

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**UNDER THE** Resource Management Act 1991

**AND**

**IN THE MATTER** of application CRC190445 by the Christchurch City Council for a comprehensive resource consent to discharge stormwater from within the Christchurch City area and Banks Peninsula settlements on or into land, into water and into coastal environments.

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**SUBMISSIONS IN REPLY FOR THE CHRISTCHURCH CITY COUNCIL**

**8 APRIL 2019**

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## **MAY IT PLEASE THE COMMISSIONERS:**

### **INTRODUCTION**

#### **Topics Addressed**

1. These submissions by counsel for the Christchurch City Council (Council) describe and assess changes to the consent conditions proposed by the Council since the Commissioners adjourned the hearing on 16 November and reply to relevant matters raised by submitters and in questions by the Commissioners during the hearing.
2. These submissions also address the matters that have arisen from the Commissioners' questions in Minutes 4 and 5 and from the evidence and recommendations in the two joint statements by the water quantity experts.
3. The Council is lodging with these submissions an amended Environmental Monitoring Programme (EMP). There have been few changes to the EMP since the November hearing and they are all agreed between Dr Margetts and the Canterbury Regional Council (CRC) experts – or, in the case of changes made following receipt of the responses from the submitters and since Dr Margetts took maternity leave, in reliance on the expertise of the CRC water quality experts and Dr Margetts' replacement at the Council.
4. Also lodged with these submissions is an amended set of proposed conditions. No issues of scope arise. All are within scope of the application.
5. References to condition numbers in these submissions are to the numbers in the *clean version of the consent conditions, along with reference to the track change version given in parentheses.*
6. The changes that the Council proposes to the draft conditions are to improve clarity or to address issues raised by submitters, in the joint experts' statements, and by Commissioners.
7. All of the Council's expert witnesses have reviewed these proposed changes to the conditions. All of the Council's experts, in their roles as neutral independent professional advisors, support the conditions here proposed by the Council<sup>1</sup>. Ms West has affirmed that her planning assessment is that the grant of consent with the conditions here proposed is consistent with the matters requiring assessment under s104 of the Act, is consistent with the objectives and policies of the relevant planning instruments and achieves the purpose of the Act.
8. Most of the matters that arose at the hearing were anticipated and covered in the application, opening submissions and the evidence for the Council. For this reason, this reply does not seek to revisit all matters raised by submitters about the potential adverse effects of the proposal. For the sake of completeness, I

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<sup>1</sup> There are two limited exceptions to this. First, Dr Margetts is now on maternity leave. She has not seen the proposed changes to the consent conditions. She approved the final form of the EMP before going on leave. Secondly, the minor difference of opinion between Mr Norton and Mr Tipper that was discussed in the Council's evidence and opening submissions. The Council's position is that it supports and adopts Mr Norton's opinion.

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record that to the extent that the Council does not respond to all of the various assertions or concerns raised by submitters, this is not an acceptance of them.

9. The following matters were addressed in detail in the Council's opening submissions and are not repeated in detail here:
  - 9.1. Collaboration between the councils;
  - 9.2. Adaptive management;
  - 9.3. Identification of the existing environment;
  - 9.4. Section 104D;
  - 9.5. Consistency with the objectives and policies of the relevant instruments;
  - 9.6. Sections 105 and 107 of the Act;
  - 9.7. Duration.
10. These closing submissions should be read in conjunction with those opening submissions.
11. These submissions:
  - 11.1. Summarise the context relevant to the Council's position in relation to the application and the proposed conditions;
  - 11.2. Explain the reasons for the key changes between the final conditions now filed and those lodged at the start of the hearing on 5 November 2018;
  - 11.3. Describe the key points raised in the responses filed by submitters in February and March and the position of the Council on each of them;
  - 11.4. Explain the changes to the conditions proposed by the Council arising from the joint statements of the water quantity experts;
  - 11.5. Address specific queries that were raised by the Commissioners either before they adjourned the hearing on 16 November or in Minutes 4 and 5;
  - 11.6. Make concluding comments in relation to duration.
12. Legal considerations that arise are addressed as they arise in relation to those topics.

### **Common ground on groundwater effects**

13. There are no evidential disputes between experts on effects on groundwater. Mr Potts' evidence of 20 February 2019 implied a connection between stormwater discharge into the Styx River and high groundwater; however, the experts' joint statement dated 15 March 2019 clarifies their joint view that there is no connection. The groundwater issues with regard to the disposal of stormwater to ground are relatively straightforward. The experts for the Council and the CRC are in agreement. The proposed consent conditions allow stormwater to be managed in a manner appropriate for the localised natural ground conditions, with

safeguards in place to protect water supplies from contamination – such as the separation distances between infiltration systems and wells<sup>2</sup>.

### **Common ground on water quality effects**

14. Aside from live issues regarding the management of industrial high risk sites, and regarding coverage under the consent for sites that currently have their own consents from the CRC, there are no live issues between experts in relation to water quality effects. The EMP and the water quality effects conditions now proposed by the Council are agreed to by Dr Margetts for the Council, and Ms Stevenson and Dr Bolton-Ritchie for the CRC.

### **Principal remaining issues**

15. It is submitted that the principal remaining issues between the Council and some submitters (but not between the Council and the CRC reporting officers) are:
  - 15.1. Water quantity effects in the Brooklands area, including management of the Styx River flooding effects around Earham St;
  - 15.2. Management of industrial sites that may, or do, pose an unacceptably high risk of adverse effects on water quality – determining what is unacceptable, auditing them, and excluding them from coverage under this consent.

### **The water quantity joint experts' statements**

#### *The first joint statement*

16. The first joint statement dated 5 February 2019 answered questions raised by Commissioners in their Minutes 4 (21 Nov 2018) and 5 (29 Nov 2018).
17. The first question addressed was the choice and application of baseline years for assessing changes in modelled water levels. The joint statement provided detailed information on a catchment by catchment basis, mostly relating to the historic development of Stormwater Management Plans (SMPs) and the modelling undertaken during such investigations. The experts stated “*targets should be set within the SMP process for the catchment according to the peculiarities of the catchment concerned and the specific issues to be managed*”.
18. The second question addressed was the development of flow volume targets (as distinct from level targets). These had not been previously investigated. The experts agreed that it is not possible to set those targets without further investigations and modelling. The Council now proposes Schedule 2(s) (track change version condition 6(s)) that this be investigated as part of SMP development.
19. The third issue questioned the assumptions in the model and the raised questions about the changes in the Styx River in recent years. The joint experts' response to this involved further modelling to test the effect of a high weed status in the river. The modelling showed that a high weed condition would increase the water levels beyond the Schedule 10 limits (Schedule 7 track change version) proposed in the conditions. The joint experts considered at the time of preparing that first

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<sup>2</sup> Condition 32 clean version.  
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joint statement that the consequences of such increases were minor to the extent that residential floors were not flooded by the water levels in the river channel. They considered that it was a matter that required further research to find better ways to manage weed as it seemed to be an issue that was becoming more problematic. Schedule 4(r) – (x) have been proposed to address this matter.

20. Mr Harrington subsequently identified that the Rodrigues property was flooded above floor level in the modelling scenario which included 0.5m sea level rise and he prepared draft evidence to explain this matter. This was then addressed in the second joint statement discussed below.
21. The fourth issue concerned the need for targets to be set for frequent events such as a five year event and for additional modelled reporting locations. The experts agreed in the joint statement that in principle SMP development is the appropriate place to investigate this. The Council proposes a consent condition (Schedule 2 (s) in the clean version) to address this.
22. In the case of the Styx catchment some limited modelling information is available regarding a five year event upstream of the tidally affected areas. That information indicates a minor reduction in water level as a result of the stormwater volume mitigation in the upstream urbanised areas. This is described in the second Joint Statement.
23. The fifth question addressed in the first joint statement concerned the effect of filling in the Earlham St area. The experts agreed that LiDAR imagery indicated that filling had occurred which would likely have impeded drainage in the Earlham St area. This matter was further discussed in the second joint statement. The Council has an enforcement investigation underway with regard to that filling.
24. The sixth issue discussed in the first joint statement concerned the reporting frequency of modelling results and how to address un-modelled catchments. The experts agreed that a five year reporting of modelled catchments was acceptable and where catchments are un-modelled then appropriate targets should be set for individual facilities.

#### *Second Joint Statement*

25. The second joint statement dated 15 March 2019 principally sought to clarify matters relating to the anticipated flooding in the Earlham St area of Brooklands. It records areas of agreement relating to the causes and depths of flooding and remedies to this flooding. This includes the effect of fill and sea level rise on the residents and the effects of weed and urbanisation in the Styx River channel.
26. The second joint statement noted in paragraph 4 that the issue of flooding at the Rodrigues property in Earlham St *"is predominantly a local drainage issue and is not directly related to the stormwater effects of urbanisation being addressed in this CRC190445 application"*. As noted above, the Council is investigating the lawfulness of the fill.
27. The second joint statement also noted (paragraph 18) that the high weed scenario made a very marginal increase (20mm) in flooding at the Rodrigues property. Modelled flooding at this site was principally due to the effects of 0.5m sea level rise.

28. The Council has accepted the recommendations of the experts in both joint statements. The Council offers a condition under the Augier principle which will prioritise weed harvesting in the interim subject to the results of a wider investigation of the management of weed in the river<sup>3</sup>.

### **Enclosures**

29. Filed with these closing submissions are:

29.1. A track change version of the Environmental Monitoring Programme;

29.2. A “clean” version of the Environmental Monitoring Programme;

29.3. A table of the proposed consent conditions that shows:

Column 1 – the conditions sought in the application with track changes recording the changes sought by the Council at the start of the hearing on 5 November 2018;

Column 2 – the Council’s draft proposed conditions shared with the other parties on 8 February 2019, with track changes showing the differences between those and the 5 November draft;

Column 3 – the final version of the conditions proposed by the Council, with track changes showing the differences between these and the draft that was distributed to the other parties on 8 February 2019<sup>4</sup>.

29.4. A “clean” version of the Council’s final proposed conditions;

29.5. A letter from the CRC dated 5 April 2019 recording the CRC reporting officers’ support for the conditions now proposed by the applicant, for the 25 year consent duration.

### **RECAP ON CONTEXT**

30. It is respectfully submitted that the broad context of this application is a crucially significant consideration when assessing the conditions proposed by the Council. Key aspects of that context are here highlighted again.
31. The Council has a statutory obligation to provide a stormwater discharge service.
32. The service is needed due to the natural process of rain falling.
33. The urban areas of Christchurch are growing.
34. Both rain and growth will continue to happen.

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<sup>3</sup> Condition 26 clean version.

<sup>4</sup> There has not been attention given to condition numbering and cross-referencing in that version. That detail is tidied up in the “clean” version.

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35. Integrated stormwater management must be comprehensively planned in advance of changes in land use.
36. Urbanisation increases the rate and volume of stormwater quantity and the concentration and load of contaminants but the Council is committed to improving stormwater discharge quality and mitigating flooding (which has been critical in reaching agreement with Ngā Runanga).
37. Much of the network is already in place in the existing city and Banks Peninsula settlements.
38. The Council had started down a track of seeking catchment consents for the Christchurch urban area and has them for the South-West and the Styx areas. The Styx consent commenced in 2013. Both are for 35 year durations. Then the CRC and the Council decided that this ought to be managed as a single comprehensive consent rather than separate consents for each catchment area.
39. The application is not for a new activity. The stormwater network, and the Council's obligation to maintain and expand it as the community grows, already exists. The application consolidates existing resource consents into a single resource consent and introduces opportunities for retrofitting mitigation of existing development where appropriate.
40. The existing state of the waterways - with the effects of the existing discharges into them, surrounded by existing urbanisation, affected by 150 years of urbanisation - is the receiving environment against which the effects of this application are to be assessed.
41. This consent cannot control the many activities impacting on water quality that are outside the Council's control, including: runoff from loess covered hillsides; nutrients in groundwater; existing contaminants in stream-bed sediments; dogs/birds and airborne contaminants; cars; existing roofs; and other direct discharges that will be controlled by the CRC.
42. A stormwater discharge consent cannot on its own achieve holistic aims for improvement of urban waterways, whether that be swimmable rivers or any other objective. That requires societal change involving individuals changing their behaviours, other local government actions, other central government actions, and other economic, regulatory, or societal drivers. It would be wrong, in my submission, to judge this application against a test of the degree to which it improved freshwater quality.
43. Correlating discharges from stormwater networks to waterway ecological health is highly complex, site specific and highly variable<sup>5</sup>. The proposed conditions include detailed research and investigations, monitoring, reporting and feedback and response loops as part of the proposed adaptive management approach.
44. A policy in the Land and Water Regional Plan (LWRP) contains targets for contaminant levels in waterways. As was emphasised in Mr Cantrell's EIC and in answers to Commissioners' questions on 8 November, there are multiple disruptors to urban waterway quality. It would be inappropriate to elevate the LWRP targets into being standards to be achieved in relation to this discharge

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<sup>5</sup> Mr Cantrell's evidence.

consent application. Mr Cantrell's evidence on 8 November was that he has doubts as to whether those targets will be achievable at all. It was his evidence that even if stormwater is pure, with no contaminants, there would be issues in meeting the LWRP targets in receiving waters. In that context, it is submitted that using the LWRP targets as a foundation for triggering investigations and adaptation of responses is, as affirmed by Mr Cantrell, a sensible approach.

45. One of the reasons why the proposed water quality attribute target levels are targets, rather than fixed and required outcomes, is that there is imperfect understanding in the industry generally about the causative relationship between stormwater quality discharges and receiving environment outcomes. The Council proposes in conditions 37-39 and Schedule 3 (condition 37 in track change version) a feasibility investigation into that relationship, and actions flowing from that.
46. Source control work is crucial to achieving overall environmental gains. The Council is committing to this work in the proposed conditions through the through the erosion and sediment control and the industrial site management work (conditions 41 to 48 (conditions 39 – 41A in track change version)) and through the source control initiatives required by condition 40 Schedule 4 (condition 38 in track change version).
47. The core to the Council's obligations in the proposed conditions is in conditions 23 and 24 (conditions 20 and 24 in track change version), where the Council now proposes the obligation to *use best practical options*, and *reasonably practicable measures*, rather than *reasonable endeavours*, to mitigate the effects of its activity. The extent of the mitigation will be measured against the attribute target levels in the schedules attached to the consent conditions. Everything else in the conditions is a tool to plan, implement, monitor, evaluate, review, respond or adapt in seeking to achieve those aims.
48. The SMP conditions allow for adaptive management of tools and responses as and when required.
49. As noted in the Council's opening submissions, the Council's investment as a result of this proposed consent is substantial: \$1,081m over the next 10 years (for both stormwater management and land drainage)<sup>6</sup>, being \$415m for operations and maintenance and \$666m for capital improvements<sup>7</sup>; and for just this financial year, over \$39m operational and \$35m capital expenditure on stormwater alone<sup>8</sup>. Plus funding a full time and part time expert position at Mahaanui Kurataiao Limited and a recently appointed full time position at the Council for industrial audits. The Council does not have unlimited funds. Economic analysis shows that alternatives are not feasible<sup>9</sup>.
50. The Council's changes to proposed conditions do not (and cannot) change those figures as they were based on the Long Term Plan that was adopted by the Council in June 2018. The draft Annual Plan for the 2019-20 year which will be in effect from 1 July 2019 was open for submissions in March. The intention is for that Annual Plan to provide some changes in funding for this year to meet the

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<sup>6</sup> D Adamson EIC at 14.

<sup>7</sup> D Adamson EIC at 33.

<sup>8</sup> D Adamson EIC at 28.

<sup>9</sup> Mr Harris' EIC.

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obligations proposed in the conditions. Those changes will increase operational costs for the Council but these have not yet been included in any changes to the current Long Term Plan.

51. The Council's experts and the s42A report writers are agreed that appropriate management of high risk industrial sites is a crucial part of seeking to achieve the water quality outcomes. The proposed conditions 47-48 (clean version) provide for ongoing industrial audits to achieve that. The Council proposes a minimum of 15 audits per annum but with a cost benefit analysis required by condition 40 Schedule 4(k) (clean version) to determine whether more (or less) resources should be directed into that rather than other source control measures.
52. Management of discharges from a relatively small number of high risk industrial sites can potentially have a high impact on the scale of adverse effects of the consented discharges as a whole. Industry submitters sought greater certainty about how high risk was to be determined and how exclusion from the consent was to be assessed. But it is the Council's position that high risk cannot, and should not, be determined other than on a detailed site-specific, case by case basis. There are too many variations to seek a "one size fits all" "solution" to determination of whether activity on a particular site is creating a high risk.
53. While the Council acknowledges that absolute certainty with regard to industrial site risk under the application is not achievable at this time, it has agreed to engage with industry in development of the risk matrix for industrial sites and development sites under condition 3. This will allow industry representatives to engage in the process for establishing an equitable and consistent method of determining the relative risk of individual sites.
54. Improvement of stormwater quality and quantity is by its nature a long term, long timeframe process. Gains do not happen overnight. A duration of any less than 25 years would be counter-productive.

### **Ngā Rūnanga**

55. Ngā Rūnanga are not submitters on this application. They have also not given affected party approval. That means that adverse effects on Ngāi Tahu parties are a relevant consideration. That consideration is in the context in which they do not oppose a consent for 25 years duration with the conditions now proposed by the Council and with the separate arrangement in a Deed for funding of a role at Mahaanui that applies if consent is granted for a 25 year duration.
56. That absence of opposition is, of itself, significant, in the context of the Mahaanui Iwi Management Plan (MIMP) and the Ngāi Tahu opposition to the earlier Styx catchment consent.
57. Ngā Rūnanga are sufficiently satisfied by the resolution of issues through changes to the application and related matters described in the Deed that they do not oppose the application. That, and the related matters described in Mr Pauling's evidence, is evidence from which it is reasonable to infer that the outcome of the application will not be inconsistent with the MIMP and cultural values.
58. Mr Pauling's evidence has discussed this in detail. It was not his evidence that the adverse effects on Ngā Rūnanga are less than minor – as he had no mandate

to speak for Ngā Rūnanga – but it was his evidence that Ngā Rūnanga are satisfied with the 25 year duration proposed by the Council and in the Deed on the basis that they “have a seat at the table” in the implementation of this consent<sup>10</sup>.

59. It is submitted that it is open to the Commissioners to draw an inference from the above facts and context that the adverse effects on Ngā Rūnanga of the proposed consent, with the proposed conditions, will be minor despite there not being any direct evidence on that. As an alternative, the Commissioners can decide this application without needing to form a view as to whether those effects are minor or more than minor. The Commissioners can be reasonably satisfied from these circumstances that the grant of consent appropriately addresses effects and Part 2 of the Act with regard to Ngā Rūnanga interests.
60. It is submitted that in this context, granting consent for any less than 25 years would be contrary to the interests of the Ngāi Tahu parties.

#### **THE MAIN CHANGES TO THE CONDITIONS PROPOSED IN THE APPLICATION AND THE REASONS FOR THE CHANGES**

61. I here address those by topic. I do not explain all minor changes to improve clarity or consequential changes. Minor changes include deleting superfluous conditions or merging overlapping conditions.

#### **Definitions**

62. Definitions added for “Banks Peninsula” and “Settlement Areas of Banks Peninsula” due to changes to the conditions that use those terms.
63. “Best practical option” is defined (the same as the definition in the Act).
64. “Industry Liaison Group” and “River Care Liaison Group” defined.
65. “Stormwater” definition amended to reflect that in the LWRP and to improve the clarity of the conditions.
66. “Stormwater network” definition amended so that rivers are no longer defined as being part of the network<sup>11</sup>. There are related changes to conditions 1 and 2.

#### **Purpose and exclusion conditions 1 and 2**

67. These changes are intended to simplify and improve clarity regarding what discharges are included or excluded from coverage under the consent<sup>12</sup>. The Council proposes changes to conditions 1 and 2 and to the definition of “stormwater network”. Condition 1 now describes the full extent of discharges covered by the consent and condition 2 explicitly describes the exclusions.
68. Proposed conditions 2(d) and 2(f) retain the ability for the consent holder to exclude some discharges from coverage of the consent in limited and exceptional

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<sup>10</sup> Answers to questions from Commissioners on 14 November.

<sup>11</sup> Queried on 5 and 8 November.

<sup>12</sup> Raised by submitter and Commissioner queries on 5 November.

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cases: some Listed Land Use Register activities that post-date the commencement of the consent; by not taking over responsibility for them before 2025; or by excluding them through the industrial site audit process.

69. The changes that the Council has made to those proposed conditions were made in consultation with the CRC reporting officers. They improve certainty regarding the process that will be used for excluding sites.

**Condition 3: risk matrix and transitional processes for the currently excluded sites**

70. The proposed changes in condition 3 involve the Industry Liaison Group in the development of the risk matrix that will be used to assess the currently excluded sites and activities and clarify the process that the consent holder will use to manage discharges from the site or determine whether sites or activities remain excluded from the consent.
71. The Oil Companies submission (Mr Enright) was that the risk matrix should be developed as soon as possible or now, even suggesting adjournment of the hearing to require it to be developed before consent is issued. It appears that the Commissioners did not agree with that submission as the hearing was not adjourned for that purpose. It is submitted that the improved clarity regarding development of the risk matrix, explicitly defining the timeline and the engagement actions required, and the involvement of the Industry Liaison Group in that process, should satisfy the Oil Companies' concerns.
72. The proposed role of the Technical Peer Review Panel (TPRP) under conditions 14 to 18 (conditions 8 to 9C track change version), further described below, will include review of the draft risk matrix.
73. The proposed changes to the conditions retain the ability for the Council to exclude high risk sites from coverage under the consent, either by not taking over responsibility for them before 2025<sup>13</sup>, by excluding them through the industrial site audit process<sup>14</sup> or by excluding them through the risk matrix<sup>15</sup>.
74. Mr Enright's submission for the Oil Companies was that the ability to exclude sites is wrong at law as it is in effect allowing the consent holder to define the scope of its own legal obligations. Mr Enright also objected to the arguable 'veto power' that the discretion in conditions 2 and 3 give the Council. That submission is, with respect, misconceived.
75. While the sites listed in Schedule 1 fall within the scope of the consent applied for, those sites are expressly excluded from the exercise of the consent until 2025 or until the conditions provide for the exclusion to no longer apply.
76. Proposed condition 3 sets out the transitional process by which sites will be assessed. The risk matrix to be developed following the grant of this consent will help the Council to better understand the excluded sites for the purposes of managed inclusion or, in the more exceptional case, for a site to remain excluded. While the risk matrix to identify and rate the risk associated with the excluded

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<sup>13</sup> Condition 2(d).

<sup>14</sup> Conditions 47-48 and Schedule 4(k) and (l)

<sup>15</sup> Condition 3.

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sites is yet to be developed, condition 3 is certain and workable and condition 2 provides a clear transitional arrangement until such time as the risk matrix is complete.

77. The process for developing the risk matrix under condition 3 also requires engagement with the Industry Liaison Group, which includes representatives from industry groups such as the Oil Companies, LPC and Ravensdown, and for review of a draft risk matrix by the TPRP. The industry groups will not be excluded from the development process.
78. In addition, condition 47 (condition 41 track change version) sets out a process by which industrial sites will be audited and monitored, with the decision to exclude sites resting with CRC under condition 48 (condition 41A track change version) and Schedule 4(k) and (l) (condition 38(k) and (l) track change version). Council considers this to be appropriate. In this case Council does not have any veto, with the substantive discretion resting with the consent authority.
79. Conditions need to be certain, workable and enforceable (while subject to the reasonableness test). However, uncertainty or ambiguity will not invalidate a condition unless a point is reached where it cannot reasonably be given any meaning: *Aubade NZ Ltd v Marlborough DC* [2015] NZEnvC 154.
80. Condition 3(c)(iv) is an output condition. It requires that the Council provide to CRC a Transition Plan that includes certain deliverables. One of those deliverables is a *description of the process* used to determine how sites and activities that pose high risks will be managed and whether a site will remain excluded from authorisation under this consent due to its discharge posing an unacceptably high risk of surface water or groundwater contamination.
81. It is submitted that the deliverable is the description of the process used to manage those high risks and manage the inclusion of previously excluded activities or, in exceptional cases, determine whether sites will remain excluded. There is no uncertainty there. No discretion is provided to CRC. It is ultimately for the consent holder to determine whether a site will remain excluded from the consent provided that the determination is made in accordance with the process developed with CRC.
82. The consent holder develops the process, but that process is to include collaboration with CRC and engagement with affected site owners and/or operators.

### **SMPs**

83. Consultation with the Department of Conservation (DoC) in the development of SMPs is added to condition 8 (condition 7 track change version).
84. The Council proposes some changes to the timing of SMP reviews in condition 5 (condition 4B track change version). The reasons for the changes are threefold: to provide for dates running from the commencement of the consent; to provide for adequate time for Council administrative reasons; and for development of the Avon SMP to follow decisions on the Otakaro Avon River Corridor Regeneration Plan.

85. Purpose of SMPs (condition 6 (condition 5 track change version): The Council proposes that the purposes now include setting a catchment specific contaminant load target for each catchment in the SMP area, as was recommended by expert evidence for some other parties at the hearing and in the first water quantity joint expert statement. The Council proposes to add implementation of the best practical option for weed management in the Styx River as an additional purpose (condition 6(g) clean version).
86. Catchment-level contaminant load model targets<sup>16</sup> were not in the conditions proposed by the Council on 5 November. The Council, in agreement with the CRC reporting officers, now proposes conditions that require development of catchment level contaminant load model targets in SMPs. These are required by the conditions for the purpose<sup>17</sup> and content<sup>18</sup> of SMPs. The proposed conditions require that the best reasonably available model or method be used and that, as an objective, the target set must “*demonstrate the commitment of the Consent Holder to the improvement of stormwater discharge quality over time*” (condition 6(b) clean version).
87. Mr Cantrell’s evidence for the Council, including in answers to Commissioners’ questions on 8 November, was that an overall averaging of C-CLM targets across the city is preferable to catchment-level targets being set as the city-wide approach gives greater flexibility for surgical responses to risk areas. However, Mr Cantrell has reviewed the approach to setting catchment-level targets in SMPs now proposed by the Council and supports it. His concern was with setting fixed catchment level targets in the conditions. The process of setting catchment-level contaminant load reduction targets in SMP development, review and amendment provides for the surgical reaction to hot spots that Mr Cantrell seeks.
88. **Contents of SMPs (condition 7 and Schedule 2 (condition 6 track change version))**: These are now proposed to include: the catchment specific contaminant load reduction target using the best reasonably practicable model (c); added attention to retrofitting facilities in existing areas (g); description of new modelling, monitoring or mitigation methods (p); and a change to the contents regarding bird strike risk that addresses the CIAL concern (t).
89. **Volume limits in SMPs**<sup>19</sup>: The Council has accepted the recommendation in the water quantity joint experts’ first statement that there be provision for the ability to set volume limits in SMPs. Proposed condition 7 and Schedule 2(s) (condition 6(s) track change version) now provides for that.
90. **Setting a receiving environment attribute target level at more locations and for more frequent storm events than that proposed in the application**<sup>20</sup>: The Council has accepted the recommendation in the first water quantity joint experts’ statement to enable the setting of modelled attribute target levels for more locations along waterways and for more frequent storm events to be considered in the development and review of SMPs. Proposed Condition 7 and Schedule 2(s) (Condition 6(s) track changed version) now provides for that.

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<sup>16</sup> Raised by Commissioner queries on 5 and 8 November.

<sup>17</sup> Condition 6.

<sup>18</sup> Condition 7.

<sup>19</sup> Commissioners Minutes 4 and 5.

<sup>20</sup> Commissioner Minutes 4 and 5.

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91. **Seeking comments from parties on draft new, reviewed or amended SMPs unless they are minor changes** (condition 10 (condition 12 track change version)): a change to the proposed condition requires agreement of the CRC in determining whether a proposed change is “minor” and so does not require the Council to seek comments from the specified parties.
92. There is a more specific list of the reasons for possible amendment to SMPs (condition 9 (condition 11 track change version))

### **Stormwater Technical Peer Review Panel (TPRP)**

93. In order to address concerns raised at the hearing the Council proposes a change to the condition that required a peer review. Conditions 14 to 18 (conditions 8 to 9C track change version) now establishes the TPRP, requires transparency with regard to the TPRP work, and provides the TPRP with three roles: review of draft SMPs and changes to SMPs; review of feasibility studies and investigations under conditions 39 and 40 and Schedules 3 and 4 (conditions 37 and 38 track change version); and review of the draft risk matrix for the Transition Plan following comments by the Industrial Liaison Group.

### **Implementation Plan**

94. Proposed condition 11 (condition 13 track change version) adds the Department of Conservation to the parties with whom there will be engagement in the development of the Implementation Plan.

### **Best practicable option to achieve both catchment-specific and district-wide C-CLM**

95. The consent holder’s obligation in the proposed change to condition 20 (condition 16B track change version) is to use the **best practicable options** to achieve the contaminant load reduction targets specified in the SMPs - with no change to the overall standard in condition 19 that the consent holder will be in breach if it does not achieve the modelled condition 19 Table 2 Christchurch-wide reductions. The “Responses to contaminant load modelling” condition described below requires an investigation if either the catchment-level CLM target or the Christchurch-wide CLM standard are not met.

### **Reasonable endeavours, reasonable practical measures or best practicable options<sup>21</sup>**

96. The Council has reconsidered its position regarding use of these terms.
97. The obligation now proposed by the Council is:

97.1. *Best practicable options* (as defined in the Act) rather than *reasonable endeavours* or *reasonably practicable measures* to mitigate the effects of discharge on groundwater, water quality and water quantity<sup>22</sup>. The Council is here proposing “best practicable option” as the consent holder’s

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<sup>21</sup> Queried on 5 November.

<sup>22</sup> Condition 23.

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obligation for condition 23 (condition 20 track change version) being where the consent holder has full control over the matter at hand.

97.2. To do what is “*reasonably practicable*” or to implement “*reasonably practical measures*” wherever the consent holder does not have full control over the actions of a third party. The consent holder’s obligation is to do whatever is reasonably practicable to ensure that the third party carries out an action; accordingly, there is no proposed change to the obligation to use *reasonably practicable measures* to seek to ensure that mitigation is in place for development and for new operations<sup>23</sup>.

97.3. The Council has amended the reference to using *reasonable endeavours* with regard to the requirement for new water quality mitigation facilities and devices to treat the first flush in retrofit and re-development sites, where there are likely to be spatial, topographic, economic and other limitations. The proposed obligation is now that the consent holder design the facilities and devices to treat as much of the first flush as is *reasonably practicable*<sup>24</sup>;

97.4. An obligation to use *reasonable endeavours* is retained in only one instance in the consent conditions. Under condition 40 and Schedule 4(m) (condition 38(m) track change version) where the consent holder is required to, “*Make reasonable endeavours to establish a community water engagement programme...*”. “*Reasonable endeavours*” is the appropriate obligation in that instance as this involves a number of third parties, and there can be no guarantee that all of the third parties will participate in the programme.

#### **Design of facilities and devices (conditions 27-36)**

98. The Council proposes in condition 27(b) (condition 26 track change version) an additional requirement that design be in accordance with best practice design criteria that is adopted by the Council.

99. In condition 28 (condition 26A track change version) an additional requirement regarding bird strike risk has been added to address CIAL concern.

#### **“Other actions” by the consent holder: Schedule 4 and condition 40 (condition 38 track change version)**

100. **Timing:** changes to completion dates in order to provide adequate time for the steps, including the necessary gathering of engineering and environmental data over several seasons.

101. **Cost benefit analysis of options to improve source control,** including changes to the annual number of industrial site audits required. This was raised as a possibility at the hearing<sup>25</sup> when commissioners were questioning the reasoning for the 15 per annum proposed by the Council.

102. **Annual meetings** (at least) with river care groups and industry groups: The Council proposes condition 40 and Schedule 4(n) and (p) (condition 38(n) and (p)

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<sup>23</sup> Conditions 41 and 24 clean version.

<sup>24</sup> Condition 30.

<sup>25</sup> This was raised as a possibility in the Commissioners’ questions of Ms West on 8 November. BK Pizzey Right of Reply Submissions for the CCC

track change version) so as to address some submitters' requests for a more formal process of engagement.

103. Some inconsequential deletions in the table are for the purpose of reordering and combining conditions where there is duplication.

**Other action: Styx River weed management**

104. An extensive proposed addition to the requirements in Condition 40 and Schedule 4 (condition 38 track change version) is for the consent holder to undertake an investigation into, and implement, the best practical option for managing the relationship between weed management and flood outcomes. This is coupled with the proposed addition of condition 26 (condition 25A track change version) which requires prioritisation of weed harvesting in the Styx River until that investigation is implemented.
105. Whether it is appropriate to have conditions of consent requiring weed clearance or dredging was the subject of some queries from the Commissioners.<sup>26</sup>
106. The above conditions are being proposed by the Council under the Augier principle. It is submitted that *the imposition* of such conditions by the Commissioners would be unreasonable and potentially ultra vires sections 108 and 108AA of the Act.

*Legal discussion*

107. Section 108AA provides that a consent authority must not impose a condition unless the condition:
- Is agreed to by the applicant; or
  - Is directly connected to an adverse effect of the activity on the environment or to an applicable district or regional rule or a national environmental standard; or
  - Relates to an administrative matter that is essential for the efficient implementation of the resource consent.
108. The Council has sought the above conditions regarding weed clearance but there are no regional or district rules that such a condition would be "directly connected to". It is submitted that such a condition would not relate to an administrative matter that is essential for the efficient implementation of the consent.
109. In terms of adverse effects, the application seeks a permit for the discharge of stormwater from the network. The adverse effects of the proposal include those that may result from increasing the amount of water in the waterways that are subject to the application. A potential effect of that increase in water is a contribution to flood effects when water escapes its channel.
110. Weed growth within waterways is a natural process. While it may separately contribute to water escaping its channel in flood events, it is submitted that weed

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<sup>26</sup> Queried on 5 November.

growth does not amount to an adverse effect “directly connected” to the proposed stormwater network discharge activity<sup>27</sup>. It follows that a condition requiring clearance or dredging by the Council, if that condition was not proposed by the Council, would be unreasonable and fall foul of the requirements of section 108AA.

111. Despite the above discussion, the Council is offering up (as *Augier*-type conditions) conditions related to weed management.
112. Conditions 26 (condition 25A track change version), and condition 40 Schedule 4(r) to (x) (condition 38 (r) to (x) track change version) require the Council to prioritise weed management in the Styx River for an interim period and to undertake an investigation and cost benefit analysis of the best practicable options for mitigating flooding through river channel weed management. The cost benefit analysis will take into account the overlapping powers and responsibilities in this area between the CRC and the Council. The best practicable option is to be implemented in the SMP<sup>28</sup>. It is possible that the best practicable option will be to not change current management practices. This investigation will assist in establishing a more sustainable river management regime which will provide a more reliable means of setting targets in the Styx Stormwater Management Plan as they relate to the effects of urbanisation in the upper Styx catchment.
113. This discharge consent application is not the forum for resolution of concerns regarding dredging and maintenance of waterways. This application is for a permit to discharge stormwater in the manner set out in stormwater management plans . Maintenance, dredging and weed clearance is an operational and maintenance power of both the CRC and the Council under other legislation. The manner in which the councils exercise that power is not the subject of this application. Any submitters’ concerns regarding those matters must be raised and responded to in other forums.
114. Further, this is not a land use consent application for the Council’s operation of the stormwater network and nor is it an application to the CRC for resource consent for works within waterways. Operation and maintenance are Council activity under the LGA. The decision on how that system operates is made under the LGA, together with any further consents needed from the CRC or Council.
115. There are, it is submitted, overlapping powers and responsibilities between the CRC and the Council with regard to the operation and maintenance of the waterways within the Christchurch District. That is a matter that those councils need to address under their other statutory responsibilities. It is submitted that it would be inappropriate for a decision maker on this resource consent application to impose resource consent conditions that purport to determine where those responsibilities lie.

### **Erosion and sediment control (conditions 23 and 39 track change version)**

116. The 5 November draft conditions had condition 23 regarding construction phase erosion and sediment control. The condition has been merged with condition 39

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<sup>27</sup> This was an answer to Commissioners from Mr Norton and Dr Margetts on 6 November.

<sup>28</sup> Proposed condition 6(g).

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in the track change version – condition 41 in the clean version – with no substantive changes.

**Industrial site management and audits (conditions 47 and 48 (condition 41 track change version))**

117. The Commissioners queried whether the annual number of industrial site audits required under condition 47 (clean version) is adequate<sup>29</sup>.
118. The Council has not changed the proposal that there be at least 15 industrial site audits per annum<sup>30</sup> and in collaboration with CRC officers has agreed an approach which ensures that sites posing a higher environmental risk are audited. The Council and the CRC reporting officer continue to support that the proposed conditions provide for at least 15 industrial site audits per annum. The Council has added to proposed condition 40 and Schedule 4(k) and (l) (condition 38 (k) and (l) track change version) that provide for a cost-benefit analysis of the benefits of putting more resources into industrial site audits rather than other source control options.<sup>31</sup> The Council and CRC can then agree to change the number of industrial site audits as a result of that cost/benefit analysis.
119. Allowing for the reconsideration of the number of audits ensures that the consent is flexible and able to adapt if circumstances require it. This is the key to adaptive management conditions, as explained in detail in the Council's Opening Legal Submissions.<sup>32</sup> The proposed conditions also provide another feedback loop so that management can improve over time.<sup>33</sup>
120. Other changes to this proposed condition require agreement with the CRC on at least 10 of the sites selected for audit, and add that the exclusion of a site that poses unacceptably high risk from coverage under the consent by adding it to Schedule 1 cannot occur without the *agreement* of the CRC.
121. This condition provides a degree of discretion to the consent holder, to make a recommendation that a site be added to Schedule 1, but leaves the substantive decision to approve that recommendation with the consent authority. If CRC disagrees with the recommendation prepared by the Council, the site will not be added to Schedule 1. As a result, while there is discretion given to both organisations, it is the CRC that determines the exclusion of a site. In my submission, this is acceptable at law as it involves the consent authority.
122. It is submitted that the proposed changes provide an appropriate approach for targeting environmental "hot spots" and a rational basis for establishing the level of resourcing which should be applied to addressing these over a given timeframe and in comparison with other source control options.

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<sup>29</sup> Queried on 5 November.

<sup>30</sup> Condition 47(b).

<sup>31</sup> This was raised as a possibility in the Commissioners' questions of Ms West on 8 November.

<sup>32</sup> Opening Legal Submissions for the Christchurch City Council dated 5 November 2018, at paragraphs 90 to 101.

<sup>33</sup> *Lower Waitaki River Management Society Inc v Canterbury Regional Council* EnvC C080/09. BK Pizzey Right of Reply Submissions for the CCC

### **Responses to contaminant load modelling (condition 56 (condition 49 track change version))**

123. As noted earlier in these submissions, the Council now proposes a requirement for catchment specific CLM targets to be set in SMPs. The obligation in condition 20 (condition 16B track change version) is that the Council implements *best practicable options* to achieve that target. As a result, the Council proposes that the responses to modelling condition 56 now includes responses if that catchment specific CLM target is not met.
124. For the avoidance of doubt, if the Christchurch-wide modelled standards in condition 19 Table 2 (condition 16A track change version) are not met the consent holder will be in breach of the consent. The investigation and reporting required by condition 56 is in addition to the fact that the consent holder will be in breach of condition 19.
125. It is no longer proposed that the investigation be into whether reasonable endeavours have been exercised. Consistent with the proposed use of “best practical option” as the standard in condition 23 (condition 20 track change version), and in condition 56 (condition 49 track change version) for catchment level standards, it is proposed that this condition now be an investigation into whether best practical options have been used.

### **Responses to flood modelling (condition 57 (conditions 49A track change version))**

126. This proposed condition is new and is proposed in order to ensure that there are specific steps required of the consent holder if the attribute target levels in Schedule 10 (Schedule 7 track change version) are not met. The investigation is again into whether the consent holder has employed best practicable options to seek to achieve those targets.

### **Reporting (condition 61 (condition 53 track change version))**

127. The sole substantive proposed change adds a requirement to report on the C-CLM results at a catchment level as well as the CLM targets set in SMPs.

### **“Administration and Duration” conditions 62 to 65 (conditions 54 to 56 track change version)**

128. The Council proposes additions to the grounds for the consent authority to invoke the review condition: for ensuring consistency with the Christchurch-West Melton section of the LWRP (thereby addressing a concern regarding duration that was mentioned by the CRC reporting officer); for overall water quality improvement purposes; and for review of C-CLM standards.
129. The added condition listing the consents that are to be surrendered does not include the one that CIAL is relying on, and so addresses that submitter’s concern.

### **Changes to objectives in schedules<sup>34</sup>**

130. The commissioners queried the merits of the Schedule 7 and 8 (Schedule 4 and 5 track change version) objectives that referred to “acceptable levels”. Dr Margetts, Ms Stevenson and Dr Bolton-Ritchie have agreed to proposed changes to these that address that concern.
131. Schedule 10 (Schedule 7 track change version): It is proposed to add an objective to Schedule 10. This improves understanding of the context in which the attribute target levels are set. It also improves consistency with condition 23 (c) (Condition 20 (c) track change version) which refers to there being an objective in schedule 10.

### **Environmental Monitoring Programme**

132. Counsel's memorandum dated 8 February 2019 described the minor changes proposed to the EMP at that time. The Council now proposes further minor changes to the following sections of the EMP following the responses from submitters on 22 February 2019 and engagement between CRC and Council experts:
  - Sections 3.2.3, 3.3.1 and 4.3 regarding implementing the required actions: The changes have been made to retain an appropriate interval between the commencement of the resource consent and implementing the EMP actions and to maintain consistency with the timing in the proposed conditions. The need for these changes has arisen from the extension to the timeframe which has been necessary for the completion of the consent hearing process.
  - Section 5.4 – A sentence has been added to the end of the first paragraph, to clarify that monthly sampling will be carried out regardless of the weather and thereby will allow sampling during rainfall events.
133. These changes have been agreed to between the relevant experts for the Council and CRC.

### **RESPONSES BY SUBMITTERS TO THE COUNCIL'S 8 FEBRUARY DRAFT OF THE PROPOSED CONDITIONS AND TO SUBSEQUENT JOINT STATEMENTS OF EXPERTS**

134. Since the hearing was adjourned the Council has engaged with the rivercare group submitters, DoC, the expert for Mr and Mrs Rodrigues (Mr Potts), the Oil Companies, CIAL, Lyttelton Port Company (LPC), and CRC reporting officers.
135. The Council engaged with Mahaanui Kurataio Ltd (Mahaanui) on the proposed changes before distributing the draft conditions in February. Mahaanui raised no concerns. The Council has not engaged with Mahaanui on the additional changes that are now proposed by the Council but is reasonably satisfied that these changes do not adversely impact on any matters of interest to Mahaanui.

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<sup>34</sup> Queried by Commissioners in questions of Dr Margetts, CRC experts and submitters.  
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136. The Council's staff have had numerous meetings and communications with CRC reporting officers since the hearing was adjourned, with freely flowing engagement by both parties on various drafting proposals. Those officers do not seek any changes to those conditions or additional conditions. Those officers now consider that it is appropriate for consent to be granted for a 25 year duration with the conditions here sought by the Council.
137. Water quantity experts for Mr and Mrs Rodrigues, CRC and the Council have produced a joint experts' statement. The Council proposes to make each of the changes to the conditions that were recommended in the joint statement of the water quantity experts.

#### **CIAL**

138. CIAL has confirmed that it is satisfied with the changes to the conditions proposed by the Council and has no other issues<sup>35</sup>.

#### **AvON**

139. Mr Evan Smith of AvON has confirmed that he is happy with the proposed changes that require the consent holder to seek to convene meetings with the river care groups<sup>36</sup>.

#### **Opawaho Heathcote River Network**

140. The submitter has confirmed that it acknowledges the changes made to the proposed conditions and supports those changes. It does not seek any other changes<sup>37</sup>.

#### **Ravensdown**

141. In an email to the Christchurch City Council dated 25 February 2019 Ravensdown (via Ms Wilkes) says:

*Thank you for circulating these documents. Ravensdown has not provided written feedback (noting that the closing date was Friday 22 February) as the revised conditions have generally provided the clarity we sought in our submission and presentation to the hearing. However, we would like to confirm that we would be interested in participating in the Industry Liaison Group, at such time as it is formed and on the assumption that the requirement for this group is part of the final set of consent conditions.*

142. Accordingly the proposed conditions meet all of that submitter's concerns.
143. Ms Wilkes' evidence for Ravensdown favoured an approach, possibly coupled with the industrial site audit programme, in which the Council and industry develop a template site specific stormwater management plan for each big industrial site to use, because she said that Ravensdown sought improved clarity regarding the acceptable limit of discharge quality. The need for that site specific management plan template approach was not supported by the Oil Companies.

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<sup>35</sup> Email 11 February 2019.

<sup>36</sup> Email 17 January 2019.

<sup>37</sup> Email 21 February 2019.

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The Council's submission on this is that site specific assessment is built into the risk matrix, transition plan and industrial site audit approach to site specific risks. Development of a template site specific management plan would not improve environmental outcomes and so would introduce an unnecessary layer.

### **Department of Conservation**

144. DoC has confirmed that it is satisfied with the amendments to the conditions proposed by the Council on 8 February and has no other issues.

### **Lyttelton Port Company (LPC)**

145. It is submitted that the wholesale changes to the conditions sought by the submitter at the hearing are unnecessary. They are simply the planner's drafting preference. The condition framework proposed here by the Council, and supported by the CRC reporting officers, is appropriate.
146. Proposed changes address the submitter's concerns with the term "new activity" in relation to exclusions in condition 2(d).
147. It is submitted that the linkages between the "exclusion" conditions is clear and certain.
148. The submitter's concern with use of the term "better" in condition 3(e) is misplaced. The term used in the condition is "the same or better". This condition ensures that when existing consented activities transition to coverage under this resource consent, the standard of the discharge will not get worse. No definition of "better" is needed.
149. The submitter's concerns regarding the ability for the consent holder to change the schedules is noted. This is further discussed below. It is submitted that in an adaptive management framework such as in these proposed conditions, the ability to make those changes is an important component of the consent holder's ability to adapt to changes in information and changes in the environment.
150. The Council accepts the submitter's proposal to delete the words "*(with the exception of the Operational Area of the Port of Lyttelton)*" in Schedule 8 (Schedule 5 of the track change version) and addresses the submitter's concern over the misplaced references in that schedule by removing those references from the schedule.
151. It is submitted that measurement and monitoring of attribute target levels is appropriately provided for in the consent conditions.

### **Oil Companies**

152. The Council agrees with the submitter's suggestion that the TPRP review role include review of the draft risk matrix. The Council has added that to the proposed conditions (condition 14(a) (condition 8(a) track change version)).
153. The Council has also adopted the submitter's requested addition of a requirement for the Minutes of the Industry Liaison Group to be circulated (condition 3(b)(iv)).



154. The Oil Company submitters seek a bespoke approach for their sites in accordance with the MfE guideline approach rather than the consent holder being able to exclude them from the consent. But:
- They agree that it is appropriate to have a global approach to the city's stormwater discharge (Mr Enright answer to Commissioner question on 13 November);
  - They accept that some "cowboy" operators are not complying with the MfE guidelines. They accept that if the conditions of this consent require the MfE guidelines to be complied with, and the "cowboy" operators do not comply with the MfE guidelines, then the consent holder would be in breach of the resource consent (answer to Commissioner questions on 13 November).
  - They accept that the Christchurch City Council can exclude them from the stormwater network using Bylaw/LGA tools (Mr Enright's answer to Commissioner question on 13 November);
  - It is consistent with basic principles under the RMA that a consent holder should be entitled to determine the scope of the discharges for which the consent holder seeks consent (as identified by Commissioner Christmas in questions of Mr Enright on 13 November);
  - Mr Norton's evidence was that compliance with the MfE guidelines alone may not be adequate to guarantee that all petroleum industry sites are managed to sufficiently ensure the Council's compliance with this consent or achieve its required outcomes. Compliance (or not) with the MfE guidelines is likely to be a component of the industrial site risk matrix which will be developed in consultation with industry.

### **Little River Community Trust**

155. The submission was heard on 15 November. The submitter said that he does not oppose anything in particular in the application but seeks improved definition between CRC and CCC on responsibilities. The service station owner who submitted said he cannot get insurance cover because of flood risk. They seek improved drainage management such as a wider drain.
156. That issue partly relates to the management of stormwater from rural catchments beyond the settlement areas in Banks Peninsula rather than urbanisation within the settlement areas. The CRC has a drainage rating district in Little River. The CRC is progressing works to improve the conveyance capacity of the Okana River which runs through Little River.
157. The City Council Drainage Operations Unit is assessing the drainage network in parts of the township for necessary repairs and upgrades. It expects to carry out works in the following 2 to 3 years, funding permitting.
158. The remedy for this submitter does not lie within the scope of this resource consent application. There are unrelated steps that the submitter can take to advance its objective, through engagement with either the CRC work programme, or seeking to influence the Christchurch City Council work programme.

**Mr Robertson<sup>38</sup>**

159. Mr Robertson expressed a concern that the Council diverts artisan water from the Kaputone into the Styx and that this increases flood risks.
160. The second joint statement of the water quantity experts dated 15 March 2019 states (paragraph 36):

*That diversion does occur but, in the experts' opinion, it does not increase flood risks. The augmentation of flow in the upper Ka Putahi amounts to about 1% of the base flow in the Lower Pūharakekenui / Styx River. There is currently no natural spring water at the augmentation point. If the spring water was present then it would not cease during a rainfall event. The catchment area above the augmentation point is very small and so the natural flow of surface water from this catchment would be unlikely to replace the augmented flow during a rainfall event if the augmented flow was turned off. Manipulation of this flow during rainfall events would risk dewatering the stream at its upstream end and damaging the stream life for a less than minor impact on flows lower down in the river.*

161. Mr Robertson states that he wants to see the removal of sediment from the river. River operation and maintenance is an overlapping function of the CRC and the Christchurch City Council under other legislation. It is submitted that there is not jurisdiction to impose conditions that require river maintenance under this consent.
162. It has been pointed out by Mr Harrington (EIC paragraph 77) that the largest single factor in raising the Styx water levels is the growth of weed – and as noted above, weed growth is not an effect of the stormwater discharge activity. The first joint statement (paragraph 29) notes that seasonal weed growth can vary the base flow water level at Radcliffe Rd by 1m. It is acknowledged that sediment accumulation is a factor in raising water levels but currently it is a minor issue (Harrington EIC at 78).
163. Mr Harrington advises that the "huge pipes" mentioned by Mr Robertson being installed at the Prestons subdivision are to relieve the concerns expressed by the McGuigans (submitters) that the fill used to raise the land in the Prestons subdivision will block a previous overland flow path of floodwater from the McGuigans property and onto the Prestons subdivision area. The pipes are not a means of increasing the flow from the Prestons subdivision but will take flows from agricultural land which may have previously discharged to the Styx River via the same culvert under Lower Styx Rd that is presently used by Prestons subdivision.

**The effect of fill in the Earlham St area**

164. This has been raised by several submitters so it is addressed here by topic rather than for the Council's response to each submitter.
165. This matter was addressed in detail in the water quantity joint expert statements and in the memorandum of counsel for the Council dated 8 February 2019. It is not repeated here. It is submitted that there are no changes to proposed consent

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<sup>38</sup> Mr Robertson's evidence on 13 November.  
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conditions that arise from that issue. It is a separate matter for the attention of the Council's enforcement unit.

### **Ms Kathryn Snook**

166. The Snook Family submission on 12 November quoted from the Styx SMP at 4.7.2 saying that the stormwater discharge will result in an increased flood risk in the area and that because it is red zoned there is less need for flood protection.
167. Inevitably there is less risk to people and property if there are fewer people and residences.
168. The calibrated modelling which includes 0.5m sea level rise indicates that tide may cause above floor flooding nearby at the Rodrigues property as noted in the water quantity experts second joint statement<sup>39</sup>. The inclusion of increased urbanisation with mitigation does not materially alter the predicted flood level at the property<sup>40</sup>.
169. Ms Snook comments on the use of 120mm in Schedule 10 (Schedule 7 track change version). This is simply a change in the way of presenting "100mm plus or minus 20%" and is consistent with the other attribute target levels in Schedule 10 (Schedule 7 track change version).
170. The existing water level upon which to compare the rise is as described in the header to Schedule 10 (Schedule 7 track change version). In the case of the Styx however further investigations needs to be done to establish an appropriate weed resistance for the modelling - as proposed in the weed investigation condition.
171. Ms Snook queries the Council's evidence regarding the significance of weed growth. This was addressed above.
172. Additional drainage infrastructure needed at Earlham St: This is a matter unrelated to the application. The need for drainage at Earlham St is related mainly to earthquake effects, local rainfall flooding, tidal inundation and high groundwater levels rather than infrequent flooding from the Styx River resulting from upstream stormwater network discharges.
173. With regard to the comment that "additional water" in the Styx River raises the groundwater levels: The flows in the Styx Catchment have not materially changed (Harrington EIC at 76 and figure 1) in spite of developments upstream. There is an allowance for an increase of 120mm proposed in the application however this is for an infrequent 2% AEP event. Urbanised catchments generally cause a lower base flow to occur (Harrington EIC at 74) and these base flows have the greatest time to establish an equilibrium with groundwater levels in the Brooklands area and hence future increases in groundwater is not a hazard of this consent as deemed by Ms Snook. The possible increasing groundwater hazard is more related to future increases in tide levels.
174. In response to the second joint statement Ms Snook suggests that because there is some connection between the groundwater and the river in the Brooklands area that full detention should be used in the upper catchment. This is addressed in

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<sup>39</sup> Experts Second Joint Statement paragraph 13.

<sup>40</sup> Experts Second Joint Statement paragraph 32.

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the second joint statement which states at paragraph 10 "sustained high groundwater levels are not related to upstream urbanisation".

### **Ms Sue McLaughlin**

175. The Council does not propose to establish a local stormwater committee. Appropriate engagement and communication processes are provided by the proposed conditions.
176. The use of the term "proposed to be used" in the definition of "stormwater network": that term is deleted from the definition now proposed by the Council.
177. The question of ownership of drains could be resolved by asking the Council about the ownership status of the drain of interest rather than requiring this to be part of an SMP. This is not relevant to the stormwater network discharge consent.
178. Ms McLaughlin wishes to see an "audit system". That is the role of the consent authority which grants this consent – coupled with the extensive monitoring and reporting requirements of the proposed consent conditions.

### **Ms Jan Burney**

179. It is submitted that her concern with the use of the term "anticipated private development" in the content of Implementation Plans is unwarranted. The consent holder ought to plan responsibly for the anticipated needs arising from growth.
180. In response to the second joint statement Ms Burney suggests that it is the responsibility of this application to resolve the earthquake and weed issues in the Styx River. While the Council does not agree that weed is an effect of urbanisation - or is required to be managed under this consent - it is offering conditions which require investigate of how to better manage these effects in the longer term and which prioritise weed harvesting in the interim.

### **Ms Penny Hargreaves**

181. Contrary to Ms Hargreaves' submission, Mr Harrington's evidence clearly establishes that up to this time with developments already upstream there has not been an obvious increase in volume of water in the Styx River (EIC at 76 and Figure 1).
182. Ms Hargreaves evidence paragraph 6 (2) &(3): The graphs in the Joint Statement relate to river levels rather than flows and so it is not relevant whether or not all the flow is within the channel being monitored.
183. In response to the second joint statement Ms Hargreaves asserts that flood levels equivalent to a 50 year event have occurred with a 1 in 8 year rainfall. It is acknowledged that the resistance of weed is variable however there is a low probability that a high weed status will coincide with an extreme rainfall event (second joint statement paragraph 22). The Council is proposing conditions to ensure that high weed is appropriately managed.
184. Ms Hargreaves asserts that the Waimakariri River represents a flooding threat to residents around the Brooklands Lagoon. Mr Harrington's EIC introduction slide

10 demonstrated that a 100 year flood in the Waimakariri River is less of a threat than a 100 year tide event. She also suggests that Brooklands Lagoon should be stopbanked; however, as agreed by the experts in the second joint statement at paragraph 33 that would be an attempt to manage sea level rise, not to manage the effects of this proposed stormwater network discharge.

### **Mr and Mrs McGuigan**

185. The McGuigan submission on 12 November referred to the 11 questions outstanding from the Styx working party that have not been answered by the Christchurch City Council and sought (in answer to a question from Commissioner Caldwell) a condition requiring a working party.
186. Counsel understands that the Council has undertaken an approximately 2 year programme of meetings with Styx catchment residents and Community Board members (Harrington EIC para 100) specifically to consider matters related to the management of the Styx River. The general aim was to identify projects which would be helpful in the catchment and could be included in annual plan funding. This has resulted in experimentation with additional weed harvesting and also a dredging project near Spencerville. There are adequate consultation and communication requirements for the development of SMPs in condition 8 (condition 7 track change version) of the consent and the Council considers that further measures within the consent are not necessary.

### **Mr and Mrs Rodrigues**

187. An earlier difference of opinion arose in the expert evidence of Mr Harrington and Mr Potts concerning the degree of adverse effect on the Rodrigues' property from stormwater network discharge potentially increasing the size of a flood pond. Mr Potts' evidence<sup>41</sup> was that even though the big flood pond would be there already regardless of the stormwater network discharge into the Styx River, the presence of the discharge would mean that the flood effect would be present for longer and is more of a hazard, getting close to the 1m depth that is by definition a high hazard (RPS and District Plan definition). This matter has been addressed in paragraph 4 of the second joint statement which clarifies that "*flooding at the Rodrigues property is a local issue not directly related to the stormwater effects of urbanisation being addressed in this CRC190445 application*".
188. The earlier flood modelling in the initial SMP investigations indicated that the 2% AEP flood did not cause above floor flooding at the Rodrigues. Subsequent modelling using a higher hydraulic roughness to account for higher weed growth also did not suggest flooding above the floor level from the Styx River however above floor flooding would occur from the tide with a 0.5m sea level rise in such an event (second joint statement paragraphs 11 to 15).
189. The flows in the Styx River have not noticeably changed (Harrington EIC paragraph 76 and figure 1) in spite of developments upstream in recent years. There is an allowance for an increase of 120mm proposed in the application (Schedule 10 (Schedule 7 track change version)) however this is for an infrequent (2% AEP) flood event. Urbanised catchments generally cause a lower base flow to occur (Harrington EIC paragraph 74). The second joint

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<sup>41</sup> Answers to Commissioner questions on 9 November.  
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statement concludes at paragraph 10 that sustained high groundwater levels at Earlham St are not related to urbanisation effects in the upper catchment.

190. The first joint statement agreed (paragraph 61(b)) that restoring connection to Barkers Drain could be helpful.
191. The Council is treating the matter of fill in this local area as an enforcement issue which is not related to the stormwater network discharges from the urbanisation upstream in this catchment. It is therefore not appropriate to consider improving drainage as a stormwater mitigation within this consent as suggested by Mr Potts (see Harrington rebuttal evidence paragraph 19 and 20).
192. Council staff have considerable empathy for the residents at Brooklands and at Earlham St who are subject to a flooding hazard. They live in an area that is low, was further lowered in the Canterbury earthquake sequence, is subject to high groundwater, has tidal flooding, local rainfall flooding, poor drainage, and will be subject to the further effects of sea level rise. It is submitted, however, that the Council's evidence establishes that the "solution" to that is not to be found in the conditions of this discharge consent (see second joint statement at paragraphs 10 & 15 )
193. Those circumstances arguably make that area either more or less sensitive to the effects of the stormwater discharge (and, for the avoidance of doubt, the Council accepts that the increased sensitivity of some receptors can be a relevant factor in the assessment of adverse effects of a proposed activity).
194. It is submitted that the weight of the evidence establishes that the stormwater network discharge effect on that flooding hazard is minor.
195. There is agreement that drainage systems would assist to resolve the poor drainage at the Rodrigues property however the Council does not agree that it is within the scope of this application to address this matter because it is not related to the stormwater from urbanisation in the Styx catchment.
196. Mr Potts' answers to Commissioner questions on 9 November were that he considered that 10 yearly programmed reviews of SMPs was an appropriate duration; however, he considered that there should be a review of the SMPs if the 5 yearly run of the water quantity model (condition 55 (condition 48 track change version)) showed unexpected results.
197. It is submitted that no further change to the proposed conditions is necessary in order to address that issue. The maximum duration between reviews is 10 years. If circumstances warranted an earlier review then this would be undertaken. The condition for amendment of SMPs (condition 9 (condition 11 track change version)) provides the ability for the consent holder to seek to amend an SMP (through a certification process with the CRC) in order to respond to issues such as this.
198. The 22 February response from Mr and Mrs Rodrigues sought an explanation of the dark blue line on p22 diagram (Figure 9) of the water quantity experts' joint statement. This is the realignment of Barkers Drain around the recently built residence at 930 Lower Syx Rd.

199. There is not an outlet from Barkers drain into the Styx River. The outlets to Barkers drain are directly into Brooklands Lagoon and also into the Seafield Lagoon constructed wetland.
200. The Rodrigues response suggests that the Kaikoura earthquakes affected land levels at Earlham St. No evidence has been presented to confirm that assertion one way or the other. Mr Harrington's evidence (EIC paragraph 58 and Evidence Introduction slide 19) was that the highest tides recorded in Brooklands lagoon occurred in 2017 and 2018 and these tidal events followed the Kaikoura earthquake. It is clear and confirmed by Ms Rodrigues that these areas around Earlham St are subject to tidal inundation however it is not clear if the Kaikoura earthquakes have made the Earlham St area more prone to tidal and other forms of flooding.
201. Mr Harrington agrees that the re-connection of Barkers Drain will not stop flooding in the Earlham St area but it will facilitate drainage following flooding and thereby relieve to some extent the long periods of surface ponding that the area has suffered in recent years.
202. With regard to a weed plug stopping flow past Earlham St - there is no evidence of this in the Styx water level graphs presented in the joint statement or in Mr Harrington's evidence.
203. The Rodrigues' response to the second joint statement questions whether salt water has reached their property however they do acknowledge that their neighbours trees have died presumably as a result of recent salt water overflows from the Lagoon.

## **OTHER MATTERS RAISED BY THE COMMISSIONERS OR SUBMITTERS**

### **The uses within the conditions of “avoid”, “minimise” or “mitigate” and how and why the Council has selected the terms for each relevant condition<sup>42</sup>**

204. This was addressed by Ms West's answers to Commissioners' questions on 8 November. The Council has proposed no change to the manner in which the conditions use those terms.
205. “Mitigate” is used throughout the conditions, as it is within the Council's control to mitigate the water quality and quantity effects of stormwater network discharge. The falling of rain cannot be avoided, and many of the effects cannot be avoided, but can be mitigated to varying degrees. The conditions set the degrees to which effects must be “mitigated”. “Minimise” is an inappropriate obligation in relation to those effects as that is an open-ended obligation rather than an enforceable measure.
206. ‘Avoid’ and ‘remedy’ are used together once. That is in condition 6(e) (condition 5(e) track change version), stating that a purpose of SMPs is to ensure that the effect of stormwater infiltration facilities on groundwater mounding is avoided, remedied or mitigated. This enables an examination at the time of drafting and

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<sup>42</sup> Commissioner questions on 8 November.  
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certifying SMPs as to whether the effect in the particular instance should be avoided, remedied or mitigated.

207. The sole other use of “avoid” is in an objective within Schedule 9 (Schedule 6 track change version): *“Avoid Sustainable urban design widespread adverse effects on shallow groundwater quality”*. That Schedule sets the context within which steps to achieving that objective are to be assessed; and the framework within which that assessment occurs is the “best practicable options” obligation in condition 23 (condition 20 track change version).

### **Sustainable urban design (SUD) and soft engineering<sup>43</sup>**

208. Mr Parsons’ evidence on 7 November was that SMPs are the best place to assess the need for SUDs. No specific change to consent conditions is needed in order to provide for that as the purposes include use of infiltration systems for discharge to land where reasonably practicable.
209. It is submitted that Mr Norton’s evidence when recalled on 7 November established the inappropriateness of imposing any other conditions that would require SUDs. His evidence was that SUDs was not necessarily feasible or appropriate for all types of developments in all areas of the city, particularly where disposal of stormwater into land is impractical due to low permeability soils and high groundwater. Mr. Norton reiterated the Council’s preference for collective, integrated stormwater management for greenfields development and that SUDs measures are currently implemented by the Council for re-development and infill areas. Mr. Norton also highlighted issues of potential reliability where small-scale, privately owned stormwater mitigation systems are not constructed, operated or maintained properly by site operators where it is not their core business. Furthermore, certain types of SUD measures such as permeable pavement require specialised equipment with high cost and limited availability to maintain them. The Council’s position is that SUDs are one part of a larger toolbox of available measures which it uses to achieve the outcomes sought by the consent.
210. Ms Hess’s evidence on 12 November referred to a recent MfE Phase 1 Report by a Working Group relevant to SUDs and she submitted that this shows that a “top down” directive to use SUDs is needed so that this gets some traction in the Council.
211. The Council understands that the report that she was referring to is “Urban Water Principles: Recommendation of the Urban Water Working Group”, Phase I Report (2018). The report discusses urban water problems and sets out a purpose for urban water principles *“...to guide decision-making that promotes sustainable behaviours and the creation of water sensitive urban spaces by drawing on matauranga, the lessons of the past, international best practice, the needs of our present communities, and a vision of a sustainable, resilient future”*. It sets out seven criteria for developing urban water principles and does not make any express mention of SUDs.
212. If by “top down” Ms Hess meant a requirement in the conditions of this consent, then it is submitted that on the basis of Mr Norton’s evidence it is not appropriate

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<sup>43</sup> Commissioner questions on 7 November - recalled Mr Norton to address – and evidence of Ms Hess on 12 November.

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for those conditions to be imposed. If by “top down” she meant central government intervention, then that is irrelevant to this application.

**Whether conditions can provide for both variability of the Christchurch-wide contaminant load model and a fixed standard<sup>44</sup>**

213. The Council and CRC reporting officers have grappled with this possibility.
214. The Council does not propose any change to conditions intended to provide for that flexibility with regard to the Christchurch-wide C-CLM. The purpose of the C-CLM condition is to include a fixed standard assessed by a fixed model. The consent holder will be in breach if it does not reach the modelled standard. Enabling the consent holder to change the model used in assessing that compliance is not compatible with the objective of having a “hard” measure of compliance. The consent holder can and will, however, be investigating the utility of new or better models in development and review of SMPs.
215. A different approach is taken in the proposed conditions for the catchment specific contaminant load modelling for the SMPs. The contaminant load targets (as distinct from C-CLM derived standards) required by condition 6(b) (condition 5(b) track change version) for each SMP area will not necessarily be developed with the C-CLM model but can use the best or most suitable model available at the time. This will provide for an adaptive approach to use the latest technology in addition to the certainty provided by the C-CLM standards.
216. The facts are also different regarding modelling that underlies assessment of whether the water quantity attribute target levels are met. Condition 55 (Condition 48 track change version) provides for the ability to change the inputs to that model to account for changes such as growth of urban areas, changes in the network, or addition of detention basins. The model software itself is not changed. Moreover, the Council is not bound to a specific model for water quantity modelling. The water quantity experts have had no disputes regarding the appropriateness of that flexibility.

**Can there be a mechanism to change Schedule 10 (Schedule 7 track change version) without needing a variation of conditions under s127 of the RMA?<sup>45</sup>**

217. The Commissioners raised this as a possibility when questioning Mr Parsons on 7 November and again on 8 November. The query was whether the Council could propose a change to the consent conditions that would enable Schedule 10 to be changed without needing a variation of consent conditions under s127 of the Act. As noted above, condition 55 (condition 48 track change version) provides the ability to change the inputs to the model that is used to monitor achieving the targets in Schedule 10, so as to demonstrate compliance with Schedule 10, but not to change Schedule 10 itself.
218. Ms West’s answer on 8 November took the Commissioners to the proposed conditions that already provide for possible changes to Schedules 7 and 8 (Schedules 4 and 5 track change version) through a structured certification process, being conditions 50-53 (conditions 43 to 46 track change version).

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<sup>44</sup> Query raised in questions of Mr Kennedy and Mr vN on 7 November.  
<sup>45</sup> Commissioner question during Mr Parson’s evidence on 7 November.  
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219. Counsel understood Mr Caldwell to have requested that this be addressed in closing submissions in relation to Schedule 10, including reference to scale and degree, and a management plan type framework with objectives and criteria, as relevant factors.
220. While a condition could be inserted providing for a certification process for Schedule 10 similar to that used for Schedules 7 and 8, Council considers that one should not be inserted at this late stage, and is not necessary. Schedule 10 has been the subject of expert witness conferencing and has been discussed at length between Council, CRC and submitters. To insert a process where Schedule 10 could be changed at this point would require further resourcing, discussions and delay.
221. In addition, Schedules 7 and 8 are based on regional and national guideline levels, which can change independently. In contrast, Schedule 10 is based on the Council's own modelling and other information. The Council and, we understand, the CRC reporting officers are satisfied that the conditions as proposed allow for the following schedules to be updated without the need for a variation:
- Schedule 1 – sites excluded from the consent: This can be through condition 3(d), where the Industry Liason Group and the Technical Peer Review Panel will have input and there is a clear and certain process; and through condition 48 (Condition 41A track change version) where the final exercise of discretion is on the hands of the CRC;
  - Schedules 7 and 8 via condition 54 (condition 47 track change version) with respect to mana whenua values.

**Mr Parsons EIC paragraph 62: “nuisance” being managed under Christchurch District Drainage Act and Land Drainage Act<sup>46</sup>**

222. Commissioners had some questions of Mr Parsons regarding this and requested that this be addressed by counsel in the Right of Reply.
223. It is respectfully submitted that Mr Parsons' evidence on this point is straightforward and correct. In Mr Parsons' EIC (at 62) he states that although Schedule 10 (Schedule 7 track change version) only addresses infrequent / large flood flows, but not more frequent events, there is no gap in the proposed conditions as the Council has statutory duties under both the Christchurch District Drainage Act and the Land Drainage Act to manage nuisances that arise through the management of its stormwater network. Further, Mr Parsons states that any issues of that nature that arise can be dealt with outside of this consent, as a result of the Council's obligations under the Christchurch District Drainage Act and the Land Drainage Act to manage “nuisances”. That means that even if the “more frequent” flood events that Mr Parsons there categorised as “nuisance” are not managed under the conditions of this consent, they will still be managed by the Council performing its obligations under those statutes.
224. However, it is not the Council's position that the “more frequent” flood events need not be considered for the purposes of this consent. The Council has accepted the recommendations in the first joint statement by the water quantity experts that

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<sup>46</sup> Mr Parsons EIC at 62. Questions of Mr Parsons on 7 November.  
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these effects ought to be considered at the SMP development stage, and targets there set for the effects of stormwater in the “more frequent” events. The Council has also accepted the recommendation of the experts in the second joint statement that there be an added condition providing for interim prioritisation of weed clearance in the Styx River (condition 26).

225. The Christchurch District Drainage Act 1951 and the Land Drainage Act 1908 are still relevant. They can provide comfort to the Commissioners that the issue of “nuisance” is dealt with via another statutory framework, which requires that watercourses be kept in good repair and not allowed to become a nuisance.<sup>47</sup>

### **No other changes to consent conditions that arose from the joint statement of the C-CLM experts**

226. The changes to the proposed consent conditions arising from the joint statement of the C-CLM experts, and the evidence of the modelling experts for the CRC, are limited to the addition of the conditions that require setting catchment level targets in the SMPs.

227. There was considerable attention during presentation of the CRC officers’ report to possible alternative models for the C-CLM and its “accuracy”. It is submitted that the concern raised in the CRC consultant evidence regarding the need for “improvement” to the C-CLM model was fundamentally misplaced. That concern is no longer held by the CRC reporting planner, who supports the conditions now proposed. It is a model. Its purpose is to model the percentage of contaminant reductions that are achieved by the Council’s infrastructure irrespective of the level of contaminant that enters the infrastructure. As emphasised in counsel’s oral preliminary response on 15 November, the use of the model in condition 19 (condition 16A track change version) is a reporting obligation, not an operational condition. Remove the condition, and the outcome on the ground would be exactly the same, because it is the other conditions that manage the actual discharge that determine the environmental result.

228. The Council appreciates the Commissioners’ determination in the Fourth Minute that no further modelling is necessary for the purposes of deciding this application.

### **Relevance of section 14 of the Act<sup>48</sup>**

229. The Commissioners’ query was whether there should also be an application for diversion of water under section 14 of the Act which provides, among other things, that no person may divert any water, other than open coastal water, unless it is expressly allowed by a rule in a regional plan or a resource consent.

230. It is respectfully submitted that this is not an application for the construction of stormwater network infrastructure. It is an application to discharge stormwater from the Council’s network to land and water. Assessment of the effects of the discharge consent does not necessitate an application for consent for diversion of water. If any of the consent holder’s activities associated with building the stormwater network involves a diversion under s14 of the RMA that is in breach

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<sup>47</sup> Section 35 of the Christchurch District Drainage Act 1951 and s25 of the Land Drainage Act 1905.

<sup>48</sup> Queried by the Commissioners on 5 and 8 November 2018.

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of the Land and Water Regional Plan, then Council would apply for that consent at that time. That detail will become apparent in the Implementation Plan under condition 12(c) and (d).

231. For the sake of completeness, in the event that the Commissioners do not accept that primary submission, it is submitted that the LWRP does not require consent for the diversion of water where it is for the purpose of detaining, retaining or conveying stormwater.

232. The relevant rule is Rule 5.6, which provides:

*Any activity that-*

- (a) would contravene sections 13(1), 14(2), 14(3) or 15(1) of the RMA; and
- (b) is not a recovery activity; and
- (c) is not classified by this Plan as any other of the classes of activity listed in section 87A of the RMA

*is a discretionary activity.*

233. When considered at face value, Rule 5.6 classifies any activity involving the diversion of water, and that is not otherwise classified by another rule in the LWRP, as a discretionary activity. However, the LWRP includes several definitions that collectively operate to exclude any stormwater-related diversion of water from this requirement.

234. The Act does not define “diversion”. The LWRP does, however, with that definition being *the deflection of water from its natural course, but remaining within the bed or the banks of the water body, or artificial lake or artificial watercourse*. It follows that there are three situations in which the LWRP regulates the diversion of water – being diversion within a *water body, artificial lake or an artificial watercourse*.

235. The latter two terms are defined as:

*“Artificial lake” means a lake created by human action. It includes any lake created as a result of damming a river, constructing an impoundment on land, excavating land, **but excludes detention and retention basins for stormwater, for dewatering purposes, factory waste and washdown water and oxidation ponds and other artificial water bodies used to treat human or animal waste.***

*“Artificial watercourse” means a watercourse that is created by human action. It includes an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal channel. **It does not include artificial swales, kerb and channeling or other watercourses designed to convey stormwater.***

(emphasis added)

236. These definitions together provide a carve out from the definition of “*diversion*” for “*detention and retention basins for stormwater*” and “*artificial swales, kerb and channelling or other watercourses designed to convey stormwater*”. In light of the absence of any definition of “*diversion*” in the Act, and this specific carve out, it is submitted that any stormwater-related diversion is excluded from the requirement to obtain consent under Rule 5.6.
237. It is accepted that the operation of Rule 5.6, in light of these relevant definitions, does not exactly provide a single rule that “expressly allows” the diversion activity (in terms of section 14). It is also accepted that an alternative interpretation may be available, which would require discretionary consent on the basis that stormwater-related diversion is not “expressly allowed” by a rule in the LWRP.
238. The Council relies on the usual approach to plan interpretation set out in *Powell v Dunedin City Council*<sup>49</sup>, which is that the plain, ordinary meaning of the words must, where possible, be applied, together with a purposive interpretation, having regard to the total context of the words and the purpose of the plan.
239. It is also relevant to note that where there are competing interpretations of a plan available, the High Court in *Nanden v Wellington CC* [2000] NZRMA 562 (HC), held that:
- (a) It is desirable for an interpretation to be adopted which avoids absurdity or an anomalous outcome;
  - (b) It is also desirable for an interpretation to be adopted which is likely to be consistent with the expectation of property owners; and
  - (c) Practicality of administration by city council officers is also an important consideration.
240. In light of the absence of any objectives, policies or rules in the LWRP that seek to regulate diversion associated with stormwater, and the clear exclusions provided within the above-mentioned definitions, it is submitted that a purposive approach supports this interpretation that the LWRP does not seek to regulate that activity.
241. In terms of the *Nanden* factors, it is submitted that both (a) and (c) support the Council’s interpretation of the LWRP provisions. If consent was required by Rule 5.6 for any diversion associated to stormwater, then the exclusions would be rendered meaningless in the associated definitions, and there would be a significant policy gap in the LWRP in relation to this matter.

**The ability for CRC to decline to permit a site specific operator to surrender a consent<sup>50</sup>**

242. It is submitted that this is not a matter that needs to be resolved for the purposes of this application. The application and proposed consent conditions do not rely on any ability of the CRC to decline to accept the surrender of an existing site specific resource consent.

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<sup>49</sup> *Powell v Dunedin City Council* [2005] NZRMA 174.

<sup>50</sup> Commissioner questions on 8 November.

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243. Section 138(1) of the Act provides that the holder of a resource consent may surrender the consent either in whole or part, by giving written notice to the consent authority. Subsection (2) provides that the consent authority may refuse to accept the surrender of “part of a resource consent” in specified circumstances. The consent authority does not have jurisdiction to decline to accept the surrender of *the whole* of a resource consent.
244. The factual circumstances in which the Commissioners may consider this to be an issue are where, following the commencement of this consent but before the risk matrix and transitional plan have been developed, an existing activity that has a current discharge consent surrenders that consent and can then continue discharging in reliance on this consent. The Commissioners may be concerned about a potential risk in those circumstances that there are not conditions in place that manage high risks from that site.
245. However, Rule 5.93A of the LWRP removes that perceived risk. That rule permits discharges to a stormwater network only if expressly authorised by the network operator. This prevents discharge consents from being surrendered in the absence of that approval as it would otherwise be in breach of the Act (unless the discharge ceases).
246. That risk will be managed by the processes that the councils set in place. The Council will need to consider whether a change to its bylaws is needed so as to improve management, as owner and operator of the infrastructure, of approvals for discharges into the infrastructure. Secondly, the Council and the CRC will be required to engage constructively to establish a process for auditing under condition 47 (condition 41 track change version) risks that may arise from surrenders of consents in those circumstances.
247. Counsel understands that the process agreed at this stage between Council and CRC staff is that discharges which are specifically excluded under Schedule 1, or which hold a separate consent for discharge from the CRC, will continue to be monitored by the CRC. Separately consented discharges are therefore effectively ‘excluded’ until the Council incorporates them under this consent. Condition 3 provides that these discharges will be identified and incorporated into this consent through the transitional arrangements when the individual discharge consents are surrendered. The Joint Stormwater Management Protocol will continue to apply to how the councils work together if issues arise.
248. The councils are likely to develop and publicise a process for managing how individual discharge consents can be surrendered so that this can be clearly communicated to staff and consent holders.

**Use of Development Contributions paid to the Council for work in the SDC Area: Halswell Drainage Committee<sup>51</sup>**

249. This submitter clarified, in answer to commissioner questions, that the relief sought was that the commissioners impose a consent condition that requires assignment of development contribution money that is taken for greenfield development in the Christchurch District to upgrades on the drainage system downstream in the Selwyn District.

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<sup>51</sup> 12 November.

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250. It is respectfully submitted that the commissioners cannot impose that condition as it would be unlawful. The Development Contributions Policy (which is controlled by the LGA 2002) dictates how the Council may collect and use development contributions for capital expenditure. Contributions collected may only be used for growth infrastructure within the District. Contributions cannot be taken for the downstream drainage works in the Selwyn District.
251. There is no solution for the issue raised by this submitter in the conditions of this resource consent.
252. The SMP process and the Implementation Plan describe how growth infrastructure for stormwater will be implemented to manage greenfield development. The Halswell Drainage Committee may wish to have input both into the SMP process (through Community Boards and/or the Zone Committees) and the Council's LTP processes. This will enable the Halswell Drainage Committee to express their interests on where Development Contributions collected within the Halswell catchment for growth related infrastructure are spent, and on what kinds of projects. If the Halswell Drainage Committee wishes for the Council to commit additional funding for infrastructure to deal with the effects of existing development, stormwater system upgrades or repairs, or other non-growth matters, they are able to have input into the Council's LTP process.
253. Council staff are available to work with the submitter to investigate, in conjunction with the CRC and Selwyn District Council, other options to address their objective.

#### **Whether cost recovery is possible for industrial site audits<sup>52</sup>**

254. Mr Adamson's answer when recalled on 6 November was that the Council could charge for industrial site audits. That charge is not under s36 of the RMA<sup>53</sup>. Section 36 does not provide for the ability to levy a charge for the purposes of a consent holder auditing a site that is covered by that consent.
255. A charge for industrial site audits can be levied only if this is provided for in a bylaw. The Council's bylaws do not currently provide that ability. The Council has a programme of work underway in which possible bylaw changes will be considered by the Council in 2020.
256. The commissioners expressed some surprise on 8 November that the Council devoted just 1 FTE to industrial site audits and queries whether the number of audits should be driven by resources, as seemed to be the current case, or driven by assessment of risks and effects.
257. It is submitted that the Council has addressed that concern through the proposed addition to condition 40 and Schedule 4(k) and (l) (track change condition 39(k) and (l)) that provides for a cost-benefit analysis of the benefits of putting more resources into industrial site audits rather than other source control options.

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<sup>52</sup> Raised by Commissioners on 5 November.

<sup>53</sup> Use of s36 for this was queried by the Commissioners on 6 November.

**Whether the Council could set numerical limits on TSS in land use consents issued by the Council under the RMA<sup>54</sup>**

258. This is a planning question raised in questions of Mr Tipper on 6 November and Ms West on 8 November.
259. Ms West's response emphasised the difficulty of setting a TSS limit for construction phase discharges at the right level before a SDMP is set up.
260. Conditions 43 to 45 (conditions 40A to 40C track change version), that require the Council to develop the SDMP are, it is submitted, an appropriate way for the Council to develop TSS limits on a case by case basis given the difficulties expressed at the hearing from experts regarding setting 'blanket' limits within the consent (Mr Norton, Mr Tipper).
261. Mr Laurenson for the Oil Companies agreed, in answer to questions on 13 November, that one TSS limit for all development sites across the city is inappropriate because it does not consider the context of the site and the receiving environment. Mr Norton discussed this in his evidence.

**The proactive work that the Council does to ensure compliance<sup>55</sup>**

262. The Council's approach to ensuring compliance with its discharge consents is not limited to reacting to complaints. Many units and parties within the Council have a role in ensuring that the Council complies with its consent obligations. The Council will be taking a holistic approach across all relevant Council units to implement, achieve compliance with, and strive for the objectives of, this consent. Mr McEntee's EIC at paragraph 13 described his holistic approach to managing compliance with the consent requirements. He has prepared a draft responsibility assignment matrix and a 2019 task schedule based on the proposed conditions and distributed it to relevant Council managers across the organisation. He will of course be doing this again if consent is granted with the conditions that are now proposed.
263. Some compliances are ensured through the RMA and Building Act processes (e.g.; design of facilities). Some are managed through inspections and enforcement teams (e.g.; sediment discharges). Some are managed through planning processes (SMP development, standards development, District Plan). In that respect "compliance" is managed through the Council's activities as a whole.

**Whether there is an assumption of roof replacements in the Golder modelling<sup>56</sup>**

264. Questions and answers between the Commissioners and Mr Van Nieuwkerk on 7 November may have left the Commissioners with some uncertainty as to whether the Golder model for contaminant load reduction "takes the benefit" of roof replacements. If it does, then the reductions in contaminant load being

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<sup>54</sup> Raised by Commissioners on 6 November.

<sup>55</sup> Questions of Mr McEntee on 7 November.

<sup>56</sup> Questions of Mr Van Nieuwkerk on 7 November and addressed in comments by counsel for the Council on 8 November.

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modelled under condition 19 (condition 16A track change version) would not be confined to reductions that are gained solely by the Council's infrastructure. It would also be gains arising from the general process of people repainting roofs or replacing houses and roofs.

265. Counsel for the Council clarified this in oral submissions on the morning of 8 November. Counsel reported that the Golder's report and Mr Van Nieuwkerk's written evidence made clear that roof replacement is not included within the model. Commissioner Christmas indicated that she was of the understanding that routine roof replacement after 70 years was accounted for in the model but that the result of proactive drives by the Council to achieve roof replacement was not included. Commissioner Caldwell granted leave for this to be addressed in closing submissions if necessary.
266. Counsel confirms that the contaminant load reduction standards in condition 19 are the standards that must be achieved by the Council's stormwater facilities regardless of the quantity of contaminants entering the facilities. The Golder CLM model report (appended to Mr Van Nieuwkerk's evidence) shows that the contaminant load reduction standards that have been copied into Table 2 in condition 19 (condition 16A track change version) consider only the relative changes in load caused by changes in treatment. The benefits of roof repainting or replacement are not reflected in that table.

#### **Whether conditions that enable exclusion of sites is contrary to LWRP policy 4.16A<sup>57</sup>**

267. This was addressed in detail in Ms West's brief of evidence and in answers to the Commissioners' questions put to both Ms West on 8 November and to Mr Reuther for the CRC. The planners were both of the view that the limited narrow route proposed in the conditions for a site to remain excluded from coverage under this consent is not contrary to the policy.
268. In my submission (and as is set out in both the s42A report and Ms West's evidence) the policy does not require the achievement of the water quality outcomes in part (c) within the timeframes specified in part (e). The policy requires "*demonstration of a commitment to progressively improve the quality of the discharge*", with the aim of the progressive improvement being to meet condition (c), no later than 2025.
269. The existing SMPs, I submit, meet the requirements of Policy 4.16. The SMPs that are still in the process of being developed will also need to demonstrate a commitment to progressively improve the quality of the discharge, and this has been provided for through proposed conditions.
270. The discharge for which this consent is sought is from an existing local authority network, and it is proposed to maintain or progressively improve the quality of the discharge towards meeting the water quality outcomes. The SMPs will demonstrate the Council's commitment to progressively improve the quality of all of the discharges.

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<sup>57</sup> First queried by Commissioners on 5 November.  
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#### **Network discharge Policy 4.17**

271. Commissioner Caldwell's questions of Ms West on 8 November queried the degree of inconsistency with policy 4.17 and noted that this is a directive policy. Ms West assessed this in her response to questions from the Commissioners.
272. The questions concerned consistency with the policy in light of the evidence presented from submitters with regard to the Styx, and Mr Parsons' evidence that modelling demonstrated an increase in volumes. Ms West's answers drew on Mr Harrington's evidence (the Council had recalled Mr Harrington following Mr Parsons' evidence to provide more detail and clarity around that increase).
273. Policy 4.17 LWRP is:

*Stormwater run-off volumes and peak flows are managed so that they do not cause or exacerbate the risk of inundation, erosion or damage to property or infrastructure downstream or risks to human safety.*

274. It is submitted that the Council is managing stormwater run-off volumes and peak flows in a manner that is not inconsistent with that policy. Mr Harrington explained that the increase described by Mr Parsons was at Harbour Road and that when the stormwater reaches the Brooklands area it spreads across the flood plain creating only a minor adverse effect. Moreover, the model assumed development over and above that which will now be undertaken as result of the earthquakes and rezoning of land, so the increase is also most likely overstated.
275. It is respectfully submitted that the evidence demonstrated that although stormwater combined with other factors such as ponding and sea level rise in the Brooklands area can result in issues for some residents, this is not primarily due to stormwater network discharges. Appendix A of Mr Harrington's evidence, and further information from Mr Parsons described in counsel's memorandum dated 8 February 2019, is that this stormwater discharge consent will result in a minor change to the effects of the water already ponding in this area. The experts' second joint statement at paragraph 18 shows an increase in flood level at the Rodrigues property of about 20mm in a high weed scenario because the flooding is largely driven by the assumption of a 0.5m sea level rise. The most significant future flooding issue will be the effects of sea level rise rather than upstream urbanisation. Based on that evidence it is submitted that given the management of stormwater proposed by the Council, and the minor degree of increase in inundation, the proposal is generally consistent with Policy 4.17. If the Commissioners do not accept that primary submission, then for the same reasons it is submitted that the effects are clearly not contrary to Policy 4.17.

#### **Whether any of the possible stormwater effects are irreversible (and therefore reliance on adaptive management is inappropriate according to caselaw)<sup>58</sup>**

276. It is submitted that there is no evidence that any of the effects of stormwater network discharge are irreversible and occur before they can be managed by the adaptive management regime. The Commissioners' questions of Dr Margetts on this on 6 November did not elicit any evidence of irreversible adverse water quality effects. On 8 November Mr Cantrell's answers to Commissioner questions were that he considered that the 10 year feedback cycle for review of SMPs was

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<sup>58</sup> Queried by Commissioners 6 November.  
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appropriate to ensure that there could be no irreversible adverse effects before the adaptive management framework ensures that there is intervention.

### **Passing the section 107 RMA test<sup>59</sup>**

277. Both Ms West and counsel for the Council agreed with the Commissioners' proposition that Dr Margetts' approach to "temporary" in relation to section 107 may not be correct and that passing the s107 test relies on special circumstances<sup>60</sup>. Those special circumstances are described in detail on Ms West's EIC and in the Council's opening submissions.
278. The Council's position, based on the evidence of Dr Margetts, is that some of the effects described in section 107(1)(c) to (g) may occur as a result of the discharge of stormwater. However, this is an application for stormwater network discharge that the Christchurch City Council is required to manage, and cannot simply turn off the discharge to avoid an effect. Instead the Council manages the stormwater network throughout the District and mitigates adverse effects through the various means described in the application and as required by the proposed consent conditions. It is submitted that this (and the fuller circumstances described in Ms West's EIC and the Council's opening submissions) is special circumstances and the consent authority may grant consent under section 107 (2)(a), and it is consistent with the purpose of the RMA to do so.

### **DURATION OF CONSENT**

279. We do not here repeat the summary of the law and submissions on appropriate duration that were set out in the Council's opening submissions.
280. There was no cogent evidence in the course of the hearing that a duration of any less than the 25 years sought by the Council is appropriate. A desire for a shorter duration was mentioned by the river care groups but without a great deal of explanation or justification.
281. The s42A report did not make a clear recommendation on duration but that changed in the CRC evidence on 14 November and the 25 year duration is now supported by the CRC reporting officers.
282. It is submitted that if the Commissioners are minded to grant consent, then given the size of the network, the level of investment, the amount of time needed to determine whether the receiving environment objectives are being met, the adaptive management approach enabled by the SMP framework, the hot spot targeting enabled by high risk site audits and the EMP and the C-CLM, it is appropriate to grant consent for the maximum duration available under the RMA, being 35 years – and is equally appropriate to grant consent for the duration now sought by the Council as a result of the agreement with Ngā Rūnanga, and supporting by the CRC reporting officers, being 25 years.

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<sup>59</sup> Counsel's answers to Commissioner questions on 8 November.

<sup>60</sup> Ms West answers to Commissioner questions on 8 November.

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## **CONCLUSION**

283. The discharge activity proposed in the SMP framework for a 25 year duration will result in an improvement in the quality and quantity management of existing stormwater discharges from existing development areas and will mitigate the effects of future residential and commercial development. It will also appropriately manage flood risk arising from those discharges. It is submitted that the effects of the proposal on the environment will be no more than minor. The proposed discharge is consistent with the provisions of the relevant statutory documents, including in particular the NPS-FM, RPS, RCEP and LWRP. The proposal is consistent with the sustainable management purpose and principles of the Act.

**BK Pizzey**

8 April 2019