

BEFORE INDEPENDENT COMMISSIONERS

UNDER the Resource Management Act 1991

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

**MEMORANDUM OF COUNSEL FOR THE CANTERBURY REGIONAL
COUNCIL**

**WYNN WILLIAMS
LAWYERS
CHRISTCHURCH**

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MAY IT PLEASE THE PANEL

- 1 On Wednesday, 1 July 2015, Counsel uplifted sealed orders from the High Court in Christchurch in relation to appeals lodged against the Canterbury Regional Council's decisions on the proposed Canterbury Land and Water Regional Plan. The sealed orders relate to the following appeals:
 - (a) Trustpower Limited v Canterbury Regional Council (CIV-2014-409-61);
 - (b) Rangitata Diversion Race Management Limited v Canterbury Regional Council (CIV-2014-409-62);
 - (c) Federated Farmers of New Zealand (Incorporated) (Combined Canterbury Province) v Canterbury Regional Council (CIV-2014-409-71);
 - (d) Nelson Marlborough North Canterbury and Central South Island Fish and Game Councils v Canterbury Regional Council (CIV-2014-409-72); and
 - (e) Nga Rūnanga of Canterbury and Te Rūnanga o Ngāi Tahu v Canterbury Regional Council (CIV-2014-409-75).
- 2 Copies of the sealed orders are attached to this Memorandum and are marked "A", "B", "C", "D" and "E", respectively;

DATED this 3rd day of July 2015



.....
P A C Maw

Counsel for the Canterbury Regional Council

"A"

Trustpower Limited v Canterbury Regional Council

CIV-2014-409-61

DUPLICATE

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2014-409-61

UNDER the Environment Canterbury (Temporary Commissioners
and Improved Water Management) Act 2010

IN THE MATTER of an appeal under Section 66 of the Act in relation to the
proposed Canterbury Land and Water Regional Plan

BETWEEN **TRUSTPOWER LIMITED**
Appellant

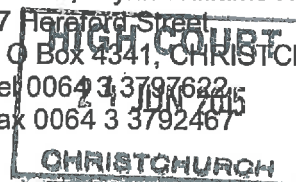
AND **CANTERBURY REGIONAL COUNCIL**
Respondent

**ORDER AMENDING PROPOSED CANTERBURY LAND AND WATER
REGIONAL PLAN**

**WYNN WILLIAMS
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Before the Honourable Justice Whata

4 December 2014

1. After reading the joint memorandum of Counsel for the Appellant and Respondent filed on **24 November 2014** this court orders that the Canterbury Regional Council amend the proposed Land and Water Regional Plan as set out in Appendix 1 to this Order.
2. There is no order as to costs.

Date: 24 JUN 2015

Signature:



K.G. SMITH

~~(Registrar/Deputy Registrar)~~

Sealed:



Appendix 1 – Amendments to pLWRP

Single underline – additions to decision version of pLWRP following settlement discussions.

~~Strikethrough~~ – deletions to decision version of pLWRP following settlement discussions.

3. Make the following amendment to Policy 4.51:

Policy 4.51

In recognition of their national benefits, existing hydro-electricity generation, and irrigation schemes and principal water supplier schemes and their associated water takes, use, damming, diverting and discharge of water are to be considered as part of the existing environment. On considering an application for a replacement consent for an existing scheme, consideration will be given to the need for, and appropriateness of, improvements in the efficiency of water use and conveyance assessed over the life of the consent and reductions in any adverse effects on the environment. The benefits derived from the use of water for the generation of electricity from existing and new renewable energy sources are recognised and provided for in accordance with the National Policy Statement for Renewable Electricity Generation 2011 and the Regional Policy Statement.

4. Add a new definition of "nationally and regionally significant infrastructure" to section 2.9 of the pLWRP:

Nationally and regionally significant infrastructure includes, but is not limited to, infrastructure for activities recognised by a national policy statement as being nationally significant.

5. Add an explanatory note to the "The natural colour of the lake is not degraded by more than five Munsell Units" in Table 1b Freshwater Outcomes for Canterbury Lakes as follows:

Explanatory note: In respect of Lake Coleridge the natural colour of the lake is the colour of the lake as measured monthly in the period 1 August 2014 to 31 July 2015.



"B"

**Rangitata Diversion Race Management Limited v Canterbury Regional
Council**

CIV-2014-409-62

DUPLICATE

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2014-409-62

UNDER the Environment Canterbury (Temporary Commissioners
and Improved Water Management) Act 2010

IN THE MATTER of an appeal under Section 66 of the Act in relation to the
proposed Canterbury Land and Water Regional Plan

BETWEEN **RANGITATA DIVERSION RACE MANAGEMENT
LIMITED**

Appellant

AND **CANTERBURY REGIONAL COUNCIL**

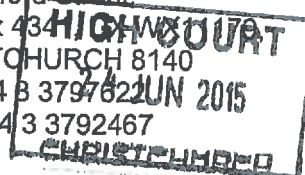
Respondent

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Before the Honourable Justice Mander

15 May 2015

1. After reading the joint memorandum of Counsel for the Appellant and Respondent filed on **13 May 2015** this court orders that the Canterbury Regional Council amend the proposed Land and Water Regional Plan as set out in Appendix 1 to this Order.
2. There is no order as to costs.

Date: 24 JUN 2015

Signature:



(Registrar/Deputy Registrar)

K.G. SMITH

Sealed:



Appendix 1 – Amendments to pLWRP

Single underline – additions to decision version of pLWRP following settlement discussions.

3. Make the following amendment to Policy 4.36

"4.36 Sustainable farming practices are promoted in all areas by:

...

(c) *encouraging industry, principal water supplier and irrigation scheme-based initiatives to improve land and water use practices for farming activities, reduce nutrient loss and nutrient discharges, and facilitate land use consenting, including irrigation and principal water supplier scheme-wide initiatives, reporting and auditing of their constituent farms."*



"C"

**Federated Farmers of New Zealand (Incorporated) (Combined Canterbury
Province) v Canterbury Regional Council**

CIV-2014-409-71

DUPLICATE

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CIV-2014-409-71

UNDER the Environment Canterbury (Temporary Commissioners
and Improved Water Management) Act 2010

IN THE MATTER of an appeal under Section 66 of the Act in relation to the
proposed Canterbury Land and Water Regional Plan

BETWEEN **FEDERATED FARMERS OF NEW ZEALAND
(INCORPORATED) (COMBINED CANTERBURY
PROVINCES)**

Appellant

AND **CANTERBURY REGIONAL COUNCIL**

Respondent

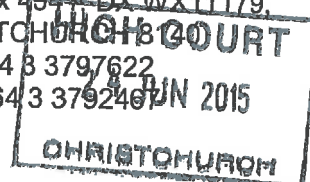
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Before the Honourable Justice Mander

27 March 2015

1. After reading the joint memorandum of Counsel for the Appellant and Respondent filed on **12 March 2015** this court orders that the Canterbury Regional Council amend the proposed Land and Water Regional Plan as set out in Appendix 1 to this Order.
2. There is no order as to costs.

Date: 24 JUN 2015

Signature:



K.G. SMITH

(Registrar/Deputy Registrar)

Sealed:



Appendix 1 – Amendments to pLWRP

Single underline – additions to decision version of pLWRP following settlement discussions.

~~Strikethrough~~ – deletions to decision version of pLWRP following settlement discussions.

1. Make the following amendment to Rule 5.68(3)(c):

"The use or disturbance of the bed (including the banks) of a lake or river and any associated discharge to water that is not at a permanent crossing point does not result in ...

(c) cattle standing in any lake ~~or river~~ ..."

3. Make the following amendment to Policy 4.9:

"4.9 Reviews of sub-regional sections will:

 - (a) be in accordance with Appendix 2 of the RPS 2013; and*
 - (b) identify and provide for the social, economic, cultural and environmental values of each catchment; and*
 - (c) have particular regard to collaboratively developed local water quality and quantity outcomes and methods, and timeframes to achieve them, including through setting limits and targets; and*
 - (d) establish methods and a timeframe to phase out any over-allocation where over-allocation of water for abstraction from surface water catchments or groundwater zones or nutrient discharges has been determined; and*
 - (e) not make any changes to the Objectives or Policies 4.1-4.9 of this Plan, but may provide for policies, outcomes and limits that are specific to the catchments in the sub-region.*

4. Delete Policy 4.10:

~~*"4.10 Reviews of sub-regional sections will not make any changes to the Objectives or Policies 4.1-4.10 of this Plan, except that catchment specific outcomes and limits may be developed to implement the objectives and policies of this Plan."*~~



5. Make the following consequential amendments to the pLWRP to account for the deletion of Policy 4.10:

a. Amend Section 2, paragraph 3, as follows:

"The sub-regional sections contain policies and rules which are specific to the catchments covered by that section. The policies and rules in the sub-regional sections implement the region-wide objectives in the Plan in the most appropriate way for the specific catchment or catchments covered by that section. Where the Plan contains policies and rules on the same subject matter, the more specific sub-regional provision will take precedence, except in relation to Policies 4.2 to 4.409. Policy 4.1 will also take precedence unless catchment specific outcomes are specified in the Sub-regional Section."

b. Amend Section 2.7, paragraph 1, as follows:

"Policyies 4.9 to 4.10 details how and when a sub-regional section will be developed, what parts of this LWRP are able to be changed and what matters must be considered. In addition, Appendix 2 to the RPS 2013 contains direction for the development of subregional sections."

c. Amend Section 4, paragraph 2, as follows:

"Where the Plan contains Policies in Section 4 and in the relevant Sub-regional Section on the same subject matter, the more specific sub-regional Policy will take precedence, except in relation to Policies 4.2 to 4.409. Policy 4.1 will also take precedence unless catchment specific outcomes are specified in the Sub-regional Section."



"D"

**Nelson Marlborough North Canterbury and Central South Island Fish and
Game Councils v Canterbury Regional Council**

CIV-2014-409-72

DUPLICATE

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CIV-2014-409-72

UNDER the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010

IN THE MATTER of an appeal under Section 66 of the Act in relation to the proposed Canterbury Land and Water Regional Plan in relation to the proposed Canterbury Land and Water Regional Plan

BETWEEN **NELSON MARLBOROUGH NORTH CANTERBURY AND CENTRAL SOUTH ISLAND FISH AND GAME COUNCILS**

Appellant

AND **CANTERBURY REGIONAL COUNCIL**

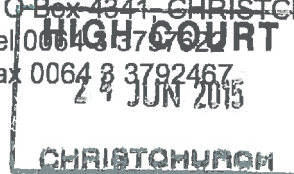
Respondent

ORDER AMENDING PROPOSED CANTERBURY LAND AND WATER REGIONAL PLAN

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Before the Honourable Justice Mander

27 March 2015

1. After reading the joint memorandum of Counsel for the Appellant and Respondent filed on **12 March 2015**, this court orders that the Canterbury Regional Council amend the proposed Land and Water Regional Plan as set out in Appendix 1 to this Order.
2. There is no order as to costs.

Date: 24 JUN 2015

Signature:



(Registrar/Deputy Registrar)

K.G. SMITH

Sealed:



Appendix 1 – Amendments to pLWRP

Single underline – additions to decision version of pLWRP following settlement discussions.

~~Strikethrough~~ – deletions to decision version of pLWRP following settlement discussions.

3. Make the following amendment to 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~~ 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:

- (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."*

4. Amend the definition of "nitrogen loss calculation" in section 2.9 of the pLWRP:

Nitrogen loss calculation

means the discharge of nitrogen below the root zone, as modelled with OVERSEER™ (where the required data is inputted into the model in accordance with OVERSEER™ Best Practice Data Input Standards), or an equivalent model approved by the Chief Executive of Environment Canterbury, averaged over the most recent four year 01 July to 30 June period and expressed in kg per hectare per annum. If OVERSEER™ is updated, the most recent version is to be used.

5. Amend definition of "nitrogen baseline" in section 2.9 of the pLWRP:

Nitrogen Baseline

means:

- (a) the mean discharge of nitrogen below the root zone, as modelled with OVERSEER™ (where the required data is inputted into the model in accordance with OVERSEER™ Best Practice Data Input Standards), or an equivalent model approved by the Chief Executive of Environment Canterbury, over the period of 01 July 2009 – 30 June 2013, and*



expressed in kg per hectare per annum, except in relation to Rules 5.46 and 5.62, where it is expressed as a total kg per annum from the identified area of land; and

(b) in the case where a building consent and effluent discharge consent have been granted for a new or upgraded dairy milking shed in the period 01 July 2009 – 30 June 2013, the calculation under (a) will be on the basis that the dairy farming activity is operational; and

(c) if OVERSEER™ is updated, the most recent version is to be used to recalculate the nitrogen baseline using the same input data for the period 01 July 2009 – 30 June 2013.



"E"

**Nga Runanga of Canterbury and Te Runanga o Ngai Tahu v Canterbury
Regional Council**

CIV-2014-409-75

DUPLICATE

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2014-409-75

UNDER the Environment Canterbury (Temporary Commissioners
and Improved Water Management) Act 2010

IN THE MATTER of an appeal under Section 66 of the Act in relation to the
proposed Canterbury Land and Water Regional Plan

BETWEEN **NGA RUNANGA OF CANTERBURY AND TE
RUNANGA O NGAI TAHU**

Appellant

AND **CANTERBURY REGIONAL COUNCIL**

Respondent

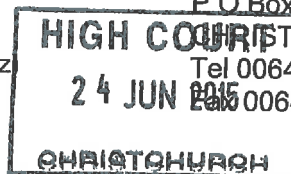
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Before the Honourable Justice Whata

4 December 2014

1. After reading the joint memorandum of Counsel for the Appellant and Respondent filed on **26 November 2014** this court orders that the Canterbury Regional Council amend the proposed Land and Water Regional Plan as set out in Appendix 1 to this Order.
2. There is no order as to costs.

Date: 24 JUN 2015

Signature:



(Registrar/Deputy Registrar)

K.G. SMITH

Sealed:



Appendix 1 – Amendments to pLWRP

1. Single underline – additions to decision version of pLWRP following settlement discussions.
2. ~~Strikethrough~~ – deletions to decision version of pLWRP following settlement discussions.

Policy 4.3 Surface water bodies are managed so that:

- (a) toxin producing cyanobacteria do not render rivers or lakes unsuitable for recreation or human and animal drinking-water;
- (b) fish are not rendered unsuitable for human consumption by contaminants;
- (c) the natural colour of the water in a river is not altered;
- (d) the natural frequency of hāpua, coastal lakes, lagoons and river openings is not altered;
- (e) the passage for migratory fish species is maintained unless restrictions are required to protect populations of native fish;
- (f) reaches of rivers are not induced to run dry, thereby maintaining the natural continuity of river flow from source to sea; ~~and~~
- (g) variability of flow, including floods and freshes, is maintained to avoid prolonged “flat-lining” of rivers; to facilitate fish passage; and to mobilise bed material; and
- (h) the exercise of customary uses and values is supported.

Policy 4.4 Groundwater is managed so that:



- (a) groundwater abstractions do not cause a continuing long-term decline in mean annual groundwater levels or artesian pressures;

- (b) the individual and cumulative rate, duration and volume of water pumped from bores is controlled so as to prevent seawater contamination;
- (c) the rate and duration of individual abstractions is controlled to ensure that individually or cumulatively, localised pressure reversal does not result in the downward movement of contaminants;
- (d) in any location where an overall upwards pressure gradient exists, restrict the taking of groundwater so that at all times the overall upward pressure difference is maintained between any one aquifer and the next overlying aquifer; ~~and~~
- (e) overall water quality in aquifers does not decline; and
- (f) the exercise of customary uses and values is supported.

Rule 5.54

Until 1 January 2016, the use of land for a farming activity that does not comply with Rule 5.53 is a permitted activity, provided the following condition is met:

1. The nitrogen loss calculation for the part of the property within the Orange Nutrient Allocation Zone does not increase above the nitrogen baseline by more than 5 kg per hectare per annum.

Rule 5.55

From 1 January 2016, the use of land for a farming activity that does not comply with Rule 5.53 is a restricted discretionary activity, provided the following conditions are met:

1. The nitrogen loss calculation for the part of the property within the Orange Nutrient Allocation Zone does not increase above the nitrogen baseline by more than 5 kg per hectare per annum; and
2. A Farm Environment Plan has been prepared in accordance with Schedule 7 Part A.



Note: The use of the phrase "5 kg per hectare per annum" in Rules 5.54 and 5.55 is a reference to the units in which the nitrogen baseline is measured. As such, Rules 5.54 and 5.55 only allow a total increase of up to 5 kg per hectare per annum above the nitrogen baseline, as calculated for the 2009-2013 period. Rules 5.54 and 5.55 do not permit a compounding increase of 5 kg per hectare per annum above the nitrogen baseline.

