

**BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE CANTERBURY REGIONAL COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of Proposed Plan Change 7 to the Canterbury Land and
Water Regional Plan and Proposed Plan Change 2 to the
Waimakariri River Regional Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF THE CANTERBURY
REGIONAL COUNCIL
16 September 2020**

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MAY IT PLEASE THE HEARING COMMISSIONERS

- 1 This Memorandum of Counsel is filed on behalf of the Canterbury Regional Council (**Council**) regarding the Council's duplication assessment.
- 2 The Council has undertaken an assessment of whether provisions in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-Freshwater**) duplicate the provisions in Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan (**PC7**) and Proposed Plan Change 2 to the Waimakariri River Regional Plan (**PC2**).
- 3 The Resource Management Act 1991 (**Act**) is silent on what constitutes duplication for the purposes of section 44A of the Act however, the Council is required to amend its planning framework in situations where its plan (and proposed plan) rules duplicate the NES-Freshwater regulations.
- 4 The Council has undertaken its assessment on the basis that duplication exists when the provisions of the NES-Freshwater regulate the same activity and the same effects.
- 5 Applying this approach, there is no duplication between the provisions of PC7 and PC2, and the regulations of the NES-Freshwater.
- 6 However, the Council is still undertaking its assessment of whether the provisions of PC7 and PC2 are in conflict with the provisions of the NES-Freshwater, noting that:
 - (a) A plan rule which is more stringent than a National Environmental Standard (**NES**) (in that it prohibits or restricts what the NES provision permits or authorises) conflicts with a provision of an NES if the NES does not expressly say that the rule may be more stringent than it (sections 43B(1) and 44A RMA);
 - (b) A plan rule which is more lenient than an NES provision (in the sense that it permits or authorises an activity that the NES prohibits or restricts) conflicts with a provision of an NES if the NES does not expressly say that a rule may be more lenient than it (sections 43B(3), (4), and 44A RMA).
- 7 Regulation 6 of the NES-Freshwater provides:

- (1) A district rule, regional rule, or resource consent may be more stringent than these regulations.
 - (2) A district rule, regional rule, or resource consent may be more lenient than any of regulations 70 to 74 (culverts, weirs, and passive flap gates) if the rule is made, or the resource consent is granted, for the purpose of preventing the passage of fish in order to protect particular fish species, their life stages, or their habitats.
- 8 The extent to which there is any conflict will be addressed in the Council's opening legal submissions.

Dated this 16th day of September 2020



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Counsel for Canterbury Regional Council