

IN THE MATTER OF

The Resource Management  
Act 1991

AND

IN THE MATTER OF

Chapters 1, 2 and 3 of the  
Proposed Canterbury  
Natural Resources Regional  
Plan

### **Recommendations of Commissioners**

#### **PART A - INTRODUCTION**

1. On the 15<sup>th</sup> of April 2004 the Canterbury Regional Council appointed Commissioners to hear the submissions and further submissions made on Chapters 1, 2 and 3 of its Proposed Natural Resources Regional Plan (“**NRRP**”). The Commissioners are:-
  - (i) Dr E.D. Wylie Q.C. - a Queen’s Counsel practising in Christchurch with civil litigation and resource management experience.
  - (ii) Mr C.J. Tipler - a senior principal with URS New Zealand Limited, with experience in engineering and environmental and risk management work throughout New Zealand.
2. Dr Wylie was appointed to chair the hearings.
3. Both of the Commissioners considered that there were various matters personal to each of them that should be brought to the attention of the Regional Council and all submitters and further submitters. Each prepared a letter recording those matters. Those letters were sent to the Regional Council and then copied and sent by it to all submitters and further submitters. All submitters and further submitters were invited to advise the Regional Council if they had any objection to the appointment of either Commissioner.
4. A Mr McKenzie contacted the Regional Council on behalf of the Yaldhurst Residents Association and queried one matter relating to the appointment of Dr Wylie. So did a Mr Jamieson. Both queries were answered and both then confirmed that they had no objection to Dr Wylie continuing with the appointment.

5. As required by clause 8B of the First Schedule to the Resource Management Act 1991 (“**the Act**”), the hearings commenced in June 2004 and finally concluded in January 2006. They were conducted in stages, based upon the three chapters referred to the Commissioners which form part of the Proposed NRRP, and upon particular plan provisions within each chapter.
6. All submitters and further submitters were advised that all submissions and further submissions would be considered by the Commissioners, and regardless of whether or not the submitter or further submitter took advantage of the opportunity to be heard. Copies of all submissions and further submissions were made available to the Commissioners and they have read and considered all of them.
7. Those submitters who wished to be heard were invited to notify the Regional Council so that the appropriate time could be made available for their respective appearances. They were individually advised of the hearings relevant to their submission/further submission, when they were to be held, and what provisions each part of the hearing would address. The Commissioners heard first from each submitter or cross submitter who wished to be heard, and then from the various officers and consultants employed or retained by the Regional Council who had prepared reports under section 42A of the Act. They then gave each submitter and/or further submitter a right of reply.
8. In some cases, the submitter/further submitter was not available on the scheduled day, and an adjourned hearing was requested. Others requested to be heard out of sequence. The Commissioners agreed to these various requests. Others elected to file supplementary written submissions rather than appear. When this occurred the Commissioners have read and considered this supplementary material.

9. At various stages in the hearing process reporting officers and consultants presented material to the Commissioners to explain the process which had been followed by the Regional Council in preparing the plan or to update information relevant to the plan provisions. A number of officers also prepared reports under section 42A of the Act making recommendations to the Commissioners as to how particular submissions and further submissions could be dealt with. The Commissioners endeavoured to ensure that copies of all materials to be presented to them were either sent to or made available for inspection by all submitters and further submitters. On occasion there were difficulties in this regard. When this came to the Commissioners' attention they invariably adjourned the hearings, issued a minute to the Regional Council requiring either circulation of the material or advising as to its availability, and then later reconvened to hear submissions in relation to it.
  
10. The Commissioners used their best endeavours to ensure that the hearings were conducted fairly and that all parties had the fullest opportunity to comment on all materials presented.

### **The Statutory Context**

11. The Regional Council is given various functions under the Act pursuant to section 30. In particular, it has the function, for the purpose of giving effect to the Act in its region, of establishing, implementing, and reviewing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region. The Proposed NRRP seeks to fulfill that function.
  
12. Amongst other things section 30 of the Act gives the Regional Council the function of controlling discharges of contaminants into or onto land, air or water - see section 30(1)(f). Chapter 3 is designed to achieve that function.
  
13. The word "**contaminant**" is defined in the Act to include any substance, including gases, or odorous compounds, that either by itself, or in combination with the same, similar or other substances, when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged.

14. Although it postdates the notification of chapters 1 to 3, it is noted by the Commissioners that the Act was amended as from the 10<sup>th</sup> of August 2005 to record that it is a function of regional councils, if appropriate, to establish rules in a regional plan to allocate the capacity of air to assimilate a discharge of a contaminant (see section 30(1)(fa)(iv), introduced by section 11(2) of the Resource Management Amendment Act 2005).
15. The NRRP is intended to be a regional plan. Pursuant to section 63 of the Act, the purpose of the preparation, implementation, and administration of regional plans is to assist regional councils to carry out any of their functions in order to achieve the purpose of the Act. The purpose of the Act is to promote the sustainable management of natural and physical resources - see section 5(1). The words “**natural and physical resources**” are defined. They include air - see section 2.
16. A Regional Council may prepare a regional plan for the whole or part of its region for any of the functions detailed in section 30(1) of the Act, including section 30(1)(f) - see section 65(1). Any plan must be prepared in accordance with Schedule 1 to the Act - see section 65(2). Without limiting the generality of its powers, a regional council is required to consider the desirability of preparing a regional plan when various defined circumstances or considerations arise or are likely to arise. These circumstances include any use of land (or water) that has actual or potential adverse effects on air quality - section 65(3)(h).
17. The matters to be considered by a regional council when it is preparing a regional plan are detailed in section 66 of the Act. The contents of regional plans are detailed in section 67, and provision for regional rules is made in section 68.
18. Pursuant to section 66, a regional council is required to prepare any regional plan in accordance with its functions under section 30, the provisions of Part 2, any direction given by the Minister under section 25A of the Act, its duty under section 32, and any regulations. Amongst other things, it must have regard to the extent to which regional plans need to be consistent with the regional policy statement.

19. A regional plan must state the objectives for the region, the policies to implement the objectives, and the rules (if any) to implement the policies - section 67(1). It may state the issues that the plan seeks to address, the methods (other than rules) for implementing the policies for the region, the principal reasons for adopting the policies and methods, the environmental results expected, the procedures for monitoring the efficiency and effectiveness of the policies and methods, the processes for dealing with issues that cross local authority boundaries or that arise between territorial authorities or that arise between regions, the information to be included in an application for a resource consent, and any other information required for the purpose of the regional council's functions, powers and duties under the Act - section 67(2). A regional plan must give effect to inter alia any regional policy statement - section 67(3)(c).
  
20. A regional council may for the purpose of carrying out its functions, and achieving the objectives and policies of a regional plan, include rules in its plan - section 68(1). Every rule has the force and effect of a regulation in force under the Act - section 68(2). In making a rule the Council is required to have regard to the actual or potential effects on the environment of activities, including in particular any adverse effect. A rule may apply throughout the region or part of a region. It may make different provision for different parts of the region, or for different classes of effects arising from an activity. It may apply all the time, or for stated periods or seasons. It may be specific or general in its application. It may require a resource consent to be obtained for an activity causing or likely to cause adverse effects not covered by the plan - see section 68(5).
  
21. Pursuant to section 70(2) of the Act, before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant, the regional council must be satisfied that, having regard to the nature of the discharge and receiving environment, and other alternatives, including the rule requiring the observance of minimal standards of quality of the environment, that the inclusion of the rule in the plan is the most efficient and effective means of preventing or minimising those adverse effects on the environment.
  
22. Under section 32 before publicly notifying a proposed plan, a regional council is required to consider alternatives, benefits and costs. Relevantly section 32, as at June 2002 (the date on which Chapters 1, 2 and 3 of the Proposed Natural Resources Regional Plan were notified) provided as follows:-

**“Duties to consider alternatives, assess benefits and costs, etc.**

- (1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall -**
- (a) Have regard to -**
    - (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and**
    - (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and**
    - (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and**
  - (b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and**
  - (c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof) -**
    - (i) Is necessary in achieving the purpose of this Act; and**
    - (ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.**
- (2) Subsection (1) applies to -**
- (a) ...**
  - (b) ...**
  - (c) Every local authority, in relation to -**
    - (i) The public notification, under clause 5 of the First Schedule, of any proposed regional policy statement or proposed plan or of any change to a regional policy statement or of any variation;**



- (b) There are provisions for consultation - see clause 3 of the First Schedule.
  - (c) The regional council is required to publicly notify its proposed plan - clause 5(1).
  - (d) Any person, including a local authority in its own area, may in the prescribed form make a submission on a proposed plan - clause 6.
  - (e) The regional council is required to publicly notify, through a prominent advertisement, the availability of a summary of all decisions requested, and detail of where the summary of decisions and submissions can be inspected - clause 7.
  - (f) Any person, including the regional council, may make a further submission in support of or in opposition to those submissions made under clause 6 - clause 8.
  - (g) There is provision for dispute resolution - clause 8AA.
  - (h) The regional council is required to hold a hearing into submissions on its proposed plan, and to give at least 10 working days notice - section 8B.
  - (i) The regional council is required to give its decisions, which include the reasons for accepting or rejecting any submissions (grouped by subject matter or individually) - section 10(1). The decision can include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.
26. The Environment Court has held that a decision should have three elements -
- (a) it should state simply whether the local authority accepts or rejects in whole or in part each and every submission on a specific provision or matter;
  - (b) when determining the content of a plan provision, if one or more the submissions are accepted in whole or in part, then the decision should identify clearly:-
    - (i) what change is to be made to one or more provisions in the proposed plan, or

- (ii) what provision is to be deleted, or
  - (iii) what new provision is to be made to the proposed plan
- (c) each decision should contain reasons. If there is more than one decision on any provision in a plan, then it is important to ensure that they are not contradictory.

See Queenstown Lakes District Council v Marcam Grand Lakes Limited and Others, decision C156/02;

Aidanfield Holdings Limited v Christchurch City Council C143/2004.

27. There are limits to the decision making powers. A decision should not amend the provisions of the proposed plan beyond what has been raised in advertised submissions. A decision can however include amendments that an informed and reasonable member of the public, having studied all the submissions, should have appreciated that the local authority might make had those submissions been accepted.

Noel Leeming Appliances Limited v North Shore City Council No. 2 (1993) 2 NZRMA 243 at p. 249;

Foodstuffs Properties Limited v Dunedin City Council, decision W53/93, partially reported at (1993) 2 NZRMA 497 (affirmed on appeal).

What is in issue in any given case where amendments have not specifically been sought to submissions, is whether any prospective amendments ought to be made to a plan as notified goes beyond that which is reasonably and fairly raised in the submissions on the plan. This is a question of fact and degree.

See Whitford Residents and Ratepayers Association Inc. v Manukau City Council [1974] 2 NZLR 340;

Atkinson v Wellington Regional Council, decision W13/99.

The local authority is not however confined to a choice of granting the precise relief sought by a submitter or refusing it. Especially where there is more than one submission, it can grant any relief in the set of possibilities bounded by the submissions and the proposed plan.

Queenstown Lakes District Council v Marcam Grand Lakes Limited, C156/02;

Countdown Properties (Northlands) Limited v Dunedin City Council [1994] NZRMA 145.

The Commissioners have also taken into account the observations of the High Court in J.G. & H. Shaw and Others v Selwyn District Council, A.P. 41/00.

28. The Commissioners have endeavoured to bear the statutory context and process in mind in their consideration of the various submissions and further submissions.

### **The Natural Resources Regional Plan - Chapters 1, 2 and 3**

29. Chapters 1, 2 and 3 of the Proposed NRRP were adopted by the Regional Council at a meeting held on the 28<sup>th</sup> March 2002 and they were notified on the 1<sup>st</sup> of June 2002.
- (a) Chapter 1 is an overview. It applies to all chapters of the Proposed Natural Resources Regional Plan.
  - (b) Chapter 2 deals with Ngai Tahu and the management of natural resources.
  - (c) Chapter 3 deals with air quality.
30. There are various later chapters to the NRRP - Chapter 4 dealing with water quality, Chapter 5 dealing with water quantity, Chapter 6 dealing with the beds and margins of lakes and rivers, Chapter 7 dealing with wetlands, and Chapter 8 dealing with soil conservation. They were notified as a variation in July 2004. The submissions and further submissions on these chapters did not fall for determination by the Commissioners.
31. The period for lodging submissions closed on the 30<sup>th</sup> day of August 2002. Each submission lodged was allocated a number - for example submission 1 was lodged by A. and J. Wilson, and submission 2 by M. Journeaux. There were a very large number of submissions, very many of which covered more than one point. Where this occurred submissions were broken up on a point by point basis - e.g. point 1, point 2, etc.
32. The evaluation and breakdown of each submission was done by Regional Council staff.
33. The summary of submissions received was notified on the 29<sup>th</sup> day of March 2003. The period for further submissions closed on the 30<sup>th</sup> day of May 2003.

34. During this period it was found that not all of the Department of Conservation submissions were in the summary of submissions - 62 points had inadvertently been omitted. These were summarised and advertised separately on the 19<sup>th</sup> of July 2003, with further submissions on these matters closing on the 15<sup>th</sup> of August 2003.
35. A large number of further submissions were received. Most further submitters had already lodged a primary submission, and they retained the same number as had been allocated to them in relation to their principal submission. The further submissions were given the letter F. For example submitter number 5 was Rangitata Diversion Race Management Limited. Its further submission was allocated number F5. Once again further submissions were broken down on a point by point basis where this was necessary.
36. In the recommendations which follow most submissions on particular points are dealt with in the same order as the NRRP. The submissions are identified by a number, e.g. ##01-007-32-00. The first two numbers identify the chapter, the next three numbers the page in the chapter, and the remaining numbers the line on the page. Those submissions dealt with under number ##00-000-00-00 are general submissions which did not readily relate to any particular provision in the plan.
37. The Commissioners summarise Chapter 1, then deal with various general submissions and further submissions received, and then with specific submissions and further submissions on chapter 1. These are dealt with generally on an issue by issue basis. They then deal with chapter 2 in the same way. In regard to chapter 3 they first detail the arguments put up by the Regional Council in support, and then deal with the submissions and further submissions on that chapter, again generally on an issue by issue basis.
38. In the course of their consideration, it has become apparent that on some occasions submissions were not accurately described in the summary of submissions. They Commissioners do not however consider that anyone was significantly disadvantaged. The errors were relatively minor and they were few and far between.

