BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Proposed Plan Change 4 to the Canterbury Land and Water Regional Plan

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SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF Z ENERGY LIMITED, MOBIL OIL NZ LIMITED, BP OIL NZ LIMITED (THE OIL COMPANIES)

31 MARCH 2016

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MAY IT PLEASE THE COMMISSIONERS

1. INTRODUCTION AND SCOPE

1.1 These supplementary legal submissions are made on behalf of Z Energy Limited, Mobil Oil NZ Limited and BP Oil NZ Limited (the **Oil Companies**), in response to the Commissioners' questions arising at the hearing on Wednesday 16 March 2016.[1] As requested by the Commissioners, these supplementary submissions outline the case law that touches upon the distinction between discharges to land and discharges to water, for the purposes of section 15 of the Resource Management Act 1991 (**RMA**).

1.2 The submissions also address a number of drafting questions put to Mr le Marquand by the Commissioners on the following matters:

(a) Rule 5.187 (passive discharges from land) – in particular whether reference to the site investigation report requires stronger wording to ensure the investigation report prepared by the Suitably Qualified and Experience Professional (**SQEP**) is sufficient to satisfy Environment Canterbury that the relevant permitted standards will be met?

(b) Community Water Protection Zone provisions – whether reference to notification of / consultation with affected parties within the provisions would alleviate the concerns of the Oil Companies. If so, how could the provisions be drafted and what is the scope for those recommended changes?

(c) In relation to deleting Policy 4.16A - whether there is scope to make the various 'alternative' suggestions put forward by Mr le Marquand in Attachment C to his evidence in chief? Where there is scope, what is the draft wording proposed?

(d) Rule 5.142 (Floodwater Rule) – whether Environment Canterbury's agreement to delete certain aspects of the rule[2] is sufficient to address the Oil Companies' concerns regarding the clarity of the Rule?

(e) Schedule 1A – what submission(s) give scope to include an explanation for Schedule 1A?

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1 Opening legal submissions on behalf of the Oil Companies dated 16 March 2016, were presented at the hearing.

2 As per page 8 of Environment Canterbury's written response to the Commissioners' questions on the section 42A Report.

1.3 Mr le Marquand's suggested redrafting on the above matters is attached at **Appendix A** to these supplementary submissions. A further explanation of each of the matters is set out in detail at section 3 below. A legal response has also been included regarding scope matters for some of the questions.

2. IS A DISCHARGE TO A PIPE A DISCHARGE TO LAND OR TO WATER?

2.1 At the hearing the Commissioners requested further information on whether a discharge to a pipe is a discharge to land or a discharge to water. Counsel for Environment Canterbury has also addressed this matter in answers to the Commissioners' questions from day 1 of the hearing (3 March 2016) at pages 4 to 7. It is submitted that the legal approach outlined by counsel for Environment Canterbury on page 6 under the heading "*Is a discharge into a pipe a discharge to "water"?*" is the correct starting point. These supplementary submissions expand on that.

2.2 Section 15(1)(b) of the RMA applies to discharges of contaminants *onto or into land* in circumstances where the contaminants may enter water. Discharges of contaminants or water into water are covered by 15(1)(a). As outlined by Environment Canterbury's answers to the Commissioners' questions, 'water', as defined under the RMA, does not include water in any form while in a pipe.[3] Therefore, when there is a discharge to a pipe, is that a discharge to land which is covered by 15(1)(b)?

2.3 Under section 2 of the RMA, land is defined broadly and inclusively as follows:

> *Land includes land covered by water and the air space above land.*

2.4 It does not expressly include pipes; nor does it expressly exclude them.

2.5 It is submitted that discharging contaminants onto the surface of land would be a discharge "onto" land, and discharging contaminants below the surface of land would be a discharge "into" land. It is further submitted that, while there is no express case law on the matter, land does not cease to be land simply because a pipe runs through it.

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[3] As per page 3 of Environment Canterbury's written response to the Commissioners' questions from Day 1 of the hearing (3 March 2016).

2.6 If a pipe is not land for the purpose of section 15(1)(b), the result could be that a person requires a discharge permit for pouring a contaminant into an open trench that leads to a stream (ie. because that is considered to be land), but does not require a discharge permit if the top of the same trench is closed in and sealed to form a pipe. We respectfully submit that this interpretation cannot have been intended by Parliament. The trench and the pipe are both designed to carry liquid substances away from one area and into another area. It is submitted that section 15(1)(b) is intended to ensure that there is adequate control over the discharge of contaminants in circumstances where they may reach water. Treating a pipe as not being land would defeat that purpose in some cases.

2.7 It is submitted that under the RMA a discharge is either into water, onto or into land, or into air. A pipe itself is not air or water, and based on the definition of "water", a pipe's contents cannot be water. A pipe could contain air, and on that basis it could possibly be argued that a discharge into a pipe that is not "full" is a discharge into air. However, a more logical application of section 15 would be to treat the pipe as land.

2.8 The starting point of relevant case law, as noted at the hearing during legal submissions for the Oil Companies, is the Planning Tribunal decision of *Minister of Conservation v South Taranaki District Council*[4]. In that case the Tribunal considered where the *point of discharge* was. The circumstances were that sewage travelled through a pipe to a man-made trench, and then onto a beach and into the sea. The question for the Court was whether or not the discharge was in the Coastal Marine Area. The Court found that the location of the discharge was at the point the sewage left the control of the District Council.[5] That was found to be the end of the trench because the discharge was still in its control until then (however, as foreshadowed by the Chair at the PC4 hearing, the Court did not specifically reach a finding on whether the pipe or trench was "land").

2.9 In *Southland Regional Council v Southern Delight Ice-cream Company*[6] the defendant had been charged under section 15(1)(a) for a discharge of contaminants from a loading bay to a car park sump and then into a public

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[4] *Minister of Conservation v South Taranaki District Council*(W16/1993)

[5] *Kerikeri Properties Limited v Northland Catchment Commission* 6 NZTPA 344: "*… the point of discharge must always be at the point at which the liquid being got rid of leaves the effective control of the discharger…*".

[6] *Southland Regional Council v Southern Delight Ice-cream Company* 15 September 1995, District Court Invercargill, CRN5025003972, Judge Sheppard.

stormwater drain and eventually into a stream. The Court agreed that the point of discharge was the point at which the contaminants left the control of the defendant (ie. when the contaminants passed from the car park into the stormwater drain). That was a discharge to land under section 15(1)(b), not a discharge into water under section 15(1)(a) (because of the definition of water). The Court dismissed the section 15(1)(a) charge.

2.10 This reasoning in *Southern Delight* was adopted in *Auckland Regional Council v AFFCO Allied Products Limited*,[7] in which the defendant had discharged trade wastes from a truck onto land (a truck wash bay) and into a stormwater drain. The defendant was found guilty of discharging contaminants to land under section 15(1)(b).

2.11 In our submission, the above cases support the argument that a discharge into a stormwater drain or network is a section 15(1)(b) discharge to land. However, the Court has also commented on situations involving discharges into wastewater pipes, and those decisions leave some room for contrary arguments on this point.

2.12 In *Cooks Beach Developments Limited v Waikato Regional Council* (A127/99), the Court stated (at page 12):

> "*The construction of a reticulated sewage system and the step of requiring private owners to connect to such system does not require any consents under the RMA. Therefore the sewage may be collected by Council under its statutory powers and taken to a point where RMA considerations may apply. The RMA definition of "water" (s2) specifically excludes water while in a pipe, tank or cistern. Thus s15 of the RMA does not apply to discharges into the pipes forming a reticulated system*".

2.13 In *Cooks Beach* the issue before the Court was whether the discharge into water in the pipe was a discharge into water for the purposes of section 15(1)(a) of the RMA, rather than whether a pipe was land. The Court did not comment on the latter point and it is not apparent whether it was argued.

[7] 29 September 2000, District Court Auckland, CRN9048006616-9, Judge Whiting.

2.14 In *Gisborne District Council v McKendry*[8] the Court commented on the *South Taranaki* case and stated "*all the case really tells us is that directing water or another liquid into a pipe will not be a 'discharge'*". The Court in *McKendry* did not comment on the view expressed in *Southern Delight* that a discharge into a stormwater drain would be a discharge to land under section 15(1)(b).

2.15 While there is no express case law that states a discharge to a pipe is a discharge to land for the purposes of section 15 of the RMA, we respectfully submit that the logical approach is that a discharge to a pipe is a discharge to land.

3. RESPONSES TO QUESTIONS ON REDRAFTING

Rule 5.187 (passive discharges from land) – whether reference to the site investigation report requires stronger wording to ensure the investigation report prepared by the Suitably Qualified and Experience Professional (SQEP) is sufficient to satisfy Environment Canterbury that the relevant permitted standards will be met?

Response from Mr le Marquand

3.1 The Commissioners have raised a question on the potential variable quality of SQEP reports. It was suggested by Commissioner Van Voorthuysen that stronger wording be included in the Rule 5.187 to have a site investigation report "demonstrate" compliance as an option. Mr le Marquand can support the inclusion of such wording, and has made the necessary drafting change in **Appendix A**.

3.2 While it is recognised that there may be some variable quality in reports from different SQEPs, it is difficult to ensure, through a planning mechanism, a consistent quality of information where such information is required to be provided for in a permitted activity condition. Removal of reference to the report may make the rule appear to be more objective or certain by a clear requirement to comply with a relevant standard, but in Mr le Marquand's view that would be at the cost of potential increased implementation issues for Council. Rule 5.187 references site investigation reports required under Rule 5.185 – the relationship between the two rules is key.

[8] *Gisborne District Council v McKendry* (2005) 11 ELRNZ 458 at 463.

3.3 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES**) provides the trigger for site investigation reports that have to be forwarded to District Councils in relation to works on HAIL sites. Rule 5.185 essentially captures those reports and makes them available to the Regional Council for assessment. A report provided in accordance with Rule 5.185 (which permits investigations subject to furnishing the report) is not required to provide specific comment on compliance with the passive discharges rule *per se* and such a report is also only provided post an investigation activity which of itself is an unspecified duration.

3.4 Rule 5.187 as originally drafted provides a framework to enable and encourage the scope of those reports required to be provided to Council via Rule 5.185 to include an explicit assessment of the risk of passive discharges exceeding the permitted standards. In the absence of a report that specifically evaluates the risk of the discharge and compliance against the standards for such potential discharges, the Council may be a further step removed from being able to ascertain the likelihood of compliance being achieved. That was certainly the case before the Hearings Panel introduced Rule 5.187 via original decisions on the Land and Water Plan.

3.5 Removal of the reporting process from Rule 5.187 may not necessarily provide the Council greater certainty or assurance in terms of permitted activity compliance of the standards, as it may not get the benefit of an assessment from a SQEP in relation to those passive discharge standards. If the report is limited to the scope of 5.185 then the Council will potentially have a greater implementation issue as such an assessment will not have been made.

3.6 In response to the Commissioners' questions on the s42A report, Environment Canterbury's response (page 26) includes the following statement:

> *At this stage, as there are no objective criteria for the qualifications and experience of the reporting author, the Contaminated Sites Team do not consider that they can 'reject' any reports received. Similarly, they are bound by the wording of the rule to accept whatever the conclusion of the report is, even if it is based on questionable methodology or logic.*

3.7 It is accepted that there are no current objective criteria relating to the qualification and experience of SQEPs. That is a matter that certain bodies like Australasian Land and Groundwater Association and Wasteminz have been considering developing guidance upon. The contaminated land industry is not large and Mr le Marquand's understanding is that the Council is likely to be familiar with who the experienced persons are. This of course is different from whether there is acceptance by Council of that person's view in a particular circumstance. These judgments on the qualification and experience of SQEPs need to be made on a daily basis by Councils in terms of information supplied on applications and there is no reason in Mr le Marquand's view as to why the Regional Council could not exercise a similar judgment as to whether someone was indeed a SQEP.

3.8 If this is a significant concern, the Regional Council could introduce a definition, through a Variation, setting out what it considers a SQEP should be. Mr le Marquand advises that this is the approach proposed in the Proposed Auckland Unitary Plan, where a definition of 'Suitably Qualified and Experienced Person' was notified and is currently subject to hearing.[9]

3.9 In terms of Environment Canterbury's concerns about an inability to reject any report, Mr le Marquand does not consider that the Council amendments to the Rule alter the outcome in that regard. In terms of a concern that the Council is bound by the wording of the Rule to accept the conclusion of the report, it is accepted that is a potential issue in terms of the current wording. It is considered however by Mr le Marquand that this issue can be addressed by amending the provision to include the word "demonstrates" (as suggested by Commissioner van Voorthuysen).

3.10 On page 27 of Environment Canterbury's report in response to the Commissioners' questions on the s42A report which queries "is there evidence that this requirement has not been found in practice to be adequate", the Council provided two examples. No comment is made here on the second matter as the context is not known. In relation to the first matter the s42A reports stated as follows:

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9 The notified definition for the PAUP reads as per below, I understand that amendments have been made to the definition through evidence and hearings progress, but no final decision on the definition has been released.
For the purposes of the Contaminated land provisions, including definitions, means:
A practitioner who:
- *is a senior or principal scientist/engineer with a relevant tertiary qualification and*
- *has at least ten years of experience in the assessment and management of land containing elevated levels of contaminants.*

*A Site Assessment Report that documented, among other things, sampling of 11 site monitoring wells, concluded that there was "…*no unacceptable risk associated with offsite migration to the north east as analytical results of wells on the down gradient boundary of the site comply with relevant Oil Industry criteria*." When the Contaminated Sites Team independently reviewed the data they found that concentrations of benzene and xylenes in one down gradient boundary well did not meet permitted activity limits established in Rule 5.187(2) of the Land and Water Regional Plan, making a passive discharge consent necessary. The fact that concentrations complied with relevant Oil Industry criteria was irrelevant to the matter of passive discharge.*

3.11 Mr le Marquand considers that this example addresses two separate issues and does not compare the same matters. The first matter is about risk, which a report provided under 5.185 is required to report upon. What the Council appears to be concerned about was that there was no assessment in that report whether consent was necessary in terms of 5.187. This is the Oil Companies' reason for seeking retention of the reporting requirement in the Rule and therefore enabling "demonstration" of compliance with the standards. If that detail is not included in such a report, then the Council can more readily follow up. If the need for the report is removed from the Rule, then it can be expected there will be more examples where compliance against the Rule is not reported.

Community Water Protection Zone provisions – whether reference to notification / consultation of affected parties within the provisions would alleviate the concerns of the Oil Companies. If so, how could the provisions be drafted and what is the scope for those recommended changes?

Response from Mr le Marquand

3.12 Mr le Marquand considers that inclusion of a reference to consultation and notification could assist in addressing some of the concerns raised by the Oil Companies relating to lack of notification and consultation, and the potential for the provisions to allow for a *de facto* plan change.

3.13 A potentially affected party identification requirement could be included in Schedule 25 so that all those potentially affected parties (owners and occupiers) within the intended protection zone are identified, and subsequently consultation could be undertaken with those parties. However it is considered by Mr le Marquand that a notification requirement is preferable and is best addressed and included through Rule 5.115. Suggested amendments are set out in **Appendix A**.

3.14 Mr le Marquand considers that there is scope to make these changes under the Oil Companies' submission set out below:

> *As discussed with regard to Policies 4.23A and 4.23B, the Oil Companies have concerns at the potential for non-notified resource consent applications to act as de facto plan changes with implications for existing users. The introduction of any new protection zones should be by way of a plan change process. This schedule should be deleted. If retained, it should be amended to require an assessment of potential impacts and constraints on other land uses* ***with written approvals of affected parties required (or limited notification).***[10] *[**emphasis added**]*

3.15 For completeness, the Oil Companies sought the following relevant specific relief:

> *"**21.** Delete Rule 5.115*
>
> ***27.** Delete Schedule 25.*
>
> ***28.** Adopt any other such relief, including additions, deletions or consequential amendments necessary to give effect to these submissions as a result of the matters raised."*

<u>*Legal response*</u>

3.16 It is submitted that the changes set out to Schedule 25 and Rule 5.115 in **Appendix A** fall within the broad scope of outcomes the Oil Companies were seeking. We refer to our opening legal submissions on issues of scope. While the specific relief seeks full deletion of Schedule 25 and Rule 5.115, it is submitted that the lesser form of relief (ie. retention of the Rule with amendments to give effect to the Oil Companies' general relief that the provisions as drafted are inappropriate) falls within the ambit of the submission, and within the specific relief sought at point 28. The changes recommended in **Appendix A** give effect to the Oil Companies' submission

[10] Page 17 of the Oil Companies' submission. It is noted that this relief is not listed in the summary of submissions table.

and associated relief sought as outlined at paragraph 3.14 above. The changes are also submitted to be within the general relief sought by the Oil Companies at paragraph 8 on pages 2 and 3 of their submission, in particular (f) and (g).

In relation to deleting Policy 4.16A - whether there is scope to make the various 'alternative' suggestions put forward by Mr le Marquand in Attachment C to his evidence in chief and, if there is scope, what is the suggested draft wording for the same?

Replace the heading (and all references in the rules) to 'post construction-phase stormwater' with 'stormwater'.

Response from Mr le Marquand

3.17 Mr le Marquand considers that scope for this change is provided for in the Oil Companies' submission point 499, which sought to amend references to post construction-phase stormwater to stormwater throughout the plan.[11] The amendment is straightforward and can be achieved by deleting the words "Post Construction-phase" from the heading above Rule 5.95A.

Introduce policies and rules to support the discharge of construction phase and operational stormwater to the reticulated network from 1 January 2025.

Response from Mr le Marquand

3.18 Mr le Marquand considers that scope to introduce policies and rules comes from the Oil Companies' submission in response to Policy 4.16A as follows:

(a) "*If Council maintains this approach an additional policy should support permitted discharges to the reticulated network from 1 January 2025 to ensure they are appropriately sanctioned having regard to Section 15(1) of the Act. This is discussed further with regard to the relevant rules (5.94A and 5.95A).*"[12]

(b) *"If it is retained, an additional permitted activity rule is necessary to avoid a situation whereby the discharge of construction-phase*

[11] Page 17 of the Oil Companies' submission. final paragraph.
[12] Page 10 of the Oil Companies' submission in response to policy 4.16A.

stormwater into a reticulated system from 1 January 2025 defaults to a RD activity under 5.94C."[13]

(c) *"If retained, there should be an additional permitted activity rule to avoid a situation whereby the discharge of operational stormwater into a reticulated system from 1 January 2025 defaults to 5.97 as a non-complying activity for all discharges into that network."[14]*

3.19 The additional provisions which are considered appropriate by Mr le Marquand are set out in **Appendix A**. Proposed Policy 4.16B can be considered as an implementation policy or could be included as an explanatory note to Policy 4.16A.

Legal response

3.20 While scope for Mr le Marquand's recommended changes comes from the main body of the submission, as opposed to the specific relief, it is considered that these matters can also be addressed via reliance on the Oil Companies' generic relief on pages 2 and 3 (particularly (f) and (g)).

Retain the restricted discretionary pathway in 5.94C for construction stormwater

Response from Mr le Marquand

3.21 The Oil Companies' submission 427 seeks the retention of Rule 5.94C[15], as do a number of other submitters.[16]

3.22 The Oil Companies sought the retention of the pathway for construction-phase stormwater. Post 1 January 2025, the discharge of construction phase stormwater into a network would need to meet Rule 5.94A, or the discharger would need to apply for consent under 5.94C. As indicated in the evidence in chief of Mr le Marquand[17], the risks of discharges from potentially contaminated land are potentially greater during earth disturbing activities and therefore such an approach (ie. requiring restricted discretionary consent) is not opposed by the Oil Companies and no changes to the rules are proposed.

13 Page 16 of the Oil Companies' submission.
14 Page 17 of the Oil Companies' submission.
15 Page 17 of the Oil Companies' submission.
16 As per the summary of submissions, Trustpower Limited submission point 81; Hurunui Water Project Limited, submission point 224; Fonterra Limited submission point 448.
17 Paragraph 5.15 of Mr le Marquand’s evidence in chief.

Establish a clear stormwater consent requirement decision process for non-residential sites.

<u>Response from Mr le Marquand</u>

3.23 There is no specific submission seeking this relief. Reliance would need to be made on the generic relief sought by the Oil Companies at pages 2 and 3 of their submission if such a process was to be introduced into the Plan. The alternative relief however relates primarily to implementation and practice, and it is acknowledged by Mr le Marquand that this is not readily able to be addressed through Plan provisions.

3.24 It is accepted by Mr le Marquand that this may be a matter best addressed by Environment Canterbury in its administration of planning documents rather than the Commissioners through PC4. Environment Canterbury could address this in parallel and as part of any transition discussions on a new post 1 January 2025 model for input management for reticulated networks.

Clarify intent in relation to management of inputs of other discharges of substances, such as construction dewatering water, pipe and tank testing waters, spa and swimming pool and other similar discharges into reticulated networks and how the process can be anticipated to work post 2025.

<u>Response from Mr le Marquand</u>

3.25 Reliance would need to be placed on the Oil Companies' generic relief on pages 2 and 3 to address this matter, if there were to be changes in the Plan. However, having reviewed Environment Canterbury's response to the Commissioners' questions on the Section 42A report (at pages 11 to 13), and given the recommended amendment to include Policy 4.16B above, it is considered by Mr le Marquand that further amendments to the provisions are not required.

Rule 5.142 (Floodwater Rule) – whether Environment Canterbury's agreement to delete certain aspects of the rule is sufficient to address the Oil Companies' concerns regarding the clarity of the Rule?

Response from Mr le Marquand

3.26 Mr le Marquand considers that Environment Canterbury's agreement to delete certain aspects of the Rule 5.142[18] improves the function of the Rule and the intent to create a permitted framework, subject only to concerns relating to erosion and destabilisation of structures. The changes are supported by Mr le Marquand. The intent of the Rule (as re-drafted) has been explained by Mr McCallum-Clark.[19] His explanation and changes are accepted by Mr le Marquand. That explanation makes it clear that the Rule is not intended to capture persons subject to flood flows where no action is undertaken. That being the case, it is considered by Mr le Marquand that the Rule could be improved further as shown in **Appendix A**.

Scope for Schedule 1A explanation

Response from Mr le Marquand

3.1 The scope for clarification and explanation in Schedule 1A is provided by the Mackenzie District Council's (**MDC**) primary submission. MDC sought deletion of all changes to the group drinking water supplies and community drinking water supplies within PC4. As an alternative, they sought other changes to the definitions including a list of three sites to be listed in Schedule X (which was then included by Environment Canterbury's section 42A report as Schedule 1A). The Oil Companies did not oppose those listed sites as they have no effects on Oil Company interests. The reasoning for the listing is provided in the main body of MDC's submission which was that the three supplies were going to be affected by the PC4 changes, as they were supplying less than 25 people. Submission point 7(e) of the MDC submission sought any additional and alternative or consequential relief in relation to these matters. Therefore it is considered that an explanation for Schedule 1A can be included relying on that scope.

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18 As per page 8 of Environment Canterbury's written response to the Commissioners' questions on the section 42A Report.

19 Environment Canterbury's answers to Commissioners' Questions from Day 1 of Hearing (3 March 2016), at page 14, question RvV 28.

Other matters

3.2 For completeness, we also record an update to Mr le Marquand's evidence in chief. At paragraph 7.3 of that evidence Mr le Marquand provided a quote and stated that it was from the section 32A report. The reference to 32A was included in error it should instead refer to the "section 32 report". A footnote should be included after the quote stating "Section 32 report, Part C, at page 15, second paragraph under the subheading 'Discharges of floodwater and Permanent Realignment of a waterbody'".

DATED this 31st day of March 2016

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APPENDIX A

Key:

Relevant provisions are shown below, underlining and strike through in black text is as per Environment Canterbury's section 42A report. Underlining and strike through in bold black text is as per Mr le Marquand's Attachment C to his evidence in chief.

Any changes shown in red text, are additional changes recommended by Mr le Marquand in these supplementary legal submissions in response to Commissioners' questions.

Changes in blue text indicate the additional changes proposed by Environment Canterbury since evidence in chief was filed (ie as per Environment Canterbury's answers to Commissioners' questions).

Policy 4.16B

Post 1 January 2025 the discharge of stormwater from a reticulated stormwater system will include stormwater from private sites directed to that network. This does not include construction-phase stormwater. Stormwater from a private site directed to a reticulated network will not require consent. Only private stormwater discharges that do not enter a reticulated stormwater system will require consent.

~~Post Construction-phase~~ Stormwater

Rule 5.95A

Prior to 1 January 2025, the discharge of stormwater into a reticulated stormwater system is a permitted activity, provided the following condition is met:

1. A written permission has been obtained from the owner of the reticulated stormwater system that allows the entry of stormwater into the network.

Rule 5.95B

Post 1 January 2025 the discharge of stormwater into a reticulated stormwater system is a permitted activity.

Rule 5.115

The taking and using of water for a community water supply from groundwater or surface water is a restricted discretionary activity, provided the following conditions are complied with:

1. A Water Supply Strategy prepared in accordance with Schedule 25[O] is submitted with the resource consent application; and
2. Where the application seeks water for purposes other than drinking water, the application shall identify which components are not related to drinking water, and which of those are existing or new activities.
3. New applications for or extensions to existing community water protection zones will be notified in accordance with section 95 of the [Act / RMA]. For the avoidance of doubt all owners and occupiers within such zones or extensions will be considered to be potentially affected parties for the purposes notification.

The exercise of discretion is restricted to the following matters:

1. The reasonable demand for water, taking into account the size of the community, the number of properties and stock that are to be supplied, the uses that are to be supplied and the potential growth in demand for water; and
2. The effectiveness and efficiency of the distribution network; and
3. The quality and adequacy of, compliance with and auditing of the Water Supply Strategy; and
4. The actual and potential adverse effects on other water takes, including reliability of supply; and
4A The effect on the environmental flow and allocation limits within the relevant sub-region Sections 6 to 15; and
5. The potential benefits of the activity to the applicant, the community and the environment; and
6. Compliance with any relevant Water Conservation Order.; and
7. The need for and extent of the proposed community drinking-water supply protection zone;and
8. The matters set out in Schedule 1 and the way in which those matters are responded to in the proposal for which consent is sought and the assessment of effects forming part of the application; and
9. The actual and potential effects on any land user with land located within the proposed community drinking water supply protection zone.

Rule 5.142

The diversion of surface run-off water caused by flooding is Actions undertaken to alleviate surface flooding that result in a discharge of floodwaters from a property to a river, lake or artificial watercourse to alleviate surface flooding is a permitted activity, provided the following conditions are met:

1. The activity is undertaken by or on behalf of a local authority in accordance with a flood protection plan that has been certified by the Chief Executive of the Canterbury Regional Council as being in accordance with the CRC's River Engineering Section Quality and Environmental Management System Manual (March 2010) by the CRC. The discharge:

(1) is limited to a duration of 48 hours; and
(2) does not result in or exacerbate flooding of any other property; and
(13) does not cause or exacerbate erosion of any property or the bed or banks of any surface waterbody; and
(24) does not result in the destablisation of any lawfully established structure.; and
(5) does not contain any hazardous substance; and
*(6) **does not originate is not** from contaminated or potentially contaminated land.*

Rule 5.187

The passive discharge of contaminants onto or into land from a contaminated site land onto or into land in circumstances where those contaminants may enter water is a permitted activity, provided the following conditions are met:

1. There has been a site investigation report provided to the CRC in accordance with Rule 5.185; and

*2. The site investigation report identifies reasons for concluding that: **The site investigation report identifies demonstrates reasons for concluding that** Tthe discharge does not result in the concentration of contaminants:*

*(1) ~~The concentration of contaminants~~ Iin groundwater ~~meets~~ at the property boundary, ~~**or at**~~**for** any existing groundwater bore (excluding any monitoring bore located on the property), **or where there is a community groundwater protection zone,** breaching the limits for groundwater set out in Schedule 8; ~~or~~ **or otherwise the New Zealand Drinking-water Standards;** and*

(2) ~~The concentration of contaminants in the groundwater: at the property boundary, at the location of any existing groundwater bore (excluding monitoring bores),~~ and at any point where ~~the~~ groundwater exits to surface water ~~does not~~ breaching the water quality standards in Schedule 5 for 90% of species; and

3. At any point where the groundwater exits to surface water the discharge does not produce any:

(a) Conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or

(b) Conspicuous change in the colour or visual clarity; or

~~(c) Emission of objectionable odour.~~

Schedule 25: - Water Supply Strategy

A water supply strategy is a document required to accompany an application for resource consent to take and use water for a community water supply. It must contain the following information in sufficient detail to enable the consent authority to be reasonably informed on the nature and extent of the activity and any effects of that activity on the environment:

1. A description of the community water supply system including:
   (1) the location of the water source, surface water or groundwater abstraction point, and any relevant bore numbers; and
   (2) a description of the water conveyance method; and
   (3) the geographical extent of the water supply distribution network; and
   (4) the estimated population supplied, or to be supplied, by the network; and
   (5) primary water uses e.g. stockwater, domestic, industrial or commercial use; and
   (6) expected peak demand water requirements; and
   (7) water treatment methods; and

2. An assessment of existing and future demand for water to meet:
   (1) reasonable domestic needs; and
   (2) public health needs; and
   (3) the responsibilities of municipal water supply authorities under the Local Government Act 2002 with respect to the supply of water; and
   (4) any staged increase in allocation that may be sought during the term of the water permit to meet these demands; and

3. A description of:
   (1) any proposed water conservation methods and measures to ensure efficient use of water(including both regulatory and non-regulatory actions); and
   (2) measures to minimise water loss from the water reticulation network; and
   (3) how the above measures in (3)(a) and (3)(b) will be implemented; and
   (4) performance targets to measure the effectiveness of the methods implemented; and
   (5) the timeframe for review of any specified actions listed in the implementation plan; and

4. An assessment of any alternative water sources available or alternative means of sourcing water; and

5. A drought management plan that includes:
   (1) methods to reduce consumption during water shortage conditions and particularly consumption by non-essential agricultural, residential, industrial or trade processes; and

(2) a description of any methods to ensure water conservancy during times of drought, including but not limited to public education programmes and compliance or enforcement measures.

6. Identification (names, addresses and contact details) of all potentially affected parties owners and occupiers) within the proposed community water protection zone, and the extent and outcomes of consultation undertaken with those parties.