

In the High Court of New Zealand
Christchurch Registry

CIV-

Under	the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010
In the matter of	an appeal under section 66 of the Act in relation to proposed Plan Change 5 to the Canterbury Land and Water Regional Plan
Between	Ravensdown Limited A duly incorporated company having its registered officer at 292 Main South Road, Christchurch
And	Canterbury Regional Council A Local Authority constituted under the Local Government Act 2002

Notice of appeal

21 July 2017

Appellant's solicitors:

Stephen Christensen | Sarah Eveleigh
Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Mail: YX10107 Dunedin
P + 64 3 477 3973 | f + 64 3 477 3184
stephen.christensen@al.nz | sarah.eveleigh@al.nz

**anderson
lloyd.**

- 1 Take notice that Ravensdown Limited (**the Appellant**) hereby appeals to the High Court against the decision of the Canterbury Regional Council (**the Council**) on proposed Plan Change 5 – Nutrient Management and Waitaki (**PC5**) to the Canterbury Land and Water Regional Plan (**CLWRP**), which was received by the Appellant on 24 June 2017, on the grounds that it is erroneous in law.
- 2 The Appellant made submissions and further submissions on PC5.

Decision appealed

- 3 The Appellant appeals against those parts of the Council's decision relating to:
 - (a) The fertiliser modelling methodologies, formulae and OVERSEER® settings (collectively, the **fertiliser modelling proxy**) contained in Schedule 28 – Good Management Practice Modelling Rules.

The fertiliser modelling proxy is used by the Farm Portal, a web based tool that is intended to estimate the nutrient losses from a farming activity operating under Good Management Practice (the **Baseline GMP Loss Rate** and **GMP Loss Rate**). The Farm Portal applies modelling proxies that purport to correlate to Good Management Practice to uploaded OVERSEER® nutrient budgets. GMP Loss Rates will be a relevant consideration when determining an application for consent. From 1 July 2020, nutrient losses exceeding the Baseline GMP Loss Rate will, dependant on the nutrient allocation zone, require consent or be classified as a prohibited activity.

Technical flaws in the Schedule 28 fertiliser modelling proxy

Errors of law

- 4 The Appellant alleges that the Council made the following errors of law:
 - (a) The Council erred in reaching a conclusion on the appropriateness of the fertiliser modelling proxy without evidence;
 - (b) The Council erred in coming to a conclusion on the appropriateness of the fertiliser modelling proxy which, on the evidence, it could not have reasonably come;
 - (c) The Council failed to have regard to evidence regarding technical flaws in the fertiliser modelling proxy; and
 - (d) The Council failed to give effect to its own reasoning and made a decision that is internally inconsistent with respect to adoption of Good Management

Practices, in particular the requirement that all sources of nutrients are taken into account.

Questions of law

- 5 The Appellant alleges that the above errors of law give rise to the following questions of law:
- (a) Did the Council err in reaching a conclusion on the appropriateness of the fertiliser modelling proxy without evidence?
 - (b) Did the Council err in coming to conclusions on the appropriateness of the fertiliser modelling proxy which, on the evidence, it could not have reasonably come?
 - (c) Did the Council fail to have regard to evidence regarding technical flaws in the fertiliser modelling proxy?
 - (d) Did the Council fail to give effect to its own reasoning and was its decision internally inconsistent with respect to adoption of Good Management Practices, in particular the requirement that all sources of nutrients are taken into account?

Grounds of appeal

- 6 The Appellant provided evidence regarding technical flaws in the fertiliser modelling proxy, in particular:
- (a) that supplementary feed was not accounted for;
 - (b) that the pasture nitrogen requirements are derived from an inaccurate linear relationship based on pasture production, which means that under Good Management Practice no nitrogen is applied at pasture production less than approximately 10,000kg dry matter per hectare;
 - (c) that there are a number of technical flaws in the crop nitrogen proxy, including a high level of uncertainty in most of the parameters estimated by OVERSEER®, and an arbitrary minimum nitrogen application of 46kg nitrogen per hectare; and
 - (d) that target soil test levels used in the pastoral phosphorus fertiliser proxy need to be aligned with the accepted agronomic target ranges.
- 7 The technical flaws were not resolved by evidence for the Council.
- 8 The Council's decision records that one of the primary outcomes of PC5 was the adoption of Good Management Practices in a consistent manner across the

region. Good Management Practices include a requirement to manage the amount and timing of fertiliser inputs taking into account all sources of nutrients.

- 9 The Council's decision does not address the technical flaws raised. The modelling proxies do not account for the contribution of supplementary feed to nitrogen losses.

Dairy NZ alternative fertiliser proxy – N surplus

Errors of law

- 10 The Appellant alleges that the Council made the following errors of law:
- (a) The Council erred in reaching a conclusion on implementation of the Dairy NZ fertiliser modelling proxy to cropping systems without evidence; and
 - (b) The Council erred in reaching a conclusion on implementation of the Dairy NZ fertiliser modelling proxy to cropping systems which, on the evidence, it could not have reasonably come.

Questions of law

- 11 The Appellant alleges that the above errors of law give rise to the following questions of law:
- (a) Did the Council err in reaching a conclusion on implementation of the Dairy NZ fertiliser modelling proxy to cropping systems without evidence?
 - (b) Did the Council err in reaching a conclusion on implementation of the Dairy NZ fertiliser modelling proxy to cropping systems which, on the evidence, it could not have reasonably come?

Grounds of appeal

- 12 The Appellant supported the alternative fertiliser proxy based on an N surplus model advanced by submitter Dairy NZ.
- 13 The Hearing Commissioners directed Council officers to undertake and report on the outcome of testing of the Dairy NZ fertiliser modelling proxy.
- 14 The report prepared notes the tight deadlines for the analysis and that some responses from Dairy NZ to clarify implementation of the proxy were received after the required coding had been completed. In particular, this resulted in cropping blocks being treated in the same way as pastoral blocks. The report states that it was not possible to implement the modification in the time available.

- 15 The Council's decision records the conclusion that implementing the Dairy NZ fertiliser modelling proxy would be problematic for modelling some farm systems including cropping systems.

Section 32 evaluation

Errors of law

- 16 The Appellant alleges that the Council made the following error of law:
- (a) The Council failed to have regard to the costs and benefits of the modelling proxies; and
 - (b) The Council failed to prepare and have particular regard to an evaluation report prepared in accordance with s32, as required by s66 of the Resource Management Act 1991 (**RMA**).

Questions of law

- 17 The Appellant alleges that the above error of law gives rise to the following question of law:
- (a) Did the Council fail to have particular regard to the costs and benefits of the modelling proxies?
 - (b) Did the Council fail to prepare and have particular regard to an evaluation report prepared in accordance with s32, as required by s66 of the RMA?

Grounds of appeal

- 18 Section 32 provides that an evaluation report required under the RMA must examine whether the provisions of the proposal are the most appropriate way to achieve the objectives by assessing the efficiency and effectiveness of the provisions in achieving the objectives (s32(1)(b)(ii)). That assessment must identify the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions (s32(2)).
- 19 Section 66(1) provides that a Council must change a regional plan in accordance with: (d) its obligation to prepare an evaluation report in accordance with s32; and (e) its obligation to have particular regard to an evaluation report prepared in accordance with s32.
- 20 The s32 report provided noted that "the costs of implementing GMP are difficult to quantify because, until auditing farms commences, it is not known how many farms in the region are already operating below or at GMP or better."

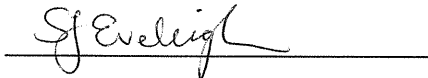
21 The Council's decision does not have regard to the costs associated with implementing modelling proxies, including an assessment of the extent to which farms which would fail to achieve GMP Loss Rates, the costs of modification to farming systems that would be required to achieve the GMP Loss Rates, and consenting costs that would arise as a result of application of the flawed fertiliser modelling proxy.

Relief

22 The Appellant seeks:

- (a) That the appeal be allowed.
- (b) Relief as available under High Court Rule 20.19.
- (c) Costs

Dated this 21st day of July 2017



Stephen Christensen / Sarah Eveleigh
Counsel for the Appellant

This document is filed by **STEPHEN WILLIAM CHRISTENSEN**, Solicitor for the Appellant, of the firm Anderson Lloyd whose address for service is at the offices of Anderson Lloyd, Level 10, Otago House, 477 Moray Place, Dunedin 9016. Documents may be:

- (a) Posted to the Solicitor at Anderson Lloyd, Private Bag 1959, Dunedin 9054; or
- (b) Transmitted to the Solicitor by email to stephen.christensen@al.nz.