

BEFORE INDEPENDENT HEARING COMMISSIONERS

UNDER the Resource Management Act 1991

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

IN THE MATTER of Plan Change 5 to the Canterbury Land and Water
Regional Plan

**OPENING LEGAL SUBMISSIONS OF COUNSEL FOR THE CANTERBURY
REGIONAL COUNCIL**

22 August 2016

**WYNN WILLIAMS
LAWYERS
CHRISTCHURCH**

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

Canterbury Regional Council's
Solicitor
Level 5, Wynn Williams House,
47 Hereford Street,
P O Box 4341, DX WX11179,
CHRISTCHURCH 8140
Tel 0064 3 3797622
Fax 0064 3 3792467

MAY IT PLEASE THE PANEL

Introduction

- 1 These opening legal submissions are given to provide context for Plan Change 5 (Nutrient Management / Waitaki) (**PC5**) to the Canterbury Land and Water Regional Plan (**LWRP**).
- 2 In these submissions I will provide a brief outline of:
 - (a) an introduction to PC5;
 - (b) the current status of the relevant regional planning framework;
 - (c) the key documents that have been prepared and filed by Council Officers following notification of PC5; and
 - (d) the proposed structure of the Council's opening presentation.

PC5

- 3 The LWRP was notified in August 2012. Over the intervening 3 years, during which the notified version, then the operative (in part) version of the LWRP have been implemented, a number of issues of interpretation, clarification and potential areas for improvement have been identified.
- 4 PC5 was publicly notified on 13 February 2016. It introduces amendments to the nutrient management provisions in the region-wide section of the LWRP. It also seeks to amend Section 15 (Waitaki sub-region) to introduce sub-region specific provisions as a new Part 15B.
- 5 PC5 has been developed in two parts. Part A of PC5 includes new region-wide nutrient management rules which:
 - (a) Require farmers throughout Canterbury, on properties larger than 10 hectares in area, to implement industry agreed good management practices, and farming activities which require resource consent to meet good management practice loss rates, over time;
 - (b) Address issues associated with the use of the OVERSEER® nutrient budget model; and

- (c) Require those carrying out a farming activity on a property larger than 10 hectares in area to register their farming activity using a new online "Farm Portal".
- 6 Part B of PC5 includes rules that apply only to the Waitaki sub-region which:
 - (a) Specify new water quality outcomes and limits for rivers, lakes and groundwater, and propose a nutrient management regime for managing to those outcomes and limits; and
 - (b) Manage the effects of land use and discharges from activities such as aquaculture on water quality in the Waitaki.
- 7 For the most part, changes to the LWRP proposed as part of PC5 apply throughout the Canterbury region. In areas where a sub-region section of the LWRP has previously been developed (for example, Selwyn Te Waihora, Hinds Plains, South Coastal Canterbury) any changes to the policies, rules and schedules in PC5 will apply unless the specific sub-region provisions apply.

The current state of the regional planning framework

- 8 A number of changes (some, previously notified as variations), have been notified, and in some cases made operative, in respect of the LWRP, as follows:
 - (a) Plan Change 1 (Selwyn - Te Waihora) has now been made operative by the Council, and the changes approved have been merged into the LWRP.
 - (b) Plan Change 2 (Hinds/Hekeao) – On 4 February 2016 the Council resolved to adopt the recommendations of the Independent Hearing Commissioners, and the decisions were publicly notified on 13 February 2016. Three parties have lodged appeals on the Council's decisions, being:
 - (i) Rangitata Diversion Race Management Limited;
 - (ii) Barrhill Chertsey Irrigation Limited; and

- (iii) Combined Canterbury Provinces, Federated Farmers of New Zealand Incorporated.¹
- (c) Plan Change 3 (South Coastal Canterbury) was publicly notified on 24 April 2015 and introduced new provisions for the South Coastal Canterbury Area as a new Section 15A. The Plan Change did not seek to make any changes to the remaining provisions for the Upper and Lower Waitaki zones. Plan Change 3 introduced changes to describe the limits, targets, timeframes and additional policies and rules to address over-allocation of water quantity and water quality for the South Coastal Canterbury Area. As Plan Change 3 developed specific provisions, PC5 will not apply in the South Coastal Canterbury area. The hearing for Plan Change 3 is complete and recommendations from the Hearing Panel are awaited.
- (d) Plan Change 4 (Omnibus) - contained amendments and additions to address the issues that have arisen since the LWRP was notified. On 21 July 2016 the Council resolved to adopt the recommendations of the Independent Hearing Commissioners, and the decisions were publicly notified on 30 July 2016. Parties have 15 working days within which to lodge an appeal (on questions of law only) following receipt of the Council's decisions. The appeal period closed on or around 22 August 2016. As far as Counsel is aware, one appeal has been lodged to date.² Counsel will endeavour to update the Hearing Panel with further details.
- (e) Plan Change 6 (Wairewa Catchment) – was publicly notified on 6 October 2015. It seeks to amend Section 10 (Banks Peninsula sub-region) of the LWRP to introduce freshwater outcomes, limits and provisions for the Wairewa catchment. The region-wide rules relating to the use of land for farming activities (as amended by PC5) apply in the Wairewa catchment. The hearing for Plan

¹ A Joint Memorandum of Counsel recording settlement of this appeal has been filed with the High Court on 19 August 2016.

² By Trustpower Limited.

Change 6 is complete and recommendations from the Hearing Panel are awaited.

- 9 The Waitaki Catchment Water Allocation Regional Plan (**WCWARP**) continues to manage the majority of water quantity matters in the Waitaki sub-region (i.e. it applies in the Waitaki sub-region in addition to the LWRP and PC5). On 28 June 2014, the Council notified Plan Change 3 to the WCWARP. Plan Change 3 to the WCWARP provides greater security of supply for the replacement of resource consents that were granted prior to the WCWARP; greater certainty for the replacement of hydroelectricity generation consents; allocation of water for mahinga kai enhancement and for augmentation of the flows into Wainono Lagoon. Several minor amendments were also made. On 16 June 2016 the Council resolved to adopt the recommendations of the Independent Hearing Commissioners, and the decisions were publicly notified on 25 June 2016. The appeal period has ended and no appeals have been lodged. Accordingly, the rules can be treated as operative. A copy of the decisions version of Plan Change 3 to the WCWARP will be provided to the Panel.

Documents filed following notification

- 10 The following documents have been prepared and filed by the Council Officers following notification of PC5:
- (a) Section 42A Report dated July 2016 (including Errata dated 14 July 2016);
 - (b) ECan Responses to Questions of Hearing Commissioners on Council section 42A Report dated 12 August 2016;
 - (c) ECan Responses to further questions from the Hearing Commissioners on the Section 42A Report (12 August 2016) dated 17 August 2016; and
 - (d) Revised Appendix I – Officers' Tracked Changes PC5.

Structure of the Council's opening presentation

- 11 After these opening submissions, the Council intends to structure its opening presentation as follows:
- (a) Statement from the Chair of the Upper Waitaki Zone Committee, Mr Shepherd, followed by any questions from the Panel;
 - (b) Statement from the Chair of the Lower Waitaki Zone Committee, Ms White, followed by any questions from the Panel;
 - (c) Presentation by the Council Officer, Miss Christensen, on PC5, including a demonstration of the Farm Portal; and
 - (d) Questions from the Panel of the Council Officers and Counsel for the Council.

Dated this 22nd day of August 2016

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P A C Maw
Counsel for Canterbury Regional Council