

Tabled @ Hearing
25-08-2016

**BEFORE THE CANTERBURY REGIONAL COUNCIL
AT LINCOLN**

Under the
Resource Management Act 1991

In the Matter of
Proposed Plan Change 5 to the
Canterbury Land and Water
Regional Plan (Nutrient
Management and Waitaki Sub-
region)

**ORAL SUBMISSION TO PROPOSED PLAN CHANGE 5 (Nutrient
Management and Waitaki Sub-region) TO THE PROPOSED
CANTERBURY LAND AND WATER REGIONAL PLAN**

BY THE LOWER WAITAKI RIVER MANAGEMENT SOCIETY INC

**Presented by Ian McIlraith (Chairperson, LWRMS)
and Dugald MacTavish (Technical consultant)
25 August 2016**

Introduction and background (Presented by Ian McIlraith, Chairman)

1. When the Society was formed over a decade ago about the time of Waitaki Project Aqua, community interest was very strong and it attracted people to become involved. This included every stakeholder group with an interest in the river. Survey polls carried out among the large group gathered then and public sentiment since have always shown that the priority concern of the community was and still remains, water quality which they want to see given highest priority in sub-catchment and regional planning.
2. Currently, the water in most district water supply schemes is required to be boiled either all of the time or frequently. Consider that these schemes were located at the most favourable water sources available and often of water quality that did not require disinfection when installed. These were in catchments which had been settled and mixed farmed for a hundred years. It is no accident to have regressed to the point where many people are compelled to collect alternative supply or install domestic water filtration.
3. From observing the appalling and rapid decline in water quality values, particularly in twenty five years, from personal experience, I know full well the extreme grave health consequences that can arise. This situation coincides with both Ecan's tenure and the unprecedented expansion of irrigation and farm conversion to large scale dairy enterprise.
4. Coincidentally, I began preparing for this presentation today when there was a serious health crises in the Hawkes Bay that by all accounts is related to water supply contamination. It's as if we are suddenly realising that our past perception that most of NZ's water is clean with patches somewhat less so, may no longer be true, and that we now face the prospect that all water should be assumed contaminated until treated.
5. It is the type of issue around public water supply which has horror story potential for people who fall victim. Acute and chronic health issues due to the contamination of an original good water supply happen to have plagued me personally for a decade. Whether in river

or in ground, ensuring protection of good water values has not been strong under current and recent-past administrations. Deficiencies in current regulations, health authorities, Local Government application of the RMA water supply zones are highlighted in a report on Waimate Rural Water Schemes (copy available).

6. The quality of the Waitaki River as a drinking source is growing in importance as the Councils promotes centralization of water schemes. Oamaru's supply is delivered some 25km from the Lower Waitaki Irrigation Scheme at Bortons. Currently, a pipeline is being designed to supply drinking water from the Oamaru Treatment Plant as far south as Moeraki an additional 35km to incorporate two rural schemes. Kakanui was also recently incorporated.
7. This plan is mainly concerned about nutrient but many are concerned about pollutants used in intensive agriculture that we do not currently measure or treat our drinking water (eg antibiotics, hormones, cleaning fluids etc). It is plainly disastrous for generations to come if solutions are not found now to combat or control the release of such substances into the environment with some farm systems.
8. In this respect the Society's original strategy and goals agreed and affirmed in the most democratic consultative way possible with all community interests represented at many many meetings are referenced in our submission and must not be ignored or discounted.
9. A review of the history of the Society and its role in resource management was provided in our submission. The formally adopted mission statement – the guiding principle of the management strategy is:

"to protect and enhance, in a sustainable way, the lower Waitaki river system".
10. Based on this long record of speaking out for a clean, healthy and ecologically functioning Waitaki River and the wide support there is for this and safe contact recreation in all our rivers in the community, the Society consider they are a major stakeholder directly affected by this proposed Plan Change.

Scope of the Society's interest

11. While the main focus of the Society is the Lower Waitaki River, its members have a genuine interest in seeing Canterbury and NZ has a similar healthy natural environment. The LWRMS membership also includes ratepayers and residents of the Waimate District who are directly affected and consequently impacted by the plan changes north of the Waitaki.
12. Secondly, the Society submitted on PC3 (South Canterbury Coastal Streams) again with a focus on trying to protect water quality from further degradation and unsustainable outcomes. The decision on that plan change is still pending. The Society expects that proposals in PC5 could affect water quality standards in that area too.
13. Thus many of the concerns and arguments raised in PC3 have been repeated in this submission. We wish to make sure that the same questions are before both hearings.
14. The need for this kind of repetition also happens to illustrate the huge waste of time, cost and effort forced on the community by the Regional Authority in attempting to tailor water quality limits, not only to individual catchments, but even to individual reaches of rivers, in an effort to facilitate maximum exploitation of resources.
15. The complexity of this process not only disenfranchises the community from understanding how their own environment is managed, but will also be costly to monitor and enforce. But worst, it seeks to remove that level of "redundancy" which serves to absorb error, shock or changing circumstances. This undermines ecosystem resilience and ultimately sustainability.
16. Due to limited resource and expertise in the Society we are simply focusing on asserting the need for good water quality outcomes.
17. Thus, the core of our case is that to meet the intent and letter of sustainable management expressed in the RMA, the limits and measures that witness Adam Canning proposes (as it was in our submission to PC3 based on the evidence of Dr Mike Joy) must be applied across the board to all parts of all waterways in the region.

Society initiatives regarding Plan Changes 3 and 5, prior to notification

18. In July 2014, after the EPA decision on Tukituki Plan Change 6 which imposed strict conditions on phosphorus and nitrogen to limit damage to river quality, the Society wrote to the Zone Committee asking that the same two key conditions for protecting ecological health there be adopted for the Lower Waitaki and the South Canterbury Zone. No response was received.
19. Then in June 2015, the Society became aware quite by chance that the Hunter Downs Irrigation Scheme Trust (HDIST) had applied for a resource consent to discharge nutrients to land from the Scheme under the Canterbury Land & Water Regional Plan (pLWRP, CRC156580).
20. As the application requested an average nutrient loss rate higher than that developed by the community during the consultation process for PC3 SCCS, and yet the 43,400 ha command area would include all the lowland area covered by PC3 SCCS, the conditions of the resource consent would effectively override the targets set in the Plan. The Scheme has resource consent to take water but has still to be constructed.
21. Because of the very large scale of the proposal, its high potential impact and the importance of river quality to the wider community economy and the ecological health sought in the region, the Society wrote to Ecan asking that the application be notified and to ensure it takes into account any improved understanding there is now on sustainable nutrient loads.
22. There was also concern that the flexibility cap approach proposed in PC3 (SCCS) may encourage farmers, currently with low-emission enterprise, to become higher emitters in order to enhance their property value.
23. The reply from Mr Bill Bayfield (CEO) indicated that irrigation schemes had special conditions and didn't need to comply with the flexibility caps but that they would be carefully assessing impacts on freshwater outcomes in Tables 15(a) and (b). We can therefore assume no robust analysis or assessment is made until after the HD scheme is constructed.

24. The application is still listed as in progress so it remains unclear to us how Ecan proposes to handle the consent process. But we want to draw your attention to the potential of proposal to trump whatever water quality standards are decided in this Plan Change 5 over a large part of South Canterbury, just as we did for PC3 (Copies of correspondence can be made available if required)

Further comment on Process

25. Ecan have made no secret of the fact that they wish to double the area of intensive irrigated agriculture in Canterbury. Each one of the current plethora of plan changes seem to be enabling of this target, in spite of their often sitting uncomfortably with higher level policies and plans. We see essential linkages between the following:

Hunter Downs RC Application

- Permits 20.5cume allocation of water for effectively continuous irrigation command between Waimate and Timaru over 40,000ha and attendant nutrient load that is likely to expand and prolong reaches of toxic conditions in lowland freshwater bodies and estuaries.

PC2 Hinds/Hekaeo

- Sets standards that will enable intensive dairying in that locality

PC3 Lower Waitaki Water Allocation Regional Plan

- Permits water to be taken north to dilute contaminants in South Canterbury Streams and Wainono Lagoon complex
- Permits the lowering of the minimum flow regime in the Lower Waitaki which would technically allow water to be taken out of the upper Waitaki to augment irrigation north of Timaru (potentially as far north as the Rangitata and Hinds area) without "derogation" of generation capacity. Whether this will be another part of the enabling process is yet to unfold.

PC3 South Canterbury Coastal Streams

- Under it Hunter Downs Irrigation Scheme depends on standards or exceptions to standards that enable it to function

Fonterra RC application for expansion at Studholme

- Requires a Resource Consent to take milk from implementation of the Hunter Downs Scheme to meet requirements of Dairy Industry Restructuring Act.

PC5 Nutrient Management and the Waitaki Sub-region

- Operation of existing and proposed expansions depends on standards or exceptions to standards that permit the activity

26. It is evident that the processes are interdependent and only together will achieve Ecan's desired objective. Thus, we wonder how "no presumption for or against" can hold for each individual process and whether decisions can be based purely on the evidence and consistency with higher RMAAct planning instruments.

27. Further, under these circumstances and with precedents already set (or in process) for other zones, we are concerned that it may not be possible now for the more stringent baseline recommended by Adam Canning to be widely implemented without fear of litigation (as appeared to be the case with priority access to water in PC3 to the Waitaki Regional Plan).

Further comment on Absolute level of limits and their application

28. Adam Canning's evidence is in keeping with our overall submission regarding the risks posed to the intrinsic value, beyond amenity, of freshwaters in the Waitaki and Canterbury, without assured and highly effective mitigation methods. From his evidence it may be reasonably inferred that other values such as biodiversity and ecosystem services will be more likely to decline if his maximum recommended thresholds are transgressed.

29. In our original submission we refer to various, mainly higher order, planning provisions with which we believe PC5 would be in conflict if there were loss of such freshwater attributes.

30. On plain reading, we consider Objectives A1 and A2 in the NPSFWM are clear on the requirement to "safeguard life-supporting capacity, ecosystem processes..." and therefore that defaulting to the National Values will not comply if it means that these attributes are at risk.

Further comment on Coastal impacts and global perspective

31. It is mandatory that regional plans give effect to the New Zealand Coastal Policy Statement (NZCPS). Under s.67(3)(b) of the Act, this includes plan variations such as PC5. Objective 1 of the NZCPS seeks to safeguard coastal environments by maintaining and enhancing natural biological and physical processes through appreciating "their dynamic, complex and interdependent nature".

32. In his evidence Chris Perley refers to work that establishes that, at a global scale, we are producing artificial nitrogen far in excess of what the environment can safely assimilate on land and in oceans. Phosphorus is similarly in excess and is a finite resource. Excess nutrient tends to migrate to the coast and ocean and therefore its ecological health cannot be managed without taking into account the impacts of land-based activities.

33. We therefore submit that developing policies and rules for nutrient management at any scale cannot be done without considering the global status of nutrient overload if the Purpose of the RMAct is to be met (s5 notably (2)(b)). That means that bottom-lines based solely on safeguarding the life supporting capacity of the nearest drainage line are incomplete.

34. To create plans that meet sustainable nutrient management criteria there are therefore two primary needs.

- mitigate the impacts of nutrient use
- minimise the use of artificial nutrient supplements

35. The Society therefore ask for provisions to require and incentivise landuse practice that minimises the need for supplementary nutrient input and maximises nutrient capture and recycling. An indirect benefit of less nutrient use by individuals will enable the gross catchment nutrient allocations to go further.

Further comment on Infrastructure Investment

36. The plan anticipates that achieving the permitted loading rates will result in the targeted outcomes for water quality. What will be done in the situation where all farms are Overseer-compliant and abiding by GMP, and yet monitoring shows that targets are not being met?

37. For these situations the society sees two possible scenarios:

- lower environmental outcomes are accepted
- farmers are required to modify their operations, which could be economically prohibitive

What would the legality be around these options?

38. Furthermore, if targets are not being met, will current monitoring arrangements enable non-compliant operators to be identified, or would Overseer be relied on for a definitive decision in such

circumstances? Our understanding is that models seldom provide sufficient rigour to be solely relied on in a court of law.

Further comment on ecologically stable farming systems and integrated catchment management

39. Policy C1 in the NPSFM states "By every regional council managing fresh water and land use and development in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects".
40. The Society consider this to be a very clear statement about the requirement for fully integrated resource management. The term appears in many plans but its importance is probably not yet fully appreciated or acted upon.
41. If it is accepted that instream ecological values must be retained, then according to our expert evidence, limits for some of the water bodies will need to be revised downward. All other things being equal this is likely to have implications for the maximum intensity of landuse in the area.
42. However, the nutrient load that a given catchment can safely assimilate and discharge is a function of the proportion of the precipitation that can be captured, the seasonal release profile and the extent to which nutrient can be retained within the root zone. The potential to influence these favourably has not been explored in this plan change process yet it is clearly an element of integrated resource management.
43. Moreover, catchment management and sustainable land and water management are key development areas which present opportunities to achieve water security, ecological stability, climate adaptation and (to the extent that the process enhances carbon sequestration), climate mitigation (which complies with NPSFWM Policy B1)
44. Thus, avoiding over-allocation of nutrients need not prevent sustainable development. Rather, it can be a tool to promote more robust landuse systems, better suited to the more extreme weather

patterns that the IPCC¹ and the RSNZ^{2,3} warn we must expect and plan for.

Planning Considerations

45. The Society is aware of a case regarding the granting of the resource consent for the Ruataniwha Dam, which has subsequently been clarified by the Environment Court's March 2015 decision. This is seen to be potentially relevant to PC5.
46. It relates to section 30(1)(c)(ii) of the RMA, which requires regional councils to uphold the function of the maintenance and enhancement of the quality of water in water bodies and coastal water.
47. The definition "water body" is based on its definition in s.2 of the Act as: ...fresh water or geothermal water in a river, lake, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.
48. In its March 2015 decision the Environment Court ruled that: 'This function is not optional - it is something a regional council is required to do, whether it be difficult or easy. (Decision of 27 March 2015. Ngati Kahungunu Iwi Inc. v Hawkes Bay Regional Council. At Para 29).
49. Although this decision related to objectives in a RPS, it raises questions as to whether this also applies to rules, given that these are the primary means for control of land use. The Society is therefore interested to know if this decision is relevant here regarding the assumptions under which the PC5 was developed.
50. It seems entirely probable, that had the Council and the Zone Committee been acting with the benefit of that decision, any provisions that allow for a decrease in water quality and the gambling of that quality on the basis of improvements whose effectiveness is highly questionable, would have been based on a more cautionary approach (in accordance with the precautionary requirement in the vision and principles of the CWMS).

¹ Summary for Policy Makers https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf

² Implications Report: <http://www.royalsociety.org.nz/expert-advice/issues/climate/#report-climate-change-implications-for-new-zealand>

³ Mitigation Report: <http://www.royalsociety.org.nz/expert-advice/issues/climate/#report-climate-change-mitigation-options-for-new-zealand>

51. In addition, the precautionary approach is apparent in s.3 of the RMA, which requires decision makers to take into account "any potential effects of high probability; and any potential effect of low probability which has a high potential impact".
52. It is the Society's submission that the extent that the plan allows a decrease in water quality cannot be seen as representing a community plan or view relevant to the requirements of the RMA.
53. This understanding in part, derives from the Environment Canterbury Act 2010 (Ecan Act), which specifies the visions and principles of the CWMS under Schedule 1. At the regional level, planning of natural water use is prioritised by first and second order considerations. Here, it clearly states that the environment takes primacy over irrigation, renewable electricity generation, recreation, tourism and amenity.
54. We ask that the relevance of the *Ngati Kahungunu Iwi Inc. v Hawkes Bay Regional Council Decision (Ruataniwha Dam)* regarding the interpretation of RMA s30 to PC5 be considered.

A comment on the state of the playing field

55. Most NZ governments have a vision of promoting economic development to further raise the standard of living in NZ. Central to current government strategy is huge expansion of dairying, particularly on the Canterbury Plains, underpinned by similarly huge irrigation development. This appears to the Society to be a high risk strategy as it puts many eggs in one basket and assumes rising demand trends for dairy products will continue. The scale of this project has made it more difficult for the general public to participate.
56. Developments that seem to us to have contributed to that circumstance include the following
- The introduction of NOFs into the NSFWM which appear to conflict with its objectives and policies in the NSFWM
 - Appointment of Ecan commissioners under legislation that has facilitated their work implementing the landuse intensification policy.
 - Appointment of "zone" committees as proxies for unwieldy public meetings and a Commissioner to each Zone Committee when those with commercial interest in exploiting water resources will inevitably be in the majority

- Breaking up the region into Zones, catchments and river reaches and proposing standards for each based on local "values", themselves determined by "user groups" typically dominated by persons with pecuniary interests
 - Removing the right to appeal to the Environment Court (on top of the requirement to consider the effect of the activity on climate change) in the knowledge that the personal risks and costs are too great to go to the High Court and which also happens to disqualify environmental groups from accessing the ELA Fund
57. That list might look like a conspiratorial interpretation, but the Society has been submitting for the protection of the Waitaki River systems for approximately 15 years. In that time we have seen nothing but deterioration in our rivers for virtually all instream values.
58. An example has been the Waitaki Catchment Allocation Regional Plan saga. Conceived under specific legislation, it was heralded as a proactive rather than reactive initiative, because it would allocate blocks of water for all major sectors to work within above a safe environmental flow regime. This would avoid the "death by a thousand cuts" syndrome that had been observed in so many East Coast rivers. As those of you involved will recall it was an exhaustive process by 4 commissioners receiving over 1,300 submissions and expert evidence over a full year.
59. However, the low flow in that original Plan has now been lowered from 150 cumecs to as low as 100 cumecs (under certain conditions) even though the justification for a robust minimum flow has never been greater. For example, how could considerations like required connectivity between mainstream and tributaries, the minimum water levels and flows to protect cultural interests, the need to maintain safe island habitat for endangered birds from predation, and dilution requirement result in such a different minimum acceptable flow?
60. This example is used to illustrate how, as a society, we seem incapable of setting and holding an environmental limit, no matter how critical it may be. Our Society is now concerned the same phenomenon threatens the water quality limit-setting process in PC5. It is common sense that unless we keep our surface water clean enough for recharge or eventually our entire aquifer system will be contaminated.

61. Laudable Plan objectives are liberally sprinkled through our planning documents and Acts, to protect and enhance, and sustainably manage our environment, yet what happens on the ground is the opposite. If lower order plans are meant to give effect to higher order how can this be? How is the disconnect in the Plan hierarchy occurring?
62. Thus, to be frank, our Society are sick of feeling ignored, even when clear evidence is provided that the environmental impacts are in conflict with such objectives. We are sick of feeling, in hearing after hearing, like manipulated pawns in the face of a master plan being inexorably rolled out. We are exasperated that this is all being done in the name of an industrial model that is currently bankrupt and (given trends in global demand, developments in novel foods and systemic flaws in company structure and commodity trading) with the very real prospect of no sustained recovery (Perley).

Decision we wish to see

63. So, above all, what the Society wants from this process is a clear signal to landowners that polluting our rivers to the point where they are unsafe for recreation and ecosystems is unacceptable, and limits set accordingly. This will mean adopting bottom-lines, based on the high order objectives in plans (including RMA s5) rather than so called "local values", that are similar or better than those recommended by Mr Canning, applied across the district.
64. If the local values are to remain in the plan as a mechanism to determine water quality limits then, at the very least, we to see a formal public survey specified.
65. The Society wants to see provisions that are unequivocal about the need to comply with new standards, and that these will be firmly backed up with cancellation of water rights or similar when compliance is not achieved within specified timeframes.
66. And to address the global nutrient crisis, it wishes to see these enforcement provisions accompanied by incentives to reduce nutrient supply and flux in agriculture, using the likes of Integrated Catchment Management planning at scale (Perley).
67. Far from being a millstone for the industry, such a clear signal will signpost a "safe operating space" for our agriculture and hasten the transition to a more resilient industry, better prepared for the climate

(and other) changes we know are in the pipeline. We need an agriculture which supports rather than undermines the ecological services delivered to us all.

68. Former Administrator of the United Nations Development Programme, Gustave Speth said "I used to think the top environmental problems were biodiversity loss, ecosystem collapse and climate change. I thought that with 30 years of good science we could address those problems. But I was wrong, the top environmental problems are selfishness, greed and apathy...and to deal with those, we need a spiritual and cultural transformation - and we scientists dont know how to do that". We think that these human characteristics are the real underlying issues in this plan change and trust commissioners can do better than the scientists routing them out!

69. Finally, the Society wishes to express its gratitude to both Chris Perley and Adam Canning for being willing to appear as witnesses for the Society for next to no remuneration. Without people like them, these hearings would be an even more one-sided affair and our chances of redressing our emerging environmental crisis, so much the lesser.

Thank you for the opportunity to be heard and we wish you well in your deliberations.