

IN THE MATTER OF

The Environment Canterbury (Temporary
Commissioners and Improved Water Management
Act) 2010 and The Resource Management Act 1991

AND

IN THE MATTER OF

Proposed Canterbury Land and Water Regional
Plan

STATEMENT OF EVIDENCE OF LYNN TORGERSON

GROUP 2 HEARING

1. INTRODUCTION

- 1.1 My background and qualifications are as stated in the statement of evidence prepared for the Group 1 hearing on the proposed Land and Water Regional Plan already presented to the hearing panel.

2. SCOPE OF EVIDENCE

- 2.1 I have been engaged by the Waimakariri Irrigation Ltd (WIL) to prepare and present this evidence. The evidence I will present deals with the specific policies and rules set out as Group 2 topics for the Proposed Land and Water Regional Plan (PLWRP) which are of concern to Waimakariri Irrigation Limited. My evidence proposes changes to selected Policies and Rules which may assist the panel.
- 2.2 I have read the planning report for the Group 2 hearing prepared by the Investigating Officers of Environment Canterbury (ECan) under section 42A of the Resource Management Act 1991 (RMA) and have commented on these below. It is noted that some parts of WIL's original submission were covered in the Group 1 hearing, therefore this brief of evidence only covers Group 2 matters.

3. SUBMISSIONS TO RELATING TO THE NUTRIENT MAP AND SPECIFIC POLICIES CONTAINED IN THE PROPOSED PLAN

Page 4- 8, Nutrient Zone Map

- 3.1 WIL did not present any technical evidence about the content of Tables 1 (a), (b) and (c) or the nutrient zone map in the Group 1 hearing, but in its original submission expressed concern about the specification of outcomes to be achieved that are defined on a generic region-wide basis. WIL supports the sub-regional zone committee approach for defining limits and outcomes that consider the particular matters of concern for the local community.
- 3.2 In Section 9.2 of the Group 2 Section 42A report, the Officer briefly discusses the Nutrient Allocation Zone Mapping and the basis in which it was derived. On p 143, the Officer explains that the nutrient allocation mapping is a tool to prioritise the development of the sub-regional sections, and this sub-regional

section development will allow catchment specific approaches, which may involve alternative criteria and mapping scales.

- 3.3 He goes on to state that the basic criteria and analysis behind the mapping continues to stand, and recommends that the Nutrient Allocation Zone mapping be retained without amendments (Recommendation RMap, p 144).
- 3.4 It is my view that while the use of the Nutrient Allocation Zone map may indeed be appropriate to use for the prioritization of development of the sub-regional sections, using it as a criterion to define which regional rule to use may not always be suitable or appropriate. By way of example, evidence presented by others (S Hayward on behalf of DairyNZ) suggests that the nutrient mapping does not always correspond with the water quality outcomes established in Table 1. In the case of the Ashley – Waimakariri Zone, Ms Hayward explains why this sub-region should be classified as ‘at risk’, rather ‘water quality outcomes not met’. This suggests that the current nutrient red zone classification is not appropriate, and as a consequence, activities in the sub-region are subject to policies and rules that are intended for areas where the nutrient limits have been overallocated.
- 3.5 This default position potentially places unnecessary impediments on development as it assumes that the nutrients have been overallocated. Given this example of the discrepancy between the water quality outcomes and the nutrient mapping, I am still of the view that the nutrient zone limits and outcomes should be developed at the sub-regional level, and not at the regional level.
- 3.6 In the absence of sub-regional nutrient zone limits and outcomes, it is my opinion that concerns about adverse environmental effects can be addressed through a consenting process until the sub-regional limits are defined.
- 3.7 That said, in light of the technical information provided by others, the mapping of the Ashley – Waimakariri sub-region should at least be amended to reflect the “at risk” or orange zone, rather than the current “water quality outcomes” or red zone as currently recommended by the Officer.
- 3.8 In the Group 2 Section 42A report (p 75), the Officer also discusses the lack of connection between the outcomes in Table 1 and the rule framework, and acknowledges that this is an issue for the region-wide regime. He suggests that it “could be overcome with further work on these matters, particularly with a movement toward sub-regional planning.”

- 3.9 On pp 74-75, the Officer discusses the need to allow for some development and investment certainty, particularly in areas marked as “red” on the nutrient allocation status mapping. The Officer indicates that the region-wide provisions are intended to operate as a “holding position” until the sub-regional rules are developed.
- 3.10 He concludes that this is “potentially unrealistic” and results in some policies not likely to be achieved even with the best mitigation. He also suggests that the non-complying activity status arising from region-wide designation could pose a potentially “inappropriately high hurdle”.
- 3.11 He cites on-going work in the Sewlyn-Waihora sub-region, which has shown that further development can still occur (with advanced mitigation techniques) in a way which minimises nutrient discharges.
- 3.12 These comments by the Officer support the relevance and importance of defining limits and outcomes at the sub-regional (community) level rather than relying on the “holding position” of region-wide limits and outcomes in the interim.
- 3.13 On p 75, the Officer proposes that the implementation of a revised framework be incorporated into the policies and the rules and this will allow for a relatively low cost opportunity for some additional development to occur prior to comprehensive solutions being developed at the sub-regional level.
- 3.14 In the discussion of timeframe for implementation (pp 75-76), the Officer states that there is on-going work and consultation towards a revised framework, with a primary aim to reduce uncertainty, provide clearer guidance for the sub-regional section development and to create a more workable regime for the future. It was suggested, but not confirmed, that there could be a shortened timeframe for implementation.
- 3.15 The Officer acknowledges that the “net result” is uncertainty for the long-term nature of related policies and rules at the region-wide level. While the Officer recommends an interim revised framework, it continues to be my view that these zones should be not be defined at the present time and left to sub-regional chapters.

Page 4-7, Policy 4.31

- 3.16 WIL, in its original submission, specifically opposed Policy 4.31 as it imposes an onerous requirement that detracts from the economic and social well-

being of the community. It is my opinion that Policy 4.31 as notified (p 4-7) imposes an unreasonable burden of demonstration without consideration of actual scale or risk that activity will have on water quality outcomes. This policy lumps all farming activities together, requiring extensive assessment, not because the activities are reasonably likely to have an adverse effect on water quality but simply because the activity is located within a designated red nutrient zone.

- 3.17 Furthermore, it is my opinion, as discussed above, that the use of a sub-regional developed nutrient zoning map and water quality outcomes are more appropriate to consider rather than generic region-wide based maps and water quality outcomes.
- 3.18 The Officer's report has recommended a number of substantive changes to the nutrient management definitions and policies. Of note is the recommendation to amend the definition of a "change in farming activity" and consequently removes the requirement to assess nitrogen loss using Overseer™ (R2.10.21 on pp 82-83) from that definition. Two additional definitions have also been recommended. "High nutrient risk farming activity" (R2.10.XX on p 87) clarifies which activities are recognised as having a higher risk of significant nutrient discharges, and "advanced mitigation measures" (R2.10.XX on p 86) provides a list of measures when implemented allows some potential for development to continue in "at risk" areas (in the Officer's report, he refers to both the orange and red zones with this phrase).
- 3.19 It is my opinion that these definitions recognise that there is variability among farming activities with respect to nutrient risk to water quality and also recognises that mitigation measures are currently available to reduce the risk associated with farming activities.
- 3.20 With respect to notified Policy 4.31, the Officer has recommended changes and these are found in recommended Policy 4.32 (p 106). This policy requires demonstration that there is no net increase in nutrients, but no longer is limited to the use of Overseer™. It is my opinion that this change allows for the opportunity to demonstrate the net effect using other methodology that may be more suitable for the site conditions or activity.
- 3.21 I note that this recommended Policy 4.32 includes the term "no net increase" in nutrients, whereas when Overseer™ was part of the original definition of "changed" with respect to farming activities (p 2-5), an allowance for an

increase of up to 10 % of nitrogen losses was provided, rather than no net increase.

3.22 The Officer's recommendation for Policy 4.32 for red zone areas (and similarly in recommended Policy 4.31 for orange zone) appears to recognise this difference, and offers a remedy when "no net increase" is not achieved. The recommended Policy 4.32 allows for development in red zone areas provided that advanced mitigation farming practices are applied. While I am uncertain as to how the demonstration of the efficacy of these advanced mitigation measures will be undertaken it is my view that on a conceptual level, this policy change allows for continued development as promoted by the Canterbury Water Management Strategy (CWMS) while encouraging the implementation of mitigation farming practices which reduce nutrient losses.

4. USE OF OVERSEER™

4.1 In its original submission, WIL expressed concern that many of the provisions of the PLWRP require all farming activities to carry out Overseer™ modelling assessments to quantify their contribution to nutrient losses. In my Group 1 hearing evidence (paragraph 5.1), I noted that for a scheme such as WIL this may be an onerous requirement for many shareholders, especially those carrying out small scale farming activities.

4.2 The Officer, in his discussion of the use of Overseer™ (p 73), has recommended "definitions and rules which are based on other measures other than modelled outputs from Overseer™."

4.3 The Officer has recommended a change to the definition of a "change in farming activity" and the requirement to assess nitrogen loss using Overseer™ has been removed (R2.10.21 on pp 82-83). It is my view that this allows the use of other methods which may be more appropriate to site conditions or to the specific farming activity.

4.4 While no longer requiring that Overseer™ be used exclusively to estimate nutrient loss, the requirement to carry out nutrient loss modelling still exists under certain circumstances within the recommended rules.

4.5 An analysis of the nutrient loss modelling requirements has been undertaken on the recommended rules. This analysis focuses on red zone areas as the lands within the WIL scheme command area fall within this designation, and

the Officer Recommendation RMap (p 144) is to retain the map without amendment.

4.6 Table 1 shows the different scenarios where nutrient modelling is required as part of a permitted activity rule under the Officer's recommendation.

Table 1 : Is Nutrient Modelling Required to Comply with the Relevant Permitted Activity Rule?			
Criteria Land area X and risk level	Existing Use of Land	New Use of Land	Change in Use of Land
X < 5 ha and Both levels of nutrient risk	No	No	No
5 ha < X < 50 ha and Not high nutrient risk	No	No	No
50 ha < X and Not high nutrient risk	No	Discretionary activity (Rule 5.46)	Discretionary activity (Rule 5.46)
5 ha < X and High nutrient risk	Yes	Discretionary activity (Rule 5.46)	Discretionary activity (Rule 5.46)

4.7 Looking at Table 1, it can be seen that for all activities (existing, new and change to existing farming) that occur on properties less than 5 ha in size and for existing activities which are not considered to be high nutrient risk, the Officer recommendation removes the requirement for nutrient modelling. The result is the removal of an unreasonable burden of demonstration for activities which are not likely to have a measurable impact on the water quality outcome.

4.8 However, for properties greater than 5 ha with high nutrient risk, nutrient modelling is still required to demonstrate compliance with the existing farm use rule. There are small block holders within the WIL scheme who may find this requirement onerous. It is my view that irrigation schemes should be allowed to carry out representative nutrient loss assessments sufficient to estimate the nutrient loss from their scheme as a whole, rather than requiring each individual farmer shareholder to undertake their own assessment.

4.9 It should be recalled that as notified, Policy 4.35 (p 4-9) enables a change in farming activities where land owners or shareholders in an existing irrigation scheme hold existing water permits with nutrient management conditions. Similarly, the Officer-recommended Policy 4.34 (p 106) also seeks to enable a change in farming activities where land owners or shareholders in an existing irrigation scheme existing water permits have nutrient management

conditions, subject to preparation and implementation with a farm environment plan.

- 4.10 These policies suggest to me that the PLWRP recognises that irrigation schemes are an appropriate means in which to manage the use of water, including monitoring and managing the effects arising from the use. Where irrigation schemes have existing water permits with nutrient limits, it follows that the individual shareholders should not have to carry out their own individual assessments if representative information is already provided or can be provided by the irrigation scheme itself.

5. SUBMISSION TO SPECIFIC RULES IN THE PROPOSED PLAN

Page 5-12, Rule 5.42

- 5.1 Rule 5.42 classifies for the use of land for a change to an existing farming activity prior to 1 July 2017 as a permitted activity subject to meeting conditions. In its submission, WIL opposed Condition 1 as it was worded as the interpretation of the specific condition was causing confusion within Environment Canterbury, thus preventing it from complying with processing timeframes.
- 5.2 Condition 1 requires that the land holder has been granted a water permit or holds shares in an irrigation company that has been granted a water permit, that authorises irrigation on the land and the land is subject to conditions that specify the maximum amount of nitrogen that may be leached.
- 5.3 At the time of submission to the PLWRP, WIL's existing water consents did not have a condition with nutrient limits, and guidance sought from ECan on the interpretation of Condition 1 did not provide clarity or certainty. It was on this basis that WIL recommended full deletion of Condition 1 altogether. Since that time, ECan have issued two advice notes on the interpretation and WIL is now in the process of varying their existing consents to incorporate a nutrient limit condition.
- 5.4 ECan, in its 20 November 2012 advice note, acknowledges that very few existing water permits limit the maximum amount of nitrogen that can be leached. Failure to meet this condition in a red zone results in a non-complying activity status for the use of land for a change to an existing farming activity prior to 1 July 2017 under Rule 5.45.

- 5.5 The plan describes non-complying activities as those which are generally inappropriate, and signals its intent that such an activity status will have to be considered more thoroughly, and the granting of such a consent will not be routine. In this case, the requirement for nitrogen limits on existing water permits poses an unfair restriction on the ability to exercise the water permit. It was in good faith that the existing consent holders applied for and were granted consent to take and use water for irrigation on designated lands.
- 5.6 Failure to meet Condition 1 results in a non-complying activity status, which by definition means that consent should be very difficult to obtain. Without consent to use land for change to farming activity, the exercise of the existing water permit cannot be used. The effect is to keep the status quo (ie existing land use) and constrains development even where it is appropriate and encouraged (for example irrigation schemes). This results in the unnecessary “tying up” of water which is, in my view, contrary to the Canterbury Water Management Strategy (CWMS), Regional Policy Statement 2013 (RPS 2013) and the PLWRP itself, especially in light of the emphasis placed on irrigation companies to manage water.
- 5.7 The Officer does not specifically address the implications of this condition and its link with the non-complying rule, nor does the Officer discuss the number of existing consent holders who may be seriously impeded by this condition.
- 5.8 That said, there have been significant changes recommended for the use of land for existing, new and changed farm activity (pp 129 – 131). These amended rules incorporate size and nutrient risk and no longer make a distinction between before and after 1 July 2017. It is also noted that there no longer a reference to existing water permit holders in any permitted activity rule.
- 5.9 A comparison of the activity status of the use of land for farming activity rules has been undertaken to see the consequences of the Officer recommended changes. As with Table 1, the comparison focuses on the red zone as this is the designation for lands within the WIL scheme command area.

5.10 Table 2 lays out the activity status for use of land for farming activities as determined by the relevant rules in the PLWRP as notified and the Section 42A report. Under both the notified PLWRP and the Section 42A report, there is a relevant permitted activity rule subject to meeting conditions. However, the activity status arising from failing to meet relevant condition differs between the documents.

Table 2 : Comparison of Activity Status of Rules for Use of Land for Farming Activities in Red Nutrient Allocation Zone		
	PLWRP as notified	Section 42A report recommendation
Existing activities (prior to July 2017)	Permitted or restricted discretionary	Permitted or discretionary
Existing activities (after July 2017)	Permitted or non-complying	Permitted or discretionary
Change to existing activities (prior to July 2017)	Permitted or non-complying	Permitted or discretionary
Change to existing activities (after July 2017)	Permitted or non-complying	Permitted or discretionary

5.11 As seen in Table 2, the most restrictive activity status for the red zone as recommended by the Section 42A report is discretionary, whereas under the PLWRP is non-complying. The discretionary activity status, allows for consideration of the activities based on their potential or actual effects, and associated mitigation measures, and no longer implies that development within the red zone, even where adverse effects can be avoided or mitigated, is generally inappropriate as the previous non-complying status suggested.

5.12 As noted above in paragraph 5.8, the Section 42A report recommended set of rules does not include any reference to existing water consent holders or irrigation schemes in the permitted activity rules. Therefore, where the activity does not meet the permitted activity rule, it becomes necessary for every individual land owner to obtain consent to use land for an existing, new or changing farm activity.

5.13 It is my opinion that it is an unrealistic expectation to require individual land owners to get consent within an irrigation scheme area. Given that the CWMS, RPS 2013 and the PLWRP promote the management of the region's water through managed irrigation schemes, any nutrient management requirements should also be controlled at the scheme level.

5.14 To achieve this, a condition similar to Condition 1 of the originally notified Rule 5.42 could be added to the Officer-recommended Rule 5.39. Suggested wording for Condition 3 (**in bold**) could be as follows:

5.39 The use of land for an existing farming activity, a changed farming activity or a new farming activity is a permitted activity provided the following conditions are met:

3. The land holder holds shares in an irrigation company that has been granted a water permit that authorises irrigation on the land.

5.15 Finally, I note that a consequence of the Officer-recommended changes is the discharge of nutrients onto or into land (p 131). Rule 5.50 provides the discharge of nutrients as a permitted activity provided that the land use activity associated with the discharge is authorised under Rules 5.39 to 5.46.

5.16 Rule 5.51 states that the discharge of nutrients that does not meet Rule 5.50 shall be a non-complying activity. This means that even though the land use activity is authorised under Rule 5.47, the associated discharge will be a non-complying activity. As discussed above, a non-complying activity classification means that the activity is generally inappropriate, and should not be granted routinely.

5.17 The result is that it is possible to gain a land use consent under Rule 5.47 which cannot be exercised as the discharge of nutrients may not be authorised. In my opinion this is not sensible, but can be addressed by including Rule 5.47 into Condition 1 of Rule 5.50.



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On behalf of Waimakariri Irrigation Limited (Submitter Number 174)

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