

# **Plan Change 4 to the Proposed Canterbury Land & Water Regional Plan**

## **Officer's Reply For Council Reply Hearing**

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29 April 2016





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Appendix A – Tracked Changes Version of Variation

# **1. Introduction**

- 1.1. This report has been written to sit alongside and explain the “marked up” version of the final recommendations on Plan Change 4 (PC4 Omnibus) to the partially operative Land and Water Regional Plan (LWRP). It responds to many of the issues raised in submissions and evidence.
- 1.2. This reply report responds to matters that have been raised in legal submissions and evidence at the hearing, and where the matter either needs a direct response from Council officers, or results in a recommended change to the Council officers’ position.
- 1.3. Where a matter has been raised in legal submissions or evidence, and the submitter takes a different point of view to the Council officers, but it does not result in an altered recommendation from Council officers, these matters are not specifically addressed. The original Section 42A Report and the two sets of written responses to questions from the Hearing Commissioners address a majority of the issues raised by submitters at the hearing, and those assessments are not repeated here. On this basis, if there is no further assessment in this reply report, it is not an indication that Council officers have not carefully considered the matters raised in evidence, but rather that Council officers have conclude that their assessment and conclusion in the original Section 42A report, as modified by the responses to the Hearing Commissioners’ questions, provide adequate analysis of the issue and continue to be the Council officers’ analysis and recommendations.

## **2. Major Issues Identified Through the Hearing**

2.1. Due to the nature of the Plan Change, with a large number of generally unrelated constituent parts, there are a number of other matters, not listed below, that had some aspect, often minor, that remained outstanding. A small number of issues consistently arose. A high-level summary of these, to provide context to this report are:

1. Inanga spawning – the overall need for protection of inanga habitat seemed largely accepted by most parties. Outstanding issues involve clarity of the provisions and mapping, particularly the coastal marine area boundary interface and ‘tidal’ variation. In addition, whether the listing of ‘sites’ as well as ‘habitat’ protection is required remained unresolved.
2. Stormwater – the issue of whether stormwater into a territorial authority system is indeed a ‘discharge’ and whether transferring responsibility to network operators is appropriate was addressed by several submitters. The implementation issues for territorial authorities was a considerable concern.
3. Braided rivers and vegetation clearance/stock exclusion – while the statutory and ecological basis for improved management of braided rivers appears clear, the, at times, significant implications for the adjacent landowners and occupiers, who may wish to make economic use of this land, became evident.

### **3. Commentary on Submissions and Evidence**

- 3.1 The following comments are a high level analysis and brief commentary on the legal submissions and evidence filed and questions put to submitters during the course of the hearing. The comments represent the officer's analysis and highlight items that were useful, in terms of framing the final position reached by officers. The order of the following comments follows the chronological order of the appearances by submitters.

#### **Royal Forest and Bird Protection Society of New Zealand**

- 3.2 Ms Toleman, counsel for the Royal Forest and Bird Protection Society of New Zealand Inc., presented substantial legal submissions, and responded to questions. Those submissions addressed a significant number of topics in PC 4, and detailed those changes now sought by the Society. The submissions also identified that a large number of the provisions, including those recommended to be adjusted by the Section 42A report were supported.
- 3.3 Evidence was presented by Ms MacArthur, on behalf of the Society. This evidence focused on inanga spawning protection, braided rivers and stock exclusion.
- 3.4 Following the presentation, the Society provided to the hearing a document identifying the "source" of the various changes requested, within the Society's original submission.

#### **Transpower New Zealand Limited**

- 3.5 Ms Bould, a consultant planner, appeared for Transpower New Zealand Limited. The evidence focused in vegetation clearance and activities in the beds of lakes and rivers, stormwater and various definitions. The evidence alerted the Hearing Commissioners to the National Policy Statement on Electricity Transmission.

#### **Trustpower Limited**

- 3.6 Ms Hunter, a consultant planner, appeared on behalf of Trustpower Limited. Her evidence identified that Trustpower was particularly interested in the vegetation clearance, and inanga spawning protection provisions, and interactions with the National Policy Statement for Renewable Energy Generation. The evidence also highlighted support for a number of the changes in PC4.

## **Fulton Hogan Limited**

- 3.7 Evidence was presented by Mr Ensor, a consultant planner for Fulton Hogan Limited. In addition, Mr Savage, an employee of Fulton Hogan, lodged evidence and appeared at the hearing. Fulton Hogan's evidence focused on the inanga spawning provisions, vehicle refuelling and vegetation clearance aspects of PC4.

## **Director-General of Conservation**

- 3.8 Ms Newell, counsel for the Director-General of Conservation, provided legal submissions, and particularly focused on the scope to make those changes requested by the Director-General, particularly in relation to whether the changes are "on the Plan Change".
- 3.9 Mr Cox, a consultant engineer, presented evidence on effluent disposal at back country huts.
- 3.10 Mr Duncan, a consultant hydrologist, presented evidence on hydrological flow regimes, particularly in relation to minimum flows.
- 3.11 Mr Familton, a planner employed by the Director-General of Conservation, presented evidence on the full range of amendments to Plan Change 4 sought by the Director General. Mr Familton considered that many of the Director-General's submission points had been addressed adequately in the Section 42A report. Subsequent to the hearing, and at the invitation of the Hearing Panel, Mr Familton produced additional evidence relating to Section 70 of the RMA.
- 3.12 Dr Dunn, a freshwater science advisor, employed by the Director-General of Conservation, presented evidence particularly relating to Canterbury mudfish and other threatened freshwater fish species.
- 3.13 Mr Grant, an ecologist employed by the Director-General of Conservation, prepared evidence in relation to nesting birds and Canterbury braided rivers, and the difficulty detecting the nests of some species.

## **Community and Public Health**

- 3.14 Dr Humphrey, a Medical Officer of Health for Canterbury, presented evidence for Community and Public Health. The evidence focused on the importance of drinking water protection and, in particular, the application of the New Zealand Drinking Water Standards.

### **North Canterbury and Central South Island Fish and Game Councils**

- 3.15 Mr Pierson and Ms Christianson provided evidence for the Central South Island and North Canterbury Fish and Game Councils.
- 3.16 The evidence particularly related to the planning framework, works in riverbeds and stock exclusion. Issues remained relating to a Code of Practice referenced in Rule 5.138. A number of photographs and a map were submitted at the hearing, relating to stock exclusion from salmon spawning areas.
- 3.17 Following the hearing, the Council's effectively withdrew their submission points with respect to the Code of Practice.

### **Hurunui Water Project**

- 3.18 Mr Hansen, a consultant planner, appeared for the Hurunui Water Project. The evidence focused on activities in the beds of lakes and rivers, and explained the interests of Hurunui Water Project. Mr Hansen noted that many of the Hurunui Water Project submission points were satisfactorily addressed in the Section 42A report.

### **Horticulture New Zealand**

- 3.19 Mr Hodgson, a consultant planner, appeared for Horticulture New Zealand. Although Mr Hodgson made it clear that he had not prepared the Horticulture New Zealand submission, he confirmed that Horticulture New Zealand were largely supportive of the conclusions reached in the Section 42A report.

### **H Rennie**

- 3.20 Mr Rennie appeared and presented a powerpoint presentation and commentary relating to the Selwyn River and, in the main, inanga spawning. Mr Rennie had a number of concerns about stock exclusion requirements, braided rivers and inanga spawning habitat.

### **ANZCO Foods**

- 3.21 Brief legal submissions were presented by Ms Dewar, primarily related to community drinking water supplies.

### **Ngāi Tahu**



- 3.22 Evidence was presented by Ms Bartlett, a Senior Policy Advisor, employed by Te Runanga o Ngāi Tahu. Ms Bartlett's evidence focussed on inanga spawning protection, the recognition of Ngāi Tahu values and discharges directly to water.

#### **Fonterra**

- 3.23 Legal submissions were presented by Mr Williams and evidence by Mr Goldschmidt, environmental manager for Fonterra. The legal submissions and evidence focussed on various requirements of the Plan Change in relation to inanga spawning, discharges, and groundwater and surface water limits.

#### **Ellesmere Sustainable Agriculture Inc.**

- 3.24 A brief of evidence was presented by Ms Barnett. The evidence was substantial, and focussed on a number of concerns of the Society, principally related to inanga spawning, vegetation clearance and stock exclusion, and drainage networks, especially in lowland parts of Canterbury.

#### **Genesis Energy**

- 3.25 Evidence was presented by Mr Matthews, a consultant planner on behalf of Genesis Energy.
- 3.26 Mr Matthew's evidence focussed on the genesis Energy assets in the region, and the implications of the revised provisions with respect to vegetation clearance and braided rivers in particular. Mr Matthews lodged a subsequent brief of supplementary evidence responding to questions of the Hearing Commissioners', clarifying that Genesis did not hold any existing resource consents authorising vegetation clearance.

#### **Meridian Energy**

- 3.27 Ms Whyte, a consultant planner, presented evidence on behalf of Meridian Energy. Similarly, Ms Whyte lodged a subsequent brief of supplementary evidence responding to questions of the Hearing Commissioners', clarifying that Meridian Energy did not hold any existing resource consents authorising vegetation clearance.

#### **The Oil Companies**

- 3.28 Legal submissions were presented by Mr Winchester, on behalf of the Oil Companies. In addition, Mr le Marquand, a consultant planner, and Mr Tearney, a consultant

engineer, presented evidence. Mr Tearney's evidence focussed on groundwater quality, while Mr le Marquand's was oriented towards a range of planning matters, especially in relation to stormwater and passive discharges from potentially contaminated sites.

- 3.29 Mr Winchester and Mr le Marquand provided a supplementary memoranda, in response to questions of the hearing commissioners.

#### **Selwyn District Council**

- 3.30 Mr England, an engineer employed by Selwyn District Council, appeared and presented evidence, primarily related to stormwater discharges, floodwaters and drainage matters. The evidence helpfully included specific changes to the provisions that were sought by the Council.

#### **Waimakariri District Council**

- 3.31 Mr Simpson, an engineer employed by Waimakariri District Council, appeared and presented evidence similar to other territorial authorities, Mr Simpson's evidence focussed on stormwater, responsibility for reticulated systems, and floodwaters.

#### **Kaikoura District Council**

- 3.32 Mr Hoggard, a planner employed by Kaikoura District Council, appeared and presented evidence.
- 3.33 Mr Hoggard's evidence covered a range of matters in PC4, with a focus on the need for protection of a wider range of drinking water supplies, particularly for commercial and community activities.

#### **Christchurch City Council**

- 3.34 Legal submissions were presented by Mr Pizzey, legal counsel employed by Christchurch City Council.
- 3.35 In addition, evidence was presented by Dr Margetts, an ecologist employed by the City Council, who focussed on inanga spawning sites and habitat. Mr Norton, an engineer employed by the council, focussed on the stormwater provisions, the operation of the Christchurch City stormwater network and the existing and, in his view, satisfactory framework for managing discharges from higher risk sites. Ms Keller, a planner

employed by Christchurch City Council, addressed the planning implications of the matters raised in legal submissions and other evidence.

- 3.36 Following the hearing, Mr Pizzey and Dr Margetts submitted a memorandum and supplementary evidence responding to matters arising at the hearing.

### **Egg Producers Federation and Poultry Industry Association**

- 3.37 Evidence was presented by Ms Heywood, a consultant planner, outlining a suggested change to the definition and rule framework that would potentially be more permissive of poultry washdown water discharges.
- 3.38 Ms Heywood lodged a supplementary brief of evidence in order to respond to outstanding questions of the Hearing Commissioners.

### **Working Waters Trust**

- 3.39 Ms Allen presented the Working Waters Trust submission. Ms Allen outlined the importance of healthy ecosystems, primarily relating to inanga spawning habitat.

### **Erralyn Farms**

- 3.40 Legal submissions were presented by Ms Hamilton for Erralyn Farms Limited.
- 3.41 Mr Begg, a director of Erralyn Farms, presented evidence, including a number of photographs that showed historic conditions adjacent to the Rakaia River, development potential of land adjacent to the river, generally identified opposition to the additional restrictions on vegetation clearance and stock access adjacent to braided rivers.

### **Waitaki Irrigators Collective**

- 3.42 Ms Soal, Policy Manager employed by the Collective, and Mr Keeling and Mr Allan, farmers within the Lower Waitaki River area, appeared and presented evidence primarily in relation to the braided river and vegetation clearance provisions. The evidence identified a number of concerns, primarily related to movement of the Waitaki River, including erosion of banks and existing farmland. In general, the evidence appeared to largely support the provisions, as recommended to be adjusted, in relation to stock exclusion.

## 4. Outstanding Legal Issues

### Introduction

- 4.1 During the course of the hearing of submissions on PC4, a small number of legal issues have arisen. This part of the Section 42A Report in reply addresses those legal issues. It has been prepared by Philip Maw, Counsel for the Council.

### Inanga Spawning Provisions

- 4.2 The Christchurch City Council (the "CCC") submission identified inconsistencies between spawning sites identified for protection by CCC and those identified in Schedule 17. It requested *'analysis and discussion between the two councils'* and *'if further investigations identify anomalies, amend Schedule 17 to ensure that all significant inanga sites within Christchurch and Banks Peninsula are identified correctly and consistently'*.
- 4.3 Subsequent evidence introduced by Dr Margetts for CCC provided more detail of the relief sought. Dr Margetts suggested amending Schedule 17 where there are multiple sites identified within one stretch of land, by way of example, combining the 5 sites along Avondale Road into one site given spawning could occur anywhere within the upstream or downstream reaches. Dr Margetts also requested an additional, separate layer for the maps of potential inanga spawning habitats to show where the site locations are.
- 4.4 Officer advice was that *"the requests now sought in Dr Margetts evidence appear to significantly extend beyond the relief sought in CCC's original submission"*. A submission was made that given the proximity of the sites to residential dwellings and the lack of detail in the original CCC submission regarding the relief sought, there is a real risk that potentially affected persons could be deprived of the opportunity to engage in the plan change process. As such, it was submitted the changes requested by the CCC in evidence are beyond the scope of its primary submission.<sup>1</sup>
- 4.5 CCC subsequently filed a Memorandum of Counsel responding to the Officer's recommendation, stating:

*"The submission's reference to anomalies that may need correction does not imply either minor or major changes, just that changes could be required. Any person had*

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<sup>1</sup> Responses to questions of Hearing Commissioners on Day 1 of PC4 Hearing 3 March 2016, p 20.

*the opportunity to join as a further submitter in support or opposition to that submission if they had any concern about the effect of such changes. Specific identification in the submission of the changes sought was unnecessary for people to be fairly on notice that there may be such changes, regardless of whether those changes are to sites on the Avon/Heathcote Rivers, or in other locations."*

- 4.6 The issue of whether the CCC relief is within scope is finely balanced. However, Counsel's submission that the relief sought is outside of scope is still supported by:
- a. The case law relied on by Counsel for CCC is predominantly from the Environment Court and predates *Motor Machinists*.<sup>2</sup>
  - b. The CCC submission results from a survey of spawning sites done as part of a consent process, which revealed the 'anomalies'.<sup>3</sup> During the course of the hearing, it was also identified that the 'anomalies' arose as a result of the different methods employed by CRC and CCC when classifying spawning sites. As a result, while the original CCC submission identifies issues, it lacks any detail as to the areas affected. The sites subsequently nominated for protection by CCC appear to be unlikely to form part of any readily available document, which would place potentially affected parties on notice at the time the original submission was lodged. While the relevant rules within the LWRP are likely to have the greatest effect on CCC, there is a potential effect on adjacent residential properties or recreational users of the affected waterways who may have been denied an opportunity to participate.
- 4.7 In any event, the issue is addressed by the officer recommendation to delete protection of Schedule 17 'sites', replacing them with 'inanga spawning habitat' protections. All the areas proposed for protection by Dr Margetts are within 'spawning habitat' identified on the maps, so the protection desired by CCC is achieved.

## Stormwater

- 4.8 Even disregarding all other physical components of a stormwater system that are not pipes (eg. kerbs, swales, retention ponds etc), the movement of stormwater into a pipe is a discharge.<sup>4</sup> The issue for ECan is avoiding duplication of regulation of the discharge. An authority can regulate a discharge at the 'top' or the 'bottom' of a reticulated stormwater system, but not both.

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<sup>2</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

<sup>3</sup> Statement of evidence of Dr B I Margetts for the Christchurch City Council, 29 January 2016 at [12].

<sup>4</sup> Resource Management Act 1991, section 15(1)(b).

- 4.9 By way of example, CCC currently allows approximately 99% of stormwater discharges into its reticulated system, which are then managed by way of a global consent at the final receiving environment or the 'bottom'. The remaining 1% of discharges, from contaminated land and the like, are excluded from the global consent and managed at the 'top' of the reticulated system by virtue of individual consents.<sup>5</sup> Provided duplication of control is avoided, the 10 year lead in period for Policy 4.16A is *intra vires*.<sup>6</sup>
- 4.10 Managing discharges in this way can result in difficulty for ECan enforcing discharge quality conditions. It is more efficient to manage stormwater at the bottom of the reticulated system only and Policy 4.16A is intended to bring about this change. In order to achieve policy intent, some changes to the notified rule framework are required.
- 4.11 The notified definition of 'available reticulated stormwater system' whereby a 'network operator' has the ability to accept or decline stormwater into the reticulated system appears to be inappropriate in light of Policy 4.16A, as:
- a. Pre-2025, the effect of the definition is a duplication of rules 5.94B and 5.95A.
  - b. Post 2025, it is contrary to the intent of Policy 4.16A for a network operator to retain an unrestricted ability to refuse to accept stormwater into a reticulated stormwater system.
  - c. Post 2025, once a global consent that covers 100% of stormwater discharges from a particular area is in place, arguably the consent holder is unable to exclude persons wishing to discharge to the reticulated system for the consented area.<sup>7</sup>
- 4.12 The reply report recommends amendment of the definition of 'available reticulated stormwater system' as follows:

*Available reticulated stormwater system*

*means a reticulated stormwater system where:*

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

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<sup>5</sup> Statement of evidence of Brian Norton for the Christchurch City Council at [23].

<sup>6</sup> Responses to Questions of Hearing Commissioners on Day 1 of PC4 Hearing 3 March 2016, page 3.

<sup>7</sup> *Opua Ferries Ltd v Fullers Bay of Islands Limited* [2003] 3 NZLR 740 (PC) at [20]

## 5. Final Recommendations

- 5.1. For this reply report, the answers to various questions put to the officers by the Hearing Commissioners either immediately before the hearing or during the hearing process have been incorporated into the 'tracked changes' version of the Plan Change. Unless indicated, there is no additional analysis or discussion in this report.
- 5.2. There were a number of matters that were subject to evidence from various parties, generally opposing positions reached in PC4, and subsequent Section 42A analysis. Not all of these matters are responded to in this reply report, particularly where the officers are maintaining their existing recommendation and no further change is recommended. Officers consider, after reviewing the evidence, that these matters have been addressed adequately within the Section 32 report, Section 42A report and the written responses to the Hearing Commissioners' questions.

### Inanga

- 5.3. The inanga spawning provisions have been the subject of a number of briefs of evidence, all of which appear to seek some adjustment, and many raise valid questions as to the clarity and interpretation of the provisions and the associated mapping.
- 5.4. Council officers have carefully considered these briefs of evidence, and have sought additional technical direction on some matters. On this basis, the final officer's recommendations, as included in the tracked-changes version of the Plan Change, show a number of modifications.
- 5.5. It became apparent through the hearing that the provisions and mapping were complicated by the inclusion of provisions relating to inanga spawning sites, and inanga spawning habitat<sup>8</sup>. Throughout the development of PC4, the inclusion of both 'sites' and 'habitat' was considered to be important as the framework of the LWRP, including Schedule 17, encouraged the recognition of sites. However, in considering the evidence lodged, and the overlap between the habitat and the sites, Council officers now consider that considerable simplification would occur through relying only on habitat protection, with some minor strengthening of the provisions protecting habitat.
- 5.6. The primary strengthening of these provisions relates to the existing, relatively narrow date framework for habitat protection. The specification of the dates is recommended

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<sup>8</sup> See paras 34-36 of Ms McArthur's evidence for the Royal Forest and Bird Protection Society of New Zealand.

to be removed from the policy, and some of the relevant rules, primarily stock access and gravel extraction, have been recommended to be adjusted. With respect to stock access, it is noted that the rules currently require the exclusion of cattle, pigs and deer from almost all lowland waterbodies in any event, and as the inanga spawning habitat is within these lowland waterbodies, the additional restrictions are expected to be of only minor effect. Such a strengthening of the provisions would have other positive benefits, particularly the preservation of the natural character of rivers and their margins<sup>9</sup>.

- 5.7. This results in a simplification of the mapping, with a removal of the sites, removal of the sites from Schedule 17, and simplification of the provisions. Dr Greer, an Environment Canterbury ecologist, has been consulted on this matter, and while his preference would be to keep consideration of sites as well as habitat, he is satisfied that the protection of habitat overall provides a reasonable level of protection, and will more likely enable consistent administration of inanga spawning habitat, with non-regulatory methods focussed on the identified sites.
- 5.8. It is also noted that in response to a question from Commissioner van Voorthuysen, Dr Margetts, for the Christchurch City Council, identified that all Christchurch City Council identified sites were within the areas of habitat shown on the planning maps.
- 5.9. The mapping of inanga spawning habitat attracted a number of submissions and evidence from several parties. There are two primary issues that arose, both relating to the accuracy of the mapping.
- 5.10. The first issue relates to the extent of the mapping. Some submitters considered that additional areas should be mapped, while other submitters considered that the mapping, extending beyond the waterbody bed and banks, was inappropriate<sup>10</sup>.
- 5.11. The general justification for the mapping, including whether additional areas need to be mapped, is adequately addressed in the original Section 42A report.
- 5.12. Mr Rennie identified that a number of the mapped areas extended well beyond the bed or banks of identified inanga spawning habitat. This, unfortunately, is a product of the hard copy mapping process, whereby in order to be visible at the scale of the maps produced, when the electronic copy is “zoomed in” to the scale of an individual property, the mapped areas are comparatively large. If the mapped areas were kept to the edges of the waterbodies, the mapped areas would not be visible on the scale of the hard copy planning maps. In any event, the definition of inanga spawning

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<sup>9</sup> S6(a) RMA.

<sup>10</sup> In particular, evidence of Mr H Rennie.

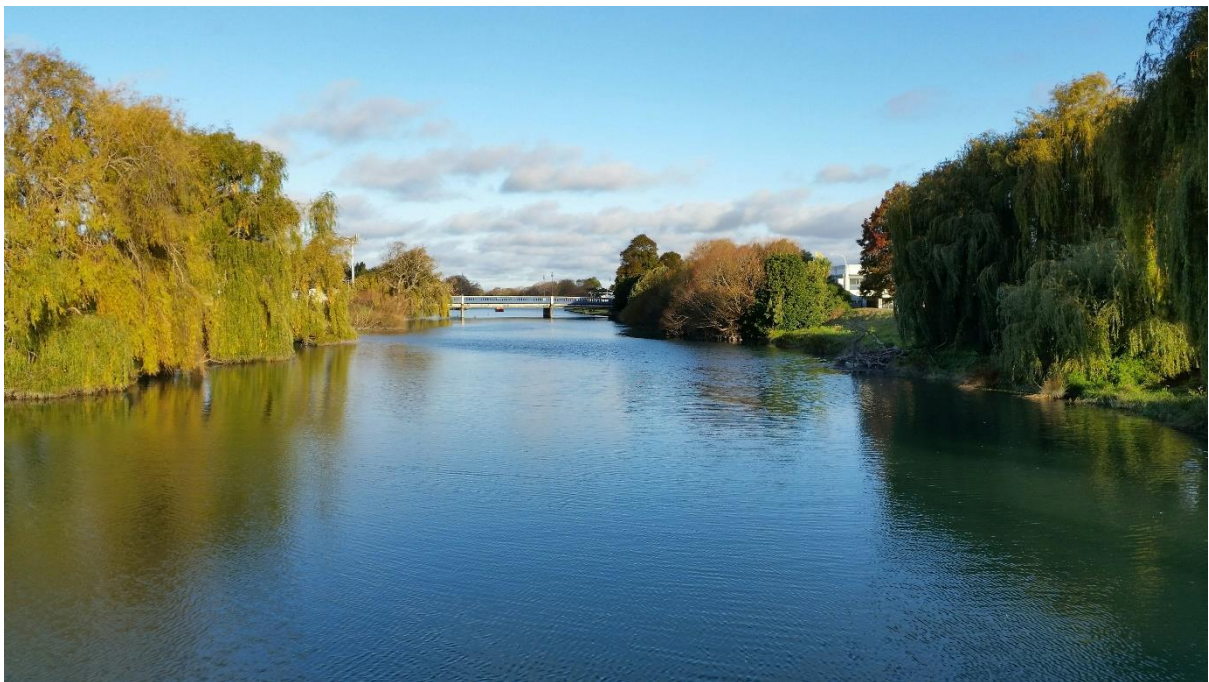


habitat, and therefore the relevant policies and rules, only apply to the areas that are tidally influenced. This is an unfortunate practical response to the limitations of the hard copy mapping system. Council technical staff have made some adjustments to the mapping, to remove obvious areas where the lines extend beyond inanga spawning habitat. This is particularly so when areas that are heavily developed as urban areas, or contain buildings are included, and these have now largely been removed from the inanga spawning habitat mapping.

- 5.13. The second concern raised by a number of submitters is the mapping of the habitat in relation to the coastal marine area<sup>11</sup>. The reference in the definition to 'mean high water spring tide' and 'mean low water spring tide' have been inappropriately interpreted by some submitters to mean the coastal marine area. In order to avoid any confusion, the areas that are mapped have been reduced to remove any areas that are seaward of the coastal marine area boundary, as identified on the planning maps. However, a large number of rivers inland of this coastal marine area boundary are influenced by the tide. I have included below photographs of the Kaiapoi River, approximately 2 kilometres inland from the mapped coastal marine area. These two photographs are taken six hours apart, one at low tide and one at high tide, showing approximately 1.5 metres of tidal variation at this point, considerably inland. The photographs do not show a spring tide, which adds approximately half a meter of additional tidal variation.

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<sup>11</sup> See paras 6-24 of the legal submissions for the Royal Forest and Bird Protection Society of New Zealand.



- 5.14. Overall, Officers recommend maintaining the high water spring tide and low water spring tide references, which, in combination with removal of the areas mapped within the coastal marine area, will provide a comparatively simple and certain regime.
- 5.15. Attached to this report are two revised planning maps, showing the adjustments to the mapping, being the removal of the sites and removal of habitat areas in the coastal marine area. Should the Hearing Commissioners agree with this mapping change, a

full set of revised planning maps can be provided. These two are shown as examples for the Hearing Commissioners to consider.

- 5.16. In addition, should the Hearing Commissioners agree with the full deletion of the inanga spawning sites from Schedule 17, there will be a need to remove the existing mapped sites from the planning maps. The mapped habitat covers three of the four existing listed sites in Schedule 17 – a minor extension is required to cover part of one existing site. As it is an existing area with protection, the planning framework for adjacent landowners will not change.

### Drinking Water Protection

- 5.17. The E.Coli limit in Schedule 8 is not proposed to be changed in PC4. However, the methodology for assessing compliance with that limit has been the subject of changes in the notified version of PC4, which were recommended to be further adjusted in the Section 42A report. Dr Alistair Humphrey of Community and Public Health attended the hearing and, amongst other things, discussed some altered wording for this measurement methodology<sup>12</sup>.
- 5.18. While there is some discomfort with Dr Humphrey's recommended wording within the Environment Canterbury science team, because some water supplies may not meet this threshold after heavy rain events, the wording recommended by Dr Humphrey appears well reasoned and based strongly on the New Zealand Drinking Water Standards thresholds. On this basis, Officers recommend that it be adopted, and the changes are shown in the attached tracked-changes version of the Plan Change.
- 5.19. There was some discussion during the hearing on the operation of Schedule 1 to the LWRP and the identification of drinking water protection zones. The operation of these drinking water protection zones was raised in evidence from both Dr Humphrey for Community and Public Health<sup>13</sup> and in evidence for the Oil Companies<sup>14</sup>. PC4 identified a small range of changes to the referencing of drinking water protection zones, as a consequence to changes relating to proposed changes to group and community drinking water provisions. The changes in PC4 do not alter the manner in which the rules interact with Schedule 1 to the LWRP, or change how the drinking water protection zones are identified. However, there appeared to be some residual

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<sup>12</sup> Specific wording provided in response to questions.

<sup>13</sup> See section 3.3 of the evidence of Dr Humphrey for Community and Public Health

<sup>14</sup> See section 6 of the evidence of Mr le Marquand for the Oil Companies

concerns, primarily relating to public notification of changes to those drinking water protection zones.

- 5.20. This matter has largely been addressed in the responses to written questions from the Hearing Commissioners. Overall, no particular additional changes to the provisions relating to drinking water protection zones are recommended, and it is noted that the scope within PC4 and these submissions to make any changes is limited.
- 5.21. Kaikoura District Council identified in its submission the need to provide protection to an additional range of sites. In the evidence for the Kaikoura District Council, Mr Hoggard identified the specific sites warranting, in his opinion, the benefits of default community drinking water protection zones. This would be in a similar nature to the suggestions in the Mackenzie District Council evidence, that led to the recommended Schedule 1A. While there are potential concerns with respect to the scope of the submission, being somewhat general in its nature, the Hearing Commissioners may wish to consider adding these Kaikoura District Council listed sites<sup>15</sup>.

## Minimum Flows

- 5.22. The Director-General of Conservation put some effort, within legal submissions and evidence, into the matter of the “default” minimum flow for waterbodies that are not subject to a specified minimum flow in Sections 6 to 15 of the LWRP<sup>16</sup>. This request was based on a relatively minor change in the rule framework from “calculated” to “estimated”. As was identified in the Section 32 report, and the Section 42A report, the change in wording notified reflects the reality of the process undertaken, and does not signal a change in the Environment Canterbury procedures in terms of estimating minimum flows.
- 5.23. As these waterbodies are not subject to specified minimum flows in Section 6 to 15 of the LWRP, or other catchment plans, the method of calculating the minimum flows is often through a method of correlation with other flow monitoring sites, often established in a resource consent process. As the methodology is not changing, the Department of Conservation request for a relatively significant change to the default minimum flow is not recommended to be adopted.

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<sup>15</sup> See Appendix 2 to Mr Hoggard’s evidence.

<sup>16</sup> See evidence of Mr Duncan

## Salmon Spawning Sites

- 5.24. Fish and Game identified in their evidence the potential for increasing the areas in the upper regions of rivers where stock should be excluded, on the basis that this would protect salmon spawning sites<sup>17</sup>. In particular Fish and Game identified that salmon spawning sites are commonly in reaches of rivers that are of a slope of less than 3 degrees. A number of photographs were presented showing this kind of river condition, and the lack of stock exclusion. On the basis of this evidence, I requested feedback on some specific issues from Environment Canterbury ecologists. Overall, the ecologists were supportive of a regime that protected these areas with a slope of less than 3 degrees, on the basis that this would enhance the potential salmon spawning habitat.
- 5.25. The ecologists did identify that a simple rule that offers protection to areas with a slope of less than 3 degrees was potentially problematic, in that a lay person is unlikely to be able to determine whether the slope is less than 3 degrees, particularly as it approaches that threshold. The Environment Canterbury ecologists were of the view that areas such as this should be mapped in order to provide adequate certainty. On analysis, it was identified that the mapping of these areas did identify relatively large areas that would be subject to additional restrictions on stock access. Presumably, as identified in the Fish and Game photographs, this would require fencing.
- 5.26. Stock exclusion is a relatively contentious issue, and is the subject of recommendations in the latest Land and Water Forum report. While these areas would appear to fall within the slope recommendations of the Land and Water Forum report, the relative costs and benefits and appropriateness of the provisions have not been tested, and in particular, the potentially affected land owners, while technically having the ability to be involved through the further submission process, are unlikely to be aware of the potential change.
- 5.27. Overall, due to lack of a proper analysis of the technical justification, extent and potential costs of excluding stock from these areas, along with other national processes underway, Council officers do not recommend any further changes to PC4.

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<sup>17</sup> See paras 31-39 of the evidence of Mr Pearson and Ms Christensen for the North Canterbury and Central South Island Fish and Game Councils.

## Poultry Wash-down Water

- 5.28. The Poultry Industry Association of New Zealand and the Egg Producers Federation of New Zealand were represented at the hearing by Ms Hayward. Ms Hayward struggled with what appeared to be a fundamental flaw in the submission lodged, in that the requested change to the definition would not appear to achieve the permitted activity status that appeared to be being sought. Commissioner van Voorthuysen requested officers confirm that the default status, should the change to the definition be accepted, would be discretionary under Rule 5.6. Officers can confirm that that is the case.
- 5.29. Ms Hayward filed a supplementary statement, following the close of the hearing, requesting an alternative relief. This is a more considered analysis of the situation, and would appear to result in a permitted activity status for the discharge.
- 5.30. As discussed in the Section 42A report, it is not considered that such a permitted activity status is appropriate, and officers remain doubtful that there is scope within the submission to incorporate the alternative relief sought, as Rule 5.35 is not amended by PC4. On this basis, no change is recommended.

## Back Country Huts

- 5.31. The discharge of effluent from backcountry huts was addressed in the Director-General of Conservation legal submissions, evidence from the Director-General and questions from the Hearing Commissioners. Overall, officers are of the view that this is an issue of relatively low importance, particularly given other activities, such as pit toilets, that would be largely permitted in the circumstances where the backcountry huts exist with, sometimes relatively rudimentary, effluent systems.
- 5.32. In the final tracked-changes version of the Plan Change, officers have recommended some minor adjustments to the recommended Rule 5.8A, and an associated Rule 5.8B. If the Hearing Commissioners remain uncomfortable with the permissive nature of these rules, then officers suggest deletion of these rules, and return to the notified version of the PC4 framework. This may mean that the Director-General of Conservation would need to seek resource consent for some backcountry huts, and may need to do this by way of a global consent to cover all of them in the Canterbury region.

## Braided Rivers

- 5.33. The reasons for management of biodiversity and the natural character values of braided river systems are set out in the Section 32 report, the Section 42A report and the responses to questions from the Hearing Commissioners. A number of the submission points identified that there is some confusion relating to how these provisions are applied, with a mix of exclusions and requirements split between the relevant definition and the rules on earthworks and vegetation clearance. When read together, the situation becomes rather clearer.
- 5.34. In the officers' opinion, when read in conjunction with the definition of vegetation clearance, the policy and rule framework is reasonably clear, with respect to infrastructure, including hydro generation activities. It was identified in the responses to questions from the Hearing Commissioners that the existing hydro generation infrastructure generally do not have existing resource consents that would enable the vegetation clearance that may be limited by the proposed rules<sup>18</sup>. Given the definition, officers are of the view that management of vegetation for existing infrastructure would remain a permitted activity. To provide additional certainty, the definition is recommended to be adjusted in a minor way, to limit the vegetation clearance exclusion to only those areas where it is required for the operation of the infrastructure. However, new infrastructure, including hydro generation, irrigation or utilities should be, in the officer's opinion, subject to the same requirements as any other activity that has the effect of reducing biodiversity or natural character values of braided river systems, through the operation of existing rules that manage the establishment of infrastructure including bridges, dams, pipelines and earthworks.
- 5.35. The evidence of Erralyn Farms and, to a lesser extent, the Waitaki Irrigators Collective identified why the provisions have been included. The Erralyn Farms evidence essentially provides the Hearing Commissioners with a choice between protection of natural character values and biodiversity values, against that of the development of farmland up to the river's edge. In the officer's opinion, the position advanced in PC4 is more appropriate, in order to give effect to the RMA, the RPS and the Canterbury Water Management Strategy.
- 5.36. During the evidence of the Waitaki Irrigators Collective, Commissioner van Voorthuysen asked officers to confirm whether it would be preferable to use the defined term "riparian margin" rather than the "gravel margin" used in the present definition. Officers have considered that, and can confirm that riparian margin

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<sup>18</sup> See responses to questions from Ms Whyte and Mr Matthews

unfortunately does not address the issue as it does not assist in the definition of the edge of the “bed”. The definition of riparian margin reads:

*means the land within the following distances of the bed of any lake, river or wetland boundary:*

- 1. In Hill and High Country land or land shown as High Soil Erosion Risk on the Planning Maps – within 10 m; and*
- 2. In all other land not shown as High Soil Erosion Risk on the Planning Maps or defined as Hill and High Country – within 5 m.*

5.37. Under this definition, the underlying issue of identifying the edge of the bed, particularly for a braided river system, remains. On this basis, officers continue to recommend use of the gravel margin.

## Section 70

5.38. The officers have grappled with the requirements of section 70 of the RMA, with respect to a number of rules in the LWRP, and PC4 in particular. The Director-General of Conservation identified in evidence a range of discharges that potentially did not comply with Section 70. These were the subject of further analysis in response to the questions of Commissioner van Voorthuysen. The Hearing Commissioners also requested clarification from the Director-General as to how the Section 70 requirements could be addressed in the framework of the rules. However, the response from the Director-General does not provide any actual provisions that may be utilised. On this basis, no further amendment, beyond that identified in the response to the Hearing Commissioners’ questions is recommended.

## Passive Discharges

5.39. The Oil Companies’ legal submissions and evidence continued to promote a risk-based approach to passive discharges. The wording of the rule that is sought by the Oil Companies would appear to enable significant levels of contamination, provided there is no bore nearby or a community drinking water protection zone<sup>19</sup>.

5.40. As has been set out in the Section 42A report, the Regional Council continues to have concerns about the reliance on site investigation reports. In addition, it is the officer’s opinion that the enabling of potentially significant passive discharges in presently less

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<sup>19</sup> See Attachment C of the evidence of Mr le Marquand for the Oil Companies.



sensitive areas does not amount to sustainable management of groundwater resources.

### Fine Sediment Removal

- 5.41. A minor change is recommended with respect to Rule 5.146a and 5.146b, following the evidence of Mr Murray England. This change recognises that there may be multiple reasons for undertaking fine sediment removal, with the focus of the rule being habitat restoration, rather than being an exclusive purpose.

### Floodwaters

- 5.42. In response to evidence, principally that of the Oil Companies, and Mr Murray England for the Selwyn District Council, officers have recommended a number of adjustments to the rules relating to floodwaters. Some of these were addressed in response to questions from the Hearing Commissioners. While not changing the overall direction of these rules, the changes are considered to address the need for certainty in terms of diversion as well as discharge, and broadening the types of flooding addressed. As was stated during the hearing, the primary aim of these rules is to address the practical realities of responding to a flooding situation, and the limitations of the existing LWRP wording in this regard, which would have required many individuals to seek a resource consent to manage flood water on their property, which is unrealistic.

### Stormwater

- 5.43. Few changes are recommended with respect to the stormwater provisions, construction phase stormwater and sediment-laden discharges. While a number of matters have been traversed by territorial authorities and the Oil Companies in particular, it remains the officer's opinion, for reasons largely outlined in the Section 32 and Section 42A reporting, that owners of systems should be ultimately responsible for the quality of the discharge, and all inputs into the system.
- 5.44. In particular, the evidence of Mr Norton for Christchurch City Council, at paragraphs 21 to 23, notes the process used to undertake a risk assessment of discharges into the reticulates systems, with more significant or risky discharges being subject to a higher level of assessment, and only "a very small fraction" needing to be referred to Environment Canterbury.

- 5.45. Given the existing processes in place, and the very small proportion, identified as less than 1% of all stormwater discharges that are referred to Environment Canterbury, it is the officers' opinion that it would be more efficient and effective for the territorial authorities to administer all aspects of the stormwater discharge.
- 5.46. Officers maintain that this will require a transition period, and there do not appear to be any specific submissions on what that transition period should be, other than the 2025 date in the notified PC4.
- 5.47. In order to avoid creating a potential circularity in the rules, a consequential amendment is recommended to the definition of available reticulated stormwater system, to remove the third condition, being that the network operator agrees to accept the discharge. This is required as the rule framework has been adjusted to include reference to available reticulated stormwater systems, which may have the implication, in combination with this definition, of defeating the policy position set out in PC4.
- 5.48. It is acknowledged that PC4 sets out a significant change in the management approach to discharges into reticulated stormwater systems. The Christchurch City Council legal submissions identified that there is a lack of prohibited activity status, to go along with the strong policy position not to grant resource consents for discharges into such reticulated systems from 2025. It is acknowledged that there is some potential residual uncertainty with respect to the framework post-2025. However, the intention of PC4 is to clarify the framework for management of reticulated stormwater systems, being the management of all inputs to these systems by the owner of the reticulated system. As the 2025 date is approached, if there remains some residual uncertainty as to the status of activities following that date, there is a significant time period available within which a further plan change could be promulgated to rectify any residual uncertainty.

## Miscellaneous

- 5.49. Section 4(12) of the Biosecurity Law Reform Act 2012 provides that "pest management strategy" is to be substituted by "pest management plan". The LWRP contains a number of references to "pest management strategy". Those references included in the proposed changes as part of PC4 have been updated, to now refer to the "pest management plan" in the final tracked changes version of PC4. However, there are five other instances, outside the PC4 provisions where the term is used: 1.3.3, 4.87, 8.5.2, 9.5.7 and 11.5.48.

- 5.50. The Hearing Commissioners may wish to recommend that, pursuant to clause 16 of the 1st Schedule to the RMA, these amendments are also made.

## 6. Tracked-changes Version of Variation

- 6.1 The recommended changes discussed in the report are set out in a final version of the Plan Change, showing changes from the notified version. The red underlined elements are suggested additions, while ~~red-strikeout~~ shows deletions. This document is attached as Appendix A.
- 6.2 Many are similar to changes recommended in the Section 42A Report. However, the reply recommendations here are a complete and standalone version, and the existing Section 42A Report versions should be treated as a product of their time.
- 6.3 Some tracked changes are not discussed in any detail in this report – some are clear and obvious in nature, and usually result from matters discussed in detail at the hearing.
- 6.4 Footnotes are also included with submission references for most recommended changes. Many footnotes explain the reasoning behind the wording recommended, where this differs from the precise wording sought in primary submissions.
- 6.5 For those recommended changes that do not have a specific submission reference, they are noted as either a consequence of changes due to another submission (per clause 10(2)(b) of the 1<sup>st</sup> Schedule to the RMA) or a recommended change under clause 16 of the 1st Schedule.
- 6.6 These “clause 16” changes often relate to changes in the use of abbreviations, grammatical changes and wording changes that do not affect the meaning of the rule or policy. The references to submitters is usually by way of some acronym of the submitter’s name, particularly in the case of companies and organisations. A complete list of the submission acronyms is included below.
- 6.7 There are a small number of additional policies and rules, and a small number are recommended to be deleted. In order to keep the numbering of the policies and rules within PC4 consistent with the LWRP, there are some numbering gaps and the occasional use of “A” following the previous policy or rule number when a policy or rule is inserted.
- 6.8 There are a small number of grammatical and typographical corrections. These are often of a minor nature such as of typographical errors, and changes to the text so that it reads with more certainty or with a better sentence structure.

- 6.9 The majority of these recommended changes, in particular the grammatical corrections and improved wording, do not have any particular submission or further submission to reference the changes that have been recommended. Very minor recommended changes often have no reference.

## **7. Tracked-changes Version of s32 Report**

- 7.1. This document will be supplied at the reconvened hearing.