

**BEFORE THE CANTERBURY REGIONAL COUNCIL
INDEPENDENT HEARING PANEL**

Under the Resource Management Act 1991

And the Environment Canterbury (Transitional Governance Arrangements) Act 2016

In the Matter of Plan Change 7 to the Canterbury Land and Water Regional Plan

**LEGAL SUBMISSIONS ON BEHALF OF THE WAIMAKARIRI NEXT
GENERATION FARMERS TRUST**

Submitter number: 425

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Introduction and summary

1. These legal submissions are made on behalf of the Waimakariri Next Generation Farmers Trust (NGFT). NGFT represents over 100 Waimakariri farmers and rural businesses who are focused on developing, encouraging, and promoting the interests of the Waimakariri district farming community for the benefit of future generations. The Objects of the NGFT are:
 - Represent all primary industries in the Waimakariri farming catchment area;
 - Promote awareness and a positive public image of the farming community by publishing real stories and experiences;
 - Bridge the urban and rural divide and unite the community;
 - Build positive and constructive relationships with regulators, council and regional stakeholders to work collaboratively for a greater outcome;
 - Encourage open testing and reporting of farming information from independent monitoring systems;
 - Encourage the use of industry bodies to aid the greater farming outcome; and
 - Facilitate and increase the knowledge base within the farming community.
2. The NGFT's submission supports most aspects of Plan Change 7 (PC7) to the Canterbury Land and Water Regional Plan (the Plan). NGFT's primary concern is with Table 8-9 which provides for progressive reductions in nitrogen losses within a defined Nitrate Priority Area. The table provides for five Nitrate Priority Sub-areas (A to E) with specified targeted reductions for each 10-year period starting in 2030, and in the case of one Sub-area, extending to 2080.
3. NGFT accepts the targeted reductions in Table 8-9 for 2030 and 2040. I submit that those targets give effect (in part at least) to the National Policy

Statement: Freshwater Management 2020 (NPSFM 2020). Achieving the 2040 targets will be particularly challenging for farmers and may well negatively impact farm profitability in many instances. That is, based on the primary sector evidence it will likely adverse the profitability of many farmers in the area, and for some this will challenge the viability of their farm.

4. However, NGFT seeks that Table 8-9 be amended by removing the targeted reductions for 2050 and beyond. The likely need for further reductions from 2050 and beyond should be included in later plan reviews once a robust set of data that is needed to inform these longer-term targets has been collected between now and 2040. This will ensure that the water quality improvements which have resulted from changes in land use practices, together with implementing managed aquifer recharge and targeted stream augmentation are properly considered. This is both an appropriately cautious and a 'no regrets' approach and is consistent with the approach taken by the Hearings Panel in Plan Change 2 to the Regional Plan (the Hinds Plains/Hekeao section).
5. What targets should be included in Table 8-9 is a question of what the most appropriate set of provisions is, in accordance with the requirements of section 32 of the Act. In my submission, this is primarily a question of assessing the costs and benefits of the options. The approach sought by NGFT carries less risk in terms of adverse economic and social effects than Table 8-9 as notified, but is equally as cautious as that proposed by Environment Canterbury.
6. NGFT's position is mostly consistent with Waimakariri Irrigation Limited's (WIL) submissions and evidence. NGFT relies on the technical evidence called on behalf of WIL, Dairy NZ and Dairy Holdings Limited. The primary difference between NGFT and WIL is that NGFT accepts that providing both 2030 and 2040 targets in Table 8-9 is appropriate, notwithstanding the 'stretch' that these targets will require.

The need for improvement in water quality

7. NGFT supports the need to change land use practices to improve water quality. Significant changes to farming practices will be required and

meeting the targets for 2040 will be particularly challenging.

8. To achieve the necessary targets NGFT considers that it is critical that landowners/farmers are part of the solution and are supported to demonstrate leadership in partnership with Council. NGFT's commitment is demonstrated by the project for which it has just gained funding from the Ministry of Primary Industries¹. As part of this, NGFT seeks a (non-regulatory) commitment from Environment Canterbury that the Council will actively work in partnership with landowners to effectively monitor future water quality. That is critical to provide an adequate and appropriate basis for further reduction targets which may be needed to achieve the long-term water quality outcomes sought.

Table 8-9

9. NGFT's primary concern is the reduction targets set from 2050 and beyond in Table 8-9. This concern arises from:
 - a. The inherent uncertainty of the modelling which increases as the period being modelled increases.
 - b. The potential adverse economic and social effects of including specific targets now for 2050 and beyond.
 - c. The appropriateness of providing sub-areas within the Nitrate Priority Area.
10. In addition, if the 2050 and later targeted reductions were to remain in Table 8-9, then NGFT disagrees with adopting differing percentage reductions in different of sub-areas (due to the distorted economic impacts that could result); and disagrees with the 'sinking floor' and 'cumulative' approach to percentage reductions in nitrogen loss. Prior to 2040 these issues do not arise. However, their adoption further drives the need to constrain limits to 2040 at this point, or to adjust the N loss floor, and percentage reductions in N loss to apply as discrete percentage reductions.
11. NGFT seeks that Table 8-9 be amended to remove the sub-zones and to

¹ Evidence of Sam Spencer-Bower paragraph 1.5(d)

delete the targets from 2050. NGFT suggests that the plan should nonetheless make it clear that:

- a. there are likely to be additional reductions required beyond 2040;
- b. the nature of those reductions will be determined through rigorous monitoring and consideration of the improvements which have resulted from changes to farming practices prior to 2040;
- c. the precise nature of further reductions required will be introduced in plan reviews as the water quality information becomes available and the modelling is more certain.

Section 32 – costs, benefits and risks

12. Section 32 requires the decision maker to:
 - a. examine the extent to which the purpose of PC7 is the most appropriate way to achieve the purpose of the RMA²;
 - b. examine whether the provisions (policies, methods, rules) are the most appropriate way of achieving the objectives³; and
 - c. identify and assess the benefits and costs of the effects that are anticipated from implementing the provisions (including economic growth and employment), including assessment of the risk of not acting if there is uncertain or insufficient information about the subject matter of the provisions⁴.

13. For a plan change, the decision-maker should adopt “the better of the choices before it on the evidence” in achieving the purposes of the RMA and the objectives of the Plan⁵. If “the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted.”⁶

² Section 32(1)(a)

³ Section 32(1)(b)

⁴ Section 32(2)

⁵ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* C153/2004 at [56].

⁶ *Royal Forest & Bird Protection Society of New Zealand Incorporated v Whakatane District Council* [2017] NZ EnvC 051 at [59]

14. NGFT accepts that it is likely that there will need to be additional reductions beyond 2040. However, the primary question is whether including specific targets for 2050 and beyond at this point is necessary, and whether the benefits of doing that outweigh the potential costs.
15. There is, of course, a need for caution in determining what the appropriate provisions should be. That is a common issue which applies to all regional water plans which address water quality, and each of those plans must include provisions within a context of varying levels of uncertainty. A relatively recent example is Plan Change 10 to the Bay of Plenty Regional Natural Resources Plan for the Rotorua Lake catchment. In *Federated Farmers of New Zealand Inc v Bay of Plenty Regional Council*⁷, the Court discussed the need for caution.

[37] It is an unavoidable conclusion from the evidence that there are many important aspects of nutrient management in the Lake Rotorua catchment that are uncertain, and that time will be required before the outcome of policies and methods put in place now will become apparent. Under these circumstances, it is necessary for all parties to accept that PC10 is part of a long-term process, and that further plan changes will likely be required in terms of policy direction in the future to take account of experience and further scientific data.

[38] This is recognised explicitly by the Regional Council in the introduction to PC10, which states:

The need to achieve the sustainable lake load of 435 tonnes of nitrogen per annum is based on the best science available. Adaptive management is a core element of the implementation of nutrient management for the Lake Rotorua groundwater catchment. This includes regular reviews of the science and policy and responding to the outcomes of these reviews.

[39] Ms Wooler in submissions in reply explained that use of the phrase adaptive management in this context is a "reflection of the complexity of water management in the Lake Rotorua catchment, rather than any innate uncertainty in resulting effects of the actions

⁷ [2019] NZEnvC 136

being taken". We accept use of the phrase understood in this way and differentiated from the prerequisites for adaptive management contained in the Sustain Our Sounds decision.

16. NGFT seeks that the Hearing Panel adopt an approach to PC 7 which is consistent with the approach adopted by the Environment Court in this decision. This I submit, is also consistent with the approach of the Panel in the Lower Hinds/Hekeao Plains Area decision. In this regard I also agree with, and adopt, the submissions by counsel for WIL on the 'precautionary principle'⁸.
17. In the Rotorua Lake decision, the Environment Court cautions against others seeking to simply transfer the findings of that decision to other locations without a thorough evaluation of their applicability and appropriateness⁹. However, I understand that to be referring to the specific provisions of that plan change rather than to assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions¹⁰. I submit that the approach to caution used by the Court in that decision is entirely appropriate for the Hearing Panel to adopt when considering PC7.
18. Are the specific targets in Table 8-9 from 2050 necessary to be included in the Plan at this stage? NGFT accepts that the targets for 2030 and 2040 can be adequately justified by the modelling, but from 2050 and beyond that there are increasing levels of uncertainty, particularly where:
 - a. natural attenuation processes continue to be researched;
 - b. questions remain about the reliability of the Overseer model and its practical application as a method of predicting nitrogen losses; and
 - c. monitoring progress in improving surface and ground water quality is difficult because of the long groundwater travel times that exist in the catchment.

⁸ Legal submissions on behalf of Waimakariri Irrigation Limited 11 November 2020, paragraphs 25-36

⁹ Paragraph [40]

¹⁰ Section 32(2)(c). The primary issue in the Rotorua Lake case was determining the most appropriate nitrogen allocation method to meet the relevant plan provisions and give effect to the regional policy statement.

19. These uncertainties will be reduced by robust monitoring data collected between now and 2040. There will be two plan review cycles between now and when further targets may be needed. If new targets for 2050 and beyond were introduced around 2040 they would not apply until 2050 (the table provides for the 2040 targets to apply right up until just before 2050). Those new targets could be the same as those in the notified version of Table 8-9, or they might require greater or lesser reductions, based on further data.
20. Farmers will need to meet the 2030 and 2040 target reductions. That will require changes to farming practices. Those changes will be a 'stretch' for many. When the farmers meet those targets, water quality should be trending in the desired direction. There is no evidence to suggest that specifying targets for 2050 and beyond in the plan now is necessary to require farmers to change land use practices to meet the 2040 targets. Those targets are sufficient in themselves. Not providing targets now for 2050 and beyond will not mean water quality improvement is slower, or that the long-term targets (should they be shown to be appropriate and necessary) will be harder to achieve.
21. Consequently, I submit that setting targets from 2050 now is not necessary.
22. Nonetheless, is specifying long-term targets (from 2050) now useful or desirable having regard to the need to exercise appropriate caution in light of the uncertainty inherent in the modelling, and the uncertainty around how much water quality will improve as a result of changes to land use practices over the next two decades or so? There is benefit from a transparency perspective in signalling now that further reductions are possible/likely after 2040. However, that can be done without the Table actually setting specific targets now.
23. What is the risk of not specifying limits beyond 2040 in the Plan now?
24. Risk is a combination of likelihood of an event and the consequence of it occurring. While the need for further reductions from 2050 and beyond is quite likely, that is not the issue. The actual event of potential concern here is not simply that further reductions will be necessary, but that the

Council by not including those targets now will be constrained in some way in later specifying appropriate additional target reductions, that options to achieve further reductions will have been limited or foreclosed, or that any necessary additional future changes to framing practices are made significantly more difficult or costly. What is the risk of that happening?

25. I submit that that risk is nil or negligible. There are at least 2 plan review cycles between now and 2050 that can include specific targets if and when they are shown to be necessary. Moreover, as more data is gathered, and uncertainty is reduced, the risk that the 2050 and beyond reduction targets are not the correct or most appropriate targets should also be reduced. But in any event, that is something that can be considered and addressed if necessary, in the plan reviews.
26. I therefore submit that the risk of not including specific targets from 2050 is low, especially if the Plan is clear that further reductions are likely and the specific targets will be set in future plan reviews once monitoring data leading to improved modelling certainty becomes available.
27. What, on the other hand is the risk/disbenefit in providing specific long-term targets in Table 8-9 now? Those risks/potential costs/adverse effects are described in the evidence of NGFT farmers (and in evidence for other submitters). Not only are there concerns about farm profitability, but witnesses talk in their evidence about farmer wellbeing being of concern. Mr Sam Spencer-Bower, the Secretary of the NGFT, notes that anecdotal evidence suggests many farmers are extremely uncertain and fearful for their futures. The evidence also points to economic and social effects on centres such as Oxford and Rangiora.
28. How likely are these adverse economic and social effects? And do they arise because of Table 8-9 specifying long-terms reduction targets or are they inherent in the need for the 'stretch' reduction targets to 2040, and likely further reductions beyond that? The question for now is not the more general one of whether achieving the long-term outcomes in the NPSFM 2020 and giving effect to Te Mana o Te Wai as required by the NPSFM 2020 will result in adverse effects on some farmers and potential adverse social effects on communities in the Waimakariri. Those effects

may be an inevitable consequence of fully giving effect to the NPSFM 2020. Rather, the question for now is whether listing specific long-term targets in Table 8-9 now risks making those adverse effects worse or reducing the resilience of the community to manage those effects.

29. There is evidence from farmers that the long-term targets are a disincentive to even trying to reach the 2030 and 2040 stretch targets. The problem they have identified is having to make long-term financial decisions in the next few years while mindful of the need to go even further after 2040 to meet targets which are based on uncertainties. Meeting the 2040 targets will be hard enough. Meeting (unreliable) targets even further out may well be a bridge too far for many.
30. If we had a high level of certainty about the modelling and the improvements that will be made from changing farm practices, targeted stream augmentation and managed aquifer recharge, it would most likely be preferable for the Plan to signal the need for changes clearly and early. However, we do not have that certainty.
31. There is no cogent evidence that states the farmers are entirely unnecessarily concerned about the financial implications and the potential flow-on social effects of including targets for 2050 and beyond now. The likelihood of these adverse effects occurring or being made worse because 2050 and beyond targets have been unnecessarily included in the Plan now (even if they turn out to be correct) is unclear, but even if the likelihood of that happening is in the end low, it is not negligible.
32. What are the consequences if these adverse social and economic effects occur or are made worse by including the long-term targets now? Evidence from some NGFT farmers suggest they could be significant.
33. Considering the above, I submit that:
 - a. There is no necessity for including the long-term targets in the Plan now, and there is no particular benefit in doing so.
 - b. The risks of including the long-term targets now outweigh any

benefits of including them now, particularly if the Plan signals the likely need for further reductions after 2040.

- c. The risk of not acting if there is uncertain or insufficient information does not arise. The 2030 and 2040 targets in Table 8-9 require significant action. Taking that action does not and will not constrain or foreclose the ability of the Council to require additional action of a type and to the degree necessary when that is informed by additional monitoring data.

NPSFM 2020 – TE MANA O TE WAI

- 34. I agree with the submissions of counsel for WIL about the applicability of the NPSFM 2020¹¹. However, I go further in making the submissions that PC 7 gives effect to Objective 2.1 and Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai. This plan change has properly recognised Te Mana o Te Wai and also correctly prioritises the health and well-being of the Waimakariri waterbodies over the health needs of people and the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. It may be necessary for future plan changes to give effect to other aspects of the NPSFM 2020.

Dated: 15 November 2020



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¹¹ Legal submissions on behalf of Waimakariri Irrigation Limited 11 November 2020, Schedule 1