

Before the Hearings Commissioners
at Christchurch

in the matter of: a submission on the proposed Canterbury Land and
Water Regional Plan under the Resource Management
Act 1991

to: **Environment Canterbury**

submitter **Hunter Downs Irrigation
(submitter 256)**

Memorandum of counsel on behalf of Hunter Downs Irrigation

Dated: 13 June 2013

REFERENCE: BG Williams (ben.williams@chapmantripp.com)

Chapman Tripp
T: +64 3 353 4130
F: +64 3 365 4587

245 Blenheim Road
PO Box 2510, Christchurch 8140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch



MEMORANDUM OF COUNSEL ON BEHALF OF HUNTER DOWNS IRRIGATION

INTRODUCTION

- 1 This memorandum provides a response to the Commissioners' questions around:
 - 1.1 the relationship between the National Policy Statement on Freshwater Management (*NPSFWM*) and the amendments sought by HDI to the proposed Canterbury Land & Water Regional Plan (*L&WRP*) regarding the management of farm derived nutrients; and
 - 1.2 in particular, how the rules proposed by HDI (which provides a permitted activity status for "change" in farming associated with an irrigation scheme), address the requirement of the NPSFWM to improve water quality in degraded catchments.
- 2 The issue stems from the trigger in proposed rule 5.42 and in another rule proposed by HDI, which allow for changes in farming as a permitted activity.
- 3 This memorandum also attaches the material that was discussed (and requested) during Mr Brian Ellwood's presentation of his evidence to the Commissioners, being:
 - 3.1 the relationship between leaching concentration and mass; and
 - 3.2 a brief summary of the effects of the HDI Scheme.

RULE 5.42

- 4 Under Rule 5.42, permitted activity status is contingent on the landowner "*hold[ing] shares in an irrigation company*". If that and a number of other requirements are met then the landowner would not need to hold their own resource consent that addresses the management of nutrients (the expectation of this 'exemption' being that the controls under the irrigation scheme water permit would address issues of nutrient management from changes in farming on the landowners' land).
- 5 However, it would appear that landowners who hold shares in an irrigation company could potentially rely on permitted activity status without necessarily taking irrigation scheme water (and in such circumstances there may be no requirement to comply with the nutrient management conditions of the relevant water permit).

- 6 This could lead to farming intensification occurring without the nutrient controls of either the L&WRP, or alternatively the irrigation scheme water permit being applied. This would run the risk of greater water quality degradation from farm derived nutrients, including in those catchments where the L&WRP water quality outcomes are currently not being met. The concern of the Commissioners was that this would not achieve the requirements of the NPSFWM that seeks improvement in water quality in degraded water bodies.

Amendments proposed

- 7 To address the issue, the following amendments to rule 5.42 and HDI's proposed new post 2017 rule are proposed. Changes from that originally sought by HDI in its evidence, are shown crossed out or underlined in red:

Section 5 - Region-Wide Rules

Farming

5.42 Prior to 1 July 2017 the use of land for a change to an existing farming activity is a permitted activity if the following conditions are met:

1. The land holder has been granted a water permit ~~that has been given effect to,~~ or holds shares in an irrigation company that has been granted a water permit ~~that has been given effect to,~~ that authorises irrigation on the land; and
 - a) water is being taken and applied to that land by the land holder under the terms of that water permit; and
 - b) the land is subject to conditions that addresses nutrient management, and in particular the requires the preparation, implementation, and auditing of a farm environment/management plan(s), and specifies the maximum amount of nitrogen that may be leached;
2. The property is outside a Lake Zone as shown on the Planning Maps;
3. A record of the annual amount of nitrogen loss from the land, for the period from 1 July in one year to 30 June in the following year, calculated using the OVERSEERTM nutrient model;
4. A Farm Environment Plan is prepared and implemented in accordance with Schedule 7 (except where this is otherwise required under the water permit as provided in 1 above);

5. The Farm Environment Plan is externally audited each year for the first three years by an Farm Environment Plan Auditor ~~(except where this is otherwise required under the water permit as provided in 1 above)~~. Following three consecutive years of full compliance, the audit shall occur once every three years; and
6. A record of the audit compliance grading and the average annual loss of nitrogen for the property is provided to the CRC by 31 August of that year ~~(except where this is otherwise required under the water permit as provided in 1 above)~~.

5.XX Notwithstanding rules 5.46 – 5.49, from 1 July 2017, the use of land for any farming activity, is a permitted activity if the following conditions are met:

1. The land holder holds shares in an irrigation company that has been granted a water permit that has been given effect to that authorises irrigation on the land; and
 - a) water is being taken and applied to that land by the land holder under the terms of that water permit; and
 - b) the land is subject to conditions that address nutrient management, and in particular requires the preparation, implementation, and auditing of a farm environment/management plan(s), and specifies the maximum amount of nitrogen that may be leached.

Conclusion on the NPSFWM

- 8 Policy A2 of the of the NPSFWM states:

Where water bodies do not meet the freshwater outcomes made pursuant to policy A1, every regional council is to specify targets and implement methods (either or both regulatory and non-regulatory) to assist the improvement of water quality in the water bodies, to meet those targets, and within a defined timeframe.

- 9 The result of the proposed amendments is that the ability for changes in farming associated with irrigation schemes to occur without nutrient management controls being applied is removed.
- 10 It is also emphasised that the evidence provided by HDI has demonstrated (and the conditions of the existing resource consents confirm) that the nutrient management regime under the HDI water permit is a current and robust means to manage nutrients, comparable to the L&WRP regime.
- 11 The HDI water permit was granted under the auspices of the NRRP water quality outcomes (which largely mirror those of the NPSFWM and the L&WRPP). Providing permitted activity status on the

condition that the nutrient management regime under the relevant water permit is complied with will therefore (especially in the case of HDI) assist in the improvement of water quality in those water bodies that do not currently meet the table 1a and b water quality outcomes of the L&WRP.

INFORMATION REQUESTED

- 12 In accordance with the discussion that occurred at the hearing while Mr Ellwood was presenting, we are now able to attach:
- 12.1 an extract from the evidence of Dr Matthew Ryan, 23 October 2007 where he calculates the leaching rates - including the mass nitrate leached and concentrations for the Hunter Downs Irrigation Scheme. It is noted that his evidence was based on OVERSEER version 5.2.6;
 - 12.2 an extract from the URS *Mass Balance Modelling Assessment* Report dated 28 June 2007 which provides a summary of the changes to water quality from the HDI Scheme (by sub-catchment) with and without best management practices being implemented (also based on an earlier version of OVERSEER);
 - 12.3 an extract (page 165, para 892-895) from the decision of the Commissioners (Skelton, Ryder and Bowden) in relation to the application for resource consent which provides a brief summary of the assessed effects of a developed HDI Scheme.

Dated: 17 June 2013



Ben Williams
Counsel for Hunter Downs Irrigation