

Canterbury Regional Council (Environment Canterbury)

Proposed Plan Change 5 (Nutrient Management and Waitaki Sub-region)

to the

Canterbury Land and Water Regional Plan

MINUTE OF HEARING COMMISSIONERS

on Federated Farmers' memorandum

(Minute 5)

The memorandum

- [1] On 12 December 2016 we completed our hearing of the submissions on Plan Change 5 with the Council's reply, and on that and the following day we commenced our deliberations on the submissions.
- [2] We have now before us a memorandum dated 12 December 2016 by counsel for Federated Farmers, Mr K Reid. This memorandum did not reach us until 15 December, after we had started on and progressed with our deliberations, and had then dispersed to other commitments.
- [3] By his memorandum, counsel proposed certain amendments to a rule recommended by the officers who had presented the Council's reply.

Federated Farmers' submission

- [4] In its primary submission on Change 5, Federated Farmers stated the relevant decision it requested as follows:¹

"Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produced aberrant results."

¹ Submission by Federated Farmers, pg 11.

- [5] The RMA directs that a submission on a plan change must be in the prescribed form.² The prescribed form stipulates that a submitter is to “give precise details” of the decision requested.³ Minor differences from a prescribed form do not necessarily invalidate it, if it has the same effect as the prescribed form.⁴
- [6] We find that the relevant decision requested by Federated Farmers quoted above does not give precise details of the decision requested for an alternative pathway; nor does it have the same effect as the prescribed form in that it does not provide particulars of the alternative pathway requested, or of the circumstances in which it would be available.

The hearing

- [7] When, at our public hearing of the submissions, the case for Federated Farmers was presented, counsel referred to an alternative consenting pathway proposed by another submitter, Fonterra, and amended in the evidence of a witness, Mr G M Willis. Counsel informed us that Federated Farmers generally supports that pathway, except that it did not agree “that the pathway should automatically default to a requirement for a full discretionary activity resource consent.”⁵
- [8] In that respect we asked counsel what activity status Federated Farmers requested for where the Farm Portal does not work or produces aberrant results. Mr Reid replied that restricted discretionary status is requested, and submitted that this would not place an undue burden and would be generally consistent with other rules.⁶
- [9] Save for that exception about the activity status, Federated Farmers made no submission at the public hearing of submissions for amending the Fonterra proposal.

New provisions proposed by the officers

- [10] By their submissions on Plan Change 5, Fonterra and Dairy New Zealand also asked for provision for a pathway as an alternative to the Farm Portal to the same general effect. Ravensdown also made a similar request, and described in its submission with some particularity the amendments it proposed in that regard.⁷

² RMA, Schedule 1, cl 6(5).

³ Resource Management (Forms, Fees and Procedure) Regulations 2003, Form 5.

⁴ Resource Management (Forms, Fees and Procedure) Regulations 2003, reg 4.

⁵ Opening Submissions on behalf of Federated Farmers, 23/8/2016, para 57.

⁶ Memorandum responding to questions raised at the hearing, 17/10/2016.

⁷ Submission of Ravensdown, pg 5, and Part II table, seriatim.

- [11] At the hearing of their respective submissions Fonterra and Ravensdown proposed detailed provisions for an alternative consent path. In the light of that we asked the Council officials to articulate in their reply such an alternative consent path, irrespective of whether that approach is ultimately recommended by them.
- [12] In their reply, the officers gave their opinion that such a measure would only be appropriate if confined to exceptional circumstances reflected in specific entry conditions, which they identified. ⁸ They recommended new policies and rules accordingly.⁹ Those recommended measures would generally provide a consent path alternative to the Farm Portal, although they are not the same as the proposal presented at the hearing on behalf of Fonterra, or that for Ravensdown.

Our consideration

- [13] By counsel's memorandum, Federated Farmers is, after the completion of our public hearings, and after we have made substantial progress with our deliberations on the submissions, now proposing amending the officer's recommended rule by inserting an additional entry condition, to apply where a modelled Baseline GMP or Good Management Practice Loss Rate is not representative of the particular farm system.
- [14] The representativeness of a particular farm system was not raised in Federated Farmers primary submission; it was not provided for in the Fonterra proposal which counsel informed us that Federated Farmers supported (with an exception that does not bear on representativeness of the farm system); nor was it referred to in the submissions presented by counsel for Federated Farmers. In terms of what other submitters could understand is at stake from the Federated Farmers' submission, the representativeness point is a new issue raised after the public hearing is complete and after our deliberations on relevant submissions have substantially progressed.
- [15] We consider that for us to consider the substance of the amendment requested in counsel's memorandum would be unfair to other submitters in two respects.
- [16] First, all submitters are entitled to expect that we will deliberate on their submissions on the basis of their content, and the reports, representations and evidence given at the public hearing. It would be unfair to them for us to consider an argument presented to us for the first time after the hearing had been completed, and after we had entered into our substantive consideration of the issues.

⁸ Plan Change 5 Officers' Reply, para 4.41-4.48.

⁹ Plan Change 5 Officers' Reply, paras 4.49-4.51.

- [17] Secondly, there may well be other submitters who oppose the representativeness condition now requested in counsel's memorandum. As they have no opportunity to join issue on the point it would be unfair to potential opponents if we were to consider that request.
- [18] Finally, the public are entitled to expect that we progress with considering and reporting on the submissions without undue delay. For us to depart from our programme and re-open the public hearing would not be consistent with the long-standing precept of the public interest that there is an end to litigation. That precept is apt for this plan change that is intended to improve the management of land and water resources in Canterbury.

Conclusion

- [19] We conclude that Federated Farmers' request in counsel's memorandum is out of the order which other submitters are entitled to expect us to follow; and for us to entertain it now would require a re-opening of the hearing. We are not persuaded that Federated Farmers are entitled to expect so radical an outcome for a point that it did not raise in the presentation of its case, nor at any appropriate stage prior to the close of our public hearing.
- [20] Therefore we decline to consider the substance of the amendment requested in Federated Farmers' memorandum.

For the Hearing Commissioners:



(David F Sheppard, Chairman)

Date: *4 January 2017.*