

Issues and Options A Review of the Canterbury Regional Policy Statement

Chapter 10 Beds of Rivers and Lakes and their Margins.

Purpose

The purpose of this paper as part of a review of the Canterbury Regional Policy Statement (CRPS) is to discuss issues and options for Beds of Rivers and Lakes and their Margins (Chapter 10). The paper brings together the current thinking from the recent review of the CRPS provisions, ("Our Changing Environment: An Evaluation of the 1998 Canterbury Regional Policy Statement"). It outlines options and develops a preliminary approach. Views are being sought on the possible policy approaches prior to undertaking more detailed analysis and drafting of specific wording.

Background

The beds of rivers and lakes and their margins are natural resources of considerable significance in Canterbury. Canterbury has an extensive system of lakes and rivers that support natural and introduced ecosystems and are a commercial, cultural and recreational resource for people and communities. The river and lake beds also provide a conduit for flood flows and they are the location for network utility and other infrastructure, including bank protection structures, bridges, structures for the diversion, conveyance and discharge of water, dams, pipelines, pylons and fords.

There are a number of activities that take place within the beds of rivers and lakes and their margins that threaten the natural values of the resources, the structures on those beds or adversely affect flood carrying capacity. These activities include gravel extraction, undertaking works and building structures within and adjacent to the beds, stock access, vehicle use on the beds and both vegetation clearance and planting. However some gravel extraction and vegetation clearance can assist with flood carrying capacity, and some planting can be beneficial for flood control and/or natural values.

Public access to river and lake beds for recreational purposes is also an issue. Access is linked to the ownership of the beds and control over that access. River and lake beds can be vested in the Crown, constitute a reserve managed by local authorities or be in private ownership. Access is also needed for commercial activities such as sand, rock and gravel extraction, flood mitigation works and the need to maintain or build structures. Access along riverbeds can, in some places, create conflicts with other values supported by riverbeds, such as non-motorised recreation (e.g. fishing, bird-watching) and ecological values. Access is often presumed to be a legal right. It may be necessary to identify areas where all access may need to be restricted at certain times, such as bird nesting areas.

The issue of public access is complex. There is a need to distinguish between walking access and motorised access. There is also a need to deal with access to a water body and along a flowing water body separately. The matter of walking access was addressed by a Ministerial Reference Group in 2003. They reached the conclusions set out in Appendix 4 below. Generally a non-regulatory approach was favoured.

The Government has drafted a Walking Access Bill. This bill establishes the New Zealand Walking Access Commission to lead and co-ordinate the provision of public access to the outdoors especially around the coast, lakes, and along rivers. The Commission's responsibilities include the provision of information about the location of existing public access, the provision of a code of responsible conduct for the guidance of the public and landholders in respect of recreational access to the outdoors, and the facilitation and funding of negotiations for new public access across private land.

Regional Councils have the function under Section 30(1)(c) of the RMA for the control of the use of land for a number of specific purposes: soil conservation, maintaining water quantity, maintaining and enhancing water quality and ecosystems in waterbodies, avoidance or mitigation of natural hazards and the prevention or mitigation of the adverse effects of the storage, use, disposal or transportation of hazardous substances.

Regional Councils also have a specific function under Section 30(1)(g) of the RMA to control, in river or lake beds, the introduction or planting of any plant for the purposes of soil conservation, maintenance and enhancement of water quality and maintenance of water quantity and the avoidance or mitigation of natural hazards.

There are restrictions on activities in the beds of lakes and rivers in Section 13(1) of the RMA that require resource consent or a permitted activity rule in a regional plan to occur. Regional rules under Section 13(2) may also control entry to or crossing of a river or lake bed or the disturbance, removal, damage or destruction of any plant or habitat of any plant or animal in, on or under a river or lake bed. These provisions lead to a regulatory role for regional councils.

Since the CRPS became operative the RMA has been amended to include additional functions (Section 30 (1) (ga) and (gb)) for regional councils that are of relevance to the beds of rivers and lakes and their riparian zones. They include the establishment of objectives, policies and methods for maintaining indigenous biological diversity and the strategic integration of infrastructure with land use. Section 62 of the RMA has also been amended so that a regional policy statement is also now required to state the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land to maintain indigenous biological diversity. A similar provision applies in relation to assigning responsibilities for natural hazards and hazardous substances.

A new National Policy Statement (NPS) on Electricity Transmission came into effect in March 2008. This NPS provides for the effective operation, maintenance, upgrading and development of the electricity transmission network as matters of national importance that must be recognised and provided for. Electricity transmission pylons are located in many river beds.

Since the CRPS became operative Environment Canterbury has notified two regional plans that impact on river and lake beds.

The Waimakariri River Regional Plan made operative in October 2004 has a chapter dealing with river and lake beds in the Waimakariri River Catchment. Objectives, policies and methods (including rules) in the chapter deal with river and lake bed issues.

Proposed Variation 1 to the Natural Resources Regional Plan was notified in July 2004 and Chapter 6 has objectives etc dealing with activities within river and lake beds in Canterbury outside of the Waimakariri River catchment.

Current CRPS provisions and the effectiveness of these.

Chapter 10 deals with four groups of issues. The first issue group is the adverse effects of a number of land uses (activities) on a very large group of values including natural character, Tangata Whenua, indigenous flora and fauna, health of aquatic ecosystems, and amenity, recreational, cultural and recreational values. The second issue grouping is the effects on flood carrying capacity of rivers from land uses and accumulation of plant and bed material. The third issue grouping is the effect of activities on essential structures within river beds and their margins. The fourth issue is public access needs and conflicts arising from any restrictions, infringements of property rights and the lack of kaitiakitanga opportunities for Tangata Whenua.

The issues and associated objectives for those issues link to a number of anticipated environmental results (AERs) specified in Chapter 10 of the CRPS. The effectiveness of the policy statement should be assessed against these AERs. Appendix 5 contains a review of these AERs and the associated Issues and Objectives.

Policy options and discussion

The analysis of effectiveness of the chapter in the recent review and in Appendix 5 has identified the desirability of redrafting it to more succinctly express the issues, objectives and policies and to recognise that an inventory of specific sites to single them out for special protection may be useful, but has to date been seen as low priority. Inventories of river and bed values have been undertaken but not linked back to any special protection measures.

In examining policy options it is useful to consider the purpose of the regional policy statement which is to provide “an overview of resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resource of the whole region”, (RMA Section 59).

Roles of regions and districts

Section 62(1) (i) of the RMA requires a regional policy statement to state the local authority responsible for specifying objectives policies and methods for the control of the use of land for maintaining indigenous biological diversity in the whole or any part of the region.

One option is that Environment Canterbury be responsible for specifying the objectives, policies, and methods for the control of the use of land to maintain indigenous biological diversity within river and lake beds. The major points of contention are whether or not Environment Canterbury should adopt the sole role of protecting indigenous biodiversity in river and lake beds. This is discussed in more detail in Appendix 1 below.

There is also the question of whether or not Environment Canterbury should take an active and lead role in identifying and protecting important conservation areas in riparian zones adjacent to river and lake beds. However, this is a matter that may be better considered in the context of a Biodiversity chapter of the CRPS.

A district plan is required under Section 75 (3) to give effect to the Regional Policy Statement. A policy option is to specify or direct the content of district plans in maintaining indigenous biodiversity in river and lake beds and possibly their margins to achieve regional objectives and policies. A similar policy option relates to access.

The other policy options discussed below are not mutually exclusive and as such can be summarised below: The major options are also summarised in Appendix 3.

Policy 1

Policy 1 lists a large number of conservation values and proposes that areas containing such values are identified and listed. Policy 2 proposes enhancement of such areas.

Policy 1 is in 3 parts. Part (a) proposes to identify areas within the beds of rivers and lakes where there are important conservation values. Part (b) states that landuses and developments should avoid causing significant adverse effects on the areas identified in part (a). (Part c) proposes a more general avoiding and mitigating of adverse effects not necessarily linked to identified sites, to occur before the sites are identified.

Comprehensive desktop inventories of instream and recreation values have been made for all Canterbury Rivers and Lakes. (Ecan Report U02/45 "Inventory of Instream Values for Rivers and Lakes of Canterbury New Zealand" and Report U04/15 "Inventory of Recreation Values for Rivers and Lakes of Canterbury New Zealand" April 2004.) Despite the policy in the CRPS no prioritisation of the highest conservation sites has been made.

Implementing Policy 1 by setting out priority areas could be useful. Even showing all the sites where threatened nesting birds have been recorded during various surveys of the rivers would provide a pragmatic and readily available visual aid to anybody administering a gravel consent or other disruptive activity on the river during the nesting period. It would also provide a very useful guide to the priority areas for positive protection such as pest and weed control, which are much more efficient if well-targeted to the highest priority areas.

Virtually all the braided rivers are bird habitat, and so consent conditions may require a qualified ornithologist to do a survey for any work proposed during the breeding season. Therefore any refinement of the classification system would probably be less onerous to gravel extractors, etc. than the current situation.

Braided rivers are a particularly dynamic environment, an individual area may transit or cycle through a number of different ecosystem phases. Giving it high priority for a particular ecosystem purpose may be appropriate at the time, but entirely inappropriate at some future date, with another different area fulfilling its previous ecosystem function.

Making such a priority list is not without its own problems. Does it mean the areas not listed are less important? As stated above virtually all the braided rivers are bird habitat. Listing of areas of private land for special protection from certain land uses will also be contentious and will be another layer of information about a property similar to existing designated significant natural areas (SNAs).

The part of Policy 1 requiring an inventory of areas within the beds of rivers and lakes where there are important conservation values is also more of a method of achieving protection for such areas than a policy in its own right.

Policy 2

Policy 2 goes on to state what should occur for the areas identified through Policy 1 and proposes their "enhancement". Given the non specification of priorities under Policy 1, this policy is redundant at present.

One option would be to combine the two policies into one, much as the proposed NRRP Chapter 6 has done. The enhancement element of Policy 2 could be combined with a new Policy 1.

The particular conservation values that are under threat would be identified as part of the issue statement. One of the methods under the policy might be to establish priority high conservation areas for specific actions

The objective could be generalised and then read something like:

"Maintain and enhance the conservation values of river and lake beds and their margins",

Policy 3 advocates the retention or establishment of riparian vegetation. Environment Canterbury pursues this policy through both regulatory and non-regulatory means. Such a policy might be better left to a biodiversity chapter. .

Issue 2

Issue 2 is reduced flood carrying capacity of rivers due to a list of four matters involving the natural build up of bed material and land use activities in the bed and on the margins.

The issue could be expressed more succinctly. Examples of such land uses could be listed rather than restricting them to those expressly written into the issue.

The objective, one of protecting flood-carrying capacity is succinct but there remains a question of how much protection should be given, absolute or partial? There could be a linkage to a new hazards chapter which may define acceptable levels of risk.

Policies 4 and 5 simply restate the needs identified in the objectives by expressing the need to avoid adverse effects on damage of flood waters and avoiding erosion. Examples of land use activities that might have such adverse effects are listed as candidates for regulation or other means of dealing with the possible adverse effects.

Policy 4 states that “any” adverse effects should be avoided or mitigated. Policy 5 similarly states that removal of (all?) accumulated vegetation and/or bed material should be promoted where it has reduced flood carrying capacity.

However, Policy 5 is “subject to Policy 1”, the policy that proposes the identification of conservation sites. Vegetation in the bed that reduces flood carrying capacity and is capable of being washed away is likely to be of little or no conservation value anyway and in all likelihood comprises weed plants that may harbour or hide predators of native ground nesting birds. For obvious reasons it would be unwise to establish conservation sites in areas of river bed subject to frequent and significant flooding.

Issue 3

Issue 3 is concerned with protecting “essential” structures in river beds and their margins. This section is straightforward in its flow through from objectives to policies and methods.

Issue 4

Issue 4, “public access” is confusing. This is because it has three separate sub-issues that are often in conflict with each other. The first sub-issue is the lack of access to and along beds through inadequate provisions and through landowner denial of legal access.

The second sub-issue is the infringement of property rights (and presumably the associated adverse effects for the property owner or occupier) by people seeking access. The third sub-issue is the access for Tangata Whenua.

The associated Objective 4 in fact only really addresses the first sub-issue, to achieve improved and safe public access. The objective has caveats on this main aim which covers the other issues but does not address them directly. The associated Policy 7 similarly addresses the first sub-issue with similar caveats. There is a need to either not have the second and third sub-issues or cover them more explicitly.

Policy 7 repeats the desirability of maintaining and enhancing public access subject to certain caveats most of which are in the objective but with the addition of the need to protect public safety. In doing so it suffers the same deficiencies in its drafting as does the objective. It similarly refers to “conservation” values identified in Policy 1. These are extensive and would need repeating to make the policy stand alone.

As discussed above there needs to be some redrafting to assist the coherency of this policy by avoiding the need to cross reference other parts of the CRPS to interpret the policy.

The adverse effects of access are not well covered particularly in relation to biodiversity in river beds. Damage can be caused through allowing vehicle and domestic animal (dogs, cats, horses) access.

Other policy options

Other policy options might be to develop very specific policies in relation to specific issues, including Environment Canterbury operational matters that may or may not be considered to affect regionally significant areas or have effects of regional significance. Such issues could, for example, involve the following:

Rock, sand and gravel extraction. (Nearly half of all river bed consents are for this activity.)

Mineral extraction.

Vehicles on river beds.

Weed and animal pests in river beds.

Regional parks and associated recreational activities.

Public access to paper roads to river and lake beds.

Provision for, as well as safeguarding protection works

Vegetation clearance in areas adjacent to river beds when the vegetation functions as flood mitigation.

Accretion claims on river bed land that could revert back to active river braids.

In each of these areas policy could be developed at a detailed level. For example a policy might be to levy an extraction charge on all consented removal of bed material. Another policy may be to exclude all vehicles from non tracked areas of braided river beds at bird nesting times. Whilst such policies may or may not have merit, there is a question about whether or not the issues are matters that should be detailed in a regional policy statement.

Policy options generally

The general options that could be considered are:

- Environment Canterbury to be the local authority responsible in river and lake beds for specifying the objectives, policies, and methods for the control of the use of land to maintain indigenous biological diversity.
- Restrict the Chapter to beds only and simplify the chapter by having more succinct issues, objectives and policies as opposed to retaining of the chapter largely as it is apart from minor redrafting.
- Revise Issue 1 and its objectives, policies etc to make the chapter more focussed and replace the part of policy I requiring Environment Canterbury to identify important conservation areas with a more general policy for river and lake beds.
- Develop more detailed issues and policies
- Transfer Policy 3 (riparian vegetation) to a Biodiversity Chapter.
- Specify requirements for District plans to maintain indigenous biodiversity in river and lake bed margins in accordance with the RPS objectives and policies.
- Specify requirements for District plans to control access to river and lake beds and/or their margins in accordance with the CRPS objectives and policies.

Also see Appendix 3.

Recommendations

- Include a Policy that Environment Canterbury is the local authority responsible in river and lake beds for specifying the objectives, policies, and methods for the control of the use of land to maintain indigenous biological diversity.
- Restrict the Chapter to beds only, not margins.
- Replace policies 1 (a) and 2 requiring Environment Canterbury to identify and protect important conservation areas with a Policy providing more general protection of such conservation values in all river and lake beds.
- Transfer Policy 3 to a new Biodiversity Chapter.
- Specify requirements for District plans to control access to river and lake beds in accordance with the CRPS objectives and policies.

Appendix 1

Statutory Context

RMA Section 30(1) Functions of regional councils

- c) *the control of the use of land for the purpose of—*
 - (i) *Soil conservation:*
 - (ii) *the maintenance and enhancement of the quality of water in water bodies and coastal water:*
 - (iii) *the maintenance of the quantity of water in water bodies and coastal water:*
 - (iiia) *the maintenance and enhancement of ecosystems in water bodies and coastal water:*
 - (iv) *the avoidance or mitigation of natural hazards:*
 - (v) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:*
- (g) *in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—*
 - (i) *soil conservation*
 - (ii) *the maintenance of enhancement of the quality of water in that waterbody.*
 - (iii) *the maintenance of the quantity of water in that waterbody*
 - (iv) *the avoidance or mitigation of natural hazards.*
- (ga) *the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:]*
- (gb) *the strategic integration of infrastructure with land use through objectives, policies, and methods:*

RMA Section 13 **Restriction on certain uses of beds of lakes and rivers**

- (1) *No person may, in relation to the bed of any lake or river, -*
 - (a) *Use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed; or*
 - (b) *Excavate, drill, tunnel, or otherwise disturb the bed; or*
 - (c) *Introduce or plant any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed; or*
 - (d) *Deposit any substance in, on, or under the bed; or*
 - (e) *Reclaim or drain the bed –*

Unless expressly allowed by a rule in a regional plan and in any relevant proposed regional plan or a resource consent.
- (2) *No person may-*
 - (a) *Enter or pass across the bed of any river or lake; or*

- (b) *Disturb, remove, damage, or destroy any plant or part of any plant (whether exotic or indigenous) or the habitats of any such plants or of animals in, on, or under the bed of any lake or river-*

In a manner that contravenes a rule in a regional plan or proposed regional plan unless that activity is-

- (c) *Expressly allowed by a resource consent granted by the regional council responsible for the plan; or*
 - (d) *Allowed by section [20A] (certain existing lawful uses allowed).*
- (3) *This section does not apply to any use of land in the coastal marine area.*
- (4) *Nothing in this section limits section 9.”*

RMA Section 31 *Functions of territorial authorities under this Act*

- “(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of-*
- (i) the avoidance or mitigation of natural hazards; and*
 - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*
 - (iii) the maintenance of indigenous biological diversity:*
 - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:”*

Roles of regions and districts

Section 62(1) (i) of the RMA requires a regional policy statement to state the local authority responsible for specifying objectives policies and methods for the control of the use of land for maintaining indigenous biological diversity in the whole or any part of the region.

RMA Section 62 *Contents of regional policy statements*

- (1) *A regional policy statement must state—.....*
- (i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—....*
 - (iii) to maintain indigenous biological diversity”.*

Thus there is a need to state explicitly within the CRPS the responsibility for maintaining indigenous biological diversity in relation to river and lake beds. This could be achieved through a more general chapter such as Chapter 8 dealing with landscape, ecology and heritage, or a new biodiversity chapter or this Chapter 10 which is specific to river and lake beds.

Unlike the requirement to state explicitly the responsibility for control of the use of land for the avoidance or mitigation of natural hazards and the prevention or mitigation of the effects of the use, storage, disposal or transportation of hazardous substances there is no default option specified by Section 62 (2) of the RMA. The default option for natural hazards is the regional council and is the district council for hazardous substances.

One option is that Environment Canterbury be responsible for specifying the objectives, policies, and methods for the control of the use of land to maintain indigenous biological diversity within river and lake beds.

A district plan is required under Section 75 (3) to give effect to the Regional Policy Statement. A policy option is to specify or direct the content of district plans in maintaining indigenous biodiversity in river and lake beds and their margins to achieve regional objectives and policies.

RMA Section 75 Contents of district plans

(3) *A district plan must give effect to—.....*

(c) *any regional policy statement.*

The function of territorial authorities in relation to biological diversity is contained in RMA Section 31 (1) (b), the section which specifically details the purposes for which territorial authorities may control the effects of the use, development or protection of land including for the purpose of maintaining indigenous biological diversity. There is no reason why territorial authority functions under RMA Section 31 cannot be carried out on land which constitutes the bed of a river or lake. District Councils have the functions of managing and controlling land use under Section 31 of the RMA for other purposes and “land” of course includes river and lake bed land.

Regional Councils have the functions under Section 30 (1) (ga) of the RMA for “the establishment, implementation, and review of objectives, policies and methods for maintaining indigenous biological diversity”.

Both regions and districts can thus have functions in relation to river and lake beds and their margins.

The question arises as to whether region or districts should regulate activities such as the use of vehicles on the bed. Regional councils can regulate such activities under RMA Section 30 (1) (ga) and (h). RMA Section 13 (2) (b) provides for rules in a regional plan to address disturbance, damage etc, to habitats of any such plants or animals. Thus a regional council has clear functions and powers to control activities to maintain biological diversity.

The functions of a regional council for the control of the use of land (RMA Section 30 (1) (c)) are limited to soil conservation, water quality and quantity, ecosystems in water, natural hazards and hazardous substances. However, RMA Section 30 (1) (ga) provides a function for maintaining biological diversity, it provides for objectives, policies and methods (including rules). Therefore a regional council can control the use of land to address its functions under Section 30 (1) (ga).

Section 13(1) of the RMA lists activities in the bed that are restricted under the RMA unless provided for in a regional plan as a permitted activity. Section 13 (2) (b) of the RMA provides that no person may carry out the activities listed in a way that would contravene a rule in a regional plan.

The regional council's role in maintaining indigenous biological diversity in river and lake beds through land use controls may also occur in relation to its role in having land use controls for river and lake beds and their margins for other purpose under Section 30. However, districts councils may be better placed to identify significant areas of indigenous vegetation or other areas where biodiversity is an issue in their own districts. District councils also control activities on the surface of rivers and lakes under the RMA, and these activities may impact on the beds.

A dual allocation of roles is not without some difficulties. The boundary of many territorial local authorities in the Canterbury region runs along the centre line of major rivers and lakes. Having the responsibility in one agency would ensure integration across these boundaries. However, district council responsibility also ensures integration with other more general district land use rules.

Environment Canterbury also has other responsibilities in river and lake beds under RMA section 13 as discussed above, together with responsibilities under the Soil Conservation and Rivers Control Act 1941 for flood and erosion control in river beds and for animal and plant pest management under the Biosecurity Act 1993. A wholly integrated approach with these other regional functions would seem to favour regional council responsibility.

In most other regions where there is a dual responsibility for land use controls, regional councils have tended to control matters where they relate to beds of lakes and rivers (and in some instances, riparian zones), while district councils have tended to control matters on land more generally. This may provide a sensible rationale for land use control to maintain biodiversity generally falling to district councils, but for controls in river and lake beds to fall to region.

Certainly, district councils have, in some instances, dealt with biodiversity related issues more directly than regional councils, particularly with regard to identifying significant areas of indigenous flora and fauna for the purposes of section 6 of the RMA. However, this seldom relates to biodiversity values of river and lake beds, and has not been done consistently, or in fact by all district councils. This presents an argument for the CRPS to contain broad objectives and policies regarding maintenance of indigenous biodiversity that district councils must all give effect to through their District Plans.

Appendix 2: Review of resource management issues

Issue	Relevance	Significance	Recommendation
<p>Chapter 10 Issue 1</p> <p>With respect to land use activities within water bodies, their beds and margins:</p> <p>(a) Damage to the natural character of lakes and rivers, habitats of indigenous flora and fauna and trout and salmon, the health of aquatic ecosystems, the quality or extent of and access to mahinga kai, wahi tapu and wahi taonga, or heritage sites due to:</p> <p>(i) the effects of drainage works on wetland margins;</p> <p>(ii) land uses which modify riparian vegetation;</p> <p>(iii) degraded water quality from contaminant discharges;</p> <p>(iv) damming or diversion of flows, and direct destruction by construction or mining machinery;</p> <p>(v) the effects of management of the levels of lakes and coastal lagoons;</p> <p>(vi) siltation of the beds of water bodies through human induced erosion;</p> <p>(vii) disturbance of wildlife and destruction of habitats by vehicles, watercraft, people and domestic animals, particularly grazing stock;</p> <p>(viii) the replacement of diverse ecosystems with a narrow range of plant species in riparian plantings;</p> <p>(ix) effects of the spread and control of undesirable plants in water bodies, their beds and margins;</p> <p>(x) effects of the dumping of rubbish.</p> <p>(b) Reduction of significant amenity values, cultural and recreation values, or natural features and landscapes including:</p> <p>(i) the effects of dust storms associated with low lake levels (e.g. Lake Tekapo);</p>	<p>Issue 1 in the current CRPS is unnecessarily broad. It identifies damage to a number of values in the waterways themselves as well as their beds as a result of ten different activities. It goes on to identify effects on other values which are adversely affected by another five different activities.</p> <p>The issue lacks focus and as a consequence the associated objective and policies are unfocussed and too broadly targeted to be effective.</p> <p>Issue 1 has numerous links to issues in other chapters of the CRPS, but this only serves to complicate matters and make it difficult to follow the linkages from the issue through to objectives, policies and methods.</p> <p>Wetlands is an issue dealt with elsewhere in the CRPS</p>	<p>Remains significant. The issue is still a region wide issue</p>	<p>Issue 1 could be expressed more simply as the adverse effects of activities in river and lake beds on natural, amenity, cultural and recreation values. Leave margins to be dealt with by other chapters.</p> <p>For example:</p> <p><i>“Adverse effects on natural, amenity, cultural and recreation values from activities on the beds of rivers and lakes.”</i></p> <p>Similarly for the objective, for example:</p> <p><i>“To protect natural, amenity, cultural and recreation values of the beds of rivers and lakes.”</i></p>

<ul style="list-style-type: none"> (ii) the effects of the extraction of rock, gravel, sand or other bed material, and river works activity; (iii) the presence of structures, buildings, and other land uses in disharmony with the landscape; (iv) effects of the dumping of rubbish; (v) the spread of undesirable plants. 			
<p>Chapter 10 Issue 2</p> <p>Reduced flood-carrying capacity of rivers due to:</p> <ul style="list-style-type: none"> (a) the effects of land use on any riparian vegetation which contributes positively to flood-carrying capacity; (b) the accumulation of aquatic and terrestrial plants, and bed material within the beds of rivers which may obstruct water flows; (c) the effects of tree planting, the deposition of materials, gravel and sand excavation, earthworks, and erection of buildings and structures within the beds and margins of rivers on flood flows; and (d) the effects of land use activities on the stability or performance of flood mitigation works. 	<p>Issue 2 is specific and relevant. It identifies four threats that could lead to reduced flood carry capacity: removal of riparian vegetation providing bank protection, plant and other material in river beds, planting, deposition of material and structures in river beds and their margins and activities affecting flood mitigation works.</p> <p>However, natural accumulation of bed material that is unrelated to human activity is not a RMA issue, and this should be clarified.</p>	<p>Remains significant. The issue is still a region wide issue.</p>	<p>The issue could be expressed much more succinctly.</p> <p>For example:</p> <p><i>“Activities on river beds can adversely affect flood carrying capacity of the river and the stability and performance of flood mitigation works.”</i></p>
<p>Chapter 10 Issue 3</p> <p>Land use activities causing adverse effects on the stability or performance of essential structures within river beds and their margins.</p> <p>Adverse effects include:</p> <ul style="list-style-type: none"> (a) undermining or scouring of banks or structures; (b) diversion of water flows; (c) impeding the flow regime of a river; (d) uncovering or damaging a buried structure; and (e) deposition or excavation of bed material. <p>Essential structures include bridges, fords, pylons, pipeline crossings, structures for the diversion and conveyance and discharge of water, and dams.</p>	<p>Issue 3 is the threat to essential structures in river beds and their margins and remains relevant at a regional level.</p>	<p>Remains significant. The issue is still a region wide issue</p>	<p>The issue could be expressed more succinctly by confining the second and third paragraphs to an explanation, but covers the reasonably full scope of possible threats to essential structures.</p>

<p>Chapter 10 Issue 4</p> <p>Public access needs and conflicts arising from:</p> <ul style="list-style-type: none"> (a) restrictions on public access to and along rivers and lakes including: <ul style="list-style-type: none"> (i) inadequate provision for access; (ii) denial of access along legal roads and public rights of way by land owners or occupiers; (b) infringement of private property rights by people seeking access; (c) lack of opportunity for Tangata Whenua to exercise kaitiakitanga. 	<p>Issue 4 is that there is a need for public, private and Tangata Whenua access to and along rivers and lakes and the associated conflicts that arise.</p> <p>This remains relevant at regional and local levels.</p>	<p>Remains significant. The issue is still a region wide issue</p>	<p>The issue should be split into the three sub-issues which are addressed separately in any case.</p>
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Appendix 3: Analysis of possible policy approaches:

Option 1: Environment Canterbury to have sole responsibility for specifying objectives etc for maintaining indigenous biodiversity in river and lake beds.

	For	Against
Purpose of the RMA	<ul style="list-style-type: none"> Provides an overview for the region. 	<ul style="list-style-type: none">
Issue resolution	<ul style="list-style-type: none"> Environment Canterbury is familiar with bed management and deals with the issues on a regular basis. 	<ul style="list-style-type: none"> Issue is too broad and overlaps with local issues. Local conservation efforts may have a different focus and priorities.
Integrated management	<ul style="list-style-type: none"> Integrates with other regional council functions,(flood protection, control of activities in beds for other purposes, pest control). 	<ul style="list-style-type: none"> Lack of integration with district functions
Carrying out functions	<ul style="list-style-type: none"> The region can have regional rules controlling activities for this purpose as well as other purposes.. 	<ul style="list-style-type: none">
Consultation views	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
OVERVIEW	<ul style="list-style-type: none"> Environment Canterbury responsibility better allows both regional and local interests to be served 	

Option 2: Revise Issue 1 and its objectives, policies etc to make the chapter more focussed and replace the part of policy I requiring Environment Canterbury to identify important conservation areas with a more generally applied policy.

	For	Against
Purpose of the RMA	<ul style="list-style-type: none"> While some individual areas are likely to be regionally significant, all riverbeds are important areas for conservation reasons. 	<ul style="list-style-type: none">
Issue resolution	<ul style="list-style-type: none"> Districts may be better placed to identify such areas. All river and lake beds have conservation values. 	<ul style="list-style-type: none"> No common regional focus on conservation May be missed in other chapters
Integrated management	<ul style="list-style-type: none"> Regional Rules can still protect such areas. 	<ul style="list-style-type: none">
Carrying out functions	<ul style="list-style-type: none"> Can still have regional rules controlling activities for this purpose. 	<ul style="list-style-type: none">
Consultation views	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
OVERVIEW	<ul style="list-style-type: none"> The identification of such areas is more of a means to an end than an end in itself. Policy 1 would read something like the following: <i>“Ensure that activities in the beds of rivers and lakes do not have significant adverse effects on the conservation values of such areas”,</i> 	

Option 3: Restrict the Chapter to beds only and simplify the chapter by having more succinct issues, objectives and policies as opposed to retaining of the chapter largely as it is apart from minor redrafting.

	For	Against
Purpose of the RMA	<ul style="list-style-type: none"> Provides more of an overview. 	<ul style="list-style-type: none">
Issue resolution	<ul style="list-style-type: none"> Issues are at an overview level. Less confusing interpretations. 	<ul style="list-style-type: none"> Leaves riparian zones/margins to be dealt with elsewhere
Integrated management	<ul style="list-style-type: none"> Can be applied at a territorial level as well as regionally 	<ul style="list-style-type: none"> May not provide an integrated approach
Carrying out functions	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> May not relate directly to specific regional or district functions These may be operational issues rather than policy issues.
Consultation views	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
OVERVIEW	<p>The chapter should be simplified by decoupling of issues, objectives and policies. For example Policy 3 could simply read something like the following:</p> <p><i>“Retain existing riparian vegetation and promote the establishment of new riparian vegetation where it has ecological value and where it provides flood bank protection”.</i></p>	

Option 4: Include additional more detailed policies on specific issues, (e.g. gravel extraction, 4WD and foot access).

	For	Against
Purpose of the RMA	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> May not be at an “overview” level
Issue resolution	<ul style="list-style-type: none"> Directly deals with issues 	<ul style="list-style-type: none"> May not be issues of regional significance
Integrated management	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Too specific to provide an integrated approach
Carrying out functions	<ul style="list-style-type: none"> Relates directly to specific regional functions 	<ul style="list-style-type: none">
Consultation views	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
OVERVIEW	<ul style="list-style-type: none"> Such details may be better left to regional plans 	

Option 5: Specify requirements for District plans to control access to river and lake beds in accordance with the RPS objectives and policies.

	For	Against
Purpose of the RMA	<ul style="list-style-type: none"> Provides an overview. 	<ul style="list-style-type: none">
Issue resolution	<ul style="list-style-type: none"> Issues are at an overview level. Less confusing interpretations at a local level. 	<ul style="list-style-type: none"> Places limits on local solutions
Integrated management	<ul style="list-style-type: none"> Can be applied at a territorial level as well as regionally No duplication of responsibilities Helps where district boundaries split a river or lake bed 	<ul style="list-style-type: none">
Carrying out functions	<ul style="list-style-type: none"> Still allows for districts to maintain or restrict access for their own reasons provided there are no conflicts with regional objectives and policies. 	<ul style="list-style-type: none">
Consultation views	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
OVERVIEW	<ul style="list-style-type: none"> District controls on access should be consistent with regional objectives for river and lake beds. Districts need not be silent on this issue 	

Option 6: Specify requirements for District plans to maintain indigenous biodiversity in river and lake bed margins in accordance with the RPS objectives and policies.

	For	Against
Purpose of the RMA	<ul style="list-style-type: none"> Provides an overview. 	<ul style="list-style-type: none">
Issue resolution	<ul style="list-style-type: none"> Issues are at an overview level. Less confusing interpretations at a local level. 	<ul style="list-style-type: none"> Places limits on local solutions
Integrated management	<ul style="list-style-type: none"> Can be applied at a territorial level as well as regionally No duplication of responsibilities Helps where district boundaries split a river or lake bed 	<ul style="list-style-type: none"> May be better handled in a Biodiversity Chapter of the CRPS
Carrying out functions	<ul style="list-style-type: none"> Still allows for districts to maintain indigenous biodiversity for their own reasons provided there are no conflicts with regional objectives and policies. 	<ul style="list-style-type: none"> Beds can be adequately dealt with by Environment Canterbury so why not margins
Consultation views	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
OVERVIEW	<ul style="list-style-type: none"> District controls on margins should be consistent with regional objectives for river and lake beds. Districts need not be silent on this issue. However, this matter is best left to be resolved in terms of a Biodiversity Chapter. 	

Appendix 4

Walking Access in the New Zealand Outdoors

The government is considering proposals to legislate to increase public access along rivers and lakes and beaches, but farmers would not be forced to let the public cross their land to reach the waterways. The public would get to use walking strips along designated river banks, lakes and coastline with "access value", but the access would be restricted to people on foot. Any access across private land would be negotiated with landowners.

The matter of walking access was addressed by a Ministerial Reference Group in 2003. Generally a non-regulatory approach was favoured. They reached the following conclusions:

Conclusions of the Ministerial Reference Group

Current arrangements for public access exist within a legal framework that establishes clear rights for the landowner to determine access to property. Other statutes such as the Forest and Rural Fires Act and the Health and Safety in Employment Act provide little incentive for the landowner to allow access outside the existing legal framework. The NZ Walkways Act is intended to overcome some of these difficulties however, the procedures required are costly and, under the current legislative regime, opportunities are frequently not progressed.

Guidance on the rights and responsibilities for obtaining and granting public access are skewed, often by perverse incentives, in favour of excluding the recreational user. Absolute rights to obtain access are conferred only on public land, such as roads. Even then, this is not unfettered access. The existence of these roads is not generally publicised by territorial authorities and often their correct position is unknown, a situation tolerated by landowners who are concerned about security, stock disturbances and rustling. Territorial authorities are reluctant to enter into disputes because of the cost - to ratepayers - of surveying the roads and the fact that benefits often accrue to visitors rather than ratepayers.

Notwithstanding this, government agencies, private organisations and interested members of the public continue to make incremental and case-by-case efforts to protect and, where possible, enhance access to the New Zealand backcountry, rivers, lakes and foreshore. This may be through subdivision and other land sales or through community and landowner initiatives. In general, the focus is to protect or facilitate access to public land, especially where private landowners have, consciously or otherwise, prevented access to the Queen's Chain. These initiatives may continue but a strategic approach is needed rather than ad hoc incremental attempts to fix gaps in the law that will lead inevitably to frustration and continued conflict.

New Government Agency

A new government agency the New Zealand Walking Access Commission will be established in 2008 to advise on, and set up walking access policies. It will also help local groups with access issues and take responsibility for mediation of disputes over walking access. Its first job will be to develop a national access strategy along with a voluntary code of responsible conduct. A database of walking access is also planned, and the group will be seeking funding so new walking access can be established. The basis for all new walking access over private land, including Maori land, will be by negotiation and agreement with the landholder(s).

A Walking Access Bill establishing the New Zealand Walking Access Commission has been drafted. The Bill provides for "public land" to be made a "walkway". Where the land concerned is or includes an unformed legal road, the Commission must consult the public on the proposal and provide for the landholders with legal frontage on, or direct access to, the unformed legal road to retain their existing right to use the unformed legal road. The Bill provides that if the Commission considers that any private land should be made available for use as a walkway, it may negotiate with the landholder to acquire an easement or lease over the land for its use as a walkway. Restrictions on the use of a walkway will apply, (e.g. no vehicles, dogs, horses, firearms, structures).

Appendix 5

Review of Environmental Results Anticipated, Issues and Objectives

CRPS Chapter 10 Anticipated Environmental Results

The issues and associated objectives for those issues link to a number of anticipated environmental results (AERs) specified in Chapter 10 of the CRPS. The effectiveness of the policy statement should be assessed against these AERs. These AERs are detailed below along with brief comments on their achievement through the provisions in the chapter.

- (1) *Enhancement of natural character, habitats of indigenous flora and fauna, habitats of trout and salmon, and ecological health of aquatic ecosystems.*

This AER is not dependent on provisions in Chapter 10, or the CRPS alone. It is also debatable whether the result has been achieved in a general sense as this would require a review of regional and district plans. There are areas where enhancement has occurred and areas where there has been degradation, particularly where farming activities have expanded onto river bed land. The CRPS enhancement policies in the chapter relate to identified high conservation areas, but no priorities have been set, so has not been effective in this respect.

“Maintenance” of such values may be a more realistic goal in relation to indigenous biodiversity values at least, as this is consistent with the regional function RMA Section 30 (1) (ga), the district function RMA Section 31 (b) (iii) and the requirements of RMA Section 62 (1) (iii) which all refer to “maintaining” indigenous biodiversity. However, it is noted that Section 30 of the RMA refers to both maintenance and enhancement of water quality and ecosystems in water bodies. A combination of enhancement and maintenance may be appropriate, provided that those areas to be enhanced are identified

- (2) *No increase in flood hazard due to land use in river beds and margins.*

This AER has not been universally achieved. Examples of vegetation clearance of private land on land comprising part of a river bed or margin, and stock access damaging stock banks can be found where flood risk has increased. Environment Canterbury enforcement staff have been using the provisions of the Soil Conservation and Rivers Control Act 1941 rather than the RMA to take action against persons who remove plantings in river beds. This is because of difficulties in establishing the extent of river beds in order to apply RMA Section 13 provisions.

A result of absolutely no additional hazard may be an unrealistic outcome anyway given the controls required.

A further difficulty is the use of the term “margin” in this AER and more generally in the Chapter. Margin is defined in the CRPS in a way that appears to mean land in the bed that is only intermittently flooded or inundated. The RMA definition of “bed” appears to be sufficient to encompass the “margin” as defined in the CRPS. It would be best to stick to the term “bed” only. The term “margin” applies under the RMA only in the case of lakes. Rivers are normally constrained within their beds by natural or artificial river banks. The term “riparian zones” may be a more meaningful term to use than margins in most circumstances. Riparian zones that contain vegetation that may be of value for both conservation and flood protection reasons, may include areas both adjacent to, and within the bed. Such areas need protection but could be adequately dealt with by the hazards chapter and the Biodiversity chapters of the CRPS. RMA Section 9 (3) provides for land use controls in a regional plan.

(3) The stability and performance of essential structures not compromised by other uses.

River and lake bed activities that could affect such structures are subject to controls under the RMA and there are rules in the Proposed NRRP that protect such structures. Generally the policies in the Chapter, together with regulatory measures have been effective in achieving this outcome. There have been no significant structural failures directly through human activities occurring adjacent to essential structures on Canterbury river beds.

(4) Improved public access to and along rivers and lakes and reduced conflicts with land owners or occupiers.

The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance under the RMA that must be recognised and provided for when developing and implementing a regional policy statement. This is an issue that must therefore be addressed in the CRPS.

Generally public access to and along major water bodies has improved. In a number of areas councils have provided facilities for such access. A comprehensive survey of rivers has been made to determine their recreational use. The specific influence of the CRPS Chapter on improving public access is debatable. It is also debatable as to whether such related conflicts have decreased.

Walking access is being addressed by central government. A Ministerial Reference Group reported to the government in 2003. Generally a non-regulatory approach was favoured. See Appendix 4 below for a discussion of this issue.

(5) Heritage sites protected.

There is no specific recorded evidence that this has or has not occurred in river and lake beds. With river beds subject to flooding, and inundation of land normally associated with lake beds, heritage would only be affected through damming or diversions. Most river and lake bed activities that could adversely affect heritage sites require resource consent and a check for heritage effects would be made. Environment Canterbury has its own protocols to protect such values from its own river engineering works but there may be a wider advocacy role beyond this.

(6) Mahinga kai areas better protected and able to be cared for and managed by Tangata Whenua.

There is no specific recorded evidence that this has or has not occurred in river and lake beds. The CRPS provide for this to occur in beds of rivers and lakes through advocacy and constraints on controlled land use activities.

Again, Environment Canterbury has its own protocols to protect such values from its own river engineering works but there may be a wider advocacy role beyond this. Tangata Whenua have specific ownership role of the bed of Te Waihora, (Lake Ellesmere) , and a number of other rights relating to various rivers, lakes and lagoons in the region, granted as part of the Crown's settlement with Ngai Tahu.

(7) Reduced frequency of floodwaters being diverted on to occupied land.

This is more a result of flood prevention and mitigation measures than CRPS provisions themselves. It relates to protecting occupied land outside of a river bed. Occupation of a river bed itself should not necessarily preclude the land functioning as a flood plain and nor should protection be afforded to such land. The CRPS does provide for protection of flood mitigation planting and infrastructure in this chapter.

(8) Protection of Tangata Whenua cultural values.

Environment Canterbury has no specific recorded evidence that this has or has not occurred in river and lake beds. However, all resource consent applications that are publicly notified have provisions made for Tangata Whenua input. No specific provisions in the CRPS provide for protection of Tangata Whenua cultural values to occur in river and lake beds other than advocacy. However, land use activities are subject to controls. The need to obtain resource consent for most significant works in river and lake beds and the involvement of Tangata Whenua in this process may be sufficiently effective in protecting these values. Once again, Environment Canterbury has its own protocols to protect such values from river engineering works, but there may be a wider advocacy role beyond this.

CRPS Chapter 10 Issues and Objectives

Issue 1

Issue 1 in the current CRPS is perhaps unnecessarily broad. It identifies damage to a number of values in the waterways themselves as well as their beds as a result of ten different activities. It goes on to identify effects on other values which are adversely affected by another five different activities.

The issue thus lacks focus and as a consequence the associated objective and policies are unfocussed and similarly too broadly targeted to be effective.

The NRRP Chapter 6 (Beds and Margins of Lakes and Rivers) is a method under the CRPS. It deals with only one broad issue, the adverse effects of activities in beds. One would normally expect a regional plan to have the same level of generality or to be more specific than the CRPS. However, other NRRP chapters (Chapter 4 Water Quality and Chapter 7 Wetlands) have provisions promoting riparian management, and these involve wider areas than just river and lake beds.

Issue 1 has numerous links to issues in other chapters of the CRPS, but this only serves to complicate matters and make it difficult to follow the linkages from the issue through to specific objectives, policies and methods.

Issue 1 could be expressed more simply as the adverse effects of activities in river and lake beds on natural, amenity, cultural and recreation values with these values described in an explanation. This would still leave infrastructure, flooding and access to be dealt with under the other issues in the chapter, and margins dealt with under other CRPS chapters dealing with land use outside of river and lake beds.

Objective 1 for Issue 1 is the protection and where appropriate enhancement of the values related in Issue 1. The objective could also be stated more succinctly.

Making enhancements “where appropriate” begs the question as to what is appropriate. Enhancement policies in relation to the objective mostly relates to bed areas with high conservation value that have yet to be fully identified and to riparian margins. This is discussed further under the Policies 1 to 3 of the chapter that aim to achieve Objective 1.

Issue 2

Issue 2 is much more specific. It identifies four threats that could lead to reduced flood carrying capacity: removal of riparian vegetation providing bank protection, plant and other material in river beds, planting, deposition of material and structures in river beds and their margins and activities affecting flood mitigation works. This issue could also be expressed much more succinctly. Objective 2 is to protect the flood carrying capacity from threats, but unlike the issue only refers to “land use activities” on the bed and bed material and vegetation accumulation in the bed.

Issue 3

Issue 3 is the threat to essential structures in river beds and their margins. The corresponding Objective 3 and Policy 6 deal with the need to protect such structures. The issue could be expressed more succinctly by listing the possible adverse effects and examples of structures that are essential in an explanation. It covers the reasonably full scope of possible threats to essential structures.

Issue 4

Issue 4 is about the need for public, private and Tangata Whenua access to and along rivers and lakes and the associated conflicts that arise.

Objective 4 is to promote improved and safer public access for the public and Tangata Whenua where it does not adversely affect flood carrying capacity or the values identified in the issue, or cause conflicts with land owners or occupiers. Objective 4 refers to the values identified in Objective 1 which are extensive.

Both the issue and the objectives are not precisely drafted and are somewhat circular in their cross referencing. Redrafting would make them clearer, but overall the intentions are sound.