies under other Acts, such as the Central South Island Fish and Game Sports Fish and Gamebird Management Plan prepared under the Conservation Act 1987.

## Part 2 Matters

- 30. The sustainable management purpose of the Act requires that the use, development, and protection of natural and physical resources is managed in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural

---

<sup>22</sup> Section 67(3)(b) of the Act

<sup>23</sup> The ability to stage implementation of the NPSFM in part E seems to refer specifically to Policies only.

<sup>24</sup> Following *Environmental Defence Society Inc v The New Zealand Salmon Co. Limited* [2014] NZSC 38 at 75 onward

<sup>25</sup> Section 67(3)(c) of the Act

wellbeing only while and to the extent that<sup>26</sup> the matters set out in subsections 5(2)(a) and (b) are achieved, namely:

- a. Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
- b. Safeguarding the life supporting capacity of air, water, soil and ecosystems.

31. Part 2 matters are important throughout your consideration; particularly in this case where strictly the policies of the NPSFM do not have to be given effect to now, the ruling in *King Salmon* has less effect. Effectively, *King Salmon* said that decision makers are not to turn to Part 2 when making decisions on plans that are on matters fully addressed by the NZCPS (or in this case the NPSFM). However Part 2 remains relevant here where the full scope of the NPSFM is not yet being implemented<sup>27</sup>. The Hearing Commissioners for plan Variation 1 commented: "*A Part 2 judgment must still be applied in assessing the provisions in Variation 1 against the relevant statutory tests, including section 32.*"<sup>28</sup>

32. Section 5 is therefore interpreted as requiring that management of resources for the enabling elements of section 5 are "*constrained by the sustaining, safeguarding and effects based elements in paragraph (a), (b) and (c).*"<sup>29</sup> The summary of the relationship between the parts of section 5 from the One Plan decision is of assistance in this regard:

*[5-215...]There can be no doubt of course that enabling ... people and communities to provide for their ... economic ... wellbeing ... includes so enabling the farmers and communities of the region. But that part of the purpose is not absolute, or necessarily even predominant. It must be able to coexist with the purposes in subparas*

---

<sup>26</sup> Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management, January 2010 at para 36

<sup>27</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 [127] – [131]

<sup>28</sup> At page 123 "Report and Recommendations of the Hearing Commissioners Adopted by Council as its Decision on 23 April 2015"

<sup>29</sup> *Ibid*, para 24

*a), b) and c). For the reasons already traversed, unless effective and thorough steps are taken to manage N leaching from the region's farms, none of those three purposes will be met.<sup>30</sup>*

33. Sections 6 and 7 are there to "inform and guide" your ultimate decision as to whether Variation 2 will enable ECan to exercise its functions and achieve the purpose of the Act.
34. Section 6 (a), (b) and (c) require decision-makers to recognise and provide for the preservation of the natural character of wetlands, lakes, rivers and their margins; protection of outstanding natural features and landscapes; and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as matters of national importance.
35. Section 7(aa), (c), (d), (f), (g), and (h) also require decision-makers to have particular regard to certain matters in order to achieve the purpose of the Act. Nearly all are relevant to Variation 2, and are as follows: the ethic of stewardship; the maintenance and enhancement of amenity values; the intrinsic values of ecosystems; the maintenance and enhancement of the quality of the environment; and the protection of the habitat of trout and salmon.
36. The Board of Inquiry's Report and Recommendations into the Proposed National Policy Statement for Freshwater Management listed instances of intrinsic values of freshwater as they relate to safeguarding the life-supporting capacity of freshwater and sustaining its potential to meet the reasonably foreseeable needs of future generations. The Report helpfully observed that:

*[41] Intrinsic values of freshwater are substantial in themselves. Maintenance, restoration and enhancement of them is not subordinate to economic values of freshwater for potential use for people and communities' wellbeing.*

### **Enhancement**

37. Maintaining and enhancing amenity values and the quality of the environment generally feeds directly into the s 5 requirement that people's cultural, social and economic wellbeing be enabled. The

---

<sup>30</sup> *Day v Manawatu-Wanganui Regional Council*, page 5-76

recreation, leisure and even businesses of people recreating are all reliant on the maintenance and enhancement of healthy water bodies.

38. This point was made by the Court in *J F Investments Limited v Queenstown Lakes District Council*<sup>31</sup>.

*[28] The RMA does not regard the present Environment – being the sum of all environments – the best of all possible New Zealand's. Section 7 (f)'s reference to enhancement of the quality of the environment requires that improvements may be made in appropriate circumstances. That is consistent with purpose of the Act which requires remedying of the adverse effect of activities, including past effects (of past activities). For example air and water quality were in the past regarded as public goods, people could pollute water nearly (subject to the common law of nuisance) as much as they wished. It is clearly contemplated by section 7 (f) together with sections 5 (2)(a) to (c) of the RMA that improvements to air and water quality may be very desirable ends of resource management. The same applies to degraded land and related natural resources.*

39. Fish and Game supports ECan and other parties' positions that the current environment in the Hinds is clearly nowhere near "the best" it could be, and that a Plan that ensures **enhancement**, in accordance with those principles in section 7 is not only justified, but required.

#### **Canterbury Regional Policy Statement (RPS)**

40. The RPS establishes a clear set of outcomes which Variation 2 must give effect to<sup>32</sup>. Currently the Variation 2 land use / allocation approach is inconsistent with some RPS provisions:

- a. Further allocation may be inconsistent with objective 7.2.2.<sup>33</sup>

---

<sup>31</sup> C 48/2006 at paragraph 28

<sup>32</sup> Section 67(3) RMA

<sup>33</sup> Objective 7.2.2: abstraction of water occurs in parallel with...2) ...the improvement of water quality in catchments where it is degraded and 3) restoration or enhancement of degraded freshwater bodies and their surroundings. Policy recognises that abstraction improvement is ok if it is not at the expense of the maintenance/ improvement of water quality.

- b. Policy 7.3.6 requires the establishment of minimum water standards based on factors like the values of maintaining life supporting capacity and ecosystem processes.
  - c. Policy 7.3.11 recognises existing irrigation, but requires improvement in water use efficiency and reduced adverse effects where appropriate.
  - d. Policy 7.3.12 requires a precautionary approach to be taken when setting policies that affect water. This is critical given the uncertainty in leaching rates here.
41. Fish and Game submits that with the changes it proposes, Variation 2 will give effect to the RPS for the interim period between now and 2023. Of particular relevance to Fish and Game in relation to water quality and quantity are Objectives 7.2.1, 7.2.2, 7.2.3, 7.2.4; and Policies 7.3.1, 7.3.3, 7.3.4, 7.3.6, 7.3.7, 7.3.8, 7.3.11 and 7.3.12.
  42. Objective 7.2.1 of the RPS enables use of water provided that life supporting capacity, ecosystem processes and natural character are safeguarded. Supporting policies<sup>34</sup> refer specifically to protecting the flows, freshes and flow variability required to achieve this objective and direct a precautionary approach to allocation where effects of water use are unknown or uncertain.
  43. Policy 7.3.1 requires the identification of the natural character values of freshwater bodies and their margins and to preserve, maintain or improve those values, depending on the current state of those values, unless modification of those values is otherwise provided for as part of an integrated solution to water management in a catchment.
  44. Policy 7.3.12 requires a precautionary approach to be taken when setting policies that affect water.

### **Canterbury Water Management Strategy**

45. Section 63 of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 ("ECan Act")) requires that you have particular regard to the vision and principles of the

---

<sup>34</sup> Policies 7.3.4(1)(c) and 7.3.12, RPS

CWMS. In terms of the hierarchy of matters for your consideration, the CWMS sits below Part 2 of the Act, the NPSFW and, in Fish and Game's submission, the RPS.

## CHANGES SOUGHT TO VARIATION 2 BY FISH AND GAME

46. An overview of the changes that Fish and Game seeks to Variation 2 follows. These changes are appended to Mr Wilson's evidence. They are pared back from the changes originally advanced in Fish and Game's submission, as a result of considering further submissions and the ECan Officer's reports, as well as considering further the fact this Variation is an interim measure, leading up to 2023/24 when the NPSFM will be fully implemented and given effect to by way of a further plan change<sup>35</sup>.
47. The source of scope for each of the changes advanced is set out in a table attached to these submissions at **Appendix 1**.
48. Fish and Game have proposed changes to Policy 13.4.13:
  - a. To address a perceived inequity in Variation 2's approach for allocating Nitrogen reductions<sup>36</sup>;
  - b. To ensure consistency with Policy 4.7 of the pLWRP (as amended by the High Court in a consent order). Policy 4.7 states:

### *Policy 4.7*

*Resource consents for new or existing activities will not be granted if the granting would cause a water quality or quantity limit set in ~~Schedule 8~~ or Sections 6 to 15 to be breached or further over allocation (water quality and/or water quantity) to occur or in the absence of any water quality standards in sections 6 to 15, the limits set in Schedule 8 to be breached. Replacement consents, or new consents for existing activities, may be granted to:*

---

<sup>35</sup> For example Fish and Game is not advocating for groundwater connections between Ashburton and Rangitata to be recognised; In respect of Table 13(h) Fish and Game submitted for a 2030 target but is happy with 2035.

<sup>36</sup> EIC Mr Wilson paragraphs 58-63

*(a) Allow the continuation of existing activities at the same or lesser rate or scale, provided the consent contains conditions that contribute to the phasing out of the over allocation (water quality and/or water quantity) within a specified timeframe; or*

*(b) Exceed the allocation limit (water quality and/or water quantity) to a minor extent and in the short-term if that exceedance is part of a proposal to phase out the over-allocation within a specified timeframe included in Sections 6 to 15 of this Plan.*

49. It is fundamental that Variation 2 should be consistent with the wider unchallenged parts of pLWRP. Currently it is not consistent because for replacement consents or new consents for existing activities it does not require or guarantee consent conditions that will contribute to the phasing out of over-allocation.
50. In respect of Rule 13.5.14 Fish and Game seek an additional condition be added to require any new irrigation development to prove they will not result in an exceedance or breach of targets in Table 13(g) (k) and (i). This amendment will provide certainty that the increased area that may be irrigated will not frustrate achievement of the target reduction in load and instream concentrations.
51. Fish and Game is concerned that ECan's modelling of Nitrogen leaching may have significantly underestimated leaching.<sup>37</sup> In light of this Fish and Game consider it would be imprudent and inconsistent with the RPS for Variation 2 to allow future expansion in the catchment. It seeks the removal and amendment of rules that enable expansion. Any expansion should be deferred until the catchment is proven to be on a trajectory of improvement.
52. Fish and Game seek removal of rules 13.5.21 and 13.5.22 that provide for the use of land or discharges from that land if it has already been consented by an irrigation company's discharge consent. These rules permit activities if a consent is held for a discharge. Fish and Game submit that:
  - a. A rule should not grant permitted activity status that is determined by whether or not another consent is held, nor deem that by virtue of holding a consent that it is being

---

<sup>37</sup> EIC Mr Wilson paragraphs 36-41

complied with or the impacts on freshwater from the activity are not breaching the requirements of section 15 of the Act;

- b. For these rules, the holding of a consent is the only condition. There are no other conditions. The rule cannot require that the existing consent achieve certain outcomes, or be in accordance with this revised statutory plan's requirements. Essentially this means rules 13.5.21 and 13.5.24 have no conditions controlling environmental effects in a manner consistent with Variation 2. The discharge rule in 13.5.24 has no conditions to prevent section 107 effects from occurring.
- c. In *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93 the Environment Court considered whether the status of a permitted activity, or indeed any activity, could be determined by a prior grant of consent. In other words, could a rule in a plan require as a pre-condition to any development, the approval of a resource consent? It was submitted to the Court that it cannot have been Parliament's intention that a consent would prescribe the rules that are to apply to a consent granted for another activity. The Court concluded that the status of an activity derives from the Act and its subsidiary planning instruments and not from a resource consent. It found that rules were *ultra vires* the Act insofar as they required compliance with a resource consent which is not a standard, term or condition that was specified in the plan change.

*[182] We struggle to understand how the classification of permitted activities can proceed from a grant of a resource consent. ...*

*[183] ... under s 87A (or correctly s 77B) the status of an activity derives from the Act and its subsidiary planning instruments and not from a resource consent. In summary we find rules 12.19.1.1 and 12.20.3.2-4 are ultra vires s 77B of the Act insofar as the rules require compliance with a resource consent which is not a standard, term or condition that is specified in the plan change.*

- d. With respect it is submitted that this is authority that should be followed in respect of rules 13.5.21 and 15.5.22. In so far as they purport to make an activity permitted based on an existing resource consent they are *ultra vires* the Act.

## WATER ALLOCATION

53. Fish and Game consider an essential element for safeguarding the ecological health of the Hinds is an assured flow of water. With improved ecological health, reduction in nutrient enrichment, and improved flow, the Hinds could be restored. Fish and Game generally support having established means for restoring flows through direct augmentation, review of aquifer management in the Upper Hinds Plains Area, or other means. However, it is acknowledged that these solutions do not address the cause of the degradation, only dilution of the symptoms.
54. Further, Fish and Game has reservations that Variation 2 relies on managed aquifer recharge technology. The benefits of this technology are unproven and therefore should not be relied upon in Variation 2. Instead the technology should be researched and trialled and, if it has proven benefits, incorporated into the future 2023/24 plan change<sup>38</sup>. This would be consistent with a precautionary approach to water management.

## ECAN'S APPROACH

55. Fish and Game consider the following improvements are required in ECan's approach:
  - a. ECan's section 42A report (section 14.25) does not adequately consider the Central South Island Fish and Game Sports Fish and Gamebird Management Plan as required under section 66(2)(c)(i) of the Act<sup>39</sup>. Relevant extracts from that Plan are **attached**.<sup>40</sup>

---

<sup>38</sup> EIC Mr Wilson paragraphs 51-53

<sup>39</sup> Fish and Game submission paragraph 18 and Relief paragraph 40(m), EIC Mr Wilson paragraphs 19-20.

<sup>40</sup> E.g. Habitat Management - "**GOAL 3:** To protect, maintain or restore, and enhance sports fish ... habitat to ensure species sustainability in the wild for the enjoyment and benefit of anglers and hunters", "**OBJECTIVE 6** - To promote through statutory processes and mechanisms, the protection, maintenance or restoration, and enhancement of sports fish ...habitat." "**Policy 6.1** CSI Fish and Game will, within regional council...statutory plans, JES-264450-57-230-V1

- b. Variation 2's limits and targets require further amendment to protect life supporting capacity requirements of the receiving environment and to ensure that improvements are achieved over time such that the current degraded instream status is not the best that can be achieved in the future.<sup>41</sup>
  - i. Fish and Game consider that for the development of further instream targets and on farm leaching limits, the starting point should be the required instream nutrient concentration to protect the appropriate values i.e. it should be a bottom up approach. A top down approach that uses current on farm leaching to calculate leaching allocations and therefore instream concentrations is flawed.
  - ii. Nitrogen reductions are not completely realistic.
  - iii. Policy 13.4.13 should be amended to make sure consent authorities take account of the amount of nitrogen loss possible on a farm enterprise, as well as to require other farming activities to undertake nitrogen reduction (Variation 2 currently only addresses dairy/ dairy support). This will ensure consistency with Policy 4.7 of the pLWRP. It is currently inconsistent because there is no requirement for consent conditions for phasing out over-allocation for replacement consents.
- c. ECan has relied upon OVERSEER 6.0 for modelling Nitrogen leaching, however the more recent version of the OVERSEER model shows the catchment has a significantly higher Nitrogen leaching from irrigated land, than modelled by ECan. Therefore, ECan has likely significantly under-estimated current and future Nitrogen leaching from land in the

---

promote strategies and policies that maintain, protect, and enhance sports fish and game bird habitat, including: a. the establishment of water management regimes that maintain or enhance sports fish ... values, and that promote the efficient use of water;..." **"Methods 6a)** Using First Schedule (RMA) consultation and formal submission processes to advocate policy consistent with CSI Fish and Game's statutory plans regarding sports fish ... habitat."

<sup>41</sup> EIC Mr Wilson paragraph 33

catchment<sup>42</sup>. Further, schedule 24A(a) does not require OVERSEER to be operated by a qualified person, creating a risk of incorrect data

- d. Variation 2 relied in part on "good management practice", which was not defined and the detail of which would be introduced in a future plan change. ECan's s42A report recognised the limitations of this approach and recommended removal of this term, which Fish and Game supports<sup>43</sup>. There must be consistency with the pLWRP section 3.2.4, which requires that *"All activities operate at "good environmental practice" or better to optimise efficient resource use and protect the region's fresh water resources from quality and quantity degradation."*
  - e. There are other small amendments to the wording of the entirety of policy 13. This is for the reason that it currently does not comply with policy 4.7 of the parent plan (phasing out over allocation).
56. Variation 2 requires amendment to ensure ECan fulfils its section 30 functions:
- a. Variation 2 will not assist ECan to achieve the purpose of the Act;
  - b. Variation 2 will not control land use to maintain or enhance quality of water, or control discharge of contaminants to maintain or enhance ecosystems as required by s30(1)(c) of the Act.

## Section 32

57. Each proposed policy, rule or method is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate for achieving the objectives.<sup>44</sup> The evaluations must take into account:

---

<sup>42</sup> EIC Mr Wilson paragraphs 36-38 and EIC Ms Dewes paragraphs 126-133 & Table 1

<sup>43</sup> EIC Mr Wilson paragraphs 72-76

<sup>44</sup> Section 32(3)(b) of the Act

- a. The benefits and costs of the proposed policies, rules or other methods; and
  - b. The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.<sup>45</sup>
58. The basic premise of a section 32 evaluation is that it requires input and certainty on how objectives, policies, and rules in a plan will function.
59. The requirement in section 32 is to evaluate the appropriateness of the Plan that has been proposed, and that cannot be done if there is no certainty about the way in which the rules will perform in the future.
60. Fish and Game specifically submitted that the section 32 has not been complied with in its original submission and challenged its adequacy<sup>46</sup>. The hearings committee should take into account Fish and Game's criticisms.<sup>47</sup> The normal course of events would be for the hearing committee to resolve any defect in the s32 analysis<sup>48</sup> before making a decision whether or not to modify the Variation 2. However, it is more complicated in this instance, given that in the absence of definitions of key provisions, for example such as defining 'good management practice', the section 32 analysis simply cannot be completed, because the efficiency and effectiveness of Variation 2 cannot be assessed in its current (incomplete) state.

## EVIDENCE

61. As a result of the ECan Act this hearing is the only opportunity to present and test the evidence on the values of Canterbury's lakes, rivers and wetlands and how they should be managed to achieve the requirements of Part 2 of the Act. Fish and Game has therefore committed considerable resources and expertise to presenting their

---

<sup>45</sup> Section 32(4) of the Act

<sup>46</sup> Submission C14C/197259-02 dated 24 October 2014 paragraphs 27(d) and 36 to 38

<sup>47</sup> *Kirkland v Dunedin CC* [2001] NZRMA 529 (CA) at [17]

<sup>48</sup> *Naturally Best New Zealand Ltd v Queenstown Lakes District Council* ENC Christchurch, C49/2004, 23 April 2004 at [36]

evidence to this hearing panel in support of the changes that it seeks to Variation 2.

#### **Mr Scarf**

62. The evidence of Mr Scarf is in relation to the allocation abstraction provisions proposed in Variation 2. By comparison with previous years, he makes clear that the water resource in the Hinds River is currently over allocated. The reduction of water flows in the catchment can be solely attributed to this over allocation.
63. The conclusion reached is that for the most part, current consented allocations exceed the estimated mean annual flow of drains, to the point where some are recently recorded as having zero flow. In coming to this conclusion, Mr Scarf has assessed the drainage water resources of the Ashburton Hinds Drainage area. Mr Scarf supports policies 13.4.18 and 13.4.19 providing minimum flow provisions provisionally, until post 2020 when replaced by a collaboratively developed regime.

#### **Mr Webb**

64. Mr Webb addresses the values of the Hinds River, and the impacts that the degradation has on the ecosystem ecology. Mr Webb's focus is on explaining the impact the deterioration has had on recreational trout fishing.
65. By comparison to the pre – 1980's, the trout fishery today is entirely non – existent. The value of the river before the 1980s as a productive trout spawning zone, and therefore a prominent spot for sports fishing enthusiasts has disappeared. Mr Webb maintains that the period of decline was gradual, and primarily was between the 1980's to mid 2000's.
66. A 2014 review of the current habitat values of the drains in the Ashburton Hinds Drainage area indicated the biggest problems to be low fish habitat diversity, excessive silt inundation and high nitrate levels. The extremeness of the poor ecological condition was shown to be uniform across the six main drains in the Hinds Hekeao Plains.
67. In his evidence, Mr Webb further details the state of the drainage systems within the area, as well as reiterating the importance of the contributions of tributaries to the lower Ashburton, and the Hinds River to recreational users.

### **Mr Canning**

68. Dr Canning does not believe that Variation 2 in its current form will achieve ecosystem health as a minimum requirement, nor achieve the freshwater outcomes/objectives in table 13(a). He maintains that the only way to correct the state of utter degradation currently present in the Hinds and thus safeguard the life supporting capacity and ecosystem health of the catchment would be to establish water quality concentration limits for dissolved inorganic nitrogen which are significantly less than the current Nitrogen Toxicity based concentration limits/ targets set in table 13(j), and base the nitrogen reduction methods contained in Variation 2 on the balance of instream concentration required.
69. Additionally, Mr Canning provides recommended limits which will support the life supporting capacity in the Hinds River, a measure which will help to return the River to a useable state. These limits will be further detailed in his evidence.

### **Ms Dewes**

70. The evidence of Ms Dewes identifies that the approach taken in Variation 2 – to allow expansion and intensification of farming land uses while at the same time as attempting to achieve catchment wide improvements – requires very careful evaluation. Her experience is that no irrigation schemes in New Zealand have actually managed to reduce nutrient and contaminant loads at the same time as intensifying farming use. In other words, there have been no known instances of adequate mitigations/reductions sufficient to counteract the net increases in discharges.
71. Ms Dewes considers the proposed intensification of farming use in the catchment against what can be achieved through improved farm management practices. She concludes that even with improvements in practice, if there is additional intensification the nitrogen loads will increase unless the reductions attained are significant and ensured.
72. Ms Dewes' opinion is that material reductions in Nitrogen leaching can be made while a farm remains profitable. She acknowledges that there is no 'one size fits all' approach to achieving this, although there are some good management practices that she considers should be made mandatory, as well as some 'minimum practices' to assist mitigation. Ms Dewes recommends that Variation 2 should provide

the incentive and enable appropriate mitigation to be applied to individual farm businesses so as to reduce nutrient losses.

73. As Variation 2 will be substantially reviewed in 2023/24 in order to give full effect to the NPSFM, that time will allow a better understanding of how farms can be optimised to still be economically viable while dropping Nitrogen leach rates. There will be technological advances, market changes and other variables which mean that by 2023/24 better methods will be able to be implemented to achieve the target 45% reduction of leaching by 2035.

#### Mr Wilson

74. Mr Wilson acknowledges that Variation 2 endeavours to set the degraded Hinds catchment on a "trajectory of improvement" and confirms Fish and Game's general support for the Variation. He identifies this will be quite a challenge and a lengthy process.
75. Fish and Game consider it critical that the interim regime proposed by Variation 2 use the period until 2023/24 (after which the NPSFM will be fully implemented in another plan change) effectively, to start reducing leaching and total Nitrogen load in the catchment.<sup>49</sup>
76. Mr Wilson's opinion is that to meet the requirements under the Act and RPS the **minimum** that Variation 2 must achieve is to maintain the current instream water quality in the lower Hinds River of 3.8mgN/L, even though that level is toxic to some aquatic life. Fish and Game do not believe that maintaining the degraded status quo is a satisfactory resting place, and believe that Variation 2 ought to be aiming for future **enhancement**.<sup>50</sup>
77. Mr Wilson outlines Fish and Game's concerns with ECan's modelling of Nitrogen leaching which it is believed to have significantly underestimated leaching.<sup>51</sup> In light of this, Fish and Game consider it would be imprudent and inconsistent with the RPS for Variation 2 to allow future expansion in the catchment, and relief seeks the removal and amendment of rules that enable expansion. Any expansion

---

<sup>49</sup> EIC Mr Wilson paragraph 28

<sup>50</sup> EIC Mr Wilson paragraph 31

<sup>51</sup> EIC Mr Wilson paragraphs 36-41

should be deferred until the catchment is proven to be on a trajectory of improvement.<sup>52</sup>

78. Mr Wilson notes that Variation 2 requires up to 45% of Nitrogen leaching reductions by 2035. He says evidence demonstrated the targets set in Policy 13.4.13(c)(i)-(ii) for reductions by 2020 and 2025 are fair and achievable. However all land uses should be included in requirements to reduce leaching and not just dairy and dairy support, and he considers the 2023/24 plan change may need to readdress the 2035 target which will be harder to achieve.<sup>53</sup>

## CONCLUSION

79. The relief requested by Fish and Game is intended to:
- a. Establish an effective interim regime that will prevent further degradation, and start a trajectory of change for reducing over allocation;
  - b. Give appropriate recognition to the Council's section 6 and 7 obligations;
  - c. Meet the Council's function under section 30(1)(c) of the Act, to control of the use of land for the purpose of the maintenance and enhancement of the quality of water and ecosystems in the Hinds and for the maintenance of the quantity of water in the Hinds;
  - d. Better give effect to the RPS, as required by section 67 of the Act, than ECan's Variation 2 proposal.
80. Therefore Fish and Game seeks amendments to Variation 2 as set out in the evidence of Mr Wilson.

## ORDER OF WITNESSES

81. Fish and Game's witnesses will be called in the following order:
- a. Mr Webb;
  - b. Mr Canning;

---

<sup>52</sup> EIC Mr Wilson paragraphs 41-50

<sup>53</sup> EIC Mr Wilson paragraphs 54-57

- c. Mr Scarf;
- d. Ms Dewes; and
- e. Mr Wilson.

---

**J E St John**

2 July 2015

Subject	Scope Provided
Part 3: text inserted before heading 13.1 on page 13-2	F&G submission at sub-section Policy 13.4.9 and 13.4.10 provides scope to incorporate the recommendations.
Policy 13.4.9	F&G submission Relief at point 40(a) provides scope to incorporate the recommendations
Policy 13.4.9 (a1)	F&G submission at sub-section Policy 13.4.9 provides scope to incorporate the recommendations.
Policy 13.4.9 (a2)	F&G submission at sub-section Policy 13.4.9 provides scope to incorporate the recommendations.
Policy 13.4.9 (d)	F&G submission at General Submission point 26, Relief at point 40(p) provides broad scope to incorporate the recommendations,
Policy 13.4.9 (d1)	F&G submission at sub-section Policy 13.4.9 and Relief at point 40(p) provides scope to incorporate the recommendations.
Policy 13.4.10 (a1)	F&G submission at sub-section Policy 13.4.10 and sub-section Rules 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.
Policy 13.4.10 (b)	F&G submission at sub-section Policy 13.4.10 provides scope to incorporate the recommendations.

Policy 13.4.11 (a)	F&G submission at Relief point 40(i)(iii) and sub-section Policy 13.4.11 provides scope to incorporate the recommendations, which reflect the Table 13(g) limit
Policy 13.4.11 (b)	F&G submission at sub-section Rule 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.
Policy 13.4.13 (a)	F&G submission at sub-section Policy 13.4.13 and Relief at point 40(p) provides scope to incorporate the recommendations.
Policy 13.4.13 (b)	F&G submission at sub-section Rule 13.5.8 to Rule 13.5.24, and Relief point 40(f) and (r) provides scope to incorporate the recommendations.
Policy 13.4.13 (d)	F&G submission at sub-section Rule 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.
Rule 13.5.9	F&G submission at sub-section Policy 13.4.9 and Policy 13.4.10
Rule 13.5.10 (4)	F&G submission at sub-section Rule 13.5.10 provides scope to incorporate the recommendation. F&G submitted that farming enterprises should have the same management framework as farming activities. Point 4 provides consistency with the rules for farming activities of Rule 13.5.9
Rule 13.5.14 (5) & (6)	F&G submission at sub-sections Policy 13.4.9 and Policy 13.4.10 and Relief point 40(k) provides scope to incorporate the recommendations.
Rule 13.5.17 (4)	F&G submission at sub-section Policy 13.4.10 provides scope to incorporate the recommendations.

Rule 13.5.18 (4)	F&G submission at sub-sections Policy 13.4.10, Rule 13.5.10 and Rule 13.5.18 provides scope to incorporate the recommendation. F&G submitted that farming enterprises should have the same management framework as farming activities.
Irrigation Schemes Rules 13.5.21-13.5.22	F&G submission at sub-section Rules 13.5.21 to 13.5.24 provides scope to incorporate the recommendations.
Rule 13.5.31 (6)	F&G submission at New Objective p. 11 and New Policy p. 17 provides scope to incorporate the recommendations.
Rule 13.5.36 1A	F&G submission at sub-section Policy 13.4.14 and Relief point 40(a) provides scope to incorporate the recommendations.
Table 13(a)	F&G submission at sub-sections NPS Freshwater point 39(b) and (d), Relief point 40(i) (i), Table 13(a), Policy 13.4.9, Policy 13.4.11, and Policy 13.4.12, provides scope to incorporate the recommendations.
Table 13(e)	F&G submission at sub-section Policy 13.4.19 and Table 13(d) provides scope to incorporate the recommendation.
Table 13(j)	F&G submission at sub-section RMA s69 and Schedule 3 point 32, NPS Freshwater point 39(d) and (e), Relief point 40(i) (i) and (ii), and Table 13(j) provides scope to incorporate the recommendations.

Schedule 7	F&G submission at sub-section Policy 3.4.9 and Policy 3.4.10
Schedule 24a	F&G submission at sub-section RMA s69 and Schedule 3 point 35, Rule 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.

## Central South Island Fish and Game Council

### SPORTS FISH AND GAME MANAGEMENT PLAN 2012-2022 (extracts)

#### 6. SPECIES MANAGEMENT (page 24)

**GOAL 2: To manage, maintain, and where appropriate enhance sports fish and game bird species populations to levels that provide for sustainable recreational harvest.**

**OBJECTIVE 4 - To maintain and, where appropriate, enhance the population of sports fish species throughout the Region.**

##### Policies

- 4.5 CSI Fish and Game will identify and advocate mitigation to minimise impacts to sports fish stocks posed by mining, power generation, irrigation abstraction, road construction, river protection works, lake control activities, and any other relevant proposed activities.
- 4.6 CSI Fish and Game will advocate for flows and provisions sufficient to maintain fish passage together with provisions and conditions deemed necessary to protect salmonid stocks. Where appropriate CSI Fish and Game may enter into joint study projects to provide improved understanding and information.

##### Methods

- 4h) Advocating for the sustainability of sports fish populations and protection and restoration of key sites.

#### 7. HABITAT MANAGEMENT (page 36)

Sports fish and game bird species include and co-exist with many native species and occupy similar habitat. Threats to the integrity and extent of natural habitat utilised by sports fish and game bird species also generally constitutes a threat to indigenous aquatic species.

**GOAL 3: To protect, maintain or restore, and enhance sports fish and game bird habitat to ensure species sustainability in the wild for the enjoyment and benefit of anglers and hunters.**

**OBJECTIVE 6 - To promote through statutory processes and mechanisms, the protection, maintenance or restoration, and enhancement of sports fish and game bird habitat.**

As a matter of national importance, those administering the RMA are required to recognise and provide for the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and

their margins, and the protection of them from inappropriate subdivision, use, and development.

Section 7 of the RMA requires that Authorities to *“have particular regard to”,* among other things, *“the intrinsic value of ecosystems”* and *“the protection of the habitat of trout and salmon.”*

CSI Fish and Game has a responsibility to exercise a watchdog function to ensure that regional and district councils fulfil their statutory duties and adhere to the purpose and principles of the RMA. Much can and will be achieved to protect valued habitats through the application of regional and district policy and plans developed under that legislation. (page 37)

### Policies

- 6.1 CSI Fish and Game will, within regional council, Department of Conservation and district council statutory plans, promote strategies and policies that maintain, protect, and enhance sports fish and game bird habitat, including:
- a. the establishment of water management regimes that maintain or enhance sports fish and game bird values, and that promote the efficient use of water;
  - b. the establishment of esplanade reserves or strips along the margins of waterways lakes and wetlands where land is subject to sub-division; and
  - c. the establishment of riparian management and other practices to mitigate adverse effects resulting from agricultural, industrial, and municipal land and water uses.

### Methods

- 6a) Using First Schedule (RMA) consultation and formal submission processes to advocate policy consistent with CSI Fish and Game’s statutory plans regarding sports fish and game bird habitat.
- 6g) Promoting restoration, protection, and maintenance of key sports fish habitats through statutory processes.