

BEFORE THE MACKENZIE DISTRICT COUNCIL

IN THE MATTER of proposed PC19 to the Mackenzie District Plan for
Activities on the Surface of Water

BETWEEN **MACKENZIE DISTRICT COUNCIL**

AND **CANTERBURY REGIONAL COUNCIL**

Submitter

**STATEMENT OF EVIDENCE OF ALANNA MARISE HOLLIER ON BEHALF
OF THE CANTERBURY REGIONAL COUNCIL**

Dated 20 November 2018

Introduction

1 My full name is Alanna Marise Hollier.

Qualifications and Experience

- 2 I am a Planner at the Canterbury Regional Council (**Regional Council**).
- 3 I hold a Master of Arts in Coastal Geography from the University of Auckland. I am an associate member of the New Zealand Planning Institute.
- 4 I have been a Planner at the Regional Council since September 2017. My previous role with the Regional Council was as an Advisory Officer which I held from April 2014 until beginning my current role. In that role I was responsible for providing advice to Regional Council customers on what the regional plans meant in relation to their proposed activities.
- 5 My relevant work experience includes providing regional policy advice and planning assistance to the territorial authorities in the Canterbury region. I work closely with the planning teams at Mackenzie District Council (**MDC**) and Waitaki District Council to assist with district plan reviews and the obligations to give effect to the Canterbury Regional Policy Statement 2013 (**CRPS**).
- 6 I have been responsible for co-ordinating the Regional Council's response to proposed Plan Change 19 to the Mackenzie District Plan (**PC19**) and preparing the Regional Council's submission.
- 7 Although this is a Council level hearing, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that code. Other than where I state I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 8 I am authorised to give this evidence on behalf of the Regional Council.

Scope of Evidence

- 9 I am giving evidence in relation to the Regional Council's submission on PC19.

- 10 My evidence will focus on the following matters, as they relate to the Regional Council:
- (a) The key issues addressed in the Regional Council's submission;
 - (b) The wider planning context;
 - (c) The values based approach to surface waterbody management;
 - (d) Lake Pukaki as an Outstanding Natural Landscape (**ONL**); and
 - (e) Roles and responsibilities of the Regional Council as they apply to PC19.
- 11 I have reviewed the following documents relating to PC19 in preparing my evidence:
- (a) PC19 (as notified); and
 - (b) The Regional Council's submission on PC19; and
 - (c) the submissions and further submissions on PC19; and
 - (d) the Section 42A Report for PC19 and Attachments A to F to that Report; and
 - (e) the Section 42A Report Officer's recommended amendments to PC19, as set out in Attachment G to the Section 42A Report; and
 - (f) the relevant planning documents, including the CRPS.

Key issues in Regional Council's submission

- 12 The Regional Council's submission addressed the following key points in respect of PC19:
- (a) Supported the values-based approach to surface waterbody management in PC19.
 - (b) Noted that noise and visual effects are an important issue for MDC to manage in respect of Lake Pukaki and that the Regional Council is neutral on these issues.
 - (c) Sought a minor amendment to improve clarity in respect of Policies 8B and 8C to reflect commercial activities being prohibited on Lake Pukaki.

- (d) Supported Rules 7A.1.1.a, 7A.2.1.a, 7A.3.1.a and 7A.4.1.a, which provide that the use of motorised craft on Lake Pukaki for specified activities (including scientific research, monitoring and pest control) is a permitted activity. The Regional Council also sought an amendment to these rules to clarify that the rules only apply where the activity relates to a statutory responsibility.
 - (e) Supported Rule 7A.2, which proposed a prohibition on the use of motorised craft on Lake Pukaki. The Regional Council also suggested an alternative to amend Rule 7A.2 to allow motorised recreational activity on defined areas of the Lake.
 - (f) Suggested alternative wording to Policies 8E and 8G to clarify the responsibilities of the Regional Council under the Navigation and Safety Bylaw (2016) and Controls (**Navigation Bylaw**).
- 13 The recommendations set out in the Section 42A Report are largely consistent with the issues raised in the Regional Council's submission, and I address these further below.

Planning Context

- 14 The environmental issue at stake regarding the management of activities on and within waterbodies that PC19 addresses is providing for appropriate non-commercial and commercial use, while still protecting key values associated with these waterbodies, such as landscape, amenity, ecology and water quality.
- 15 Directives for the management of activities on surface waterbodies come from a national level as set out in the Resource Management Act 1991 (**RMA**) and the Maritime Transport Act 1994 (**Maritime Act**), and at a regional level as set out in the CRPS and the Navigation Bylaw. I briefly summarise the role of each of these documents in relation to the management of activities on and within surface waterbodies, below.
- 16 The regulation of activities on and within surface waterbodies, and the protection of the values associated with the surface waterbodies are largely regulated through the RMA. Sections 30 and 31 outline the functions of regional councils and territorial authorities under the RMA, respectively.

- 17 Under the RMA, in relation to the management of freshwater resources, the Regional Council has the function to control:¹
- (a) The use of land² for the purpose of the maintenance and enhancement of the quality of water in water bodies;
 - (b) The use of land for the purpose of the maintenance and enhancement of ecosystems in water bodies;
 - (c) The taking, use, damming and diversion of water and the quantity, level and flow of water in any water body;
 - (d) The discharge of contaminants on to land or into water, and discharge of water into water; and
 - (e) In relation to the bed of a water body, the control of the introduction or planting of any plant in, on, or under that land for specified purposes (including the maintenance and enhancement of the quality of water in a water body).
- 18 Under the RMA, in relation to the management of freshwater resources territorial authorities (in this case MDC) have the function to:³
- (a) Control the emission and the mitigation of the effects of noise; and
 - (b) Control any actual and potential effects of activities in relation to the surface of rivers and lakes. Activities in relation to the surface of rivers and lakes can cause effects on amenity, and therefore the management of these effects would be a territorial authority responsibility.
- 19 The RMA also provides that all persons exercising functions and powers under the Act are to recognise and provide for, as a matter of national importance:⁴

¹ Sections 30(1)(c), (e), (f), and (g), Resource Management Act 1991.

² I note that where "land" is used in the RMA it includes land covered by water. However, "land" when used in a regional rule does not include the bed of a lake or river. "land" when used in a district rule includes the surface water in a lake and river. See definition of "land" in section 2 of the Resource Management Act 1991.

³ Sections 31(1)(d) and (e) Resource Management Act 1991.

⁴ Section 6(a) and (b), Resource Management Act 1991.

- (a) the preservation of the natural character of wetlands, lakes and rivers and their margins from inappropriate subdivision, use and development
 - (b) the protection of ONLs from inappropriate subdivision, use and development.
- 20 Regional Policy Statements are the planning document that set how the purpose of the RMA will be achieved for each region of New Zealand⁵. This is achieved through an overview of resource management issues, and a suite of objectives, policies and methods to achieve integrated management of the natural and physical resources of the whole region. The Regional Council works collaboratively alongside District Councils in implementing the CRPS, particularly when District Councils are reviewing their district plans to ensure any cross-boundary issues are resolved.
- 21 Chapter 7 of the CRPS relates to freshwater. Objective 7.2.1 provides for the sustainable management of freshwater, where freshwater is managed firstly for the preservation of the natural character of wetlands, lakes and rivers, safe-guarding life-supporting ecosystem processes, providing for customary use and protection from inappropriate use and development. Once these values are provided for, other values and uses are provided for including allowing the taking of water, and/or use of water for irrigation, recreation and amenity purposes. Objective 7.2.3 provides for the intrinsic values of water bodies and their riparian margins and recognises that water has value in its own right including water quality, life-supporting capacity, ecosystem processes and indigenous species.
- 22 Chapter 12 of the CRPS addresses landscape. Objective 12.2.1 provides for the identification and protection of outstanding natural features and landscapes. Landscape is identified as an integral element of the environment, and can incorporate many values including natural science, aesthetic, heritage and cultural. Protection is not a prohibition on land use change, but instead focus is placed on identifying appropriate development based on the values that make the landscape outstanding. Objective 12.2.2 provides for the identification and management of other landscapes not identified as outstanding, but may be important at a

⁵ Section 59, Resource Management Act 1991.

regional, district or local level for natural character, amenity or historic and cultural heritage.

- 23 The Maritime Act is also relevant in this context, as it sets out the management of maritime safety, of which navigation safety is a subset. Local regulation of maritime activities, including navigation safety, applies to New Zealand waters, including inland surface waterbodies⁶. Navigation safety is the responsibility of the Regional Council and appointed Harbourmaster⁷. Some of the responsibilities in the Maritime Act can be transferred from the Regional Council to Territorial Authorities,⁸ but this has not occurred within the Canterbury region. The recommended amendments to PC19, as set out in the Regional Council's submission, clarify that responsibility for navigation safety (under the Maritime Act) sits with the Regional Council. These amendments are supported by the Section 42A Officer's Report⁹ and I consider that these amendments are appropriate.
- 24 The Navigation Bylaw is the main mechanism in which navigation safety is regulated in Canterbury. The Navigation Bylaw became operative in October 2016 to implement new national direction relating to navigation safety, following the Maritime Amendment Act 2013. These amendments narrowed the scope of navigation bylaws to providing for navigation and safety matters only and removed the ability to apply any environmental protection mechanisms within a navigation bylaw. This means that the protection of ecological values can no longer be included in navigation bylaws. To reflect this amendment, the Regional Council's submission sought changes to proposed Policy 8E of PC19. The Regional Council's recommended amendments have been accepted in the Officer's Report.¹⁰ Accordingly, I consider that Policy 8E now accurately reflects the recent legislative changes and the change in the Regional Council's role in respect of the control of activities on the surface of water.
- 25 I note that there is a minor error in the Regional Council's submission, which I consider should be highlighted. Where the term 'navigational' is referenced, it should be replaced with 'navigation' as the correct term.

⁶ Section 2, Part 1 and Section 33A, Part 3A, Maritime Transport Act 1994.

⁷ Sections 33D-33F, Part 3A, Maritime Transport Act 1994.

⁸ Section 33X, Part 3A, Maritime Transport Act 1994.

⁹ Plan Change 19 Section 42A Report, Rural Policy 8G – Regulations, pages 19-20

¹⁰ s42a Report to proposed Plan Change 19 to the Mackenzie District Plan, 2004; pp 17-18.

This is to create consistency in terminology between national acts, and local regulations¹¹. 'Navigational' was referenced in the explanatory text of the Regional Council submission, but not within the Regional Council's suggested amendments to PC19. It is noted that the use of 'navigational' has carried through to the Officer's Report for recommended amendments to proposed PC19¹². I consider that a minor amendment should be made to the relevant provisions (being the Reasons for Rural Objective 8 as well as Rural Policy 8G, and its Explanation and Reasons) to replace 'navigational' with 'navigation', to reflect the correct usage of the term.

Values based approach to surface waterbody management

26 The CRPS sets the framework for the management of landscape and surface waterbodies in Canterbury. I consider that the new policy approach introduced in PC19, which recognises the differing values of waterbodies within the Mackenzie District gives effect to a number of the CRPS provisions including:

- (a) Objective 7.2.1 Sustainable management of fresh water;
- (b) Objective 7.2.3 Protection of intrinsic value of waterbodies and their riparian zones;
- (c) Objective 7.2.4 Integrated management of fresh water resources;
- (d) Policy 7.3.3 Enhancing fresh water environments and biodiversity;
- (e) Policy 7.3.6 Fresh water quality;
- (f) Objective 12.2.1 Identification and protection of outstanding natural features and landscapes;
- (g) Objective 12.2.2 Identification and management of other landscapes;
- (h) Policy 12.3.2 Management methods for outstanding natural features and landscapes;
- (i) Policy 12.3.3 Identification and management of other important landscapes.

¹¹ Principally between the Maritime Transport Act 1991, which uses "navigation" and local regulations such as regional bylaws and district plans.

¹² The term 'navigational' is present in Rural Objective 8, Reasons as well as Rural Policy 8G, and Explanation and Reasons.

- 27 On that basis, I consider that PC19 appropriately gives effect to these provisions in the CRPS in relation to the management of activities on and within surface waterbodies and ONLs.

Recognising Lake Pukaki as an Outstanding Landscape

- 28 Lake Pukaki is an ONL.
- 29 PC19 recommended prohibition of all motorised vessels on the surface of Lake Pukaki, due to recognition of Lake Pukaki being an ONL. Clear direction is provided within the RMA s6 and the CRPS¹³ to recognise ONLs as a Matter of National Importance and to protect the values that define the character of the ONL.¹⁴
- 30 The Regional Council's submission on PC19 supported Rule 7A.2 as notified, which prohibited motorised activities on or within Lake Pukaki, to protect the scenic, natural and amenity values identified as contributing to Lake Pukaki as an ONL¹⁵. As an alternative, the Regional Council's submission sought to amend Rule 7A.2 to provide for motorised recreational boating as a permitted activity within defined areas of Lake Pukaki and/or during specific peak periods of recreational boating.
- 31 The Section 42A Officer's Report has recommended amendments to Rule 7A.2 to permit non-commercial motorised activities on Lake Pukaki within a specifically identified area. Non-commercial motorised activities outside this area, and commercial motorised activities in any part of Lake Pukaki would continue to be a prohibited activity (subject to some minor exceptions). I address the Section 42A Officer's proposed amendments to Rule 7A.2 further below.
- 32 An aspect of the Regional Council's role of preventing a decline in navigation and safety on lakes and rivers under the Navigation Bylaw is to ensure there is capacity across surface waterbodies to absorb non-commercial and commercial craft use. I understand that Lakes Aviemore, Benmore and Ruataniwha are already under pressure, predominantly from non-commercial motorised craft in the summer months. Lake Pukaki

¹³ Namely Objective 12.2.1 and Policy 12.3.2, Chapter 12, Canterbury Regional Policy Statement 2013.

¹⁴ Ibid.

¹⁵ As defined in Policy 12.3.1 and Appendix 4 of the Canterbury Regional Policy Statement 2013, and the Canterbury Regional Landscape Study 2010, pp 142-145.

has been identified as a lake able to absorb further use and alleviate pressure from other lakes in the Mackenzie District.¹⁶

- 33 It is important that protecting the ONL of Lake Pukaki is assessed in relation to managing boating pressure in the Mackenzie District.
- 34 The CRPS directs that the identification of an ONL does not necessarily equal a prohibition on land-use change, as long as the ONL is protected from inappropriate use and development¹⁷.
- 35 The recommended zoning of Lake Pukaki in the Section 42A Report with permitted non-commercial motorised boating being confined to specific areas in the northern and eastern extent of Lake Pukaki is based on expert visual and acoustic assessments.¹⁸ Based on the assessment set out in the Section 42A Report, I consider that the suggested amendments to Rule 7A.2 to provide for a limited extent of non-commercial motorised boating as a permitted activity still protects the natural and amenity values of the Lake Pukaki ONL. Non-commercial motorised boating would be provided for in such a way to protect the ONL values of Lake Pukaki (e.g. motorised boating would occur away from key tourist and public viewing pathways and corridors).
- 36 Accordingly, I consider that the amendments to Rule 7A.2 as discussed above, would give effect to the relevant provisions of the CRPS.
- 37 I note that the 'Non-commercial motorised activity area' demarcated in Appendix 1 to Attachment G of the Section 42A Report overlaps with the 'no boating, swimming or diving' Reserved Area for the Tekapo B Power Station demarcated in the Navigation Bylaw. Under the Navigation Bylaw, boating cannot occur within the Reserved Area. While there is no legal requirement for PC19 to give effect to or not be inconsistent with a bylaw, I consider that amendments to PC19 are appropriate to ensure clarity for plan users. Therefore, I consider that amending the 'Non-commercial motorised activity area' to exclude the Reserved Area (i.e., so that these areas do not overlap) will resolve this potential conflict between the Bylaw and district planning maps and will also provide greater certainty to plan users. Alternatively, an advice note could be added under the relevant

¹⁶ Personal communication – Canterbury Regional Council Harbourmaster, 11 and 19 January 2018.

¹⁷ Policy 12.3.2, Chapter 12, Canterbury Regional Policy Statement 2013, pp 12-7.

¹⁸ s42a Report to proposed Plan Change 19 to the Mackenzie District Plan, 2004; pp 8-14.

PC19 rules to notify plan users that the Regional Council Navigation Bylaw also applies.

Roles and Responsibilities

- 38 The Regional Council uses the surface waterbodies of the Mackenzie District, including the use of motorised craft, to fulfil its statutory functions and duties under section 30 of the RMA, and other Acts. The Regional Council's submission supports the addition of Permitted Activity rules that provide for the use of motorised and non-motorised craft for each waterbody in PC19 for specific purposes, including for scientific monitoring and research and pest control purposes.¹⁹ The Regional Council uses motorised and remote controlled craft to undertake various water quality, water quantity, ecological and pest management monitoring and research programmes (as required by the RMA and the Biosecurity Act 1993).
- 39 The Regional Council's submission sought an amendment to these proposed permitted activity rules, to clarify that these rules apply to activities undertaken pursuant to a statutory responsibility (rather than to activities carried out by the general public). The Regional Council's suggested amendments have been adopted by the Section 42A Officer's Report. While I support the intent of the amendments sought in the Regional Council's submission (and as adopted by the Section 42A Report), I consider that the wording of the proposed addition to the relevant permitted activity rules could be amended slightly to better reflect the intent of the amendment. I consider that the addition to Rules 7A.1.1.a, 7A.2.1.a, 7A.3.1.a and 7A.4.1.a would be more appropriately worded as follows (additions to version set out in Attachment G to the Section 42A Report shown in mark up):
- “where the activity is ~~an enactment of~~ carried out in accordance with a statutory responsibility”.
- 40 This proposed amendment is set out in **Appendix A** to my evidence.
- 41 I also consider that these permitted activity rules²⁰ should be amended to include 'maritime enforcement', as shown in **Appendix A**, to enable the Regional Council to undertake its statutory role and responsibilities under

¹⁹ Proposed PC19 Rules 7A.1.1.a, 7A.2.1.a, 7A.3.1.a and 7A.4.1.a.

²⁰ Ibid.

the Maritime Act and Navigation Bylaw. These maritime enforcement responsibilities are for ensuring maritime safety, including navigation safety, and enforcing navigation bylaws, and can be undertaken by the Harbourmaster or other Regional Council authorised officers²¹.

42 While not explicitly raised in the Regional Council's submission, I consider that there is scope to make this amendment to PC19, as it appropriately reflects the Regional Council's submission in relation to clarifying and addressing duplication between PC19 and the Regional Council's responsibilities under the Maritime Act and Navigation Bylaw.²²

43 I consider the acceptance of the Regional Council's suggested amendment to Rules 7A.1.1.a, 7A.2.1.a, 7A.3.1.a and 7A.4.1.a, as appropriately providing for the Regional Council's functions, subject to the addition of the above amendment to include 'maritime enforcement'.

Conclusion

44 The Regional Council submitted on PC19 to the Mackenzie District Plan 2004 to highlight how the proposed changes gave effect or could give further effect to the CRPS. In this way, I consider that PC19 can provide for further integration and sustainable management of activities on and within waterbodies of the Mackenzie District.

45 Regarding the CRPS specifically, clear directive is given regarding the protection of ONLs. A key part of the Regional Council submission was to highlight how the objectives, policies and methods of the Landscape Chapter 12 of the CRPS could be applied to protect the ONL of Lake Pukaki.

46 The Regional Council submission provided an avenue to clarify the functions and responsibilities of the Regional Council compared to the MDC under the current planning framework. This was particularly important in highlighting the recent changes to the Maritime Act and Navigation Bylaw, and subsequent change in Regional Council role and function.

47 The Regional Council submission provided the opportunity to support the addition of permitted activity rules for the use of motorised craft on each

²¹ Section 33G, Part 3A, Maritime Transport Act 1994.

²² Regional Council's submission on PC19, see in particular pp 2-3.

surface waterbody for scientific research, monitoring and pest control. The submission also allowed the Regional Council to outline its functions and responsibilities in relation to scientific research, monitoring and pest control and request further amendments to support the extent of its functions under the RMA, Biosecurity Act 1993 and the Maritime Act.

- 48 I support the amendments proposed by the Section 42A Officer's Report to address the issues raised in the Regional Council's submission, subject to the further addition set out in **Appendix A**. With these amendments I consider that PC19 gives effect to the CRPS (to the extent that it is required to, given the limited scope of PC19).

Alanna Marise Hollier



20 November 2018

Appendix A

Amendments sought to Rules 7A.1.1.a, 7A.2.1.a, 7A.3.1.a and 7A.4.1.a of proposed Plan Change 19 to the Mackenzie District Plan

Additions to version set out in Attachment G to the Section 42A Report shown in mark up.

Amend Existing Rules 7A.1.1.a, 7A.2.1.a, 7A.3.1.a and 7A.4.1.a

Use of motorised and non-motorised craft for search and rescue, civil emergency, defence, maritime enforcement, scientific research and monitoring and pest control purposes, where the activity is ~~an enactment~~ of carried out in accordance with a statutory responsibility.