

Plan Change 4 to the Canterbury Land and Water Regional Plan

Responses to Questions of Hearing Commissioners on Day 1 of PC4 Hearing 3 March 2016

Phillip Maw (PM) and Matthew McCallum-Clark (MMC)

R. van Voorthuysen

Inanga Spawning

RvV 1. Regarding the additional sites listed in the EIC and RE of Dr Margetts for CCC, Appendix B to s42A suggests sites on at least Avon and Heathcote Rivers will be revisited. Where is that at?

Response from Dr Michael Greer of ECan and MMC:

From a technical perspective the reaches described in Table 1 of Dr Margetts evidence are not confirmed spawning sites, as eggs have not been found along the entire length of the reaches. Rather the reaches reflect areas upstream and downstream of known sites where there is suitable spawning vegetation (as assessed by CCC). In the rest of the region this buffer zone is protected by the rules relating to “inanga spawning habitat” which are generally more lenient than the rules around known sites. However, as CCC are likely the only party impacted by the presence of Schedule 17 sites on the Avon and Heathcote Rivers, the following sites in Schedule 17 may be replaced by the reaches described in Table 1 below, as these reaches will encompass these discrete points currently in Schedule 17:

- Avon River 20m downstream of Avondale Road bridge
- Avon River 60m upstream of Avondale Road bridge
- Avon River 45m upstream of Avondale Road bridge
- Avon River 325m downstream of Avondale Road bridge
- Avon River 280m Downstream of Avondale Rd bridge
- Avon River tributary At New Brighton Road
- Lake Kate Sheppard
- Steam Wharf Stream 40m upstream of Dyers Road
- Heathcote River 35m downstream of Waltham
- Heathcote River at Opawa Road bridge
- Heathcote River 1050m downstream of Beckford Road bridge
- Heathcote River 935m downstream of Beckford Road bridge

Table 1

Reach ID	Catchment	Waterway Name	Spawning Site Location	Upstream Easting	Upstream Northing	Downstream Easting	Downstream Northing
3	Avon	Avon River	Avondale	2484351	5744647	2485041	5745015
4	Avon	Corsers Stream	Immediately downstream of New Brighton Road	2485465	5745128	2485462	5745072
5	Avon	Avon River	Orrick Crescent	2485657	5745101	2485699	5745106
6	Avon	Lake Kate Sheppard	Immediately upstream of New Brighton Road	2485868	5745327	2485953	5745157
7	Heathcote	Heathcote River	Aynsley Reserve	2482776	5738333	2482816	5738348
8	Heathcote	Heathcote River	Aynsley Reserve	2482877	5738374	2482900	5738384
9	Heathcote	Heathcote River	Opawa	2483104	5739162	2483249	5739346
10	Heathcote	Heathcote River	Woolston Park	2483862	5739917	2483871	5739928
11	Heathcote	Streamwharf	Immediately upstream of Dyers Pass Road	2485052	5739405	2485128	5739394

Please note these reaches do not encompass Heathcote River 325m upstream of Opawa Road bridge and this site should remain in Schedule 17.

The submission scope issue identified below remains relevant for the identification of these reaches.

RvV 2. What about the other sites?

Response from Dr Michael Greer of ECan and MMC:

Including the remaining reaches listed in Table 1 of Dr Margetts evidence into schedule 17 may not be appropriate.

Where any uncertainty around the scientific validity of the reaches on the Avon and Heathcote Rivers really only impacts CCC, inclusion of the remaining reaches may impact private land owners or other river managers. As these reaches weren't developed by Environment Canterbury for the purposes of PC4, and were not specifically identified in the CCC primary submission, the sites have not been subject to investigation or challenge through the submission process.

- RvV 3. Appendix B recommends that ephemeral rivers should not be subject to same rules as permanent and intermittent rivers. S42A seeks to insert 'permanently or intermittently flowing river' into the definition of inanga spawning habitat, but isn't an ephemeral river also and intermittent river?**

Response from Dr Michael Greer of ECan and MMC:

In the context of inanga spawning "intermittent" means that the river has base flow at times and only dries in a seasonal and predictable pattern. On the other hand, ephemeral streams are dry for the most of the time, have no base flow and only flow after rain events.

- RvV 4. Policy 4.86A uses the words 'the beds and margins'. The definitions of 'inanga spawning sites' and 'inanga habitat' use the term 'bed and banks'. Rule 5.68A uses the term "bed (including the banks)".**

Should they be consistent?

Response – MMC:

Yes, the terms should be made consistent throughout.

- RvV 5. What should they say?**

Response – MMC:

Bed and banks. However, I note that there is some variance in the remainder of the LWRP not affected by PC4, for example Rules 5.69 and 5.70, which refer to "bed (including the banks)".

Stormwater

- RvV 6. Rules 5.94A to 5.95A. I understand that consent from ECan would be required for a discharge to a natural watercourse, or to an open drain, or to ground, but is consent required from ECan if the discharge is from a site into a TA piped stormwater network?**

(R. van Voorthuysen) Looking for a clarification as to why consent is required for a discharge into a piped network when not the situation in other authorities.

(D. Sheppard) It is a question of whether this is a discharge to “water” as a discharge to a pipe not to “water”. Clarity is required regarding this.

Response – PM:

The Rules, as set out in PC4, do require consent from ECan if the discharge is from a site into a territorial authority pipe stormwater network. However, the policy intent signalled in PC4 provides direction that such consents will only be granted over the next 10 years. The intention is that the control of the management of stormwater entering a reticulated stormwater system will be transitioned over to the network utility operators who operate the reticulated stormwater network and who hold consent for the discharge from that system into the receiving environment.

The reason why consent is required for such a discharge is a function of the historic way by which the Council has managed stormwater discharges in the past. The Council has previously processed and granted resource consent for the discharge of a stormwater into a reticulated stormwater network. The Council has also issued what have become known as "global stormwater consents" to the network utility operators. These global consents seek to manage the discharge of stormwater from the reticulated stormwater network into the receiving environment.

The way in which stormwater has historically been managed, and the way in which the Council proposes to manage the discharge of stormwater over the next 10 years (the transitional period) raises a key legal question. That is whether the discharge of stormwater to a reticulated stormwater network is a discharge for the purposes of the RMA.

Section 15(1) of the RMA provides:

15 Discharge of contaminants into environment

(1) No person may discharge any—

(a) contaminant or water into water; or

(b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or

...

unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

"Contaminant" is defined as including:¹

¹ RMA, s 2(1).

any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat-

(a) When discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or

(b) When discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged

"Discharge" is defined as including "emit, deposit, and allow to escape".²

"Water" is also defined:³

(a) means water in all its physical forms whether flowing or not and whether over or under the ground:

(b) includes fresh water, coastal water, and geothermal water:

(c) does not include water in any form while in any pipe, tank, or cistern

Plan Change 4 contains the following relevant definitions:

Construction phase stormwater means water, sediment and entrained contaminants resulting from precipitation on exposed or un stabilised land and which arises from construction or demolition activities, or the development of a building site.

Stormwater means runoff water and entrained contaminants arising from precipitation on the external surface of any structure or any land modified by human action, and that has been channelled, diverted, intensified or accelerated by human intervention. ~~modification of the land surface or runoff from the external surface of any structure as a result of precipitation and includes entrained contaminants and sediment including that generated during construction or earthworks. It excludes construction-phase stormwater, sediment-laden water and drainage water which are separately defined.~~

Reticulated Stormwater System means a network of pipes, swales, drains kerbs and channels owned or operated by a network utility operator which convey that collects stormwater within urban areas and conveys that stormwater to any device, wetlands-retention or detention pond or and infiltration basins-and treatment devices, which may include detention ponds, ~~for the treatment of stormwater, prior to a discharge to land, groundwater, or surface water or another reticulated stormwater system~~

² RMA, s 2(1).

³ RMA, s 2(1).

and that serves more than one property. It excludes any drainage system that has been constructed for the primary purpose of collection, conveyance or discharge of drainage water.

Available reticulated stormwater system means a reticulated stormwater system where:

1. A conveyance structure that forms part of the reticulated stormwater system passes within 50m of the property boundary; and
2. stormwater is able to be conveyed into the reticulated system under gravity; and
3. the network operator will accept the stormwater from the property; and
4. the distance between the conveyance structure and the source of the stormwater is less than 100m.

For the purpose of giving effect to the RMA in the Canterbury Region, one function of the Regional Council is "the control of discharges of contaminants into or onto land, air, or water and discharges of water into water".⁴ The Regional Council has no jurisdiction to regulate discharges in circumstances that do not fall under s 15(1).

Is a discharge into a pipe a discharge to "water"?

It is submitted that the discharge of stormwater into a pipe falls within the definition of "discharge" under the RMA. However, it is not a "discharge into water" under s 15(1)(a). The definition of "water" expressly excludes water in a pipe. Only a discharge directly into water (as that term is defined in the RMA) falls under s 15(1)(a). The case law is clear that intermediate discharges onto land, albeit that the discharge ultimately finds its way into water, does not come under s 15(1)(a).⁵ However, for the reasons set out further below, discharges in those circumstances could fall under s15(1)(b) as a discharge to *land* in circumstances which may result in that contaminant entering water.

Can there be more than one point of discharge in relation to the same discharge?

The point of discharge has been judicially considered. It is the point at which the contaminant leaves the effective control of the discharger.⁶

In a scenario where stormwater enters into a pipe (that is part of a reticulated stormwater system) on a residential property and that stormwater ultimately discharges from the reticulated stormwater system into a river or the sea, there is only one point of discharge that can be regulated.⁷ To regulate both the discharge into the pipe and the final discharge into water would involve an unlawful duplication as once the discharge is controlled (for example

⁴ RMA, s 30(1)(f).

⁵ See *Auckland Regional Council v Bitumix Ltd* (1993) 3 NZPTD 336 (DC) at 34 of Court Transcript.

⁶ *Kerikeri Properties Limited v Northland Catchment Commission* (1977) 6 NZTPA 344 (TCPAB) at 348.

⁷ There cannot be a second point of discharge in relation to the same discharge. See *Minister of Conservation v South Taranaki District Council* W61/93, 30 August 1993 (PT) at 6 of the Court Transcript.

through consent), any further consent would be redundant. That is because the activity for which the further consent was being sought has already been approved. In the absence of obtaining a further consent, the person seeking the further consent could not be prosecuted as the existing consent would authorise the discharge.

However, the Regional Council has discretion to choose the point at which it regulates the discharge, provided that it only regulates one point of discharge. It can regulate the discharge at the top or the bottom of the system, or perhaps somewhere in between. If it regulates at the top, there is case law authority that a discharge into an underground pipe, which transports that discharge to a drain that flows to a river, is a discharge to land under s 15(1)(b). The underground pipe is a fixture which forms part of the land.⁸ The bottom of the system being the point of final discharge into water.

Based on this analysis, it is questionable whether the Council has authority to manage the discharge of stormwater both *in* to a reticulated stormwater system *and* from that system to the receiving environment. Submitters seeking to challenge the provisions in PC4 that seek to transition responsibility from the individual dischargers to the network utility operators will need to carefully consider the legal implications associated with this matter.

RvV 7. Why was the first part of the definition of stormwater amended?

Response – MMC:

The change relates to the deletion of other words in the definition, to improve readability. There is no intention in this change to affect the purpose of the definition.

RvV 8. Is it problematic that the new LWRP definition, if approved, will differ from the definition included in the global stormwater consents presented to us in evidence by the TAs?

Response – PM:

PC4 proposes to amend the definition of "stormwater" in the LWRP as follows (insertions underlined and deletions struck through):

Stormwater means runoff water and entrained contaminants arising from precipitation on the external surface of any structure or any land modified by human action, and that has been channelled, diverted, intensified or accelerated by human intervention. ~~modification of the land surface or runoff from the external surface of any structure as a result of precipitation and includes entrained contaminants and sediment including that generated during construction or earthworks.~~ It excludes

⁸ *Manawatu Wanganui Regional Council v Thurston* DC Palmerston North CRI-2007-054-2550, 20 February 2009 at [85].

construction-phase stormwater, sediment-laden water and drainage water which are separately defined.

Construction-phase stormwater

means water, sediment and entrained contaminants resulting from precipitation on exposed or unstabilised land and which arises from construction or demolition activities, or the development of a building site.

Sediment-laden water

means water and entrained sediment arising from earthworks, geotechnical investigations, vegetation clearance, or the introduction or removal of vegetation, but excludes construction-phase stormwater which is separately defined.

It is considered that amending the definition in the LWRP is not problematic for the global consents held by the territorial authorities.

For example, a definition of "stormwater" is contained in the Styx River stormwater consent held by the Christchurch City Council (CRC131249), as follows:

"stormwater means runoff that has been channelled, diverted, intensified or accelerated by human modification of the land surface or runoff from the external surface of any structure as a result of precipitation or from routine washdown practices and may contain contaminants (which may include traces of hazardous substances). This definition excludes discharges of spilled or deliberately released hazardous substances and the subsequent washdown of such spills or releases. Any unacceptable washdown practices will be identified as part of the Industrial Site Audit process and be addressed via that process."

Similarly, a definition of "stormwater" is contained in the global stormwater consent held by the Selwyn District Council (CRC151652), as follows:

"stormwater means run-off that has been channelled, diverted, intensified or accelerated by human modification of the land surface or runoff from the external surface of any structure as a result of precipitation or from routine washdown events. This definition specifically excludes discharges of spilled or deliberately released hazardous substances and the subsequent washdown of such spills or releases."

The change in the definition as proposed by PC4 is immaterial to the activities authorised by the existing global stormwater consents. The existing global consents will continue to authorise the discharge of stormwater, as defined by the particular consent (to the extent authorised by the conditions). The proposed definition will become relevant at the time the global stormwater consents expire and any application is made for a replacement consent.

RvV 9. Did ECan consider the Auckland approach whereby s9 land use consent is required from the RC for 'high to medium risk' sites so that appropriate on-site controls can be required?

Response – MMC:

No.

RvV 10. Section 42A answers at the bottom of page 3 – explain meaning?

Response – MMC:

There are many incidental discharges to land which are impractical for people to be required to capture and control, for example rainwater running from a driveway into a garden. It is recommended that clause (e) be re-inserted to prevent circumvention of the rule, but with the suggested amendment so that these incidental discharges are not captured.

Community Drinking Water Supplies

RvV 11. Policy 4.23A(c). Can introducing a 'protection zone' by way of a resource consent process impose an obligation on any party other than the consent holder?

Response – PM:

It is clear from caselaw that a resource consent cannot impose obligations on an existing consent-holder (as opposed to the applicant).⁹ There is also a line of cases which establish that a condition of a resource consent which requires the agreement of a third party is ultra vires,¹⁰ and cases which establish that a condition imposed on a new consent cannot negate the resource consent of a third party.¹¹

The provisions as drafted in proposed Plan Change 4 as notified, and incorporating the Officer's Recommendations in the Section 42A Report, do not impose obligations on third parties or existing consent holders. Existing community-drinking water-supply sources will have provisional protection zones (determined in accordance with the methodology in Schedule 1). Plan Change 4 provides for new and existing (through an application to amend the conditions) drinking water supplies to impose a protection zone that is targeted to that specific drinking water supply, taking into account site specific information. The imposition of protection zones do not impose obligations, rather they have the effect of imposing additional restrictions on new activities that will occur within those zones, such as discharges.

⁹ *Dart River Safaris v Kemp & Anor* [2000] NZRMA 440 (HC)

¹⁰ *Robert Holt & Sons Ltd v Napier City Council* (1977) NZTPA 132

¹¹ *Medical Officer of Health v Canterbury Regional Council* [1995] NZRMA 49

While the protection zones that may be introduced by way of a resource consent process may be relevant to the consideration of an application to renew an existing resource consent, or to review the conditions of a resource consent, or to a land user within land located within the proposed protection zone (the effects on whom may be considered through proposed Policy 4.23B(c) and Rule 5.115(9)), the rules as currently proposed do not impose any obligations on any party other than the consent holder.

The way in the LWRP (subject to the changes proposed by PC4, as amended by the Officers' Recommendations) seeks to establish "protection zones" for community drinking water supplies is analogous to the protection afforded by the plan to the persons who hold resource consent to take water from a bore. Consent holder to take and use water from a bore need to demonstrate as part of their application for consent that their take will not interfere with other takes. Such interference effects extend, in many cases, beyond the boundary of the property on which the bore is located. Once consented, other parties seeking to install a bore on their property have to demonstrate that their bore does not cause interference effects on other lawfully established takes and uses of water.

In the same way, once a community drinking water supply protection zone is established, those persons seeking to carry out activities in the future will need to ensure that they do not cause adverse effects within the protection zone identified.

RvV 12. Schedule 1 – does merely updating a GIS layer that resides outside of the LWRP impose any regulatory obligations on any party?

Response – PM:

No, merely updating a GIS layer that sits outside of the LWRP cannot impose new regulatory *obligations* on parties; the GIS layer is there to assist the reader of the plan and to indicate where restrictions apply. In relation to "protection zones" intended to be shown in the GIS layer, that simply shows the practical application of the regulations set out in the LWRP.

RvV 13. Should new Schedule 1 protection zones be included in the LWRP by way of plan change if they are to have regulatory effect?

Response – PM:

No, any new Schedule 1 protection zones will have regulatory effect as a result of the existing regulatory framework (as a result of consent being granted), and there is no need to include them in the LWRP by way of plan changes in the future.

RvV 14. What is ECan's response to Dr Humprey's (CDHB) suggested deletion of Policy 4.23B(c)?

Response – MMC:

This suggested deletion has the same effect as the suggested deletion of subclause (9) in Rule 5.115, which is discussed at para D.31. The same reasoning applies and deletion is not recommended.

Vegetation Clearance and Earthworks

RvV 15. What is the purpose of the 2015 date in the definitions of “vegetation clearance” and “earthworks”?

Response – MMC:

The purpose is to exclude current established crops and pasture from being caught by that definition. Crops and pasture established after that date will be captured by those definitions.

RvV 16. Looking at the definition of vegetation clearance, will any cultivation or harvesting on production land that occurs after 2015 now require a resource consent?

Response – MMC:

Yes, if captured by the rules.

RvV 17. What is the response to Ngai Tahu’s suggested use of Erosion and Sediment Control Guidelines in relation to Rules 5.167 and 5.168? (EIC of Bartlett at para 42)

Response – MMC:

The Erosion and Sediment Control Guidelines are at:

<http://ecan.govt.nz/publications/General/FullErosionandSedimentControlGuideline.pdf>

The Erosion and Sediment Control Guidelines were drafted in 2007 and are in the nature of guidelines, including procedures, methodologies and best practice. It would be difficult to confirm whether earthworks were ‘in accordance with’ the Guidelines, as there are no objective tests in the Guidelines. The frequent use of words such as “consider”, “attempt”, “minimise” and the like further complicate matters. It is also noted that the scope of the Guidelines, as set out in section 1.2 of the Guidelines, is significantly less than the matters addressed by these Rules. On this basis, including compliance with the Guidelines, as a permitted activity condition, is not recommended.

I also draw your attention to Note 2, included at the beginning of this section of the LWRP, which states: “Refer to the CRC’s Erosion and Sediment Control Guidelines for additional guidance on undertaking vegetation clearance activities.”

Braided Rivers

RvV 18. Policy 4.85A. Is the policy intended to focus only on braided rivers?

Response – MMC:

Yes.

RvV 19. Is it intended to focus only on the braided rivers listed in Rule 5.168(5) for example?

Response from Dr Tim Davie of ECan and MMC:

The seven listed rivers are the alpine rivers (which are also braided). A technical description of a braided river is any river that has a “network of small channels separated by small and often temporary islands called braid bars”. This definition includes reaches of many other Canterbury rivers such as the Waihao, Otaiao, Pareora, Ashburton, Orari, Opihi, Ashley, Waipara, Conway and probably a few more.

The policy was intended to be less specific in the inclusion of all braided rivers, with the vegetation clearance rule specific with respect to the particular rivers named.

The rationale for not being specific in the policy is that this policy may be applied and considered any time an applicant or a consent authority considered an activity within any of the braided rivers that may adversely affect habitat values, indigenous biodiversity etc.

In addition, there may be future omnibus changes which result in additional braided rivers being added to those currently listed in condition 5.163. By keeping the policy non-specific this would avoid the need amend the policy in future.

RvV 20. Is the rationale for the policy the prevention of any further reclaiming of riparian / river bed areas for farmland?

Response – MMC:

The primary reason is protection of biodiversity, and reclamation for farmland has historically been the greatest use of land in these areas.

RvV 21. Are riverbed structures of concern in terms of the concerns underpinning this policy?

Response – MMC:

The purpose is explained at the beginning of Policy 4.85A. In my view braided rivers are reliant on being able to move and form new channels, so the intention is to also protect against structures which may prevent this.

Stock Access

RvV 22. Rule 5.68(3)(c)(1). Regarding Ngāi Tahu's submission, if the original words were reinstated, would consent be required under Discretionary Activity Rule 5.6 to stand cattle in a Lake?

Response – MMC:

See Rule 5.69 of the operative LWRP. This rule is the next rule in the stock exclusion rule-set and provides a discretionary activity status for activities that do not comply with the conditions of Rule 58.

RvV 23. If so, would that be an undesirable RMA outcome?

Response – MMC:

If the Ngāi Tahu submission point is accepted, that would be an appropriate outcome.

Structures

RvV 24. Rule 5.138(3). Fish and Game sought numerous amendments to the CRC Code of Practice for Defences Against Water and Drainage Schemes. How has that submission been addressed?

Response – PM:

Fish and Game's requested amendments to the CRC Code of Practice for Defences Against Water and Drainage Schemes (June 2015) ("Code of Practice") are beyond the scope of Plan Change 4. The Code of Practice is a document which is incorporated in Plan Change 4 by reference in Rule 5.138, which addresses the installation, maintenance, use and removal of defences against water. The content of a document incorporated by reference is not within the scope of Plan Change 4; the question of whether to incorporate that document is open for the Independent Commissioners to make recommendations on. Our reasoning is set out below.

In response to the increasing trend to incorporate documents by reference in provisions rather than setting them out in full, the Legislation Advisory Committee issued its Guideline on Process and Content of Legislation (2001, 2003 Supplement) which required legislation to ensure that material incorporated by reference was publicly available. Clauses 30 to 25 of Schedule 1 to the RMA outline the requirements of a local authority when incorporating documents by reference in plans and proposed plans.

In particular, Clause 34 Schedule 1 provides for consultation on the proposal to incorporate the material by reference. Prior to public notification of a proposed plan, a local authority must make copies of the material proposed to be incorporated by reference available for inspection at the offices of the local authority and issue a public notice stating the availability of the documents. The local authority must also allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference and consider any comments that are subsequently made.

The Public Notice (attached as **Appendix 1**) issued pursuant to Clause 34(2)(c) of the First Schedule to the RMA stated that comments on the proposal to incorporate the proposed material by reference (i.e. the Code of Practice) could be made by any person up until 5.00pm on Wednesday 26 August 2015. At that stage, Fish and Game could comment on the content of the Code of Practice. Now that Plan Change 4 has been notified, any comment on the Code of Practice must be limited to its reference in the rule, not the content of the Code of Practice itself.

RvV 25. Are we required to assess those requested amendments to the Code and make recommendations on them?

Response – PM:

No. The enquiry of the hearing panel is limited to whether it is appropriate to include reference to the Code of Practice (as drafted), or not. It is beyond the scope of PC4 to make recommendations in relation to the Code of Practice.

Floodwaters

RvV 26. Can you explain the intent of Rule 5.142?

Response – MMC:

The intent was to provide a largely permitted activity framework to deal with floodwater. The previous rule only provided limited permitted activity methods of dealing with floodwaters and in reality when flooding occurs it is inappropriate to routinely require a resource consent.

RvV 27. Is the Rule designed to legalise these discharges or to materially alter the way the discharges occur?

Response – MMC:

The erosion and flooding caused due to a release still needs to be managed, but the intent of the Rule was to legalise these discharges.

RvV 28. Why was the term ‘diversion’ deleted?

Response – MMC:

Refer to the definition of diversion in the LWRP and that it is managed in the 'bed'; if water leaves or enters then it is a take or discharge.

RvV 29. Notwithstanding the above answer, are actions taken by a property owner that alter the way the floodwaters leave their property still a ‘diversion’ in terms of the RMA that requires authorisation.

Response – PM:

Section 2 defines "water" as including water in all its physical forms whether flowing or not and whether over or under the ground. "Floodwaters" would certainly be included within that definition and therefore any alteration of the flow of floodwaters is considered a diversion for the purposes of section 14 of the RMA (noting that the definition of "diversion" in the LWRP differs from caselaw interpretation).

It is clear from the Court's analysis of caselaw in *Gisborne District Council v McKendry*¹² that water can be diverted by turning it aside, or deflecting it so that it takes a different position, or changing the direction of the water.

As such, the flow of floodwaters (where the actions taken by a property owner that alter the way floodwaters leave their property) must be expressly allowed by a rule in a regional plan (or NES) or a resource consent.

¹² *Gisborne District Council v McKendry* [2005] NZRMA 481

S42A Answers

RvV 30. Policy 4.14B. Page 38. Would it be useful to refer to district plans also?

Response – MMC:

Yes.

E. Ellison

Inanga Spawning Habitat

- EE 1. Response to question EE A.8(b) – In relation to the effect of flooding that causes an increase in the area of inanga spawning habitat, is there any intent from ECan to look at that aspect?**

Response from Dr Michael Greer of ECan and MMC:

At present ECan has no intention of trying to predict the extent of spawning habitat provided by flooding. Spawning habitat provided by flooding will be different during different size floods, and cannot be mapped with any certainty. Furthermore, flooding likely only facilitates a small percentage of spawning activity and has a low success rate as it relies on a similar magnitude flood in the following weeks. Consequently, protecting tidal areas will be sufficient to maintain and improve the availability of spawning habitat.

Cultural Landscapes

- EE 2. Page 39 of Response to s42A Questions – is there a cultural landscape mapping project?**

Response – MMC:

This is a mislabelling of a Ngāi Tahu project described in the Plan Change 1 hearings.

“Braided River” definition

- EE 3. What is the intent in the definition of braided river in relation to private land?**

Response – MMC:

The definition and rules are intended to capture private land as well.

For many rivers the bulk of land is administered by LINZ or CRC. There are higher proportions of private landowners on some rivers, primarily due to the mobile nature of the rivers and the historic surveying methods used.

DOC submissions

- EE 4. DOC in its submission mentions the use of mole drains in other regions.**

Response – MMC:

The use of mole drains in the Canterbury region is relatively uncommon and significantly lower than in other regions, such as Southland.

EE 5. DOC's submission indicates that mudfish/galaxias should have their own schedules as they share a similar threatened species status as inanga. How is this being dealt with?

Response from Dr Tim Davie of ECan and MMC:

Environment Canterbury's role is habitat protection. Inanga were included as it is possible to predict likely spawning habitat with a degree of accuracy. Environment Canterbury actively promotes mudfish habitat protection when it is identified but Environment Canterbury is not able to predict and map that habitat in the same way as inanga spawning habitat.

In addition, the DoC submission identified mudfish habitats for inclusion in Schedule 17, but does not appear to identify any additional policies or rules that relate to these additions to the Schedule.

D. Sheppard

Drinking Water

DS 1. Schedule 1 relates to Drinking Water protection. What is the related rule?

Response – MMC:

Drinking water protection arises in many rules throughout the LWRP where protecting against discharges in community drinking water protection zones, for example Rule 5.8.

DS 2. Is the Kaikoura DC submission point 481 addressed in the Section 42A report?

Response – MMC:

This is not specifically addressed in the s42A report.

Kaikoura DC sought protection of a number of categories of water take, through inclusion in the definition or rules relating to community water supplies. The reasoning given in paragraphs D.29 and D.30 of the s42A report apply to this submission point.

DS 3. The Oil Companies oppose the Kaikoura DC submissions on policy 4.16A in the further submissions (sub 524). However, in the summary of submissions it indicates the Oil Companies support the Kaikoura DC submissions. Please advise.

Response – MMC:

This is an error, and the Summary should read “oppose”.

Schedule 17

DS 4. With reference to the Christchurch City Council proposed amendments to Schedule 17. Would the CRC have authority to make amendments suggested by Dr Margetts?

Response – PM:

Christchurch City Council ("CCC") in their original submission on Plan Change 4, identified inconsistencies between the inanga spawning sites listed in Schedule 17, and those identified by the CCC as part of their survey work on inanga and trout spawning sites. The CCC submission seeks to amend Schedule 17 to ensure that all the inanga spawning sites within Christchurch and Banks Peninsula are correct and consistent.

CCC has identified Policy 4.86A and Policy 4.86B as the provisions they oppose. The relief sought is as follows:

If further investigations identify anomalies, amend Schedule 17 to ensure that all significant inanga sites within Christchurch and Banks Peninsula are identified correctly and consistently.

Dr Margetts has subsequently prepared evidence on behalf of CCC. She has suggested amending Schedule 17 in situations where there are multiple sites identified within one stretch of land. She used the example of the five sites listed in Schedule 17 associated with Avondale Road, submitting that this would more accurately be combined into one site given that spawning could occur anywhere within the upstream and downstream extents. Dr Margetts has also suggested adding an additional, separate layer to the maps of potential inanga spawning habitats to show where the site locations are.

The CCC's submission certainly satisfies the first limb of the two-stage test given that it relates directly to the inanga spawning sites. However, the requests now sought in Dr Margetts' evidence appear to significantly extend beyond the relief sought in CCC's original submission.

Applying the law as stated in *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 and *General Distributors v Waipa District Council* (2008) 15 ELRNZ 59, two questions must be asked. First, whether the amendments now sought by Dr Margetts were fairly and reasonably raised within CCC's original submission; and secondly, whether making the amendment now requested by Dr Margetts would result in a person being denied an opportunity to effectively engage in the development of Plan Change 4.

Counsel is unaware of any other submissions seeking the amendments that are now sought by CCC through Dr Margetts' evidence.

Whilst allowing these amendments may provide further protection to these important inanga sites, extending the reach of several sites and adding three further sites is arguably beyond the scope of relief requested in the CCC's submission. The various sites listed by Dr Margetts appear to be in very close proximity to residential homes. Adopting these sites would increase the size of the inanga spawning sites already identified by CCC and would also add three new sites to the Schedule.

Arguably, the original submission of the CCC did not contemplate this level of change, only stating that "there may be anomalies". Subsequent investigations have demonstrated that in fact there are several anomalies. Furthermore, the CCC's submission did not contemplate adding an extra layer to the maps of potential inanga spawning habitats to illustrate the site locations.

Given the proximity of the sites to residential dwellings and the lack of detail in the original CCC submission regarding the relief sought, there is a real risk that potentially affected persons could be deprived of the opportunity to engage in the plan change process. As such,

it is submitted that the changes requested by the CCC in evidence in relation to this issue, are beyond the scope of its primary submission.

DS 5. Freshwater species (refer Familton & Dunn evidence). The s42A recommends no, not 'on' plan change. Please briefly outline how case law applies to this submission point.

Response – PM:

Director General of Conservation's ("DOC") submission on Schedule 17 seeks the following amendments:

Add the threatened Canterbury mudfish (Neochanna burrowsius) from enclosed schedule 1 table 1 and map to schedule 17 as a threatened species deserving of inclusion on the schedule, and;

Add the other two threatened native fish species lowland longjaw galaxias (Galaxias cobitinis) and bignose galaxias (Galaxias macronasus) in table 2 and 3 from schedule 1 into Schedule 17.

In terms of managing freshwater species, Plan Change 4 is only concerned with inanga. The changes requested by DOC would require significant changes to Schedule 17, the maps, and possibly the definitions also. Change to this extent was not contemplated by Plan Change 4 or the section 32 report. The submission is not "on" Plan Change 4. Our reasoning is set out below.

The legal framework for assessing whether submissions on a plan change are within scope is contained in the Section 42A Report at paragraphs [1.140-1.161]. In summary, the court has endorsed a two stage approach to scope developed through *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 and *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02. Most recently, in *Well Smart Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 the Court outlined the test as follows:

Is the relief sought in the challenged submission incidental to, consequential upon or (perhaps) directly connected to the plan change (or variation)?

Have potential submitters been given fair and adequate notice of what is proposed in the submission or has their right to participate been removed?

In *Well Smart* the Court discussed the 2013 changes to section 32 of the RMA. It was considered that the amendments reinforced and expressly stated the need for a comparative analysis which is inherent in a section 32 evaluation.

The section 32 report for Plan Change 4 assesses the importance of the inanga whitebait fishery in New Zealand both culturally and commercially. The report refers to the Canterbury mudfish only in the context of policy 10.3.2 of the Canterbury Regional Policy Statement

2013. It does not undertake any further analysis of the species, or any other freshwater species which DOC sought to include in Schedule 17.

The DOC submission is not proposing an incidental or consequential further change to the notified plan change. Rather, the submission calls for the inclusion of three entirely new species in Schedule 17. These species were not contemplated by the plan change, or the section 32 analysis.

In Dr Dunn's evidence he acknowledges that the proposed additions to Schedule 17 could affect both public and privately owned land:

These additions to Schedule 17 were submitted to provide greater clarification of areas of particular aquatic biodiversity value, where activities may adversely affect threatened freshwater fish, both on public and privately owned / managed land.

Including the habitats of these additional species, which could foreseeably be different to inanga habitats, within Schedule 17 and the associated maps, could have repercussions for private land owners and users of public land where these habitats are found. There is a real risk that potentially affected persons would be deprived of the opportunity to engage in the plan change process should the DOC submissions be accepted.

Miscellaneous

DS 6. s42A report paragraph N.24 on page 157 – Looking at (6), what is source of words "the greywater huts" in that quotation? Could be a typo?

Response – MMC:

This is a typographical error. The words "the greywater huts," should not have been included.

DS 7. Rule 5.168 (3) and (4) – what happened to (3) and (4)?

Response – MMC:

This is an error in the numbering, nothing has been omitted.

DS 8. Rule 5.187(2) – says "discharge does not result in the concentration of contaminants". Can "the" be removed to give better effect?

Response – MMC:

Yes, the sentence reads without “the” and has been amended.

DS 9. Rule 5.187(2)(1) – “breaching the limits” intended to have the same meaning as “exceeding any limits”. Should it be replaced?

Response – MMC:

Yes.

Definition of Reticulated Stormwater System

DS 10. Mr England for the Selwyn DC (at para [27]) says that drains do form an important part of the drainage system. Only if he is wrong does the deletion of “drains” make sense. Please clarify.

Response – MMC:

On reflection, Mr England is correct, and “drains” should not be deleted from this definition of “reticulated stormwater system”. I note that “drainage system” is separately defined in Plan Change 4, and in my opinion, a stormwater drain does not form part of a “drainage system”.

Definition of Livestock exclusion - s42A L.21

DS 11. What is the RMA purpose of restricting Rule 5.68A to flood protection vegetation owned by CRC. Why is flood protection vegetation owned by anyone else treated differently?

Response from Jolene Irvine of ECan and MMC:

Flood Protection Vegetation is not specifically defined, but the term is also used for the definition of ‘bed’. In that definition it refers back to the Flood Protection and Drainage Bylaw (2013) where all the Flood Protection Vegetation is mapped. The bylaw also defines Flood Protection Vegetation as:

“Means all trees and shrubs owned or controlled by Council for flood protection purposes occurring between the “Flood protection vegetation” lines on the Schedule 1 maps and any other specific areas of vegetation plantings for flood protection outside these lines that are identified in Schedule 1. Where only one Flood protection vegetation line is shown, the area of vegetation to be managed for flood protection will be the area between the line and the adjacent edge of the active channel. Farm shelter belts are excluded from this definition.”

Environment Canterbury does not have records of other people's flood protection vegetation. In addition, vegetation doesn't need to be specifically owned or managed as flood protection vegetation to serve a flood and erosion benefit. Some vegetation is actively planted and obviously provides flood protection, other areas are rank growth of willows and other large trees which can still be very valuable for flood protection, other areas are just rank gorse, broom and scrub, which can provide some flood protection.

Overall, the use of Environment Canterbury's flood protection vegetation provides the required certainty as it is known and mapped.

Definition of Vegetation Clearance - Exclusion (b)

DS 12. Is there any legal policy or practical impediment in adding "but only to the extent necessary for that purpose"?

Response – PM:

The definition of "vegetation clearance" provides for a number of exclusions. The proposed amendment adds clarity to one of the exclusions. On further assessment, it is submitted that the proposed addition is appropriate and does not add uncertainty or ambiguity to the definition such that a consent authority would be required to make a subjective value judgment in deciding whether an activity falls within the rule.

Rule 5.167 is relevant. It regulates vegetation clearance in riparian areas. Subject to a number of conditions on the area of clearance, the type of land involved and the discharge of sediment, the use of land for vegetation clearance is a permitted activity.

No resource consent is required for a permitted activity if the activity complies with any standards, terms or conditions specified in the plan.¹³ There are three requirements for a permitted activity rule. It must:¹⁴

- a. be comprehensible to a reasonably informed, but not necessarily expert, person;
- b. not reserve to a council the discretion to decide by subjective formulation whether a proposed activity is permitted or not; and
- c. be sufficiently certainty to be capable of objective ascertainment.

There is a degree of flexibility in applying these requirements as some element of judgment is usually involved in applying descriptions to factual situations.¹⁵ The question to ask is whether the description has some measure of certainty?¹⁶ For example, it has been held that the words "significant adverse effect" and "best practicable option" in permitted activity

¹³ RMA, s 87A(1).

¹⁴ *Carter Holt Harvey Ltd v Waikato Regional Council* EnvC A123-08, 6 November 2008 at [117].

¹⁵ *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362 (HC).

¹⁶ *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362 (HC).

rules are not automatically unlawful because some degree of evaluation is involved. In the context of those cases, those phrases were found to have sufficient meaning attributed to them by the RMA. Therefore, they do not invite a subject evaluation on the council's part.¹⁷

In another case, the words "incidental and secondary" in a permitted activity rule were seen to call for an exercise of judgment involving a question of degree. However, that judgment comes within the flexibility which the Court regarded as permissible.¹⁸

The amendment suggested here would require Council to evaluate whether the clearance is only to the extent necessary for the purposes set out in exclusion (b). If the clearance goes beyond the extent necessary, the activity is vegetation clearance and will need to comply with the conditions in r 5.167 in order to be a permitted activity.

Applying the three requirements for a permitted activity, it is submitted that the rule satisfies the first requirement. It is comprehensible. The next two requirements interlink.

The term "necessary" is capable of objective ascertainment.¹⁹ In the context of the Canterbury Earthquake Recovery Act 2012, the Court of Appeal preferred the ordinary meaning of "necessary" to be "needed" or "required in the circumstances".²⁰ In the context of vegetation clearance, it is submitted that that word is capable of being objectively ascertained in the context of determining the extent of clearance needed.

Braided Rivers - s42A L.22 Rule 5.68A

DS 13. Refer to intent of avoiding "impediments" to natural movement of braided rivers. Is there a difference between the evidence of Mr Begg from Erralyn Farm and Mr Keeling from the Waitaki Irrigators Collective? Do the meandering movements result from flood events?

Response – MMC:

As I understand it, the evidence from Mr Begg and Mr Keeling both identify that bank erosion primarily occurs in high flow events. This aligns with the common understanding that major channel movements typically result from freshes and floods in braided rivers.

Their evidence is helpful in pointing out that there is a clear tension between enabling a braided river to have natural levels of channel movement in what is known as the 'braid

¹⁷ *Friends of Pelorus Estuary Inc v Marlborough District Council* at [100]-[102].

¹⁸ *Bull v Marlborough District Council* C065/03, 23 May 2003 (EnvC) at [17]. The definition of "home occupation": "an occupation business, trade, craft or profession the primary purpose of which is to derive income and is:

(a) Performed by a member of the household residing in the dwelling unit or accessory building in which it is carried on; and

(b) Is incidental and secondary to the use of the dwelling unit for residential purposes."

Home occupation is a permitted activity.

¹⁹ *Canterbury Regional Council v Independent Fisheries Ltd* [2012] NZCA 601, [2013] 2 NZLR 57.

²⁰ *Canterbury Regional Council v Independent Fisheries Ltd* [2012] NZCA 601, [2013] 2 NZLR 57 at [18],[19].

plain', and the desire to establish high value activities, on generally privately owned land, adjacent to these rivers.

DS 14. Can we identify provisions in the RMA, superior instruments and/or provisions in LWRP for avoiding impediments to natural meandering movement in rivers?

Is there a tension/discord between;

- a) protecting riparian land from erosion for use and development of land, and**
- b) avoiding impediments and natural movements of river?**

DS 15. Do any provisions in the RMA, superior instruments and/or provisions in LWRP apply to manage or resolve that tension?

Response – PM:

It is a matter of national importance under the RMA to preserve the natural character of rivers and their margins.²¹ This is reflected in the Canterbury Regional Policy Statement ("RPS") that provides policies to preserve the natural character of rivers. However, the policy statement recognises that some river modification may be necessary in order to make water available for irrigation, hydro-electricity and other activities.

The Canterbury Water Management Strategy sets a number of targets in relation to the improvement of the natural character of braided rivers. These include restrictions on new dams on major alpine braided rivers. The Land and Water Regional Plan imposes rules to protect riparian margins from vegetation clearance and earthworks, and to exclude stock from river beds and banks.

There is a tension between allowing braided rivers to naturally flow and using riparian land. However, the stock exclusion, vegetation clearance and earthwork amendments in PC4 reflect the push towards greater protection of the natural character of braided rivers. Likewise, restrictions on new dams in certain rivers slow the increase of impediments in braided rivers.

Set out below are specific provisions of some of the relevant statutory instruments in relation to this question.

RMA

Preserving the natural character of rivers and their margins is a matter of national significance under the RMA.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and

²¹ RMA, s 6(a).

physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

However, whilst the use of dams can adversely affect the natural character of rivers, the benefits of hydro-electric energy is recognised. The relevant parts of s 7 provide:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

...

(i) the effects of climate change:

(j) the benefits to be derived from the use and development of renewable energy.

As between ss 6 and 7, the strong direction is given by s 6 through the words "shall recognise and provide for" as opposed to s 7 that requires decision-makers to "have particular regard to" the specified matters.²² However, ultimately it is an overall broad judgment of whether a proposal promotes the sustainable management of natural and physical resources set out in s 5.²³

The RMA creates a hierarchy of planning documents, each intended to give effect to s 5 and part 2. In *giving effect to* a higher planning document, lower order documents must implement higher planning documents and not resort to a part 2 overall judgment analysis.²⁴

In the following section I will set out the relevant policy documents, in order of hierarchy.

Canterbury Regional Policy Statement

Section 6(a) of the RMA is reflected in the RPS.

The following objectives are relevant:

Objective 7.2.1 – Sustainable management of fresh water

The region's fresh water resources are sustainably managed to enable people and communities to provide for their economic and social wellbeing through abstracting and/or using water for irrigation, hydro-electricity generation and other economic

²² *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [26].

²³ *North Shore City Council v Auckland Regional Council* (1996) 2 ELRNZ 305 (EnvC) at 345–347.

²⁴ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [152]-[154].

activities, and for recreational and amenity values, and any economic and social activities associated with those values, providing:

(1) the life-supporting capacity ecosystem processes, and indigenous species and their associated freshwater ecosystems and mauri of the fresh water is safe-guarded;

(2) the natural character values of wetlands, lakes and rivers and their margins are preserved and these areas are protected from inappropriate subdivision, use and development and where appropriate restored or enhanced; and

(3) any actual or reasonably foreseeable requirements for community and stockwater supplies and customary uses, are provided for.

Objective 7.2.3 - Protection of intrinsic value of waterbodies and their riparian zones

The overall quality of freshwater in the region is maintained or improved, and the life supporting capacity, ecosystem processes and indigenous species and their associated fresh water ecosystems are safeguarded.

A number of policies support these objectives.²⁵ Policy 7.3.1 provides:

Policy 7.3.1 – Adverse effects of activities on the natural character of fresh water

To identify the natural character values of fresh water bodies and their margins in the region and to:

(1) preserve natural character values where there is a high state of natural character;

(2) maintain natural character values where they are modified but highly valued; and

(3) improve natural character values where they have been degraded to unacceptable levels;

unless modification of the natural character values of a fresh water body is provided for as part of an integrated solution to water management in a catchment in accordance with Policy 7.3.9, which addresses remedying and mitigating adverse effects on the environment and its natural character values.

This policy recognises the need to preserve and maintain the natural character values of fresh water bodies and their margins. However the policy also recognises that modification of natural character values through large-scale abstraction, diversion, damming or storage may be necessary, where this modification is part of an integrated solution to water management and where adverse effects on natural character values are remedied or mitigated. A broad overall judgment is to be made on a proposal, "considering but not overridden by" the obligation under s 6(a) of the RMA.²⁶ Policy 7.3.9 provides:

²⁵ See policies 7.3.1, 7.3.2, 7.3.3.

²⁶ See explanation under Policy 7.3.1.

Policy 7.3.9 – Integrated solutions to fresh water management

To require integrated solutions to the management of fresh water by developing and implementing comprehensive management plans which address the policies of this Statement including addressing all the relevant matters set out in Appendix 2.

This policy allows for parallel processes in water management. That is, the use of water for economic activities must proceed in tandem with measures to improve efficiency and to protect, restore or enhance the natural character of water bodies.²⁷

Policy 7.3.2 specifically addresses the natural character of braided rivers and lakes. It provides:

Policy 7.3.2 – Natural character of braided rivers and lakes

To maintain the natural character of braided rivers, and of natural lakes by: (1) subject to clause (3), by prohibiting the damming of each of the main-stem of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata and Waitaki rivers;

(2) in respect of every other braided river in the region; by ensuring any damming of a braided river does not reduce the braided character of the main stem;

(3) in respect of every natural lake by limiting any use of the lake for water storage so its level does not exceed or fall below the upper or lower levels of its natural operating range;

(4) clauses 1 – 3 do not restrict continued operation, maintenance or upgrading of any water storage scheme, irrigation scheme or hydro-electricity generation scheme for which lawful consent was in effect when this regional policy statement becomes operative, subject to the activity:

a) remaining a similar scale, intensity and character; and

b) not resulting in any additional significant adverse effect on the natural character of the river or lake.

That policy prohibits the damming of specified rivers but does not affect braided rivers that are already dammed provided that the activity remains similar in scale, intensity and character. The policy also does not prohibit damming of braided rivers (that are not listed), provided the braided character of the main stem is not compromised. New dams will be assessed through the consenting process to ensure they achieve the purpose of the RMA.²⁸

Policy 7.3.3 seeks to improve and restore water bodies and their riparian zones. It provides:

Policy 7.3.3 – Enhancing fresh water environments and biodiversity

²⁷ See Objective 7.2.2 in RPS and explanation to Policy 7.3.9.

²⁸ See explanation under Policy 7.3.2.

To promote, and where appropriate require the protection, restoration and improvement of lakes, rivers, wetlands and their riparian zones and associated Ngāi Tahu values, and to:

(1) identify and protect areas of significant indigenous vegetation and significant habitats, sites of significant cultural value, wetlands, lakes and lagoons/hapua, and other outstanding water bodies; and

(2) require the maintenance and promote the enhancement of indigenous biodiversity, inland basin ecosystems and riparian zones; and

(3) promote, facilitate or undertake pest control.

One of the methods is to "manage land uses and vegetation removal within riparian margins".

There are also policies that restrict activities in rivers and their riparian zones:

Policy 10.3.1 – Activities in river and lake beds and their riparian zones

To provide for activities in river and lake beds and their riparian zones, including the planting and removal of vegetation and the removal of bed material, while:

(1) recognising the implications of the activity on the whole catchment;

*(2) ensuring that significant bed and riparian zone values are maintained or enhanced;
or*

(3) avoiding significant adverse effects on the values of those beds and their riparian zones, unless they are necessary for the maintenance, operation, upgrade, and repair of essential structures, or for the prevention of losses from floods, in which case significant adverse effects should be mitigated or remedied.

This policy recognises that activities such as gravel excavation will need to be controlled through regional plans and that a whole catchment approach to the management of river beds and riparian zones is required.²⁹

Policy 10.3.2 – Protection and enhancement of areas of river and lake beds and their riparian zones

To preserve the natural character of river and lake beds and their margins and protect them from inappropriate subdivision, use and development, and where appropriate to maintain and/or enhance areas of river and lake beds and their margins and riparian zones where:

(1) they exist in a degraded state and enhancement will achieve long-term improvement in those values;

²⁹

Explanation to policy 10.3.1.

(2) they have ecological values for which protection and/ or enhancement will assist in the establishment or re-establishment of indigenous biodiversity or ecosystems, particularly for ecosystems that are threatened or unrepresented in protected areas;

(3) they have existing significant trout or salmon habitat;

(4) maintenance and/or enhancement will improve or establish connections between habitats and create corridors for indigenous species and trout and salmon and their movement between areas;

(5) riparian zones provide a buffer from activities that may adversely affect bed values;

(6) opportunities exist to create habitat corridors for plants and animals; or

(7) riparian zones provide spawning or other significant habitats for at risk or threatened species, such as inanga or Canterbury mudfish.

This policy again seeks to protect the natural character of rivers.

Land and Water Regional Plan

The LWRP gives effect to the Canterbury Regional Policy Statement.³⁰ Objective 3.19 provides that braided rivers and their margins are to be protected. However, under objective 3.20, gravel extraction is allowed provided that the natural character of braided rivers is maintained.

In high naturalness water bodies identified in the LWRP, the damming, diverting or taking of water is restricted to individual or community stock or drinking-water and water for the operation and maintenance of existing infrastructure.³¹

Rules 5.167 and 5.168 in the LWRP have been drafted to ensure that the natural character of braided rivers is adequately protected. These rules restrict vegetation clearance and earthworks in the riparian zone, thereby reducing "channel training". The intention behind the changes to these provisions is to actively manage and discourage encroachment into the riparian areas.³²

The stock exclusion rules that are the subject of PC4 are also designed to protect the natural character of rivers and river banks. Proposed r 5.68A provides greater certainty regarding the spatial extent of the bed of a braided river.

Canterbury Water Management Strategy

The Strategy includes a vision and principles, to which ECan must have particular regard. Included as a 'supporting principle' is (particular reference to the second bullet point):

³⁰ RMA, s 67(3)(c).

³¹ Policy 4.6.

³² See s 42A report including Errata at H2.

The natural character (mauri) of Canterbury's rivers, streams, lakes, groundwater and wetlands is preserved and enhanced:

- *natural flow regimes of rivers are maintained and, where they have been adversely affected by takes, enhanced where possible*
- *the dynamic processes of Canterbury's braided rivers define their character and are protected*
- *environmental flow regimes are established for every waterway where abstraction occurs*
- *that restoration of natural character and biodiversity, is a priority for degraded waterways, particularly lowland streams and lowland catchments*
- *the interdependence of waterways and coastal ecosystems is recognised.*

The Strategy also focusses on delivering a set of quantified outcome targets in nine specific areas. One of which is the natural character of braided rivers.

The targets for braided rivers support the higher level policy documents. From 2010, no new dams are to be constructed on the mainstem of major alpine braided rivers. Another target from 2010 is to maintain active floodplains, flow variability and sediment movement. The provisions in the LWRP, described above, support these targets.