

Tabled at Hearing on 18 November 2015

Before the Hearings Commissioners  
at Christchurch

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*under:* the Resource Management Act 1991

*in the matter of:* a submission on proposed Plan Change 3 to the Land &  
Water Regional Plan – South Canterbury Coastal  
Streams.

*to:* **Canterbury Regional Council**

*Submitter:* **Hunter Downs Development Company Limited**

## Summary of submissions

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## SUMMARY OF SUBMISSIONS

### INTRODUCTION

- 1 This hearing is in the process of considering submissions and further submissions in relation to proposed plan change 3 (*PC3*) to the Canterbury Land & Water Regional Plan (*LWRP*).
- 2 These submissions are provided on behalf of Hunter Downs Development Company Limited (*HDDCL*).
- 3 *HDDCL* is the joint venture entity that has been incorporated to develop the Hunter Downs Irrigation Scheme (*HDI Scheme*).
- 4 The shareholders of *HDDCL* are Meridian Energy Limited and Hunter Downs Irrigation Limited (*HDIL*). *HDIL* is a widely held company principally comprising the owners of property that is intended to be irrigated by the Hunter Downs Irrigation Scheme (*HDI Scheme*).
- 5 In terms of brief introduction:
  - 5.1 *HDIL* has around 90 shareholders (with potential in the *PC3* plan area for around 26,000 hectares of irrigation);
  - 5.2 *HDDCL* will be responsible for implementing resource consent *CRC142804* (which authorises the taking of up to 20.5 cumecs of Waitaki River water with an annual volume of 252 Mm<sup>3</sup> for irrigation across the area from Waihao Downs to Otipua, just south of Timaru); and
  - 5.3 when fully developed, the *HDI Scheme* has consent with the capacity to irrigate the equivalent of 40,000 hectares within a total command area of 60,000 hectares.
- 6 The *HDI Scheme* is still in the development phase (but obviously holds the key resource consent in relation to the take and use of water). A nutrient discharge consent application has been applied for (*CRC156580*) and it is expected that the further consents relating to the distribution infrastructure and associated operational aspects of the *HDI Scheme* will be applied for shortly.
- 7 *HDDCL* is taking a very careful and consultative approach to the further consenting and wider development of the *HDI Scheme*. This includes the establishment of the Hunter Downs Implementation Advisory Group and the implementation of very detailed scheme and farm environmental management plans.
- 8 The final provisions of *PC3* are highly relevant to the viability of the *HDI Scheme* – and equally, many of the wider outcomes envisaged

within PC3 will only occur if the final provisions are sufficiently enabling to provide for the development of further irrigation.

### **APPROACH TO SUBMISSIONS**

- 9 These submissions provide a brief outline of the key issues that are of concern of interest to HDDCL in respect of the notified version of PC3.
- 10 This includes:
- 10.1 the extent to which PC3 appropriately gives effect to the outcomes sought by the Zone Committee (and the weight that should be placed on the achievement of those outcomes);
  - 10.2 the risk of amending the allocation framework through the hearing process;
  - 10.3 the need for OVERSEER version control;
  - 10.4 the HDDCL nutrient discharge consent and the need to ensure individual landuse is a permitted activity within an irrigation scheme;
  - 10.5 the interface between augmentation and access to higher flexibility and maximum caps;
  - 10.6 the use of water received from an irrigation scheme; and
  - 10.7 consent duration.
- 11 There are a large number of other issues raised in the submissions and further submissions by HDDCL. Only a limited number of these are discussed in the context of these submissions (appreciating that some are also expanded on in detail in the pre-circulated evidence provided by HDDCL).
- 12 The fact that something is not discussed in these submissions or expanded on in evidence should in no way be interpreted as suggesting HDDCL is 'less concerned' or considers that 'less weight' should be placed on the relevant issue.

### **ISSUES IN RESPECT OF PC3**

#### **Giving effect to the Zone Committee outcomes**

- 13 The background to the Lower Waitaki South Coastal Canterbury Zone Committee (*Zone Committee*) has already been detailed in the section 42A Officer Report (see for example paragraphs 4.1-4.35).

- 14 In very simple terms, the Zone Committee was established under the Canterbury Water Management Strategy (CWMS) with terms of reference approved by the Waimate and Waitaki District Councils and the Canterbury Regional Council.
- 15 The work of the Zone Committee ultimately led to the publication of the *South Coastal Canterbury ZIP Addendum* in September 2014 (*ZIP Addendum*). The 'ZIP solutions package' (scenario 2b) is dependent on the development of the HDI Scheme and *inter alia* is intended to deliver:
- 15.1 a reduction in the trophic level for Wainono Lagoon to a Trophic Level Index (TLI) score from 6.5 to 6;
  - 15.2 an improvement in Waihao River and other tributary flows and habitat over time (along with a protection level of 90% for nitrate toxicity for the streams); and
  - 15.3 an increase in irrigation in South Canterbury by the development of the HDI Scheme (and Waihao Scheme).
- 16 Clearly the former will not be achieved without the latter occurring and much of HDDCL's submissions and further submissions have been framed around ensuring the Zone Committee's intent is properly reflected in the final provisions of PC3.
- 17 Although at least in some respects non-statutory, HDDCL respectfully submits that the Hearing Panel should be very reluctant to depart from the 'solutions package' and the intended enablement of irrigation.
- 18 Even if not being expressly referred to in a Schedule 1 (RMA) context, the Zone Committee was obviously formed under the CWMS and the wider Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (*ECan Act*) process.
- 19 Even if the ZIP Addendum does not *in itself* strictly form part of the Schedule 1 process, the CWMS is a part of it by virtue of section 63 of the *ECan Act*. It is therefore submitted that the ZIP Addendum and recommendations around the 'solutions package' should be given weight in the decision making process.
- The allocation framework provided**
- 20 The PC3 allocation framework is directly derived from the ZIP Addendum solutions package framework. This was in part informed by the separate Nutrient Allocation Reference Group (*NARG*) work which was intended to re-visit the proposed limits or other actions but to explore allocation options and describe consequences.

- 21 This ultimately culminated in what was a 'consensus method' that includes *inter alia* good management practice, catchment loads, flexibility caps and maximum caps.
- 22 Consistent in part with the concerns raised by a number of submitters, HDDCL is concerned with some of the calculations undertaken in preparing the relevant limits in PC3. HDDCL's concerns are however limited to the modelling and the version of OVERSEER® used (as discussed in paragraphs 25 to 33 below) and it is not seeking to re-visit the wider allocation framework developed through the wider Zone Committee process.
- 23 If the wider allocation framework were re-visited at some stage through the hearing process (contrary to HDDCL's submission), then it is simply emphasised that particular needs to be taken to properly understand the wider implications of any gain or reduction for *only* part of a catchment or area.
- 24 Any such gain/reduction will ultimately need to be balanced by the same gain/reduction elsewhere. In the absence of detailed section 32 analysis and certainty that, for example, the intended solution package outcomes will still be met, it is respectfully submitted that the Hearing Panel should be very careful in recommending any such changes.
- OVERSEER® version control**
- 25 As noted earlier in these submissions, HDDCL generally supports the assumptions used through the Zone Committee process to generate the nutrient loads but it is concerned that version changes to the OVERSEER® model mean that land users' ability to comply with a fixed nutrient loss rate will change through time.
- 26 In this context it is emphasised at the outset that changes in OVERSEER® versions (and calculated outputs) will typically **not** mean any change in observed effects on the environment. I.e. – even if the outputs were to hypothetically double under a subsequent version of the model, nothing in terms of 'the environment' has actually changed (what is instead being further refined is the 'attenuation factor' between on farm activities and their ultimate effect on the relevant water bod(ies)).
- 27 HDDCL has requested a rule that provides for the updating of nitrogen loss limits (as expressed throughout PC3) or, in the alternative, a footnote be included on each of tables 15(m), (n) and (p) with the effect that if OVERSEER is updated, the most recent version shall be used to recalculate the nitrogen loss limit in the relevant table using the same input data. At that point the new loss limit would then apply.

- 28 In response the section 42A Officer Report advises, for example, that:

10.155 As discussed earlier in this report, it is recommended that a footnote is included in Table 15 (p). It is also recommended that a policy is included to provide guidance to those implementing the plan on interpreting nutrient load limits following updates to the OVERSEER® model. Given that revised modelling of the Maximum and Flexibility Caps have not resulted in significantly different numbers, I do not consider that footnotes are necessary for Tables 15(m) and 15(n). The proposed solution does not require any additional amendments to the nutrient rules.

- 29 With respect, although *in this instance* the revised modelling might not have resulted in significantly different numbers, that is not a reason for limiting the 'ability to update' to only Table 15(p). Future versions might well result in significant differences.

- 30 Despite the above, the section 42A report (at paragraph 10.31) has nevertheless recommended that the table 15 (m) and (n) be updated to use version 6.2 of OVERSEER® and (at paragraph 10.400) has adopted the updated maximum cap number for Table 15(n) and provided a reference to the use of version of OVERSEER® 6.2. This effectively reinforces the point that is being made by HDDCL – (1) there is a need to update the numbers but, (2) the version used will only be relevant while version that version is used...

- 31 It is however accepted that the Hearing Panel will need to consider the extent to which an update methodology could deprive PC3 of clear limits for permitted activity rules. However, it is submitted that such a concern does not arise in the current circumstances:

31.1 typically, such objections relate to the certainty provided by a plan. For example, in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*,<sup>1</sup> the Environment Court declined to include a list of characteristics for identifying outstanding natural landscapes in the Queenstown Lakes District Plan – in circumstances where the Court found that such a list would be "*so general that... it would not assist much to have it in the plan.*"<sup>2</sup> Rather, the Court went on to apply those same criteria itself, so generating a certain list of ONLs; whereas

31.2 here, on the other hand, including a set of 'unchanging absolutes' in the LWRP (via PC3) will itself create uncertainty:

<sup>1</sup> C180/99, 2/11/99, Judge Jackson, EnvC Christchurch.

<sup>2</sup> *Ibid*, para 102.

i.e. how can a plan user tell if a single set of real-life circumstances (represented by a single set of model inputs) meet an unchanging permitted activity standard (or indeed any other standard) next time OVERSEER® is updated?

- 32 Accordingly, a certain outcome for any single set of real-life circumstances can only be provided for by including in the plan an update methodology dealing with situations where both an OVERSEER® update:
- 32.1 is made and the same model inputs are required; and/or
- 32.2 differing (be it more, fewer or different) model inputs are required.
- 33 Rather than 'muddying waters', it is submitted that a sufficiently drafted update methodology would lead to increased certainty for the permitted activity rules in PC3.
- DOC request around augmentation**
- 34 The Department of Conservation has raised concerns regarding turbidity in the Waitaki derived waters for flow augmentation. In particular, concern has been raised over the glacial flow laden waters and its potential effects on smothering macrophytes and inhibiting re-establishment in the lagoon.
- 35 On the basis of evidence provided by **Ms Sutherland**, the addition of lower turbidity waters from the Waitaki River into Wainono Lagoon will most probably result in a dilution (reduction) of turbidity. To this extent, increased flushing may also help to reduce the suspended sediment in the lagoon over the long term.
- 36 Although HDDCL accepts it is appropriate for the Department to query issues such as turbidity, it is submitted that this should be done in the context of a resource consent application (where the full suite of effects can be considered, ultimately, in the context of Part II). There is an obvious danger with 'cherry picking' individual effects in the context of a plan change – the risk in this instance being that concerns about one effect might effectively gazump wider augmentation and the development of irrigation.
- A new permitted activity within an irrigation scheme**
- 37 HDCCL has submitted asking for the inclusion of a rule that makes the use of water from an irrigation scheme a permitted activity (where the property is part of an irrigation scheme which holds an appropriate discharge consent).
- 38 The s42A Report recommends acceptance of this submission and notes that this would be consistent with the general rules in the

Land & Water Regional Plan (Rule 5.60 & 5.61) – and the approach taken by Variation 1 and the notified version of Variation 2.

39 **Ms Dawson** has recommended some amended wording:

15.5.12A The use of land for a farming activity on a property that is supplied with water by an irrigation scheme, provided the irrigation scheme holds a consent that is subject to conditions that specify the maximum rate of discharge that may be leached from the land for the area where the property is located is a permitted activity.

40 For consistency with other parts of the plan and to ensure a workable regime for irrigation schemes, HDDCL is seeks the amendment set out.

**A brief comment on augmentation**

41 A key aspect of PC3 is obviously the ability under Tables 15(m) and 15(n) for property owners to access higher flexibility caps and maximum caps once augmentation has occurred.

42 In this regard, policy 15.4.8 currently provides that:

15.4.8 Improve water quality within the Waihao-Wainono Area by enabling farming activities to access the higher flexibility caps in Table 15(l) only once augmentation of Wainono Lagoon has occurred.

43 As discussed in its original submission, HDDCL is concerned to ensure that the benefits of augmentation (i.e. access to the higher caps) is appropriately tied to those that contribute to it.

44 HDDCL supports the intent within the policy but was concerned that there was no direct connection between augmentation and the rights of an individual to access the higher caps. This is contrary to the recommendation of the Zone Committee which anticipated land users outside an irrigation scheme contributing to augmentation as a part of accessing any higher flexibility cap:

1.16 The Sub Regional Section enables land users outside an irrigation scheme to increase their N losses if they are a dry shareholder in the scheme, have a portion of the scheme load, and the catchment load limit is not breached.

45 Although in a narrow sense the absence of a contribution would mean that irrigation scheme members (alone) would need to pay for augmentation, HDDCL is concerned that this might mean that both augmentation and irrigation are prevented outright.



- 46 In its original submission, HDDCL suggest various relief, including a new rule that *inter alia* would ensure that:

6. The nitrogen loss on the property does not exceed the greater of:

(a) that subject to a targeted rating under the Local Government (Rating) Act 2002 to contribute to the provision and operation of Wainono Lagoon augmentation; or

(b) that described in any relevant "Nitrogen Loss Agreement" with the provider of Wainono Lagoon augmentation water, where a copy of that agreement has been submitted with the application for resource consent.

- 47 Although in line with the intent of the Zone Committee, HDDCL accepts that in the absence of any certainty in terms of what the final mechanism might look like it may be appropriate for the issue to be 'parked' to a future process. That will allow the mechanism to be developed in consultation with all beneficiaries of improved water quality.
- 48 For the purposes of these submissions it is simply noted that HDDCL has not abandoned the submission point and remains concerned to ensure that at some stage (albeit more than likely in another process) the concern is resolved.
- 49 For completeness it is noted that HDDCL remains of the view that it would be open for the funding mechanism to be addressed in the context of a regional plan (such as PC3) – noting for example, "Augmentation Affiliated" takes in the Opihi River Regional Plan; a requirement to hold 'Mackenzie Irrigation Company shares' and the need to provide evidence of a derogation approval from Meridian in the Waitaki Catchment Water Allocation Regional Plan (see footnote 23A and supporting material); and the "register" concept included in the National Water Conservation Order (Rakaia River) 1988.

#### **Consent duration**

- 50 This issue has already been dealt with in depth by a number of submitters and in the evidence provided by HDDCL.
- 51 Rather than repeating the issue, HDDCL simply adopts and confirms the position that has been put by others – i.e. that in the case of large-scale infrastructure the longest possible available (35 years in relation to key water consents) is of absolute importance from a financing and bankability perspective.
- 52 With an investment framework that will need to consider future generations, any shorter is likely to reduce the chances of an irrigation scheme proceeding.

**Conclusion**

- 53 HDDCL is generally supportive of the outcomes sought under PC3.
- 54 It however remains concerned that the very careful balance between the various matters identified by the Zone Committee is not 'upset' through changes that might have wider implications for the outcomes sought.
- 55 Nevertheless, there are number of changes recommended that will better the intent of PC3 and align with the outcomes sought by the Zone Committee.

**Evidence**

- 56 The submitters are calling evidence from:
- 56.1 **Mr Richard Timpany** (HDDCL);
  - 56.2 **Mr Brian Ellwood** (HDDCL);
  - 56.3 **Ms Donna Sutherland** (augmentation); and
  - 56.4 **Ms Sarah Dawson** (planning).

Dated: 18 November 2015

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