**IN THE HIGH COURT OF NEW ZEALAND**

**CHRISTCHURCH REGISTRY** **CIV-2016-**

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| **IN THE MATTER** | of an appeal under section 66 of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 |
| **BETWEEN** | **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED,** an incorporated society having its registered office at Level 1, 90 Ghuznee Street, Wellington<br>*Appellant* |
| **AND** | **CANTERBURY REGIONAL COUNCIL,** a regional authority under Schedule 2 of the Local Government Act 2002<br>*Respondent* |

# NOTICE OF APPEAL

**22 August 2016**

Royal Forest and Bird Protection Society of New Zealand Inc.
PO Box 2516
Christchurch 8140
Ph 03 9405524
Solicitor acting: Peter Anderson/Sally Gepp

**To:** **The Registrar of the High Court at Christchurch**

**And to:** **Canterbury Regional Council**

**TAKE NOTICE** that the Royal Forest and Bird Protection Society of New Zealand Incorporated (the Appellant) will appeal to the High Court against the decisions of the Canterbury Regional Council (the Respondent) on Plan Change 4 to the Canterbury Land and Water Regional Plan dated 29 July 2016, upon the grounds that the decisions are wrong in law.

**DECISIONS OR PARTS OF DECISIONS APPEALED AGAINST**

1. The Proposed Canterbury Land and Water Plan (the plan) contains objectives, policies and rules that manage land, water and biodiversity within the region in conjunction with other non-statutory methods.[1] Plan Change 4 changes the plan by, among other things, varying provisions relating to inanga spawning habitat and sites, earthworks and vegetation clearance.[2]

2. The Appellant appeals against decisions on Plan Change 4. The decisions were adopted by the Respondent on recommendations made by the Independent Commissioners appointed by the Respondent (the Commissioners).

**ERRORS OF LAW**

*First alleged error of law – scope for amendment to definition of inanga spawning habitat*

3. The Respondent decided it did not have scope to amend the definition of inanga spawning habitat by deleting the words "*is between mean high water springs and mean low water neaps*" as sought by the Appellant. In doing so the Respondent erred by:

    (a) applying the wrong legal test, in particular taking an unduly narrow and legalistic approach to the question of whether relief sought at the hearing was fairly and reasonably within the scope of submissions; and/or

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[2] *This is fully described in paragraph [4] of the recommendation as follows "The contents of the plan change include amendments to provisions of the LWRP on inanga spawning sites and habitat; stormwater discharges; tangata whenua values; group and community drinking-water supplies; dewatering and drainage water; bores; surface water sampling and monitoring; vegetation and earthworks in lakes, rivers and riparian margins; discharge of floodwater; removal of fine sediment from rivers; gravel extraction; sediment laden discharges; contaminated land; exclusion of livestock from waterways; sewage, wastewater and industrial and trade wastes; water takes and water supply strategies; groundwater and surface water limits; and a number of minor corrections."*

(b) failing to take into a account relevant consideration, specifically relevant parts of the submission that sought the protection of inanga spawning habitat and sites; and/or

(c) Took into account an irrelevant consideration when it considered other people might be prejudiced by the change sought to the definition.

*Second alleged error of law – Scope for excluding inanga spawning habitat in CMA*

4. The Commissioners recommended that changes be made to the planning maps, excluding areas identified as inanga spawning habitat that were within the coastal marine area (CMA).[3] The Commissioners acknowledged[4] that there were *"no submissions seeking clarification of the boundary between the "inanga spawning habitat" on the planning maps and the location of the Coastal Marine Area*".

5. The Respondent, in making amendments to the planning maps to exclude inanga spawning habitat" from within the CMA, when there were no submissions seeking such amendments erred by:

(a) applying the wrong legal test, specifically by considering it was entitled to make such amendment in the absence of a submission; and/or

(b) failing to take into account relevant considerations, specifically:

(i) there were no submissions seeking such amendment; and

(ii) that the CMA boundary that its decision was based on was indicative only.

*Third alleged error of law - Failure to give effect to NZCPS and Canterbury RPS*

6. The Respondent is required to give effect to the New Zealand Coastal Policy Statement (NZCPS) and Canterbury Regional Policy Statement (CRPS).

7. In defining inanga spawning habitat as limited to areas between mean high water springs and mean low water neaps and thereby excluding areas of inanga spawning habitat between MHWS and MHWS10, the Respondent erred by failing to give effect to the:

[3] [294]-[295]
[4] [293]

(a) New Zealand Coastal Policy Statement, including Policy 11 which requires the avoidance of adverse effects on threatened or at risk species;

(b) Canterbury Regional Policy Statement, including Policies 7.3.3, 8.3.3, 9.5.5, 10.3.2 and 10.3.4.

*Fourth error of law – Unreasonable/mistake of fact to limit inanga spawning habitat to below MHWS*

8. The Respondent's decided to define inanga spawning habitat as only those areas below MHWS, when the mapping of the habitat was based on MHWS10. This:

   (a) excludes areas of inanga spawning habitat above MHWS but below MHWS10; and

   (b) creates confusion an uncertainty as it is not apparent which areas marked in the planning maps as inanga spawning habitat meet the definition of inanga spawning habitat.

9. The decision is unreasonable as no decision maker properly understanding their functions, would have made a decision to exclude areas where inanga might spawn from the definition of inanga spawning habitat. The decision contains an evident logical fallacy and is clearly unsupportable.

10. In the alternative, the decision is based on a mistake of fact, in that the Respondent mistakenly believed that the definition would cover all scheduled areas of inanga spawning habitat, when in fact it does not.

*Fifth alleged error of law – scope for change to definition of "vegetation clearance"*

11. The Respondent, in ruling that it did not have scope to amend the definition of vegetation clearance, as sought by the Appellant at the hearing, took an unduly narrow and legalistic approach to the question of whether relief sought at the hearing was fairly and reasonably within the scope of submissions.

12. In relation to the change sought to clause (a) of the definition of vegetation clearance, where the Appellant sought the addition of the words "*except where the cultivation is in the beds or margins of rivers or lakes*", the Respondent failed to take into account a relevant consideration, particularly that the Appellant had sought this amendment at the hearing in its submission.

13. In relation to the changes to clause (b) of the definition of vegetation clearance, the Respondent:

    (a) misinterpreted the law, when it decided that the Appellants original submission, which sought the deletion of (b), was not "on the plan change". In particular, the Respondent took an unduly narrow view of the matters that were the subject of the plan change

    (b) failed to take into account a relevant consideration, in particular, parts of the Appellant's submission that provided scope for the amendments sought at the hearing.

*Sixth alleged error of law –Unreasonable failure in Rule 5.71 to implement Policy 4.31*

14. Policy 4.31(b) as notified provided for the protection of listed resources, including inanga and spawning sites, from disturbance by stock. The Respondent decided that "*to adequately protect the listed resources from the damage caused by livestock the exclusion stated in clause (b) should apply to the listed resources and 'the waterbody bed and banks closely adjacent to and upstream of these areas'*".

15. Rule 5.71 implements part of Policy 4.31. However, it provides no protection "*closely adjacent to and upstream"* from the listed resources.

16. The failure to provide such protection in Rule 5.71 or elsewhere in the rules is unreasonable, the result of an evident logical fallacy or clearly unsupportable.

**QUESTIONS OF LAW**

*First alleged error of law – scope for amendment to definition of inanga spawning habitat*

17. Did the Respondent, in ruling that it could not amend the definition of inanga spawning habitat as sought by the Appellant at the hearing, through deleting the words "*is between mean high water springs and mean low water neaps*:

    (a) apply the wrong legal test, by taking a unduly legalistic and narrow approach to the question of whether relief sought at the hearing was within scope? and/or

(b) fail to take into account a relevant consideration, specifically relevant parts of the Appellant's submission that sought the protection of inanga spawning habitat and sites? and/or

(c) take into account an irrelevant consideration, particularly that there were people who might have been prejudiced by the amendment sought.

*Second alleged error of law – Scope for excluding inanga spawning habitat in CMA*

18. Did the Respondent, in making amendments to the planning maps to exclude *"inanga spawning habitat"* from within the CMA, when there were no submissions seeking such amendment:

    (a) apply the apply the wrong legal test, in particular considering that it could make such a change without a submission? and/or

    (b) fail to take into account a relevant consideration, specifically that there were no submissions seeking such amendments?

*Third alleged error of law - Failure to give effect to NZCPS and Canterbury RPS*

19. In defining inanga spawning habitat as limited to areas between mean high water springs and mean low water neaps and thereby excluding areas of inanga spawning habitat between MHWS and MHWS10, did the Respondent fail to give effect to the:

    (a) New Zealand Coastal Policy Statement including Policy 11?

    (b) Canterbury Regional Policy Statement, including Policies 7.3.3, 8.3.3, 9.5.5, 10.3.2 and 10.3.4?

*Fourth alleged error of law – Unreasonable to limit inanga spawning habitat to below MHWS*

20. Was the Respondent's decision to limit areas of inanga spawning habitat to habitat between mean high water springs and man low water neaps:

    (a) unreasonable? and /or

    (b) the result of an evident logical fallacy? and/or

    (c) clearly unsupportable? and/or

(d) based on a mistake of fact?

*Fifth alleged error of law – scope for change to definition of "vegetation clearance"*

21. Did the Respondent, in ruling that it did not have scope to amend the definition of vegetation clearance as sought by the Appellant at the hearing, apply the wrong legal test by taking an unduly legalistic and narrow approach to the question of whether relief sought at the hearing was within scope?

22. In relation to the change sought to clause (a) of the definition of vegetation clearance, where the Appellant sought the addition of the words "*except where the cultivation is in the beds or margins of rivers or lakes*", did the Respondent fail to take into account a relevant consideration, particularly that the Appellant had sought this amendment at the hearing?

23. In rejecting the changes the Appellant sought to (b) did the Respondent:

    (a) misinterpret the law, when it decided that the Appellants original submission, which sought the deletion of (b), was not "on the plan change". In particular, did the Respondent take an unduly narrow view of the matters that were the subject of the plan change?

    (b) fail to take into account a relevant consideration, in particular, parts of the Appellant's submission that provided scope for the amendments sought at the hearing.

*Sixth alleged error of law –Rule 5.71 does not implement 4.31*

24. Was the decision not to include in the rules any protection upstream of identified sites, the result of an evident logical fallacy or clearly unsupportable, when the Respondent expressly decided that such protection should apply?

**GROUNDS OF APPEAL**

*First alleged error of law – scope for amendment to definition of inanga spawning habitat*

25. In Plan Change 4 the Respondent proposed "*an integrated set of new and amended provisions to address a significant lack of protection for both inanga spawning sites and areas with potential to provide 'inanga spawning habitat'*". This included the

mapping of areas sites that were inanga spawning habitat and rules to protect such habitat from damaging activities.

26. The Appellant was a submitter on Plan Change 4, submitting in support of the provisions providing greater protection of inanga spawning habitat and sites including on the definition of inanga spawning habitat and the policies and rules that provided protection to inanga spawning habitat and inanga spawning sites. At the hearing, the Appellant sought the deletion of the words "*is between mean high water springs and mean low water neaps*".[5]

27. The Commissioners considered whether the changes that were not exactly the same as those identified in the original submission where within scope in great detail.[6] The Commissioners identified their approach to ascertaining whether relief was within the scope of submissions in [19] and [20] as considering the plan change and the submission and approached in a realistic workable fashion and not from the perspective of legal nicety with the question of whether people had the opportunity to effectively respond relevant.[7]

28. The Respondent took an unduly narrow view to the relevant part of the submission. The part of the submission that the Commissioners considered relevant was the retention of the definition.[8] There were other parts of the submission that are relevant. These include but are not limited to those set out below

[5] The deletion that was sought are the words underlined (a minor grammatical change was also sought).
*Inanga Spawning Habitat: means that part of the beds and banks of a lake, river, artificial watercourse, coastal lagoon or wetland that is <u>between mean high water springs and mean low water neaps and is</u> within the area identified as 'Inanga Spawning Habitat' on the Planning Maps.*
[6] [122]-[207]
[7] *[19] Whether a requested amendment goes beyond what is reasonably and fairly raised in submissions on the plan change will usually be a question of degree to be judged by the terms of the plan change and of the content of the submissions. The question should be approached in a realistic workable fashion, rather than from a perspective of legal nicety, and requires that the whole relief package detailed in submissions is considered; and again whether people would be denied opportunity to effectively respond is relevant. [20]However, amendments to a plan change that would not extend it beyond what is reasonably and fairly to be understood from the content of submissions, nor prejudice anyone who failed to lodge a further submission on the original request may be made; as would amendments required for clarity and refinement of detail, if minor and not prejudicial.*
[8] [131]

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| 4.86A | Support in part | The use of the phrase 'as a first priority' effectively undermines the protection given by the policy.<br><br>Further, if avoidance cannot be avoided (the policy gives no guidance on what acceptable grounds for not being able to avoid), the 'best practicable' option can simply be used. 'Best practicable option' is defined in the LWRP, but the definition only relates to emissions of noise and contaminants. The definition does not provide guidance on all the likely disturbance activities that could affect inanga spawning sites. | Amend policy to read:<br><br>"Inanga spawning sites are protected though avoiding activities within the beds and margins of lakes, rivers, hapua, wetlands, coastal lakes and lagoons that may damage inanga spawning sites." |
| 4.86B | Support in part | Delete 'where it is practicable' as currently written it is meaningless.<br><br>Support the extension of time for habitat rehabilitation. | Delete 'where it is practicable'. |
| Section 5 – Rules:<br><br>5.136, 5.137, 5.138, 5.139, 5.140, 5.141, 5.148, 5.151, 5.152 | Support in part | F&B supports the general approach of these rules to protect both Inanga Spawning Sites and Habitat. However, the extended period (1 Jan - 1 June) should apply to all activities in Inanga Spawning Habitat, given the likely disturbance of that habitat and the need for it to recover before spawning occurs.<br><br>Also note that Table 1 – Amendment Categories lists 5.152A as a changed rule in this Category. That appears to be an error; the change has been made to 5.152. | |
| 5.163, 5.167, 5.168, 5.169, 5.170 | Support | These rules provide appropriate protection for Inanga. | Retain |
| 5.140A | Oppose | The exceptions relating to Inanga Spawning Sites and Habitat should apply to this activity. | Insert Inanga exceptions into this rule. |

29. There is scope to make amendments based on submissions where the changes where such consequential changes flowed downwards from any amendment sought in the submissions as a whole.[9] The realistic working approach to interpreting

[9] *Campbell v Christchurch City Council* C40/2002, [20]
*[20] The High Court's guidance in Countdown is, with respect, very useful on the issue as to whether a Council may make changes not sought in any submission. It appears that changes to a plan (at least at objective and policy level) work in two dimensions. First an*

submissions includes consideration of whether the submissions as a whole fairly and reasonably raise some relief, expressly or by reasonable implication, about an identified issue. [10]

30. When adopting the appropriate realistic workable approach, the amendment sought which ensures that the inanga spawning habitat identified on the planning maps and intended to be protected, is protected, is fairly and reasonably within the scope of the Appellants submission, which supported the policies which provided for the protection of inanga spawning habitat.

31. The Respondent did not look at the submissions as a whole, instead narrowly focussing on part of the Appellant's submission. Nobody would have been prejudiced by the amendment proposed by Forest & Bird, as there was no change to the mapped areas of inanga spawning habitat. The change was to address an anomaly in the definition that is inconsistent with the mapping.

32. If the proper approach was adopted, the relief sought at the hearing was within the scope of the submission.

*Second alleged error of law – scope for amendment to planning maps*

33. The Respondent had the power to make amendments to Plan Change 4 that were fairly and reasonably within the scope of submissions. There was no submission seeking the exclusion of inanga spawning habitat from the CMA from the planning maps. The decision to exclude such sites was beyond scope.

*Third alleged error of law – Failure to give effect to NZCPS and Canterbury RPS*

34. Inanga are an 'at risk'/declining' native fish species. The NZCPS and Canterbury RPS provide a strong directive to maintaining, enhancing and protecting 'inanga

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*amendment can be anywhere on the line between the proposed plan and the submission. Secondly, consequential changes can flow downwards from whatever point on the first line is chosen. This arises because a submission may be on any provision of a proposed Plan. Thus a submission may be only on an objective or policy. That raise the difficulty that, especially if:*

*(a) a submission seeks to negate or reverse an objective or policy stated in the proposed plan as notified; and*

*(b) the submission is successful (that is, it is accepted by the local authority)*

***- then there may be methods, and in particular, rules, which are completely incompatible with the new objective or policy in the proposed plan as revised. It would make the task of implementing and achieving objectives and policies impossible if methods could not be consequentially amended even if no changes to them were expressly requested in a submission. The alternative - not to allow changes to rules - would leave a district plan all in pieces, with all coherence gone.***

[10] *Campbell v Christchurch City Council* C40/2002

*Both of the High Court cases were concerned with what relief could be granted even if not expressly sought as such in a submission. There was no direct issue in those cases as to whether the relevant submissions were sufficiently clear in themselves. I hold that the same general test applies - does the submission as a whole fairly and reasonably raise some relief, expressly or by reasonable implication, about an identified issue.*

spawning habitat'. This is supported by other provisions in the plan. Policy 11 of the NZCPS requires that adverse effects on threatened and at risk species are avoided. The Respondent correctly concluded that the identification of inanga spawning habitat is fundamental to giving effect to the intent of this direction.

35. The Respondent's modelling of inanga spawning habitat was based on mean high water spring 10 (MHWS10), which is the upper limit of 90% of all tides.[11] The definition of inanga spawning habitat includes a requirement that inanga spawning habitat be between mean high water springs and mean low water neaps, excludes areas of habitat where inanga could spawn, in particular between MHWS and MHWS10 and does not give effect to the NZCPS or the Canterbury RPS.

*Fourth alleged error of law – Unreasonable to limit inanga spawning habitat to below MHWS*

36. The section 32 report misinterprets the MHWS10 that the inanga habitat was modelled on as the "high spring tides". This is carried through to a reference to mean high water spring in the definition of inanga spawning habitat.[12]

37. This creates an anomaly in that the planning maps were developed using MWHS10 as the most landward that inanga spawning habitat will occur but the definition of inanga spawning habitat is limited to below MHWS. This anomaly fails to protect habitat that Plan Change 4 sought to protect and creates confusion and uncertainty. This is based on an evidence logical fallacy and is clearly unsupportable.

*Fifth alleged error of law – scope for change to definition of "vegetation clearance"*

38. Clause (a) of the definition of vegetation clearance provides an exemption for cultivation. The Appellants original submission sought that clause (a) be "*amended so that effects on biodiversity are addressed".*

39. Clause (b) of the definition of vegetation provides an exemption for the establishment and maintenance of utilities or structures. The Appellant's original submission sought the deletion of (b).

[11] *Predicting inanga/whitebait spawning habitat in Canterbury*, part 2, page 4 - *The study by Mitchell & Eldon (1991) showed that inanga eggs are generally laid above the neap tide level during a spring tide cycle. Based on this this finding, we established that MHWS 10 (the upper limit of 90% of all tides) was the best MHWS level to use in the analyses.*

[12] *"To ensure that this does not result in unnecessary resource consenting, a new definition will be added to the LWRP which defines 'inanga spawning areas' as those areas identified on the planning maps and located between the spring high tide and the neap low tide water levels, within a river or artificial watercourse. The inclusion of this definition refines the provisions so that they only relate to areas where inanga have the ability to spawn."*

40. At the hearing, the Appellant provided more detail, proposing wording changes that:

    (a) would limit the exemption such that it would not apply in beds and margins of water bodies; [13] and

    (b) would limit the exemption such that it would not apply to in inanga spawning habitat or in identified rivers, specifically the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata or Waitaki rivers (the identified rivers).

41. The Respondent concluded that changes sought by the Appellant to the definition of vegetation clearance were out of scope.

42. The Respondent appears not to have understood that the Appellant sought the change to (a) relating to the addition of reference to the bed and banks of rivers. This change is not identified and assessed by the Respondent in the decision. However, less significant changes sought by the Appellant to (a) are identified and assessed. In ruling that all the Appellant's amendments to the definition of vegetation clearance were beyond scope, the Respondent has failed to take into account a relevant consideration, specifically that the Appellant sought the amendment.

43. Plan Change 4 did not seek to amend (b). The Appellants original submission sought the deletion of (b). The Respondent concluded that the Appellant's original submission seeking deletion of (b) was not "on the plan change". Plan Change 4 sought to amend the definition of vegetation clearance and therefore a submission on the definition of vegetation is on the plan change.

44. In any event, there are there are elements of (b) which are matters addressed by Plan Change 4. These relate to protection of inanga spawning habitat and the beds of the identified rivers. Insofar as the Appellant's submission seeks the exemption in (b) not apply in inanga spawning habitat and the beds of the identified rivers, it is on the plan change.

45. In the alternative, when deciding that the amendments sought to (b) were not within the scope of the Appellants submission, the Respondent an unduly narrow approach to the parts of the submission that were relevant. The Respondent focused

[13] The Appellant also sought other changes to the definition of that were ruled out of scope. This included the addition of the words "*for the establishment*" and the deletion of the words "*on production land prior to 5 September 2015*". These are not pursued as the former was to provide clarification and the latter change was in fact made by the Respondent, despite ruling it had no scope to do so based on the Forest & Bird submission.

only on the part of the submission that related to (b). There are other parts of the submission that are relevant.[14] These include the submission on Policy 4.86A set out above and:

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| 5.163<br>5.164<br>5.165 | Support in part | This rule manages both vegetation removal and disturbance, whish is appropriate. However, the vegetation clearance definition only refers to 'removal' of vegetation. As per our submission point above, the definition needs to include vegetation alteration and disturbance. Otherwise the Plan will be failing to manage a potentially significant adverse effect.<br><br>Support change to 5.163(2).<br><br>5.163(6) is now too narrow, and will only manage the effects of removal. Both the definition (as submitted above) and the rules need to incorporate disturbance and damage to vegetation.<br><br>5.163 (8) – the rule needs to make clear on what basis those agencies would give the permission.<br><br>Support intended protection of the rivers listed in 5.163(9), but this condition is far too broad and unworkable for a permitted activity. There is no way that this could be accurately assessed by a plan user, and conversely it would be almost impossible for the Council to monitor and enforce. Taken literally, any vegetation clearance will result in the reduction in at least the area, if not the diversity of existing riverbed vegetation. Support this activity being dealt with as a non-complying rule (as per 5.165).<br><br>Further, a number of braided rivers, not only alpine rivers, provide habitat for endangered bird species. Their nests are often cryptic and breeding sites may not be obvious. More needs to be done to enhance nesting outcomes, including e.g. lupin removal, and controls on activities in these rivers. If this PC is not going to include provisions to protect braided rivers, the third option mentioned in the s32A report (top of pg 45) should be pursued without delay, and another PC proposed to give effect to it. | Retain words: 'and disturbance' in Introduction to rule.<br><br>Retain 5.163(2).<br><br>Amend (6) to manage both removal and alteration/disturbance.<br><br>Amend (8) to include detail on basis for and required details of permission.<br><br>Amend condition (9) to read: "From 5 September 2015, no vegetation clearance takes place in the bed of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata, and the Waitaki rivers."<br><br>Include provisions to protect all braided rivers used by endangered bird species. |

46. These submissions seek protection for inanga spawning habitat and the beds of the identified rivers changes from activities including vegetation clearance. The amendments sought by the Appellant, which ensure that there is protection for these sites from vegetation clearance otherwise exempted from the definition of vegetation clearance, is fairly and reasonably within the scope of these submissions

[14] These include but are not limited to:

*Sixth alleged error of law –Rule 5.71 does not implement Policy 4.31*

47. Policy 4.31 relates to the exclusion of stock to provide protection for inanga and salmon spawning habitat. Forest & Bird lodged a further submission supporting a Fish & Game submission seeking amendment to provide for the protection of "*the waterbody bed and banks closely adjacent to and upstream of these areas*" in addition to the areas themselves. The Respondent accepted this submission.

48. Policy 4.31 is implemented in part by Rule 5.71. However, Rule 5.71 provides no protection to "*the waterbody bed and banks closely adjacent to and upstream of these areas*". There is an evident logical fallacy in amending Policy 4.31 on the basis that protection is needed for waterbody bed and banks closely adjacent to and upstream of these areas, but failing to provide any such protection in Rule 5.71 or elsewhere in the rules.

**RELIEF SOUGHT**

49. The Appellant seeks the following relief:

    (a) That the appeal is allowed.

    (b) A declaration that the Respondent erred in relation to the questions of law set out in this notice of appeal;

    (c) That the Respondent's decisions are quashed;

    (d) That the Respondent's is directed to reconsider Plan Change 4 in light of the High Court's findings on the matters set out above.

    (e) The costs of this appeal.

Dated 22 August 2016

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