

Canterbury Regional Council (Environment Canterbury)

**Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan**

DECISION OF THE HEARING COMMISSIONERS  
on a proposal to reopen hearing of a submission

[Decision 5]

1. Among the original submissions on Plan Change 7 ('PC7') was one lodged by Rayonier Limited and Port Blakely Limited ('the forestry submitters').
2. Further submissions relating to that original submission were lodged by the Timaru District Council; by the Royal Forest and Bird Protection Society; and by the Avon Otakaro Network.
3. On 18 November 2020 (Day 17 of our hearing of submissions on PC7) the case for the forestry submitters was presented to us by counsel (Mr C Fowler and Ms M Buddle). Evidence in support of the submission was given by Mr D Mann and Mr J Wyeth. We took the opportunity to ask questions of Mr Wyeth.
4. After the cases of all submitters who wished had been heard by us, the authors of the Section 42A Report (known as 'the officers') presented a report containing their replies to the submitters' cases, giving their reasons for recommending that we adopt some submission points, and not adopt others.
5. The officers' reply report addressed, among others, the case that had been presented by the forestry submitters, including the legal submissions presented by Mr Fowler, and the evidence of Mr Wyeth. The officers stated that they had considered the evidence presented by the forestry submitters; that they retained certain views expressed earlier; and recommended adding a new permitted-activity condition in respect of rock art sites.

6. The reply report on the forestry submitters case continued over several paragraphs in addressing sediment discharges, wetlands, and potential effects of plantation forestry on rock art sites.
7. Having read the reply report, we had some questions of the officers. Our questions were collated and provided to the officers in writing on 16 February 2021.
8. The officers' answers to our questions were provided in writing on 24 February 2021 in preparation for presentation on the final day of our hearing on PC7 on 26 February 2021.
9. On 24 February 2021, solicitors for the forestry submitters sent us a memorandum by Mr Fowler and an Appendix 2 as a separate attachment. By that memorandum, counsel referred to a question that had been asked by us of the officers concerning Rules 5.189A and 5.190A asking how appropriate controlled activity status is for new areas of plantation forestry within flow sensitive catchments.
10. Counsel noted that the forestry submitters had submitted seeking controlled-activity status for afforestation, but had not presented evidence at the hearing, for reasons that he elaborated. He sought an opportunity to be heard if we are minded to alter the activity status of those rules.
11. The reasons given for the forestry submitters having not presented evidence on the activity status point were stated at length. Although we had considered them in full, the effective reason seems to have been that the section 42A reporting officer had recommended accepting the relevant part of the forestry submitters' submission; and noted that the same rules (with minor wording changes) were recommended by the reporting officer in the reply report.
12. A further reason related to a hearing of submissions on the then-proposed Canterbury Land and Water Regional Plan, at which evidence had been given on behalf of forestry submitters by Dr B Cowie (who had previously chaired a panel hearing submissions on the Natural Resources Regional Plan). Counsel asserted that the foresters' arguments and Dr Cowie's

evidence had been accepted by the hearings panel, which had included two of us, retired Environment Judge Sheppard and Mr R van Voorthuysen.

13. In our view there are some hindrances to accepting the forestry submitters' proposal to reopen the presentation of their case.
14. First, the forestry submitters were given opportunity to present their case on PC7 as they chose. Counsel presented submissions, and two witnesses gave evidence. We questioned one of them. The recommendation of the reporting officers was just that: their recommendation. The forestry submitters' satisfaction with the reporting officer's recommendation gave no assurance that the hearing commissioners, or indeed the Regional Council, would adopt it.
15. Secondly, the memorandum by counsel for the forestry submitters does not appear to have been served on the makers of further submissions related to the forestry submitters' original submission. We consider that we should not accede to the proposal in the memorandum without the further submitters having opportunity to take part in our consideration if they choose.
16. Thirdly, in that the forestry submitters' proposal is founded on evidence given by Dr B Cowie on 12 March 2013 to hearing commissioners who included two of us (Mr R van Voorthuysen and retired Judge Sheppard), having regard to changes in legislation and resource management practice since, we do not consider that evidence is admissible and relevant to submissions on PC7. For all we know, Dr Cowie himself may not consider the opinions he expressed then in that context, are applicable now in respect of the forestry submitters' submission on PC7.
17. Fourthly, Commissioners van Voorthuysen and Sheppard, who heard that evidence in 2013, are not obliged in 2021 in consideration of PC7 to follow the presumed findings on Dr Cowie's evidence given then. So we do not accept that the 2013 events provide a valid reason for reopening the hearing of the forestry submitters' case on PC7.

18. In summary, we do not accept that a late regret for what is now thought to be an incomplete presentation of the submitters' case on PC7 justifies reopening that case for additional evidence after hearings on PC7 have concluded and other submitters who may be affected may no longer have the issues in front of mind.

19. In any event, we do understand the forestry submitters' argument on the point in issue. That understanding does not give assurance that we will adopt it, but we do comprehend it. But for the reasons given, we decline to reopen the hearing of their submission.

For the hearing commissioners:

A handwritten signature in dark ink, appearing to read 'D Sheppard', written in a cursive style.

David F Sheppard,

Chair

1 March 2021