

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

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**IN THE MATTER OF:**      the Resource Management Act 1991

**AND**

**IN THE MATTER OF:**      a submission on the Proposed Canterbury Land and Water  
Regional Plan Variation 2

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Response on behalf of the Director-General  
of Conservation to Hearing Commissioners' Questions  
Dated 30 June 2015

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**C/o: Herb Familton**

## Response on behalf of the Director-General of Conservation to Hearing Commissioner's Questions

I respectfully submit the following:

### INTRODUCTION

1. The Director-General of Conservation (the Director-General) presented legal submissions and expert evidence to the Hearing Commissioners (the Commissioners) in relation to proposed Variation 2 to the proposed Canterbury Land and Water Regional Plan on 16 June 2015.
2. During this hearing the Commissioners asked the Director-General to provide further comment on two matters to address concerns raised in his submissions as supported by the Director-General's expert evidence, as follows:
  - 2.1. Possible wording changes to proposed Policy 3.4.14 paragraphs (c) and (e);
  - 2.2. Whether the Director-General could propose alternative wording for Rule 13.5.7.

### Policy 3.4.14

3. Commissioner van Voorthuysen asked the Director-General's expert planning witness Pam Guest to comment on the following proposed wording changes to paragraphs (c) and (e) of this policy as recommended by the section 42A report (further suggested changes shown in green font):

*(c) adverse effects on fish passage are avoided or mitigated, provided that exotic fish are not enabled to enter streams where they could pose a threat to 'at risk' or 'threatened' indigenous fish species;*

*(e) there is no net loss, including through inundation of significant aquatic biodiversity—habitat or populations of indigenous species including freshwater fish—of indigenous biodiversity; and*
4. Ms Guest and Dr Dunn, who provided expert evidence on indigenous freshwater fisheries, have considered the proposed wording changes. On behalf of the Director-General it is considered that further amendments are required

to better achieve the purpose of the Resource Management Act 1991, and address the concerns raised by the Director-General's submission.

5. The following wording is proposed on behalf of the Director-General for Policy 3.4.14 paragraph (c) (additions highlighted, deletions ~~struck out~~ and highlighted):

(c) adverse effects on fish passage are avoided or mitigated, provided that exotic predatory fish are not enabled to enter streams areas where they could pose a threat to 'at risk' or 'threatened' indigenous fish species;

6. The changes to paragraph (c) are sought for the following reasons:
- 6.1. It is important that existing refuge areas for smaller native fish are protected by ensuring that managed aquifer recharge or targeted stream augmentation do not enable access by any predatory fish species. Accordingly it is recommended that 'exotic' fish be replaced by 'predatory' fish because some indigenous fish (such as tuna/ eels and koaro) also predate on smaller native fish.
- 6.2. It is submitted the term 'areas' is more appropriate than 'streams' as refuge habitat for native fish also includes wetlands.
- 6.3. The deletion of the qualifiers 'at risk' or 'threatened' is recommended because (consistent with the Director-General's powers and the Department of Conservations functions) the Director-General wishes to see all indigenous fish protected from predatory fish. Extending this policy to cover all indigenous fish is also consistent with Recommendation 2.2.3 of the Ashburton Zone Implementation Programme which states:

*"Ensure streams and sub-catchments with only native fish species are identified and protected."*

7. The following wording is proposed on behalf of the Director-General for Policy 3.4.14 paragraph (e) (additions highlighted, deletions ~~struck out~~ and highlighted):

(e) there is no net loss, including through inundation of significant aquatic biodiversity-habitat or populations of indigenous species, including in particular freshwater fish of indigenous biodiversity; and

8. The changes to paragraph (c) are sought for the following reasons:
  - 8.1. The proposed wording more simply sets out the intention of the paragraph.
  - 8.2. The Director-General seeks deletion of the qualifier 'aquatic' before 'habitat, as increased flows can also adversely affect the riparian and terrestrial habitats of some indigenous freshwater fish. This change would broaden the policy to apply to all types of significant habitat rather than restricting it to aquatic habitat.
  - 8.3. It is submitted the phrase 'in particular' is more appropriate than 'including' as this more clearly highlights the significance of indigenous fish, rather than merely indicating that freshwater fish are a type of indigenous species that should be considered.

**Rule 13.5.7 – public notification requirements for use of agrichemicals on public land**

9. Mr Briden gave expert evidence for the Director-General on the proposed Rule in support of the Director-General's submission this Rule should be deleted. Commissioner van Voorthuysen asked Mr Briden to propose alternative wording for this Rule.
10. It is very difficult to write a general notification Rule, as differing chemicals have differing notice requirements under the Hazardous Substances and New Organisms Act 1996 (HSNO Act) associated regulations, and controls, set by the Environmental Protection Authority (EPA). So, for example for the aquatic herbicides Reglone and Aquathol, Reglone has a 1 Day HSNO notice requirement post the spray operation whereas Aquathol has a 5 day EPA control notice requirement. These may be compared with glyphosate (Roundup) formulations approved for use over water which do not require signage before or after completion of a spray operation.

11. I refer the Commissioners to paragraph 20 of Mr Briden's evidence which describes a 2012 application considered by the EPA in relation to approval of four herbicides where signage was discussed. As stated in Mr Briden's evidence the EPA decision requires public signage to be installed only on the day of the application/ discharge. It is submitted that should these herbicide approvals also be subject to the additional 2 km and 48 hour signage requirements under the proposed Rule, this will make it confusing for permission holders to be certain they are complying with all notification requirements.
12. The Waikato Regional Council has a notification rule for the general discharge of agrichemicals in the Waikato Regional Plan as attached in Appendix A. However, it is submitted this Rule is still inconsistent with the HASNO Act and Controls requirements and some EPA approvals.
13. It is submitted that if a notification rule is required, this would best be worded as a generic enabling rule which imports the HASNO and EPA requirements. I note Rule 5.22.1 of the proposed Canterbury Land and Water Regional Plan already requires for discharges of agrichemicals to surface water "*... the use and discharge of the substance is in accordance with all conditions of approval*". This will include compliance with EPA notification and signage requirements.
14. Should Council wish to retain the proposed Rule 13.5.7, I submit it is best not to require an individual person to be specified on any public signage, as this may lead to those individuals being subject to personal abuse. As an alternative I submit the proposed Rule could require any notice to include contact details of an organisation or contractor able to provide further information.

### **Conclusion**

15. The Director-General now seeks further amendments to proposed Variation 2 policy 3.4.14, for the reasons set out above.
16. In relation to Rule 13.5.7, the Director-General continues to submit the proposed Rule should be deleted. However, if the Council wishes to retain the

proposed Rule then alternative wording around contact details is sought as set out in paragraph 14 above.



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**Pene Williams**

**Senior Solicitor**

## Appendix A

### Waikato Regional Plan

#### 6.2.4.9 Permitted Activity Rule – Widespread Application of Agrichemical(s)

Unless provided for in Rule 6.2.4.8, the discharge of agrichemical(s) into air, into water and into or onto land is a **permitted activity** subject to the following conditions:

- a. The agrichemical(s) shall be discharged in a manner that does not contravene any requirement specified in the manufacturer's instructions.
- b. The discharge shall be undertaken in such a way that no significant adverse effect of off-target drift shall occur beyond the boundary of the property being sprayed.
- c. Where the agrichemical is being applied to vegetation on the banks and bed of water bodies:
  - i. the application and consequent breakdown of vegetation shall not result in the contamination of domestic or commercial water supplies, or the death of fauna (and/or residues being detected in fish).
  - ii. Where agrichemicals are applied directly to water any downstream water take within one kilometre of the point of discharge must be notified between 12 hours and three weeks prior to commencement of the discharge.
- d. Within twelve months of the Plan (or this rule) becoming operative:
  - i. Every person undertaking the application of agrichemicals shall have a qualification certified in writing that meets the performance requirements set out in Section 6.2.10, or be under the direct supervision of a person who meets those requirements, or
  - ii. Every contractor or contractor employee undertaking the land based application of agrichemicals shall hold or be under the on site supervision of a person who holds a current National Certificate in Agrichemical Application, a GROWSAFE® Registered Chemical Applicators Certificate or a qualification that meets the performance requirements for contractors and contractor employees in Section 6.2.10
  - iii. Every pilot undertaking the aerial application of agrichemicals shall hold a Pilot's Chemical Rating issued by the Civil Aviation Authority or an equivalent qualification.
- e. The application of agrichemicals shall be undertaken in accordance with New Zealand Standard 8409:2004, Management of Agrichemicals<sup>5</sup>.
- f. The owner, occupier, or manager of the property to be sprayed shall prepare a spray plan, or shall arrange for a spray plan to be prepared, at the beginning of each year or spray season, and the spray plan shall:
  - i. contain as a minimum the information as outlined in Section 6.2.7 of this Plan or with reference to Appendix M4 of New Zealand Standard 8409:2004, Management of Agrichemicals.

- ii. be given to any person within seven days of that person requesting the spray plan.
- iii. Notwithstanding the requirements of part i) of this condition, for local authority parks and reserves, road side spraying operations and community based spray programmes where the spraying activities for which spray plans are required cover more than 10 properties a single spray plan can be prepared on an annual basis covering all operations. This spray plan must identify as a minimum all known sensitive areas likely to be affected by the activity and the strategies to be employed to avoid adverse effects on those areas (e.g. specific application techniques, specific notification practices, buffer zones, manning boundaries, restrictions on climate conditions when spraying can occur etc). The plan must be provided to the contractor/applicator prior to spraying commencing.
- g. The owner, occupier, or manager of the property to be sprayed shall keep and maintain records of agrichemical use, or shall arrange for records to be kept. These records shall, as a minimum, include the information in Appendix C of the New Zealand Standard 8409:2004 Management of Agrichemicals.
- h. The owner, occupier, or manager of the property to be sprayed must follow the relevant notification requirements listed in Table 64 of this Plan.

**Table 64 Notification Requirements for Rule 6.2.4.9**

Location and Nature of Chemical Application	Signage and Notification Requirements
Ground based application on <b>private*</b> property further than 50 m from boundary of the property	There is no requirement to notify unless someone has requested notification. Where a person requests that they be notified, the owner, occupier or manager of the property to be sprayed shall provide notification in a form agreed between the two parties.
Ground based application on <b>private*</b> property within 50 m of boundary	<ol style="list-style-type: none"> <li>1. The owner, occupier, or manager of the property to be sprayed shall either:               <ol style="list-style-type: none"> <li>a. provide verbal or written notification to owner(s), or occupier(s) of adjoining properties or to any other person requesting notification between 12 hours and three weeks prior to spraying, or</li> <li>b. Provide written advice (at least once a year) to any person who is likely to be directly affected by spray applications that a spray plan prepared in accordance with condition f) of this rule is available on request. Notification procedures that have been mutually agreed by the parties shall be specified and noted in the spray plan.</li> <li>c. <b>And in any case, notification of adjoining private</b></li> </ol> </li> </ol>



	<p>property owner(s) or occupier(s) will not be required if written permission has been obtained from them stating that notification can be in some mutually agreed form or that notification is not required.</p> <p>d. Where the boundary is with a public amenity area or place of public assembly the discharger shall place signs so that they are clearly visible to the public at all points where the public commonly have entry, to indicate that agrichemical(s) are being sprayed. The signs shall remain in place for a period equivalent to the contact re-entry time* for the agrichemical(s).</p>
<p><b>Using an aircraft</b></p>	<p>1. The owner, occupier, or manager of the property to be sprayed shall:</p> <p><b>Either-</b></p> <ul style="list-style-type: none"> <li>a. provide verbal or written notification to owner(s), or occupier(s) of adjoining properties or to any other person requesting notification between 12 hours and three weeks prior to spraying,</li> <li>b. Notify adjoining private property owner(s) or occupier(s) will not be required if written permission has been obtained from them stating that notification can be in some mutually agreed form or that notification is not required.</li> </ul> <p><b>OR</b></p> <p>1. The owner, occupier, or manager of the property to be sprayed shall give prior notification of the discharge, (or arrange for notification to be given), in local newspapers, or by verbal or written notice to people who may be affected in the adjoining area, between 12 hours and three weeks prior to the discharge. Notice shall include as a minimum:</p> <ul style="list-style-type: none"> <li>a. that the spray plan for the property prepared in accordance with condition e) i) of this rule, is available for viewing</li> <li>b. the likely date, time and duration of the discharge</li> <li>c. the location of the area on which the agrichemical(s) is to be discharged</li> <li>d. the trade name and classification of the agrichemical(s) to be discharged</li> <li>e. the name(s) and phone number(s) of the person<sup>6</sup> who will discharge the agrichemical(s).</li> </ul>
<p><b>In a public amenity</b></p>	<p>Notification shall be in the form of either:</p>

area, place of public assembly or as part of a community based spray programmes<sup>7</sup>

1. Prior notification of the discharge in local newspapers, or by verbal or written notice to people who may be affected in the adjoining area, between 12 hours and three weeks prior to the discharge. Notice shall include as a minimum, the following information:
  - a. that the spray plan for the property prepared in accordance with condition f) i) of this rule, is available for viewing
  - b. the likely date, time and duration of the discharge
  - c. the location of the area on which the agrichemical(s) is to be discharged
  - d. the trade name and classification of the agrichemical(s) to be discharged
  - e. the name(s) and phone number(s) of the person<sup>8</sup> from whom further information can be obtained.

**OR**

1. Prior notification of the discharge in local newspapers or written notice to people who may be affected in the adjoining area on an annual or seasonal basis. Notice shall include as a minimum, the following information:
  - a. that the spray plan prepared in accordance with condition f) i) of this rule, is available for viewing
  - b. the season during which spraying is likely to occur
  - c. the location of the area on which the agrichemical(s) is to be discharged
  - d. the trade name and classification of the agrichemical(s) that are likely to be discharged
  - e. instructions on who to contact if people wish to be notified closer to the date and the process that will be followed to ensure that people requiring individual notification are given sufficient time to take precautions

**AND**

1. Any person that identifies that they require notification shall be given notification in a form agreed between the two parties.

**The following signage requirements shall be met:**

1. The applicator shall place signs so that they are clearly visible to the public on all normal lines of entry where the public commonly have entry, to indicate that agrichemical(s) are being sprayed. The signs shall remain in place for a period equivalent to the contact re-entry time\* for the agrichemical(s)
2. If spraying a road or railway verge from a vehicle, the

	discharger shall place signs at the front and back of any vehicles used for the discharge, on which it shall be written 'agricultural application in progress'
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**Advisory Notes:**

- The use of any agricultural chemical no longer registered in New Zealand or in a manner that contravenes the requirements specified in the manufacturer's instructions is an offence under the Hazardous Substances and New Organisms Act 1996.
- The requirement to notify does not give the notified person the right to veto a spraying operation on a neighbouring property or in a public amenity area.
- 'Written notifications' as referred to in condition h) of this Rule can include circulars using rural delivery, newspaper advertisements, emails, faxes or signage along property boundaries.
- The person discharging the agricultural chemical(s) should immediately notify Waikato Regional Council in the event of any accidental or unintended discharge of agricultural chemical(s) to air, land or water.
- The use of local authority managed registers of people who require notification in a particular district to narrow the range of people to be notified in conjunction with seasonal newspaper advertisements or circulars may be one means of compliance with condition h).
- The use of weed wipers, or distribution by hand of granular herbicides is not a discharge of contaminants to air and is not regulated by this Rule.
- When applying chemicals near the boundary between the Waikato Region and neighbouring regions, chemical applicators will need to check the requirements of the neighbouring regional council and ensure that potentially affected people in the neighbouring region are notified in accordance with the requirements of that region's Air Plan