

IN THE MATTER of the Resource Management Act
1991 ("**the Act**")

AND

IN THE MATTER of the Resource Management Act
1991 and the Environment
Canterbury (Temporary
Commissioners and Improved Water
Management) Act 2010

AND

IN THE MATTER of the hearing of submissions on the
Proposed Land and Water Regional
Plan

**REBUTTAL EVIDENCE BY LYNETTE PEARL WHARFE FOR
HORTICULTURE NEW ZEALAND FOR THE GROUP 2 HEARING**

19 April 2013

INTRODUCTION

1. My name is Lynette Pearl Wharfe. I hold the qualifications and have the experience set out in my primary Statement of Evidence provided to the Council in relation to the Group 1 hearing on 4 February 2013.
2. The purpose of this Statement of Evidence is to respond to evidence lodged by the Director-General of Conservation and Nelson/Marlborough, North Canterbury and Central South Island Fish & Game Councils, Fertiliser Association of NZ and Irrigation NZ.
3. In particular, I have comments in response to:
 - (a) The evidence of Mr Hansen (for Fertiliser Association of NZ);
 - (b) The evidence of Mr Familton (for the Director-General of Conservation);
 - (c) the Synopsis of Fish and Game for the Proposed Farming Rule; and
 - (d) the draft evidence of Ms Mulcock (for herself and Irrigation NZ).
4. In addition I comment on the rebuttal evidence of Mr Willis for Fonterra Co-operative Ltd.

EVIDENCE OF CHRIS HANSEN

5. Mr Hansen, for Fertiliser Association of NZ, has set out in Paragraphs 338- 354 consideration of the definition of changed.
6. Generally he is supportive of the recommended change in the s42A Report but does note in Para 353 that there are some matters relating to arable and horticulture that require some allowance for the long term crop rotation cycle.
7. This matter was raised in my Evidence in Chief at Para 62 – 65 and sought a period of time based on the length of the rotation.
8. I support Mr Hansen's identification of the issue of the length of the rotation.
9. Mr Hansen also refers to the Fertiliser Association submission that sought that changed be based on greater than 20% of the farm changing from one of the farm activities to another farm activity.
10. At para 352 Mr Hansen considers that the s42A definition is more appropriate than the notified plan definition as it includes horticultural and arable yield increases which are more of a true land change.

11. While I agree with Mr Hansen to an extent, I consider that only relying on yield may not accurately reflect a true land change as anticipated.
12. On reflection of my Evidence in Chief I consider that it is appropriate that a 20% increase in land area for arable and horticultural production should also be included to ensure that the nature of the change does accurately reflect a true land change as anticipated by Mr Hansen.
13. Such an approach would require a combination of a yield increase and land area increase for arable and horticultural crops to be considered a land use change.
14. I recommend that the Commissioners amend clause 4 of the s42A Report definition of changed as follows:

*Greater than a 20% increase in the annual horticultural or arable yield for the operation, compared with the annual horticultural or arable yield for the operation averaged over the length of the rotation based on records to verify the length of rotation and average yield and a greater than 20% increase in the land area in horticultural or arable production over the life of the rotation. .
~~period 1 July 2010 to 30 June 2013.~~*

15. Mr Hansen also addresses the definition of Farm Environment Plan Auditor in Paras 362-374.
16. I addressed the definition of Farm Environment Plan Auditor as recommended in the s42A Report in Paras 73-81 of my EIC.
17. Currently the definition is largely based around nutrient management certificates or at the discretion of the Chief Executive of the Council.
18. Mr Hansen has identified a number of concerns with the definition of Farm Environment Plan auditor and that an entirely different definition may be required, based on the skills and expertise that is required to undertake auditing as anticipated in the pLWRP.
19. Mr Hansen raises a number of pertinent points in this regard. However in the absence of a full analysis of the requirements for auditors it is difficult to propose an alternative definition.
20. Mr Hansen seeks that if the definition as recommended is to be retained that the 'either' and 'or' be deleted and an auditor hold both the listed requirements.

21. I do not support this approach. The recommended definition has implications as to capacity of people able to undertake audits. To narrow the definition as sought will further restrict the capacity and could well result in insufficient auditors to undertake the required tasks.

SYNOPSIS OF FISH AND GAME PROPOSED FARMING RULES

22. Counsel for the Nelson/Marlborough, North Canterbury and Central South Island Fish and Game Councils have provided a synopsis of the farming rules that Fish and Game propose in Hearing 2.
23. The synopsis is provided in the interim until Mr Percy's evidence is filed.
24. Attached as Appendix One to this evidence is a summary table of the Rule Framework as recommended in the s42A Report and Appendix Two a summary table of the Rule Framework as proposed by Fish and Game.
25. The Fish and Game rule framework is substantially different from that proposed by the s42A Report in that it makes no provision for 'changed' farming activities or provisions for the Lakes Zone. It is unclear how these activities may be provided for.
26. In addition all farming activities in the region will require resource consent.
27. The Fish and Game rule framework is based on a sustainable leaching standard of 20kg/N/ha/Yr. It is assumed that the rationale will be addressed in Mr Percy's evidence.
28. The proposed rule framework also sets timeframes for existing farming to come into effect.
29. While I consider that timeframes may be appropriate those sought by Fish and Game would appear to be impractical in terms of implementation timeframes. I will comment further when I understand the rationale in Mr Percy's evidence.

EVIDENCE OF HERBERT FAMILTON

30. Mr Familton, for the Director-General of Conservation, seeks substantive changes to the Plan, particularly in respect of the rules for discharge of VTA's, agrichemicals and fertiliser.

VTA's

31. At paragraph 35- 36 Mr Familton refers to the Horticulture NZ submission which sought inclusion of AIRCARE for aerial applications and notes that while the

s42A Report recommends the inclusion the wording has not be added to Rule 5.23 in the report.

32. I noted the same matter in my EIC at Para 9-10.
33. However Mr Familton does not support the inclusion for reasons that he discusses later in his evidence. I assume that he is referring to the discussion at paras 92-97 in relation to agrichemicals.

Agrichemical Rules 5-25-5.29

34. Mr Familton is recommending a substantive change to the recommended rules for agrichemicals as set out in his Appendix B.
35. I agree with Mr Familton that the reference in Rule 5.25 Clause 1 should be to those substances approved for use under the HSNO Act.
36. However I do not support that the 'application technique or method' be approved, as set out in my EIC Para 15-17.
37. The main area where I have concerns with the approach of Mr Familton is in respect to training requirements.
38. DOC supported in part the submission of Horticulture NZ in respect of training requirements so I find the amendments that he is now proposing somewhat of a change in position.
39. I support the inclusion of appropriate training requirements based on GROWSAFE as set out in Paras 11-14 of my EIC.
40. Mr Familton is not seeking that training be limited to where Approved Handler is required under HSNO (Amended Clause 3).
41. The rationale for this appears to be Para 96 where he states that the rules as currently drafted impose voluntary industry certification scheme requirements rather than regulatory standards as set by EPA and CAA.
42. Voluntary programmes have been used as conditions in regional plans and provide a basis for best practice to be implemented.
43. NZS 8409:2004 is a voluntary standard made mandatory by virtue of being reference or required in a rule (condition) in a plan.
44. In addition NZS8409:2004 is an Approved Code of Practice under HSNO so has been used in a regulatory sense by EPA.

45. The Environment Court has also supported the use of voluntary standards in plans, such as in *Bodle vs Northland Regional Council* where the Court determined that NZS8409 was an appropriate standard to use in the Regional Plan.
46. I do not support the approach sought by Mr Familton in respect of agrichemical use because:
- (a) It would mean that only those users of agrichemicals that require Approved Handler under HSNO would require training, meaning that other users would not require any training;
 - (b) An Approved Handler is required for those substances regardless of what is in the pLWRP, so the change sought is a duplication of regulation;
 - (c) The Approved Handler requirement is based on the hazard associated with the substance which does not address the other effects that can arise from the discharge, particularly spray drift;
 - (d) The GROWSAFE training programme is based on the NZS8409:2004 Management of Agrichemicals, and is wider than what is required to obtain an Approved Handler. It is inappropriate to consider that the two are interchangeable.
 - (e) NZS8409 is more than an industry standard – it is a NZ Standard developed through the NZ Standards process that involved a wide range of parties, not just industry.
 - (f) The pLWRP rules require activities to be undertaken in accordance with Sections 5 and Appendices L and S of NZS8409:2004 Management of Agrichemicals.
 - (g) This is entirely appropriate because the Standard sets out best practice for agrichemical use.
 - (h) The GROWSAFE training programme is a means to ensure that such best practice is used by those applying agrichemicals.
47. At Para 94 Mr Familton implies that training requirements would severely curtail DOC and ECAN and volunteer efforts in biodiversity and biosecurity management.
48. I consider that those undertaking agrichemical spraying in public places such as the DOC estate should be appropriately qualified to be undertaking such operations.

49. Mr Familton also does not consider that AIRCARE should be included in the rules, or at least it should be 'or equivalent industry based certification'.
50. AIRCARE provides an assurance to the Council that an aerial operator is operating at best practice and I support that approach.
51. Inclusion of 'or equivalent industry based certification' is ultra vires based on case law (Bodle vs Northland Regional Council) so it is inappropriate to include such wording.
52. Mr Familton also seeks to remove the requirement for those discharging to water to be Registered Chemicals Applicators (RCA) and rely solely on Approved Handler.
53. This is an entirely inappropriate change to seek as RCA is based on NZQA standards and is recognition that the operator is suitably qualified to undertake agrichemical applications for hire and reward on a regular and on-going basis, especially in respect to applying to water.
54. Mr Familton is also seeking that a pilot not only has a Pilots agrichemical Rating but also a Controlled Substance Licence.
55. A Controlled Substance License (CSL) is required by EPA in situations (such as for VTA's) where the hazards associated with the substance are such that extract controls are required.
56. A CSL is essentially a police check to determine that the applicant is "fit and proper" person test and once this is satisfied the CSL is issued. A CSL does NOT certify competency as there is no assessment.
57. A requirement for a CSL is duplication with HSNO. Where an operator needs a CSL under EPA for the substances being applied then that is managed under HSNO, and not relevant to the pLWRP.
58. I am unaware of any agrichemicals that require a CSL so seeking such an addition to Rule 5.25 (6) is entirely inappropriate and is not supported.
59. I am also unaware of any submission that sought the addition of a CSL in the rule.

Fertiliser use Rule 5.52 – 5.54

60. Mr Familton seeks changes to Rules 5.52 – 5.54 relating to fertiliser use as set out in his Appendix C

61. In particular he seeks the addition of clauses that limit the application rates of fertiliser, based on unspecified numbers.
62. I am unaware of any submission that sought the addition of such clauses within the fertiliser rules.
63. Mr Familton appears to be concerned about the interaction between the fertiliser rules and the farming nutrient management rules, based on the submission of Fish and Game.
64. I understand the suite of provisions to apply as follows:
 - (a) Rule 5.52 – 5.54 are discharge rules under s15 of the RMA to enable the discharge of fertiliser.
 - (b) The nutrient management rules are land use provisions under s9 of the RMA and include provisions relating to specific substances.
 - (c) Both sets of rules need to be met to meet the requirements of the pLWRP.
 - (d) The note in the fertiliser rules makes it clear that discharge of fertiliser may be restricted by the nutrient management rules.
65. Clause 1 as sought by Mr Familton is input based – that is the 'application of fertiliser does not exceed x'. Such an approach is inconsistent with the pLWRP which is focused in the outputs – that is the leaching of nutrients.
66. Mr Familton is also seeking unspecified limits of application rates on Phosphorus. I am not aware of the basis for the inclusion of such an approach in the pLWRP.
67. That is not to say that phosphorus could be included at some future time if necessary, but at present the focus has been on N and the plan has been constructed to address that issue.
68. I do not consider that there is confusion or lack of clarity as to how the two sets of rules interact and so do not the support changes in Appendix C to address the issue perceived by Mr Familton.

EVIDENCE OF CLAIRE MULCOCK

69. Ms Mulcock has provided a draft of evidence for herself and Irrigation NZ that addresses Farm Environment Plans based on her experience of developing such plans for a number of clients.

70. Ms Mulcock attaches to her evidence the Irrigation NZ 'Irrigation Audited Self-Management: Managing Water Quality and Quantity within limits' programme of which she is a co-author.
71. At Para 11 Ms Mulcock is concerned that it is not exactly clear what the farm plan in Schedule 7 seeks to achieve and that there is a risk that it will become a bureaucratic process and lose focus on farm understanding and skill.
72. I conditionally support Ms Mulcock in this matter. In my EIC Para 107 -126 I support the use of industry developed farm plan regimes, with the grower actively involved in the development of the plan, so that there is a clearer linkage between the nature of the operation and the requirements in the farm plan.
73. Ms Mulcock raises a number of issues relating to auditing, particularly the introduction of the A, B and C grades, the frequency of audits and the lack of time to fully evaluate the recommended changes to farm plan provisions.
74. I note from the evidence of Matt Dolan for Horticulture New Zealand that there are a number of different systems used to audit farming practice. While any proposed grading system may have benefits it needs to be developed in a timely manner to ensure that it is robust and adequately addresses the appropriate issues.
75. While Ms Mulcock has attached the Irrigation NZ 'Irrigation Audited Self-Management: Managing Water Quality and Quantity within limits' she has not specifically referred to it so am uncertain of the context in which it is intended.
76. While the attached programme addresses particular irrigation uses I do not consider it is the only template that could be used by industry sectors for a Farm Environment Plan.
77. The recommended changes in the s42A Report support industry developed programmes and I support that approach.

REBUTTAL EVIDENCE OF GERARD WILLIS

78. I have had the opportunity to read the rebuttal evidence of Mr Willis, for Fonterra in which he rebuts the evidence of Mr Guest to the Director General of Conservation.
79. In particular he addresses the land use (farming) policies and rules and the relationship to the objectives in Section 3 of the pLWRP and the NPSFM.

80. As stated in my EIC to Hearing 1 I support Table 1 being an interim target until such time as the sub-regional chapters are developed.
81. Mr Willis takes a similar view and rebuts the evidence of Ms Guest that seeks that Table 1 be 'locked in' as outcomes in the Plan. I support Mr Willis' position.
82. Mr Willis also rebuts Ms Guest's interpretation regarding compliance with section 70 of the RMA.
83. Mr Willis considers that s70 needs to be applied in the broad context of the Plan (Para 6.9) and I support that approach.
84. Mr Willis (Para 7.1- 7.9) also responds to Ms Guest's preference for nutrient load limits and property level nutrient discharge allowances and sets out a clear rationale as to why they are not currently appropriate.
85. I am aware that Horticulture NZ is undertaking modelling of nutrient loads but that at this stage it is premature to contemplate using such an approach in a regulatory plan.
86. Therefore I agree with Mr Willis that in the absence of catchment loads there can be no property level allocation (or NDA) and so other mechanisms need to be used until such time as technical analysis and tools are available.

Lynette Wharfe

19 April 2012

Appendix One: Farming rule framework – as recommended in the s42A Report

| | Red | Orange | Green/Pale Blue | Lake |
|--|---|---|---|--|
| Permitted 5.39 Existing farming activity Changed farming activity New farming activity | Less than 5ha or 5-50 ha and high nutrient risk activity | Less than 5ha or 5-50 ha and not high nutrient risk activity | Less than 5ha or 5-50 ha and not high nutrient risk activity | Less than 5 ha and No high nutrient risk activity |
| Permitted 5.40 Existing farming activity if 5.39 not met | | Greater than 50ha or high nutrient risk activity Information in Sch 7 Part D provided to Council | Greater than 50ha or high nutrient risk activity Information in Sch 7 Part D provided to Council | |
| Permitted 5.41 Existing farming activity if 5.39 not met | Greater than 50ha No high nutrient risk activity –Information in Sch 7 Part D provided to Council. High nutrient risk activity – prepare FEP with audit grade A B or better | | | |
| Permitted 5.42 Existing farming activity if 5.39 not met | | | | Greater than 5 ha No high nutrient risk activity Prepare FEP with audit grade A B or better |
| RDA 5.43 Existing farming activity | | | | High nutrient risk activity Prepare FEP and audit Meet matters of discretion |
| Permitted 5.44 Changed or new farming activity if 5.39 not met | | | Information in Sch 7 Part D provided to Council. | |
| RDA 5.45 Changed or new farming activity if 5.39 not met | | Prepare FEP and audit Meet matters of discretion | | |
| Discretionary 5.46 Changed farming activity or new farming activity | Changed farming activity or new farming activity | | | Changed farming activity or new farming activity |
| Discretionary 5.47 Existing farming activity | Default | Default | Default | Default |

| | Red | Orange | Green/Pale Blue | Lake |
|---|------------|---------------|------------------------|-------------|
| Changed farming activity New farming activity Not meeting Rules 5.39 – 5.45 | | | | |

Appendix Two - Fish and Game Proposed rule framework for Farming Rules –based on Synopsis of Fish and Game 2 April 2013

The Sustainable leaching standard in all zones is 20kg/N/ha/yr

| | Red – by 2014 | Orange – by 2016 | Green/Pale Blue by 2017/2018 | Lake |
|---|--|--|--|-------------|
| Controlled (4a) Existing farming activity | Sustainable leaching standard is met Minimum practice standards | Sustainable leaching standard is met Meets minimum practice standards | | |
| RDA (4b) Existing farming activity if controlled rule not met | Meets minimum practice standards Achieves N Leaching reduction standards from 2011/12 leaching rates Reductions can be via trading | Meets minimum practice standards Achieves N Leaching reduction standards from 2011/12 leaching rates Reductions can be via trading | | |
| Non complying (4c) Existing farming activity if RDA not met | If RDA terms and conditions not met | If RDA terms and conditions not met | | |
| Non complying 4d) New farming activity | New farming activity (no controlled or RDA rule) | | | |
| Controlled 4e) New farming activity | | If leaching at or below the sustainable leaching standard Minimum practice standards are met | | |
| RDA 4f) New farming activity not meeting controlled rule | | Meet minimum practice standards Trading to reduce leaching to sustainable leaching standard | | |
| Non complying (4 g) New farming activity if RDA not met | | If RDA terms and conditions not met | | |
| Controlled (5a) New and existing farming activity | | | Meets minimum practice standards Meets sustainable leaching rates | |
| RDA (5b) New and existing farming activity not meeting | | | Meet minimum practice standards Matter of discretion maximum amount that can be leached and measures to | |

| | Red – by 2014 | Orange – by 2016 | Green/Pale Blue by 2017/2018 | Lake |
|---|----------------------|-------------------------|-------------------------------------|-------------|
| controlled | | | implement bmps. | |
| Non complying (5c) New and existing farming activity not meeting RDA | | | If RDA terms and conditions not met | |