Plan Change 5 to the partially operative Canterbury Land & Water Regional Plan

Evidence of: Hurunui SNA Group & Rural Advocacy Network 22 July 2016

Submission no: C16C/31005

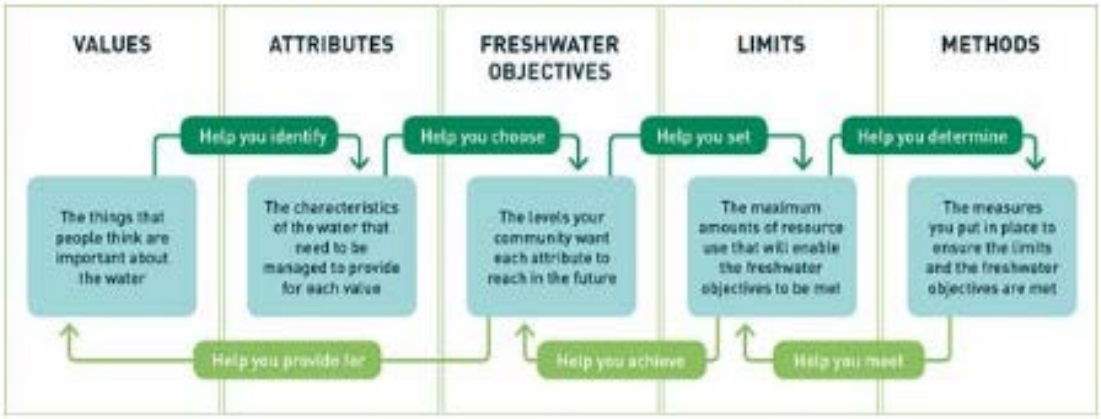
1. Freshwater planning overview

1.1 The starting point for freshwater planning is the National Policy Statement for Freshwater Management 2014 – [NPS- FM 2014] & the Resource Management Act [1991]. The Ministry for the Environments guidelines on both the NPS-FM 2014 & RMA Section 32 provide excellent detailed outlines of the requirements & processes to follow when councils undertake freshwater planning.

1.2 We believe the requirements outlined in the NPS-FM 2014 & Section 32 are very well thought out & if properly followed will deliver successful planning outcomes. Our submission is that Plan Change 5 [PC5] to the partially operative Canterbury Land & Water Regional Plan [LWRP] has not met the requirements of the NPS-FM2014 & Section 32 of the RMA.

1.3 The NPS-FM 2014 guidelines explain the concept of Freshwater Management Units [FMU] & how to define these. Once this has been done the table below [taken from the NPS-FM 2014 guidelines] explains the process to be followed.

Figure 3: The relationship between freshwater objectives, limits and methods [10]



However before determining freshwater objectives, limits & policies the guidelines highlight that Councils need to:

[1] scientifically quantify the current state of freshwater &

[2] develop an accounting system that identifies the quantity of water being taken from freshwater bodies & the sources & amounts of contaminants.

1.4 At the time of developing freshwater objectives, limits & methods the RMA section 32 requirements are a critical part of delivering legally robust & successful planning frameworks.

2. Plan Change 5 – the Hurunui District

2.1 The Hurunui Waiau River Regional Plan [HWRRP] covers the main river catchments of the Hurunui, Waiau & Jed. However a number of smaller rivers & areas of the Hurunui District fall outside this plan & are currently covered by the LWRP. The intention is for these areas to be incorporated into the HWRRP as part of the 2018 plan review process. The Waipara River is covered by the Waipara Catchment Environmental Flow & Water Allocation Regional Plan. The remaining areas include the Conway, Blythe, Motunau & Kowai river catchments & all the Hurunui district coastal hill country that drains directly to the sea. There is some water quality data for the likes of the Conway whereas for others such as the Blythe, Kowai & coastal hill country there is none.

2.2 The coastal hill country of the Hurunui District stretches from the Waipara river mouth through to the Conway River mouth & Claverley. This area is typified by many small streams that drain through steep sided gullies directly into the sea. The landowners in this area [& other areas of the Hurunui District] have a long history of retaining & protecting extensive areas of native forest & shrublands along these riparian margins. The Conway area has 20 QEII covenants & the Coastal Conway Landcare Group have a long history of good land management practices. Farming in these areas is predominantly extensive beef & sheep farming & intensive farming is limited by the steepness of the terrain, climate & lack of access to irrigation.

3. Section 32 & issue analysis

3.1 Despite there being no scientific quantification of the current freshwater state in the Hurunui district areas affected by PC5, landowners are being subjected to regulatory/mandatory requirements such as the portal, management plan & winter grazing thresholds. We submit the PC5 requirements on landowners in these areas are not legally justified .

3.2 The RMA Section 32 Ministry for the Environment Guidelines December 2014 [Page 25] outlines the process to follow when addressing issues:

"Clearly defining the problem, issue or opportunity is a critical part of robust policy analysis and is strongly linked to s32 evaluation. …A good problem definition needs to clearly explain the gap between the current situation (ie, the status quo), and the outcome aimed for, and should set out the case for intervention. The following questions should be answered:

- *What is the issue …..[*& is it an issue*?]*
- *What are the drivers for addressing the problem and its root causes?*
- *What is currently being done to address the problem, and why is it not adequate?*
- *Why is local government intervention warranted?*
- *What are the risks of acting or not acting."*

3.3 Then if local government intervention is warranted what mechanisms are the most appropriate, efficient & effective in achieving the desired objectives. Consistent with the RMA section 32 requirements, the NPS-FM 2014 requires a scientific analysis including the

sources & amounts of contaminants. We can find no evidence that the above analysis requirements have been done for the areas of the Hurunui District covered by the LWRP & outlined in 2.1 above.

3.4 As covered in our submission there is no recognition from ECan of the past efforts of landowners. There is no assessment of what is currently being done to address the problem, and why it is not adequate.

3.5 Further we believe there needs to be a more thorough section 32 analysis of the economic & social cost of regulations proposed in PC5. This includes the extra stress & frustration created by an unnecessarily heavy handed regulatory approach. We submit there also needs to be an assessment of the cumulative impact of the PC5 regulations on landowners.

4. Winter Grazing Thresholds

4.1 As outlined above the NPS-FM 2014 requires that all freshwater be categorised into Freshwater Management Units [FMUs]. The rationale for this is that freshwater objectives, limits & methods can be tailored to the different issues facing different FMUs. This approach assists in prioritising resources & actions to those FMUs facing the greatest water quality challenge.

4.2 The FMU approach is relevant to winter grazing as say a 300 ha winter grazing farm on the much of the year dry Blythe river [see figure 1]or Motunau coast will have a completely different impact on freshwater than exactly the same farm on an over allocated river that is used for swimming, fishing. The intention of the legislation is that the Blythe/Motunau farm would not be subject to the same regulatory constraints as the farm on the over allocated river. This is consistent with the universally agreed principles that the degree of regulation should be commensurate to the degree of impact.

4.3 The use of region wide mandatory requirements, such as winter grazing thresholds, is not consistent with the NPS-FM 2014 & adds unnecessary burden on landowners in areas where there is no [or likely to be no] proven freshwater issues.

5. Planning by numbers

5.1 Land use is in a constant state of change. No two farms are the same & variability of New Zealands climate mean every season, every year is different. One year it is floods & snow, the next a drought. A key factor for the survival of farming systems is the need for flexibility.

5.2 Our experience is that planning by numbers does not work. The problems with Overseer are well known. A number of submissions have highlighted problems with the numbers used in PC5 e.g. the GMP loss rate numbers, the proxies & the 20 ha winter grazing threshold.

5.3 The farcical 10 % rule issue in the HWRRP led to the bizarre situation where those farmers that had the least impact on freshwater were penalised the most. The lower your Overseer number the more you were restricted. At the other end of the scale, such as dairying, the higher the number the more headroom opportunity you were able to create. This 'incentivised' farmers that the higher your number the better off you were. There are many anecdotal examples of farmers inflating their numbers & this affects the accuracy of the data.

5.4 We see the same problems for the numbers associated with the portal & PC5 generally. The usefulness of numbers is greatly compromised when many farmers will not provide numbers [because of trust issues] or supply inaccurate or discounted/inflated numbers. Landowners are extremely nervous about numbers & what the implications of these numbers will be.

6. Cost

6.1 An important part of the RMA section 32 is a cost/benefit analysis. We can find no evidence that the costs to landowners of complying with PC5 have been adequately quantified.

6.2 As part of PC5 all landowners over 10 hectares are required to do a management plan. A basic management or farm plan starts at $1,000. However as part of schedule 7A management plan requirements landowners need to identify *(g) The location of any critical source areas for phosphorus or sediment loss for any part of the property within the Phosphorus Risk Zone.* Given the inaccuracies of the Phosphorus mapping a landowner will require someone to quantify this. Depending on the extent of Phosphorus mapping the cost to have someone do this starts at $1,000. Another schedule 7A management plan requirement is *(f) The location of any areas within or adjoining the property that are identified in a District Plan as "significant indigenous biodiversity".* Costs to undertake significance assessments on a typical Hurunui hill country farm start at $2,000 but will typically be $5,000 - $10,000 for properties with a lot of biodiversity habitat. Overseer or nutrient budgets currently required in the Hurunui Waiau Zone are $2,000 - $3,000 for an average hill country property. All the above figures are based on known costs [e.g. Overseer] or verbally supplied estimates. [e.g. significance assessments].

6.3 The purpose of the above is to demonstrate the considerable cost burden on landowners; starting from $6,000 - $15,000 just for the above. Auditing on top of this. There is no assessment of the cumulative cost burden of the regulatory requirements & we submit this needs to be quantified as part of the section 32 process.

7. Loss of trust in ECan

7.1 Since 2010 there has been a significant & widespread loss of trust in ECan. The following issues contributed to this loss of trust:

- The disbanding of the Resource Care section of ECan in 2010 & subsequent departure of all the staff. The last of the Catchment Board ethos disappeared along with a practical understanding of farming & decades old positive relationships between regional Council staff & landowners.
- Around the same time [2010] ECan were developing their Regional Policy Statement [RPS]. The biodiversity provisions were particularly contentious. The RPS placed obligations on Territorial Authorities to have a regulated approach. All 8 district council submissions opposing the RPS were rejected by ECan. This has left a very bitter feeling among landowners towards ECan particularly in the Hurunui District where the District Council & community had developed & agreed to a Biodiversity Strategy which was subsequently overridden by ECans RPS directives.

- Draft river bed lines. There are many examples where landowners were going through a consent process & ECan staff would produce draft river bed lines that captured huge areas of farmland as 'riverbed'. These mapped lines were not statutory & there had been no consultation with the community or landowners. Landowners have had to spend in some cases $10,000 - $15,000 just to prove their farmed land was not riverbed.
- Misuse of private property information including the recent photos issue during the Hurunui District Plan review process [May 2016]. ECan had taken or used a number of private property photos in appalling circumstances & this has been widely condemned by Hurunui landowners & community representatives.
- ECan threatened a Cheviot landowner with prosecution over works in a so called 'mapped' wetland. Landowners discovered ECan had been mapping wetlands without any knowledge of the affected landowners. ECan has since admitted they were mapping wetlands by using binoculars from roads & referencing private property information supplied as part of resource consent & environment enhancement funding applications.
- Overall ECans shift away from the partnership type approach of Resource Care to a much more regulatory compliance driven system has evaporated the last remnants of trust & introduced a new element into our community – fear.

7.2 The reason why this loss of trust is relevant is that it has greatly compromised ECans ability to deliver successful planning outcomes. This has been clearly evident in the HWRRP process where there has been a widespread refusal by landowners to submit farm plans to ECan. Dryland farmers have refused to accept ECans audited farm plan & collective requirements & the issue remains at a stalemate. Come 1 January 2017 there will be hundreds of farmers non-compliant with ECans requirements. Amuri dairy farmers have also refused to submit farm plans to ECan instead opting to protect themselves by retaining an in-house auditing system which provides ECan with generic data only. Individual irrigating farmers captured through a consent process have sought to provide the absolute bare minimum of information. Central to all of these issues is the loss of trust in ECan.

7.3 Another example of how this loss of trust has compromised outcomes is with Immediate Steps in the Hurunui Waiau Zone. There has been a lack of projects coming forward as landowners are concerned about how their private property information will be used.

8. **Buy in of landowners critical**

8.1 The reason we have outlined the above loss of trust issues is to highlight what we consider is the most crucial point in determining the success or failure of PC5. And that is for PC5 [or any planning framework] to succeed, the buy in & support of landowners is critical. This has recently been acknowledged in the Replacement Christchurch District Plan process as noted in the hearing transcript [page 320]:

- *"We* [the hearings panel] *have got major concerns about the breakdown of cooperation which is agreed by all the Council witnesses unless the landowners are on board nothing is going to work".* Page 320 Sir John Hansen [Chair]

8.2 Until the issues of trust are resolved ECans planning processes will fail to achieve the desired outcomes.

9. Conclusion/Solution

9.1 In our submission we propose the use of the Catchment Board model as a trusted & proven system that worked well in the past & still continues to be successfully used in regions like Taranaki & Wairarapa. We see the Catchment Board model as a complement to the current consenting requirements for irrigation, effluent etc & other mechanisms such as minimum flows. We are not opposed to regulation per se but believe any regulatory or mandatory requirements must be backed up by robust science & thorough issue/section 32 analysis. In the case of the Hurunui District, Plan Change 5 has not met the statutory requirements.

9.2 **i]** For areas where there has been no scientific freshwater analysis, no identified freshwater issues, no sensitive receiving environment or for farming types that are determined as having an insignificant impact on water quality & for all areas of the Hurunui District covered by the LWRP we submit the Catchment Board model will be the most appropriate, effective & efficient mechanism.

ii] For areas that have been accurately determined as over allocated we submit that the Catchment Board model form part of the suite of mechanisms.

9.3 We submit that ECan needs to follow the proper process as outlined by the NPS-FM 2014 & section 32 of the RMA. The process of identifying & managing freshwater through FMUs is supported. With each FMU the question needs to be asked what is currently being done to address any identified problem & is it enough.

9.4 It is our submission that the attitudes of landowners has significantly changed over the past 30 years. While dairy farmers were initially production driven they too have embraced more sustainable farming practices particularly in the last 5 years. A Catchment Board system is far more likely to build on this positive attitude change than a heavy handed regulatory approach.

Hurunui SNA Group & Rural Advocacy Network

Figure 1: Lower reaches of Blythe River which is dry most of the year. There would normally be some winter flow but not in the last years of drought conditions.

Figure 2. Middle reaches of the Blythe River. The upper reaches flow more of the year but then goes underground.