

## 9. PROPOSED NATURAL RESOURCES REGIONAL PLAN – RESPONSE TO THE DECISION



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1. The purpose of this report is to seek Council approval of the recommendation not to appeal any part of Environment Canterbury's Decision on Chapters 4 to 8 eight of the Proposed Natural Resources Regional Plan (PNRRP).
2. The report also provides the Council with a summary of:
  - (i) The development and nature of Environment Canterbury's Proposed Natural Resources Regional Plan (PNRRP).
  - (ii) The City Council's interest in the PNRRP.
  - (iii) The decisions, and their significance to the City Council, and particularly its waste water and water supply operations.

### EXECUTIVE SUMMARY

3. Decisions on the PNRRP were notified by ECan on 23 October 2010 with a 15 day appeal period. Due to legislative requirements under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 any appeals on the decisions can only be made on points of law to the High Court. In essence Council may no longer appeal a decision on its merits, which is the principal basis of the majority of appeals to the Environment Court, but appeals can only be countenanced where the decision has erred in law. The changed parameters are significantly more restrictive on potential appellants and the decisions of ECan have had to be addressed solely in this revised context.
4. In preparation of this report, staff has analysed the notified decisions and identified the main issues of concern for the Council, particularly around matters that impact on the Council's operational activities. Areas of key concern were then reviewed by lawyers for consideration as to whether or not an appeal was justified on a point of law. The legal advice on those areas of key concern identified by staff is that there are no issues on which an appeal can be recommended.
5. The requirement of only being able to appeal a regional plan decision on a point of law is a new situation for Council and means that technical issues cannot be addressed through the usual avenue of an appeal to the Environment Court. As summarised in this report there are options available to resolve some of these matters through other means.
6. The PNRRP is an important document for the City Council as it sets provisions which regulate a number of Council activities, particularly relating to discharges to air, land and water. In addition, the RMA requires that the Council's District Plan must not be inconsistent with a regional plan (section 75(4)(b)). For these reasons the PNRRP has significant influence on Council's operations and planning framework.
7. The PNRRP has been developed over about ten years and is the main regional plan for the management of the region's air, water and soil resources. The City Council has taken an active part in the development of the PNRRP through the preparation of submissions and evidence for hearings.
8. The five chapters of the PNRRP subject to the recently released decision are Chapters 4 to 8, respectively dealing with water quality, water quantity, beds and margins of lakes and rivers, wetlands and soil conservation.

9. Environment Canterbury's decision on the PNRRP contained 43 matters of particular importance to the City Council. Of those a number were resolved to the technical satisfaction of Council, though 28 were rejected in part or rejected in full in Environment Canterbury's decision. These were subject to review by staff, and in normal circumstances would be candidates for appeal, on technical or merit grounds. However on review, only three were identified as being decisions for which the outcome generated a question of "a point of law" on which the City Council could appeal the decision. Following a detailed legal review of the three matters (on a water quality policy, access to water bodies, and financial contributions), the financial contribution matter was identified as the only point of law that the City Council could pursue. The legal advice on this matter concluded that the interests of the City Council would not be furthered by lodging an appeal.
10. Of the matters rejected in part and in full by Environment Canterbury, other methods to address these matters, to varying degrees, are available to the City Council. These methods include, discussion with ECan on possible variations to the PNRRP, input to the review of the PNRRP once the new RPS becomes operative, and making changes to other statutory and non-statutory documents to address PNRRP matters left 'unresolved'.

#### **DEVELOPMENT PROCESS FOR THE PNRRP**

11. The PNRRP has been prepared by ECan to assist in carrying out several of their functions as set out in section 30 of the Resource Management Act (RMA). These functions relate to the integrated management of the region's natural and physical resources, and include, but are not limited to, the control of the use of land for various specified purposes.
12. Except where it may be provided otherwise, the PNRRP applies to the whole of the Canterbury region, apart from the coastal marine area. Resource management issues in the coastal marine area are dealt with in the Regional Coastal Environment Plan (RCEP) and issues relating to water management in the Waimakariri River catchment are dealt with in the Waimakariri River Regional Plan (WRRP). The PNRRP will replace corresponding Transitional Regional Plan (TRP) provisions.
13. Environment Canterbury (ECan) publicly notified five chapters of the PNRRP in July 2004. These were Chapter 4 (Water Quality), Chapter 5 (Water Quantity), Chapter 6 (Beds and Margins of Rivers and Lakes), Chapter 7 (Wetlands), and Chapter 8 (Soil Conservation). City Council submissions on the PNRRP were lodged in December 2004. The Council supported ECan on the preparation of the PNRRP as it provided the opportunity for the review of outdated provisions. While supporting much of the policy provided by the PNRRP, the Council, through its submissions, raised many matters of varying degrees of significance and importance to the Council, including impacts on Council operations.
14. The PNRRP has been developed with significant input from the community. Between 2006 and 2009, hearing commissioners heard submissions and further submissions on the PNRRP from a wide range of interests.
15. Preparation of the submissions was led by the Strategy and Planning Group, with technical assistance from staff across a variety of other Council units. Specific technical and legal input was provided by consultants.
16. While it was the primary responsibility of the Strategy and Planning Group to co-ordinate the submission process, the responsibility of compliance with PNRRP provisions generally rests with various Council operational units. Similarly much of the evidence required at hearings required involvement from a range of Council units.
17. The City Council's submissions on the PNRRP and evidence presented at hearings were generally well received by the ECan hearings panel. Many of the issues raised by the City Council were accepted fully or in part in ECan's Officer Reports. A number of issues weren't addressed to the satisfaction of the City Council in the Officer Reports and remained a concern for the Council.

18. ECan released their decision on the PNRRP on 11 October 2010. The decision, publicly notified on 23 October 2010 covered Chapters 4-8 (Variation 1) as well as Variations 2, 4, 5, 6 and 14. Of the greatest significance to the City Council were Variations 1 (PNRRP chapters 4 to 8), 4 (groundwater allocation limits, affects chapter 5), and 6 (Christchurch groundwater protection zones, affects chapter 4).
19. As a submitter to the PNRRP, the Council has 15 working days, to 16 November 2010, to lodge appeals with the High Court. Under the new Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, which was passed by Government in April 2010, there is no right of appeal to the Environment Court on the decisions released for the PNRRP. Submitters can only appeal on points of law to the High Court.
20. The PNRRP decisions have been made under the existing 1998 operative Regional Policy Statement. Once the new regional policy statement is operative, likely to be early 2013, the PNRRP may need to be changed to implement the new policy statement.
21. It is expected that the PNRRP will continue to be amended to reflect community-driven priorities, and in particular, priorities developed through the Canterbury Water Management Strategy and the local water management zone committees.
22. The PNRRP was prepared in parts, known as chapters. The first three chapters, an *Overview, Ngāi Tahu and the Management of Natural Resources*, and *Air Quality*, were proposed in June 2002. These chapters went through a public submission and hearing process and a Council (ECan) decision released in September 2007. A number of appeals were made by the City Council on air quality issues and were resolved to the satisfaction of the Council.
23. Chapters 4 to 8 were proposed by way of a variation (*Variation 1*). In September 2005 a seminar was held for all City Council Councillors and Community Board members. Following the seminar the City Council's submission was amended and presented to the Strategy and Finance Committee and to a meeting of the Council for adoption in late September 2005.
24. Hearings on Variation 1 started in September 2006 and finished in June 2009. Of the 32 hearings held, the City Council provided evidence to all but two hearings. The City Council, through its amalgamation with Banks Peninsula District Council (BPDC) in March 2006, included in its evidence additional matters raised by BPDC in their submissions.
25. The provisions of Chapters 4 - 8 of the PNRRP are of particular interest to the City Council, and its activities. These chapters deal respectively with water quality, water quantity, activities in the beds and margins of lakes and rivers, wetlands and soil conservation. Of these five chapters, the two largest and most complex are Chapter 4 Water Quality and Chapter 5 Water Quantity, and the provisions of these two chapters also have the greatest potential impact on Council planning and operational activities. In its submission on the PNRRP the City Council made some 110 specific 'submission points' on Chapter 4 matters alone. Of those points, about 60% were either 'support' or 'support in part', and the remaining 40 per cent, 'oppose'.
26. Since Variation 1 was notified, several other variations have followed. Of greatest significance to the City Council is Variation 6. Variation 6 introduces a new objective, policy, issues and methods, including land use rules and amendments to the existing water quality zone boundaries relating to the Christchurch aquifer system. Variation 6 applies to the area of Christchurch City north of Halkett Road as well as part of Selwyn District. Variation 6 was notified in July 2007 and hearings took place in early 2010.

#### **CITY COUNCIL SUBMISSIONS AND THE DECISION**

27. The City Council has supported ECan in the preparation, and specifically the intent, of the PNRRP. A wide range of City Council activities are affected by the PNRRP, and in particular those activities relating to water quality and water quantity. The implications of the provisions of the PNRRP for the City Council include legal issues (mostly compliance and resource consent status), resourcing issues, infrastructural and planning matters.

28. A key reason for the City Council's submissions was to help ensure the functions, roles and responsibilities of the City Council were clearly recognised and were not unduly restricted or constrained, or subject to unreasonable costs.
29. The City Council, in its submissions, raised the issue of the complexity of the plan, lack of certainty provided in many of the rules, areas of inconsistency, and the difficulty of relating matters between various chapters and other regional planning documents. Other general matters raised by the City Council include terminology, standards that lack specificity and basis, ambiguous links between objectives and policies and between policies and rules, and lack of useful cross-referencing within the PNRRP. While many useful changes have been made to the PNRRP through the submission and decision process, the plan remains a complex and, in parts, highly technical document. In general the PNRRP now places more reliance on a greater range of methods, and encourages more community involvement in managing the region's natural resources.
30. The City Council has, through the submission process, consistently advocated for the reduction of unnecessary duplication of planning provisions that could result in applicants requiring consents from both district and regional councils for essentially the same activity.
31. The City Council also strongly objected to being directed to achieve outcomes by prescribed methods, when other approaches may be equally effective, and could be developed in consultation with the community and are likely to result in an approach that is more appropriate to the local situation.
32. Forty-three matters discussed in Environment Canterbury's decision, and raised by the City Council through the submission and hearing process, were specifically reviewed by City Council staff. The majority of these were provisions within Chapters 4 and 5, water quality and water quantity respectively. Of the 43 matters of particular interest to the City Council, 15 were accepted in full by Environment Canterbury, 15 accepted in part, and 13 rejected.
33. Chapter 4 - Water quality

Chapter 4 deals essentially with surface and ground water quality (including contaminants in land), and community drinking water sources. The following matters were raised by the City Council, specifically in terms of the Council's roles and responsibilities:

- *Potential contamination of the City's drinking water:* Subdivision and land development intensification in the northwest of the City was prohibited in order to avoid contamination within the *Christchurch Groundwater Recharge Zone*. While supporting the need to avoid contamination, two key issues were raised by the Council, firstly whether the effects justify such a control, and secondly the issue of using subdivision as a tool to trigger this restriction.

*Summary comment on the decision:* The concerns raised by the City Council were recognised through the notification of Variation 6.

- *Contaminants entering surface water - sewage overflows.* In 2004 the City Council obtained resource consents which required the Council to invest about \$40m in trunk main capacity upgrades to reduce sewer overflows to the permitted two year return period. The City Council did not wish to re-litigate these consents and has sought recognition that, in a fully vented sewage system, street flooding can on occasions overwhelm system capacity and overflows will occur. These occasional overflows occur when the receiving rivers are 'in fresh' ensuring significant dilution and little impact on the receiving environment.

*Summary comment on the decision:* The PNRRP now provides recognition through the policies for the unavoidable occurrence of limited sewerage overflows and spills. There is also the ability for the City Council to apply for a resource consent for very limited discharges of untreated sewerage to surface waters.

- *Urban rivers.* The original PNRRP rules and policies did not provide sufficient recognition of the difficulties faced in meeting water quality standards in urban environments. The City Council sought greater recognition of both the challenges of improving surface water quality in urban areas and the special nature of tidally influenced coastal rivers.

*Summary comment on the decision:* The PNRRP now provides significant recognition of the character and functions of urban water courses. Required water quality standards addressed in the PNRRP are now more appropriate for water courses in urban areas.

- *Community drinking water supply protection zones.* The key concern was the designation of sewage networks as non-complying uses within these zones. The City Council strongly objected to this requirement. There is currently little evidence that seepage of sewage is causing groundwater contamination.

*Summary comment on the decision:* The rule within the PNRRP relating to the consenting of the sewerage network has altered significantly. Network operators are now required to provide ECan with detailed asset management plans for the operation maintenance, and development of the network. This will help ensure that all structures within the network provide a low or moderate risk to the environment and where necessary are improved to meet a high standard. If the network meets the conditions the activity will be permitted, if it doesn't meet the conditions, the activity will remain a non-complying activity.

- *Stormwater discharges and ICMP's.* Integrated catchment management plans (ICMP) were required and the City Council's stormwater discharges will need to meet the water quality standards set in the PNRRP. The City Council supported the approach of addressing stormwater issues on a catchment-wide basis. However, potentially significant cost implications for the City Council were identified. The City Council expressed concern about obtaining consents, timeframes to meet the new standards, practical implications to achieve water quality standards, and practical implications to achieve water quality standards.

*Summary comment on the decision:* The provision of ICMP's has been clarified. The plans are now called 'Stormwater Management Plans' (SMPs). The completion of the plans is not mandatory, however, the incentives for completing plans are significant. Water quality standards have been reviewed and are more realistic in respect of their content, and the timeframe for achieving them.

- *Riparian management and setbacks within riparian margins.* There are a number of land use constraints that were identified in the PNRRP that will limit development around the City, including development around waterways. The methods and rules in the PNRRP were considered by the City Council with regard to their consistency with City Plan rules. The City Council has developed setback rules in the City Plan to protect and enhance values associated with waterways and is reluctant to see these hard-won provisions undermined by provisions in the PNRRP. The City Council sought recognition of the City Plan setback provisions.

*Summary comment on the decision:* The PNRRP identifies that any person undertaking activities that trigger the setback rules, also need to identify any rules within a district plan which may apply to the activity. Although there is some recognition of the City Council concern, the way in which the City Plan rules have been written, with an inclusion of an exemption from the District plan rule if a consent has been granted under a regional rule, means that the City Council's rule will be undermined.

- *Application of biosolids to land.* The PNRRP lacked any reference to the application of biosolids to land. The City Council sought that policy and rules should be included in the PNRRP to make this a permitted activity providing MfE and New Zealand Waste Water Association (NZWWA) guidelines are complied with.

*Summary comment on the decision:* It was considered in the decision that even taking into account the NZWWA guidelines, the potential risk of the contamination of groundwater for biosolids or other treated effluent was at a level where this activity required a resource consent.

- *Cemeteries.* Rules associated with the management and establishment of cemeteries posed several difficulties for the City Council. A rule in the PNRRP makes the use of land adjacent to an existing cemetery or the establishment of new cemeteries, a non-complying activity.

*Summary comment on the decision:* The PNRRP identifies that there are some substances leached from cemeteries which can pose a significant risk to groundwater and surface water quality. The requirement for a resource consent as either a discretionary or a non-complying activity is considered warranted.

- *Use of artificial watercourses and wetlands to treat discharges.* The City Council requested that rules dealing with discharges be amended so that discharges into artificial watercourses and wetlands designed to treat discharges are discretionary or permitted.

*Summary comment on the decision:* The definition of a 'stormwater collection system' has been amended to include any system specifically made or formed to collect or direct stormwater, and includes, but is not limited to kerb and channel, swales, pipes, drains, ponds and sumps.

- *Hazardous substance use and water quality.* The City Council identified the need for consistency between ECan and City Council requirements to provide certainty with the process of consenting, and to ensure there is sharing of information.

*Summary comment on the decision:* The PNRRP recognises the potential overlapping responsibilities of local authorities in regard to hazardous substances and water quality, and also the importance of the joint ECan and City Council working party which has been established to manage these shared responsibilities. The nature of the recognition of the working party in the decision is a clear attempt to direct the Council's attention to defining the roles and responsibilities of the two councils, and encouraging progress to resolve current issues of 'ownership' and responsibility.

#### 34. Chapter 5 - Water quantity

The Canterbury region's water resource is used for a wide range of recreational activities, irrigation, industry and community and stock water supply. Managing the competition for water between these different needs and demands is the primary focus of Chapter 5. The following key water quantity issues were raised in the submission and hearing process as a concern for the City Council:

- *Other regional plans.* The relationship between the PNRRP and in particular the Waimakariri River Regional Plan (WRRP) and the Transitional Regional Plan (TRP) was unclear. The City Council highlighted this issue through its submissions and hearing evidence and suggested setting a timeframe for the incorporation of various other regional plans into the PNRRP.

*Summary comment on the decision:* Although recognition is given to the association and relationship of the PNRRP with other regional plans in the decision, the resolution of these matters is not able to be undertaken within the PNRRP review process.

- *Maintaining flow regimes in rivers and streams.* The City Council had concerns over whether the minimum flows set for the Avon and Heathcote, and flows in hill watercourses, achieve the correct balance between stream flows and groundwater takes. The City Council takes water from wells close to the Avon and Heathcote Rivers and the conservative allocations were considered by the City Council as potentially affecting its ability to take water.

*Summary comment on the decision:* Changes elsewhere in Chapter 5 provide greater recognition of the requirement of the priority for the City Council to provide water for domestic use.

- *Water allocation for future growth.* The City Council supported a clear objective in the PNRRP that recognised the need for water allocation regimes, within blocks, for identified long term needs. This mechanism would assist with meeting future community needs as Christchurch grows. This matter was not addressed in the policies and rules of the PNRRP.

*Summary comment on the decision:* This issue has now been identified within the objectives, policies and rules of the PNRRP, and there is provision for the City Council to apply for community domestic supplies through the resource consent process.

### 35. Chapter 6 - Beds and margins of lakes and river

Chapter 6 of the PNRRP addresses land use within the beds and margins of lakes and rivers. Activities addressed within this Chapter closely reflect those activities addressed within section 13 of the RMA (that is, within the bed of a lake or river) and section 9 (that is, within the adjacent land - 7.5 m margins). The following water quantity issues were raised in the submission and hearing process as a concern for the City Council:

- *Waterway setback rules.* Significant inconsistency issues existed between the PNRRP provisions and City Plan rules, and in particular for excavation, filling, and buildings adjacent to waterways. ECan did not need to consider City Plan provisions therefore allowing the placement of structures, excavation and filling closer to waterways than permitted in the City Plan.

*Summary comment on the decision:* As discussed previously, inconsistencies between the rules within Chapter 6 and the City Plan will need to be resolved in the future through other processes, outside of the PNRRP.

- *Biodiversity, wildlife and recreation.* While recognising the value of public access to riverbeds, the City Council questioned the adequacy of provisions to protect biodiversity and wildlife.

*Summary comment on the decision:* The PNRRP now gives recognition to any existing biodiversity strategies or other non-statutory plans that territorial authorities may have prepared.

### 36. Chapter 7 - Wetlands

The wetlands chapter aims to protect wetlands of *moderate* or *higher* significance within the region, while also encouraging the voluntary restoration and enhancement of all wetlands. Special recognition is made of the region's most depleted wetland types such as coastal, lowland and inland basin wetlands. The following matters were raised by the City Council:

- *No overall reduction approach.* At the objective and policy level the chapter proposed a 'no overall reduction' approach for wetlands of moderate or 'better' quality. In practice this permits the loss of good quality wetlands, provided a new wetland (of whatever quality) is created somewhere else. The City Council suggested that this approach was inconsistent with the provisions of the RMA, and that an objective to 'protect and enhance' would be more appropriate.

*Summary comment on the decision:* The PNRRP has maintained its approach to wetland management. The issue of creating new wetlands is of a scientific nature, and the City Council is likely to continue to pursue this matter by other methods.

- *Regional wetland inventory.* The lack of a regional wetland inventory was considered by the City Council as a significant limitation for achieving the objective and policies, especially if the 'no overall reduction' approach is retained. To partly address this matter the City Council submitted that the City Plan's Ecological Heritage Sites (EHS) inventory be adopted by ECan as an inventory/assessment of wetlands in Christchurch on the understanding that the assessment was technically rigorous and had comprehensive geographical coverage. The City Council believed that this would bring some certainty as to which rules apply in Christchurch City, and the areas they apply to.

*Summary comment on the decision:* The City Council's EHS has not been included in the PNRRP. However, as part of the City Plan review it is likely that these sites will be reassessed, and new sites identified and included in the list. It now appears appropriate that the EHS are not included in the PNRRP.

### 37. Chapter 8 - Soil conservation

Chapter 8 recognises that soils are part of a wider ecosystem where soils, plants, animals and people all interact with each other, and with natural processes such as climate. The main focus of the chapter is on preventing soil erosion that is induced or accelerated by the activities of people and or introduced animals. The following matters were raised by the City Council:

- *General support.* The City Council generally supported the objectives and policies in Chapter 8. The Council specifically noted and supported the implementation methods adopted in this part of the PNRRP which included education, management practices and financial incentives rather than regulation (rules).
- *Establishment of deep rooted vegetation.* Objectives and policies in the PNRRP sought to establish deep-rooted and fast growing exotic vegetation cover (that is, trees and shrubs) on the Port Hills to reduce soil erosion. The City Council recognised the open character of the Port Hills east of Dyers Pass Road and maintained that the Port Hills should be recognised as an outstanding natural feature and landscape that should be protected. Furthermore the City Council considered that the PNRRP does not adequately acknowledge the practical and financial implications of planting deep-rooted vegetation. For example, the cost of achieving the desired level of planting on the Port Hills alone is about \$20m, while significant vegetative cover is likely to increase fire risk. The planting of fast growing exotic trees was also noted by the City Council as being contrary to the aim of fostering indigenous biodiversity.

*Summary comment on the decision:* The decision generally recognises the importance and value of establishing both exotic and indigenous vegetation. The City Council has the opportunity, through other methods, to advocate and promote a balanced approach to the establishment of appropriate vegetation types in specific areas with specific soil and slope stability characteristics.

### APPEAL RECOMMENDATIONS

38. The process undertaken by City Council staff for assessment of whether the Ecan decisions, in the light of the revised legislation, required a two stage process. The first was the standard review of the decision vis the submission sought by the Council. The matters identified through this process were then further required to be reviewed as to whether the decision issues constituted a potential error in law (as opposed to a decision reached on the merits which Christchurch City Council disagreed with). Of the 43 matters of particular concern to Council, 28 were reviewed, as a result of the decisions, and of these 3 were identified as having a



potential scope for appeal under the revised legislation. Following this a detailed legal assessment of the three matters which warranted further consideration was undertaken by Cavell Leitch Law Ltd and are attached to this report (**Attachments 2 and 3**). The three matters considered were:

- The interpretation of Policy WQL8 (water quality) as amended.
  - The powers of a Regional Council under section 30 to regulate public access to and along the beds of lakes and rivers.
  - The lawfulness of the financial contribution provisions in the PNRRP insofar as requirements to comply with section 108(1) of the Act.
39. The legal assessment is that there is no error of law in the first two of those three matters, and that there is an error of law regarding financial contributions.
- Despite the potential for an error of law in the decision on financial contributions, the Council's interests are not furthered by lodging an appeal. This is further described in the Attachment 3.
- Accordingly, assessment has identified only one matter for which legal assessment has identified an error of law, but the recommendation is to not lodge an appeal in the High Court on that matter.
40. **Attachment 1** to this report provides a summary assessment by PNRRP chapter, hearing stage and submission number, of the key concerns raised by the City Council and discussed in this report. The summary assessment also provides a recommendation on whether any further action is required. Although some matters are deemed unsatisfactory for technical reasons, there are no matters on which an appeal is recommended.
41. In considering the appropriateness of lodging an appeal, the following matters were considered as possible alternatives to appeals. These are:
- Ongoing discussion and negotiation with ECan in preparation for and leading to possible variations to the PNRRP in the future.
  - The Regional Policy Statement (RPS) is currently under review. When the new RPS becomes operative, the PNRRP and other regional plans may need to be reviewed to implement the new RPS. A review may allow some of the 'outstanding' issues for the City Council to be revisited, in a technical and applied way, rather than only as a point of law.
  - Changes to, and development of, other local government statutory plans and non-statutory documents, such as City Council strategies.

#### **FINANCIAL IMPLICATIONS**

42. There are no immediate financial implications for the City Council. However, once the PNRRP is operative there will be financial implications, specifically in relation to the management of waste water and stormwater. Where there are financial implications for the City Council, the timeframes set in the PNRRP allow for a gradual change of approach to meet stricter provisions.

#### **Do the recommendations of this Report Align with 2009-19 LTCCP budgets?**

43. Yes, although the cost of developing and implementing other methods to address 'outstanding' matters has not, at this time, been specifically identified in LTCCP budgets. Existing and future work programmes of the City Council will need to address these matters.

#### **LEGAL CONSIDERATIONS**

44. There is no right of appeal to the Environment Court on the merits of the decision on the PNRRP. The right of appeal is solely to the High Court on points of law.

45. Clause 14 of the First Schedule of the Resource Management Act 1991 provides that a person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of:
- (a) A provision included in the proposed policy statement or plan;
  - (b) A provision that the decision on submissions proposes to include in the policy statement or plan;
  - (c) A matter excluded from the proposed policy statement or plan; or
  - (d) A provision that the decision on submissions proposes to exclude from the policy statement or plan if the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan and the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole.
46. The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (The ECan Act) has removed that right of appeal regarding ECan decisions on policy statements and plans. Section 66 of the ECan Act provides that no person may appeal to the Environment Court under clause 14 of the First Schedule of the RMA in respect of any decision on a proposed plan. A person who made a submission on the proposed plan may appeal to the High Court, but only on a question of law.
47. The RMA provides that appeals to the High Court on points of law must be filed within 15 working days of notification of the decision. Accordingly, any appeal to the High Court on the PNRRP must be filed in the High Court by the end of 16 November 2010.
48. Consideration by the Council of the ECan decisions on the PNRRP must be focussed on identification of any errors of law that the decision makers have made, and the resultant *question of law* that must be resolved.
49. Case law regarding appeals on a point of law under the RMA is well settled. The principle is that the High Court will interfere with the decision of the lower decision maker only if the lower decision maker.
- (a) Applied a wrong legal test;
  - (b) Came to a conclusion without evidence or one to which on evidence, it could not reasonably have come;
  - (c) Took into account matters which it should not have taken into account; or
  - (d) Failed to take into account matters which it should have taken into account.
50. The role of the High Court on an appeal on a point of law is to decide whether the Environment Court (or, in this case, ECan) has acted reasonably, applied correct legal tests, and taken into account all the relevant and correct considerations. The weight to be given to evidence, and deciding on conflicting evidence, is not a point of law on which the High Court can replace its judgment for that of ECan.
51. Potter J in the High Court has summarised the relevant principles from the authorities as (*Nicholls v Papakura DC [1998] NZRMA 233 (HC)*):
- (1) The High Court will not concern itself with the merits of the case under the guise of a question of law;
  - (2) The appellate Court's task is to decide whether [ECan] has acted within its powers;
  - (3) The question of weight to be given to the assessment of relevant considerations is for the Environment Court [or in this case, ECan] alone, and not for reconsideration by the appellant Court as a point of law;
  - (4) Any error of law must materially affect the result of [ECan's] decision before the High Court will grant relief;
  - (5) To succeed, an appellant must identify a question of law arising out of [ECan's] determination and then demonstrate that that question of law has been erroneously decided by [ECan]; and

- (6) On an appeal under s 299 it is not for the High Court to say whether [ECan] was right or wrong in its conclusion but whether it used the correct test and all proper matters were taken into account.

**Have you considered the legal implications of the issue under consideration?**

52. Yes. Refer to the above section of this report, and **Attachments 2** and **3** to this report.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

53. The recommendations of this report support a range of LTCCP outcomes including those of water supply, wastewater collection and treatment, parks, open space and waterways, and city planning and development.

**Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

54. As above.

**CONSULTATION FULFILMENT**

55. Extensive consultation has been carried out at the submission stage, for evidence preparation, and for the review of the decision with specific City Council staff, and with other Canterbury Region local authorities.

**STAFF RECOMMENDATION**

That the Council does not appeal the Environment Canterbury decision on the Proposed Natural Resources Regional Plan, noting that this decision reflects the particular circumstance and reduced scope of appeal created by the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.