

IN THE MATTER OF the Resource Management Act 1991 (the 'Act')

AND

IN THE MATTER OF primary submissions on Proposed Plan Change 5 to the Canterbury Land and Water Regional Plan ('PC5')

BY the Egg Producers Federation of New Zealand (Inc) ('EPFNZ') and the Poultry Industry Association of New Zealand (Inc) ('PIANZ')

SUPPLEMENTARY STATEMENT OF EVIDENCE OF POUL ISRAELSON

26 August 2016

1.0 INTRODUCTION

- 1.1 My full name is Poul Timothy Israelson. I hold a Master of Regional and Resource Planning degree from the University of Otago and I am a full member of the New Zealand Planning Institute. I am a Planning Manager and Technical Director with Harrison Grierson Consultants Limited.
- 1.2 This supplementary statement of evidence is to be read in conjunction with my pre-circulated evidence dated 22 July on the provisions of Proposed Plan Change 5 ('PC5') to the Canterbury Land and Water Regional Plan (the 'LWRP') and submissions lodged by the Egg Producers Federation New Zealand (EPFNZ) and the Poultry Industry Association of New Zealand (PIANZ).

2.0 OPENING OF HEARING ON PC5

- 2.1 My colleague Ruth Evans attended the opening of the hearing for PC5 on Monday 22 August 2016 to observe the Council's presentation on the use of Farm Portal. I understand that the Council provided a real-time demonstration of the steps required to register a farm and to generate a farm report which included information on soils, land use types, nutrient loss rates, current consents, wells and bores, as well as information entered into the Farm Portal by the user. The report draws on all databases that Environment Canterbury has access to.
- 2.2 For each farm, users are required to answer a series of questions to determine if a resource consent is required, including if the farm is authorised to irrigate more than 50ha or if there is more than 20ha of the farm used for winter grazing. I note that these questions in Farm Portal align with the permitted activity standards contained in the Red, Orange, Green or Light Blue Nutrient Allocation Zones contained in PC5 and the LWRP. If the answer to these questions is 'no', then it is likely the farming activity will be a permitted activity but there is the requirement to upload a Management Plan in accordance with Schedule 7A in the LWRP.

- 2.3 The remaining process in Farm Portal includes a series of questions such as if the land is used for cropping, orchards and other livestock. I understand that the specific example given to the Panel was on cropping. My colleague Ms Evans has since logged onto Farm Portal to review what the other options for farming activity were. They included cropping, milking dairy cows, running livestock (other than dairy cows), and other land uses such as berry cropping and viticulture. It was noted that there was no option for poultry farming. Once this data is entered by the user you are then able to generate the Farm Portal report.
- 2.4 I understand that the report from Farm Portal provides figures that include the Good Management Practice Loss Rate and that these figures may be used by Environment Canterbury for the purposes of catchment accounting purposes. As noted in my pre-circulated evidence, the EPNZ and PIANZ represent some 111 poultry farming facilities in the Canterbury Region, therefore these farms comprise a significant area of land. By not specifically including poultry farming activity, I have concerns over the accuracy of the data reported from Farm Portal.
- 2.5 This appears to be a common theme in the LWRP and the various Plan Changes where poultry interests have not been considered in the application of objectives, policies, rules and the schedules. In my opinion, this is not an appropriate means to effectively manage the effects of poultry farming in the Canterbury Region.

3.0 ACTIVITY STATUS

- 3.1 Notwithstanding my above comments, I note that the majority of poultry farms should be able to comply with the permitted standards for nutrient management proposed by PC5 as they typically do not irrigate more than 50ha or accommodate more than 20ha of winter grazing. In this circumstance, the poultry farmer will need to prepare a Management Plan in accordance with Schedule 7A of the LWRP. The requirements of Schedule 7A are not overly onerous and will be relatively straightforward for individual poultry farmers to complete.
- 3.2 The very nature of poultry farms and the potential for reverse sensitivity effects, means that poultry farms are invariably located on rural landholdings. Given the large property size required, poultry farmers often lease the balance of their land for cattle grazing purposes. This has the potential to influence the outcome of the report generated by Farm Portal for the particular site and the need for resource consent under the LWRP. Accordingly, there may be situations where poultry farming activities by themselves cannot meet the permitted standards contained in LWRP or they cannot meet these standards by virtue of other farming activities taking place on their property. In this circumstance, the hierarchy of rules apply which requires the farmer to prepare a Farm Environment Plan in accordance with Schedule 7 of the LWRP.
- 3.3 I note that as part of Plan Change 4 (PC4) to the LWRP a request was made to the Panel by my colleague Ms Emma-Jane Hayward to consider amendments to Rule 5.35 and to exclude discharges to land that were specifically excluded from the definition of animal effluent. Amendments were proposed to the definition of animal effluent to exclude washwater from poultry farms with a volume less than 500m³ over a 12 month period. The Panel recommended to reject the suggested amendments as the changes

to Rule 5.35 were not considered within the section 32 evaluation and further submitters did not have the opportunity to take part in the process. The Panel was of the view that the Council could not lawfully make the suggested amendment based on the scope of the submission.

- 3.4 Calculations for the 500m³ discharge volume were provided in the evidence of Ms Hayward, and these calculations have been corroborated by the evidence submitted as part of this hearing on PC5 by Ms Emma Coote, National Environmental Advisor for Tegel Foods Limited. Ms Coote's evidence also provides calculations that estimate the total nitrogen and potassium loading in kilograms per year for a medium sized poultry farm and compares this to a medium sized dairy farm. Ms Coote calculates that not only is the volume of washwater (defined as be animal effluent by the LWRP) from a poultry farm to be small in comparison, but the overall nitrogen and phosphorus loading from an average chicken meat farm is less than 10% of that from a medium sized dairy farm.
- 3.5 The reason I have raised the matter of animal effluent and volumes is that the washwater for many poultry farms will exceed the 100m³ over a 12 month period requirement contained in Rule 5.35 and therefore trigger the need for restricted discretionary consent under Rule 5.36. As part of the requirements of Rule 5.36 applicants must prepare and submit a Farm Environment Plan in accordance with Schedule 7 in the LWRP.
- 3.6 In summary, most poultry farms will be able to comply with the permitted standards for nutrient management in the LWRP but there are situations where they will not be able to do so. Furthermore, the washwater for many poultry farms will trigger the need for resource consent under Rule 5.36. The practical result is that there will be a requirement for many poultry farms to prepare and submit a Farm Environment Plan in accordance with Schedule 7 in the LWRP which I discuss further below.

4.0 SCHEDULE 7 - FARM ENVIRONMENT PLAN

- 4.1 PC5 proposes a number of amendments to Schedule 7 of the LWRP and the requirements that need to be included in the preparation of a Farm Environment Plan. The submission by the EPFNZ and PIANZ specifically noted that the requirements for information in Schedule 7 were not designed for, or have appropriate consideration of, the operations of poultry farms. For this reason, the submission requested that poultry farming be excluded from Schedule 7.
- 4.2 To demonstrate the difficulty of applying the requirements of Schedule 7 to poultry farming, I request the Panel to consider the following examples.

Nutrient Budgets

- 4.3 Section 4B in Part B of Schedule 7 requires the provision of nutrient budgets to show nitrogen baselines and nitrogen loss calculations. The implication for the poultry industry is that nitrogen baseline and loss calculations are defined in the LWRP and generally require this to be calculated using OVERSEER. My understanding is that OVERSEER was developed for the dairy industry where the farms tend to be on a much larger scale than individual poultry farms. There is also no poultry specific input built into OVERSEER and farmers will have to manually estimate their pollution outputs. I also note that the

poultry industry is not listed on the OVERSEER website as one of the primary industries it supports. I note that the definition of nitrogen baseline allows for an alternative model to be approved by the Chief Executive of Environment Canterbury; however, I am not aware of any appropriate model for the poultry industry.

- 4.4 Item 4B in Part B of Schedule 7 also requires a report from Farm Portal showing Baseline GMP Loss Rate and the GMP Loss Rate at specific dates. These need to be generated by using results from OVERSEER or an alternative model. As noted in my evidence above, poultry farming is not an option in Farm Portal and I therefore have concerns over the accuracy of the results generated by Farm Portal for the poultry industry. I also note that the document titled 'Industry-agreed Good Management Practices relating to water quality' dated 18 September 2015 is referred to within the definition of Good Management Practices. This agreed non-statutory guideline on GMP does not include the poultry industry.
- 4.5 I note that item 6 in Part B of Schedule 7 requires nutrient budgets to be prepared by a suitably qualified person using OVERSEER or an equivalent model approved by the Chief Executive of Environment Canterbury. In my opinion, item 6 provides the flexibility for the poultry industry to provide relevant information to Environment Canterbury using an agreed alternative rather than imposing methods that do not specifically consider poultry farming operations in item 4B. I therefore request the following note is inserted at the end of Item 4B in Part B of Schedule 7 to read as follows:

'The requirements of parts (a) and (b) do not apply to poultry farming activity.'

Audit of Farm Management Plans

- 4.6 Part C of Schedule 7 outlines the requirement to audit Farm Environment Plans. The opening paragraph in this section requires the audit to be completed by a Certified Farm Environment Plan Auditor (CFEPA). PC5 introduces amendments to the definition of CFEPA and sets criteria for the auditor that requires them to be registered with Environment Canterbury and have at least 5 years' experience in the management of pastoral, horticultural or arable farm systems. Another alternative in the definition is for the auditor to be a person who is a member of an International Standards Organisation accredited audit programme but they also need to have the same level and range of experience. There is no reference to the CFEPA having experience in poultry farming and, in my opinion, it would be inappropriate for a CFEPA to audit a poultry farming operation with little or no knowledge of the poultry industry.
- 4.7 The poultry industry has strict health and biosecurity requirements that are audited by the Ministry of Primary Industries; however, there are no specific audits undertaken for nutrient management. Most solid waste from poultry operations is taken off site and used as fertiliser and the volume of washwater is so low that no specific audit for nutrient management has usually been undertaken. Given that there will be the requirement for the poultry industry to submit Farm Environment Plans as part of the LWRP, it is important that the requirements in those Plans are flexible enough to consider the operations of the poultry industry but they are also audited by appropriately qualified people. In this regard, I request that the following option is provided in the definition of CFEPA. Please note that a similar option was previously included in the definition; however, PC5 proposed that this option be removed.

'Such other qualification that has been approved by the Chief Executive of Environment Canterbury as containing adequate instruction and assessment on agricultural sciences and nutrient management.'

5.0 CONCLUSION

- 5.1 In summary, poultry farming is not included as an option in the 'other farming' questions contained within in Farm Portal; poultry farming is not referenced or even considered in the Good Management Practices document; and the operations of the poultry industry are not considered or appropriately addressed in the requirements for Farm Environment Plans under Schedule 7 of the LWRP.
- 5.2 I have outlined to the Panel that there will likely be a trigger for resource consent for most poultry farming activities due to washwater discharge or nutrient management under the LWRP. The hierarchy of rules contained in the LWRP are such that if an activity cannot meet permitted activity standards then there is a requirement to prepare a Farm Environment Plan. Give that little consideration has been provided to poultry farming activity in the LWRP, there is the possibility that poultry farms will not be able to prepare a Farm Environment Plan in accordance with Schedule 7. As a result, poultry farming activities could default to non-complying activity status under the LWRP rule hierarchy. In my opinion, this level of activity status does not reflect the level of potential effects of washwater discharge and nutrient loading from poultry farming activity when compared to other farming practices.
- 5.3 Given the structure of the LWRP and the various Plan Changes to the LWRP, it is difficult for users to determine how the provisions will affect them. I understand that my evidence for this particular hearing needs to be considered by the Panel in the context of the submission lodged and the relief sought by the EPFNZ and PIANZ on PC5. In my opinion, the relief outlined in my evidence is within the scope of the submission and will go part way toward addressing the concerns of the EPFNZ and PIANZ. However, the primary concern of the EPFNZ and PIANZ still remains that little consideration has been given to poultry farming in the LWRP provisions. This has the potential to create compliance issues for their operations with little consideration given to the reasoning why and for the management of environmental effects.

Dated: 26 August 2016



Poul Israelson
Planning Manager

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS APPOINTED
BY THE CANTERBURY REGIONAL COUNCIL**

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF Submissions and further submissions by Opuha
Water Limited on Proposed Plan Change 5 to the
Canterbury Land and Water Regional Plan

LEGAL SUBMISSIONS ON BEHALF OF OPUHA WATER LIMITED

26 AUGUST 2016

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MAY IT PLEASE THE COMMISSIONERS:

- 1 These submissions on proposed Plan Change 5 (PC5) to the Canterbury Land and Water Regional Plan (LWRP) are presented on behalf of Opuha Water Limited (Opuha).

Introduction

- 2 Opuha owns and manages the Opuha Dam which releases water into the Opuha River. Irrigation takes associated with the scheme are from the Opuha, Opihi and Te Ngawai Rivers. Irrigation water is abstracted directly from the Rivers by approximately 70 individual consent holders across the Scheme area. Another approximately 170 irrigators are supplied water via four sub-schemes (Levels Plain, Kakahu, Totara Valley, Sutherlands) which comprise networks of water races, channels and pipelines to distribute water.
- 3 Opuha is 100% owned by farmer-shareholders. Approximately 30 shareholders farm in the Red Nutrient Allocation Zone (Red Zone), abstracting 20% of the water available for irrigation. The remaining 210 shareholders farm in the Orange Zone, abstracting 80%.
- 4 Opuha water is fully allocated to shareholders. As a consequence, to increase the amount of land irrigated within the scheme, shareholders must buy/lease shares from other shareholders and/or change to more efficient systems. In the latter case, shareholders can make their water go further through either system changes or better management. The result is that Opuha can only expand as a scheme where water efficiencies occur.
- 5 Opuha is in the Orari-Temuka-Opihi-Pareora (OTOP) catchment. The OTOP sub-regional rules are due to be notified in June 2018. Until then, Opuha and its shareholders will be subject to the PC5 provisions.

Other Relief being pursued

- 6 Opuha has taken heed of the evidence and submissions presented by other primary sector participants. For efficiency, it has chosen to confine its case to addressing only a few of its requests, although it

maintains an interest in most of its original submission points. In particular:

- 6.1 Opuha submitted on the winter grazing definition¹, seeking the same amendment proposed by DairyNZ in its submission². Opuha continues to support DairyNZ's proposed definition as recommended by, and for the reasons set out in, the Section 42A Report (s42A Report)³;
- 6.2 Opuha submitted to retain the notified definition of *principal water supplier*⁴. Opuha supports the proposed definition as recommended by, and for the reasons set out in, the s42A Report⁵;
- 6.3 Opuha submitted to retain the notified Policy 4.38E concerning phosphorus losses⁶. Opuha supports the proposed amendments as recommended by, and for the reasons set out in, the s42A Report⁷;
- 6.4 Opuha submitted to delete the words "authorised to be" from Conditions 2 and 3 of the Red Zone permitted activity rule (Rule 5.44A)⁸. This amendment would remove drafting inconsistency between that Rule and the equivalent Orange Zone rule (Rule 5.54A). Opuha supports the deletion to Condition 2 as recommended by the Officer's in their Revised version of Part A of PC5⁹, and continues to seek the same deletion in Condition 3, for the sake of clarity and consistency in wording;
- 6.5 Opuha recognises the Farm Portal will have a significant effect on its farmer shareholders. Opuha supports the efforts of other submitters to ensure the Farm Portal is able to deliver on its

¹ Opuha Submission on PC5, dated 11 March 2016, at page 8

² DairyNZ Submission on PC5, dated 11 March 2016, at page 35

³ Section 42A Report, page 105, at 7.222; Revised Appendix I - Part A of the Section 42A Report, 17 August 2016, at page 3-3

⁴ Opuha Submission on PC5, dated 11 March 2016, at page 10

⁵ Section 42A Report, page 110, at 7.251; Revised Appendix I - Part A of the Section 42A Report, 17 August 2016, at page 3-3

⁶ Opuha Submission on PC5, dated 11 March 2016, at page 10

⁷ Section 42A Report, page 173, at 8.259; Revised Appendix I - Part A of the Section 42A Report, 17 August 2016, at page 5-5

⁸ Opuha Submission on PC5, dated 11 March 2016, at pages 7 and 8

⁹ Revised Appendix I - Part A of the Section 42A Report, 17 August 2016

objective – namely, that a farm operating at Good Management Practice will be able to "match" the Portal-derived loss rate.

7 In evidence, Opuha focussed on the following aspects of its submission:

7.1 The qualifications and experience necessary for Accredited Farm Consultant status;

7.2 Lawful exceedances available to farming activities should also be available to irrigation schemes; and

7.3 The definition of winter grazing (Opuha's continued support for this submission point is addressed at paragraph 6.1 above).

8 In rebuttal evidence, Opuha focussed on the joint evidence for North Canterbury and Central South Island Fish and Game Council (**Fish and Game**)¹⁰, concerning:

8.1 Permitted thresholds for irrigation in the Orange Zone; and

8.2 Permitted thresholds for winter grazing in both Red and Orange Zones.

9 These submissions focus on those aspects of Opuha's requested relief and evidence at paragraphs 7.1 and 7.2, and 8.1 and 8.2 above.

Principal Relief being Pursued

10 Opuha's primary concern remains achieving an appropriate framework for its shareholders in the Red and Orange zones.

11 Opuha therefore requests the following relief:

11.1 With reference to the definition of *Accredited Farm Consultant (AFC)*:

(a) Retain Rules 5.44B, 5.54B and 5.57C, provided the rules continue to provide controlled status where FEPs

¹⁰ Evidence of Scott Pearson and Angela Christensen for North Canterbury and Central South Island Fish and Game Councils, dated 21 July 2016

have only been reviewed by (but not prepared by) an AFC; and, ideally

- (b) Amend (b) of the definition so the CE of ECan can approve those considered to be suitably experienced, as well as qualified.

11.2 Amend Policy 4.41C so an irrigation scheme may be granted consent to discharge N above the Baseline GMP Loss Rate if the nitrogen baseline was lawfully exceeded prior to 13 February 2016;

11.3 Retain the recommended permitted activity threshold for irrigation in the Orange Zone, without restrictions on increases; and

11.4 Retain the recommended winter grazing permitted activity thresholds for both Red and Orange Zones.

Accredited Farm Consultants

12 Opuha has proactively sought to develop FEPs with its shareholders. To date, Opuha has 100 FEPs from its 240 shareholders. The FEPs are focussed on Opuha's larger shareholders, being those farms irrigating more than 50ha¹¹.

13 Opuha has undertaken development of its shareholders' FEPs in accordance with the LWRP. In her evidence Ms Crossman explains why Opuha is confident in the calibre and robustness of the FEPs developed so far:

13.1 They use Opuha's ECan-approved template; and

13.2 They have been developed by staff and/or consultants who are qualified and experienced – including through having local knowledge¹².

14 Despite this Ms Crossman notes that only one of those persons might meet the AFC definition as recommended by the Officers – depending

¹¹ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraph 19

¹² Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraphs 20 to 25

on whether the CE approves that person's qualification (being a Bachelor of Commerce in Agriculture majoring in Farm Management) under (b) of the definition¹³.

- 15 The recommended controlled activity rules in Red, Orange and Green and Light Blue Zones (Rules 5.44B(3), 5.54B(3) and 5.57C(3) respectively) require a FEP to have been prepared or reviewed by an AFC. In its original submission, Opuha sought amendments to Condition 3 in each of those rules to either¹⁴:
 - 15.1 Remove it as a Condition and insert it as a Matter over which the Regional Council reserves control; or
 - 15.2 Add the words "or suitably experienced person" after "Accredited Farm Consultant".
- 16 On further consideration Opuha has accepted, despite the extra costs involved, both the scheme and its shareholders would benefit from having the completed FEPs reviewed and the certainty it provides¹⁵.
- 17 Opuha can therefore accept the Rules as recommended, provided the option for FEPs to be reviewed (but not prepared) by an AFC is retained¹⁶. This is currently provided for by the words *...has been prepared or reviewed by...* in Condition 3 of each of the controlled activity rules and Policy 4.41A(c).
- 18 Opuha remains concerned, however, that the definition of AFC unduly restricts the pool of people who qualify as an AFC¹⁷. To this end, Opuha's preference would be to obtain some sort of amendment so that a FEP can be prepared or reviewed by someone with suitable experience, not just qualifications.
- 19 This was the intent of Opuha 's original request to amend each of the controlled activity conditions.

¹³ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraph 20

¹⁴ Submission by OPUHA, dated 11 March 2016, pages 5 to 7

¹⁵ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraph 27

¹⁶ Rules 5.44B and 5.54B

¹⁷ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraph 29

Scope

- 20 It is submitted there is scope for the Panel to grant Opuha's request through an amendment to the definition of AFC as follows (Officer's recommendations shown in red, Opuha's requested amendments shown in blue):

Means a person ~~that~~ who holds a Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University; and who

- a. Has been certified by the New Zealand Institute for Primary Industry Management as meeting the criteria for a 'Certified Dairy farm System Consultant'; or*
 - b. Holds any other qualification or experience that has been approved by the Chief Executive of Environment Canterbury, as being an equivalent standard with respect to the knowledge and competencies required.*
- 21 It is submitted such amendment would have the same effect as Opuha's original submission on Policy 4.41A(c) and the three controlled activity rules¹⁸ because the requirement for an AFC does not appear anywhere else in the region-wide rules. It does, however, appear in the Waitaki sub-regional Rules¹⁹. If this is seen as an impediment to changing the definition, Opuha would be content with its original requested change to the relevant rules.

Lawful Exceedances

- 22 In its original submission, Opuha requested an amendment to Policy 4.41C so an irrigation scheme may obtain a permit to discharge beyond the Baseline GMP Loss Rate for land within its scheme, if the nitrogen baseline had been lawfully exceeded prior to February 2016²⁰.

¹⁸ Lake Zones do not have a controlled activity pathway

¹⁹ Rules 15B.5.15, 15B.5.19, 15B.5.25, 15B.5.34

²⁰ Submission by Opuha, dated 11 March 2016, at pages 2 and 3

- 23 In evidence Ms Crossman discusses why the lawful exceedances submission point is significant to Opuha and its shareholders²¹. In summary,
- 23.1 Approximately 80% of Opuha's shareholders farm in the Orange Zone²²;
- 23.2 The LWRP rules previously allowed some intensification beyond baselines in the Orange zone²³; and
- 23.3 Ms Crossman gives examples to illustrate why Opuha expects some shareholders will have lawfully exceeded their baselines before now²⁴.
- 24 Under PC5, consents granted to schemes shall be limited to the aggregate Baseline GMP Loss Rate²⁵. In contrast, the Regional Council is able to consent a higher loss rate for individual farming activities where the nitrogen baseline was lawfully exceeded prior to February 2016²⁶.
- 25 Opuha submits the different approach to individual farming activities, as compared with schemes or enterprises, is inequitable.
- 26 For Opuha it begs the question: why would shareholders want their scheme to obtain a consent for N discharges when they might in fact end up with less than they would otherwise? Opuha submits the different approaches could act as a disincentive to scheme consents. It is submitted this is contrary to LWRP Policy 4.36, which encourages schemes to facilitate the consenting of their constituent farms²⁷.
- 27 Under Opuha's proposed amendments, schemes, enterprises and individuals would be equally eligible for consented discharges exceeding Baseline GMP Loss Rates. It is submitted there would be no adverse effect on environmental outcomes as a result because

²¹ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraphs 31 to 33 and 42 to 43

²² Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraph 12

²³ Rules 5.54 and 5.55 LWRP - Until 1 January 2016, Orange Zone farming activities could, as a permitted activity, increase their nitrogen loss above their nitrogen baseline by up to 5 kg per hectare per annum, and, from 1 January 2016, could, as a restricted discretionary activity, increase their nitrogen loss above their nitrogen baseline by up to 5 kg per hectare per annum.

²⁴ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraphs 40 to 41

²⁵ Policy 4.41C(b)(i)

²⁶ Policy 4.38A

²⁷ Policy 4.36(c) LWRP

farmers could pursue individual consents rather than accept lesser loss rates.

Proposed wording of Policy 4.41C

- 28 As outlined in paragraph 25 above, Opuha submitted on Policy 4.41C in its original submission. This submission point was not discussed in the s42A Report, though similar submissions were²⁸. The Officer's concluded provision for previously consented N loss in the policy would *weaken the policy position such that the provisions will no longer meet the Council's obligations set out in Objective A2 of the NPSFM*²⁹. Opuha submits that position is inconsistent with the provision for lawful exceedances to individual farming activities throughout PC5.
- 29 Opuha made equivalent requests in respect of Rules 5.46A, 5.56AA and 5.58B for farming enterprises³⁰ and the s42A Report did discuss these requests. The s42A Report acknowledged the requested changes "had merit"³¹, however considered the proposed wording did not adequately limit exceedances to those which were lawful³².
- 30 In an effort to satisfy the concerns expressed, Opuha has refined its relief. The changes sought now limit total consentable N loss to the lesser of the GMP Loss Rate or the N loss calculation that occurred in the baseline period prior to 13 February 2016 (in the same way Policy 4.38A(b) does).
- 31 Opuha's proposed wording to that effect was produced in Ms Crossman's evidence³³ and is reproduced in **Appendix 1** of these submissions for ease of reference.
- 32 This leaves the issue of Rules. Opuha originally submitted on the farming enterprise rules, principally because it could see no planning rationale for a difference in approach to individual farms, farming enterprises and schemes. As presently proposed, a farming

²⁸ Section 42A Report, page 107, at 7.227-7.232

²⁹ Section 42A Report, page 109, at 7.243

³⁰ Submission of Opuha, dated 11 March 2016, at pages 9 and 10

³¹ Section 42A Report, page 121, at 7.291

³² Section 42A Report, page 121, at 7.291

³³ Evidence of Julia Crossman for Opuha, dated 22 July 2016, at paragraph 45

enterprise that proposes a higher N loss rate than the Baseline GMP Rate is prohibited in the red zone³⁴ and non-complying in the orange, green and light blue zones³⁵.

- 33 On the other hand, a scheme is governed by Rule 5.62 and is discretionary regardless of whether the load exceeds the Baseline GMP load or not. However, Policy 4.41C is of particular relevance to applications made under Rule 5.62.

Irrigation Increases in the Orange Zone

- 34 It is understood Fish and Game seeks a 10ha restriction on increasing irrigation in the Orange Zone, up to the proposed 50ha. This would make the Orange Zone rule equivalent to the notified Red Zone rule that restricts increases to irrigated area.
- 35 Opuha opposed the Fish and Game request on Condition 2 of Rule 5.54A in its further submission³⁶ and in the rebuttal evidence of Ms Crossman³⁷.
- 36 ECan undertook a number of modelling scenarios to explore various options for altering the irrigation threshold and/or the increases available in Red and Orange zones³⁸.
- 37 Fish and Game's requested 10ha restriction on permitted increases up to 50ha was not modelled³⁹. Fish and Game's evidence states *the difference...would be significant*.⁴⁰ However, this is unsupported by any technical analysis. Ms Crossman's evidence disputes this proposition with particular reference to the circumstances of the Opuha Scheme⁴¹.
- 38 Opuha therefore remains concerned the restrictions sought by Fish and Game would unnecessarily restrict Opuha's shareholders from

³⁴ Rule 5.48A

³⁵ Rules 5.56AB and 5.58B

³⁶ Further Submission of Opuha (13 May 2015) at paragraphs 9 and 15

³⁷ Rebuttal Evidence of Julia Crossman for Opuha, dated 5 August 2016, at paragraphs 17 to 24

³⁸ Section 42A Report, Appendix C – North, H., Lilburne, L., Robson, M. – Assessing the potential implications of proposed Plan Change 5 rules for Nitrogen Loss.

³⁹ Section 42A Report, Appendix C, page 36; Evidence of Scott Pearson and Angela Christensen for Fish and Game, dated 22 July 2016, at paragraph 53

⁴⁰ Evidence of Scott Pearson and Angela Christensen for Fish and Game, dated 22 July 2016, at paragraph 51

⁴¹ Rebuttal Evidence of Julia Crossman for Opuha, dated 5 August 2016, at paragraphs 17 to 24

increasing their irrigated area. Fish and Game's rebuttal evidence does not address this effects-based opposition – it simply disputes whether or not the 10Ha cap would dis-incentivise efficiency improvements⁴².

Winter Grazing Thresholds and Increases in the Red and Orange Zones

39 It is understood Fish and Game seeks to restrict winter grazing in Red and Orange Zones to:

39.1 The lesser of either 10% of the property or 20ha (Red Zone) / 50ha (Orange Zone); and

39.2 No more than 10ha above what was winter grazed at February 2016.

40 At present PC5 restricts permitted winter grazing to 20ha.

41 Modelling of various scenarios altering the winter grazing threshold and/or increases available in Red and Orange zones was undertaken in preparation of the s42A Report⁴³. The authors conceded the modelling only accounted for the biophysical feasibility of intensification (whether winter grazing or irrigation) on those properties and did not consider *whether such intensification is likely from a lifestyle, economic or motivation point of view*⁴⁴.

42 The Officer's commented that the scenarios modelling winter grazing of the lesser of 10% of farm area or 50ha/100ha resulted in similar N loss to the notified 20ha threshold⁴⁵. In their view *the 'gain' comes from effectively disallowing wintering on small properties, while being more enabling on larger properties*⁴⁶. However the Officers were hesitant to make a recommendation without considering the evidence from submitters on the modelling undertaken and the potential equity shift⁴⁷.

⁴² Rebuttal Evidence of Scott Pearson and Angela Christensen for Fish and Game, dated 5 August 2016, at paragraphs 18 and 19

⁴³ Section 42 Report, Appendix C – North, H., Lilburne, L., Robson, M. – Assessing the potential implications of proposed Plan Change 5 rules for Nitrogen Loss.

⁴⁴ Section 42A Report, Appendix C, at page 39.

⁴⁵ Section 42A Report, page 71, at 7.55 and 7.56

⁴⁶ Section 42A Report, page 71, at 7.56

⁴⁷ Section 42A Report, page 71, at 7.58

- 43 Ms Crossman anticipates the introduction of a 10% threshold will result in *unders and overs, although more restriction than enablement overall*⁴⁸. As a result Opuha prefers the 20 ha limit.
- 44 Opuha 's principal concern is with Fish and Game's request for a 10ha 'cap' above what was winter grazed at February 2016. Ms Crossman deposes this does not allow for⁴⁹:
- 44.1 The sporadic nature of winter grazing, particularly in light of the recent fluctuations in dairy grazing due to the low dairy pay out; and
- 44.2 The risk management advantages winter grazing can bring to a farm that experiences a downturn in its primary farm use.
- 45 Opuha therefore anticipates there will be shareholders who would be negatively impacted by Fish and Game's 'cap', because they have either not, in recent years, winter grazed as much area as they typically would, or have not previously winter grazed at all. Opuha therefore seeks to retain the Red and Orange Zone permitted activity thresholds for winter grazing as recommended by the Officers.

Conclusion

- 46 OPUHA seeks to avoid unnecessary and expensive duplication regarding quality-assurance of its shareholders' FEPs. It supports the words *...has been prepared or reviewed by...* in the proposed provisions⁵⁰. Ideally, Opuha would like to see the pool of available AFC's extended by providing potential for *suitably experienced* persons to also be approved by the CE of ECan.
- 47 Not allowing N loss rates that include previously **lawful** exceedances would unduly disadvantage those operating under a scheme consent. Opuha seeks changes so that its shareholders might obtain the same N loss rate through the scheme as individually.

⁴⁸ Rebuttal Evidence of Julia Crossman for Opuha, dated 5 August 2016, at paragraph 25

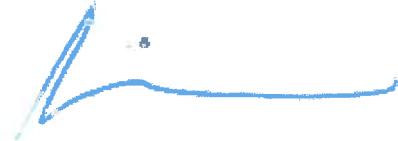
⁴⁹ Rebuttal Evidence of Julia Crossman for Opuha, dated 5 August 2016, at paragraphs 27 to 29

⁵⁰ Policy 4.41A(c); Rules 5.44B, 5.54B and 5.57C

- 48 Opuha opposes the amendments requested by Fish & Game regarding the permitted activity thresholds and increases for winter grazing and irrigation.

Evidence called

- 49 In support of its case Opuha calls evidence from Julia Crossman.

A handwritten signature in blue ink, appearing to be 'Alanya Limmer/Johanna King', written over a horizontal line.

Alanya Limmer/Johanna King
Counsel for Opuha Water Limited

Appendix 1 – Proposed Amendments to Policy 4.41C

Officer's recommendations shown in **red**, Opuha proposed amendments shown in **blue**.

4.41C Maintain water quality in Orange, Green and Light Blue Nutrient Allocation Zones, and improve water quality in Red Nutrient Allocation Zones and Lake Zones by requiring:

(a) any application for resource consent for the discharge of nutrients submitted by an irrigation scheme or principal water supplier to describe the methods that will be used to implement the **G**ood **M**anagement **P**eractices on any land that will be supplied with water from the scheme or principal water supplier; and

(b) discharge permits granted to irrigation schemes or principal water suppliers to be subject to conditions that restrict the total nitrogen loss to a limit not exceeding:

(i) the Baseline GMP Loss Rate for any land within the Red, Lake or Orange Nutrient Allocation Zones unless the nitrogen baseline has been lawfully exceeded prior to 13 February 2016 in which case the nitrogen loss limit may exceed the Baseline GMP Loss Rate provided:

1. The application contains evidence the exceedance(s) was lawful; and

2. The nitrogen loss limit remains below the lesser of the Good Management Practice Loss Rate or the nitrogen loss calculation that occurred in the four years prior to 13 February 2016; and

(ii) a total of 5kg/ha/yr above the Baseline GMP loss rate for any land within the Green or Light Blue Allocation Zones.

Comment [A1]: We note the revised provisions (post-17 August 2016) label it as sub-paragraph (a) instead of (b). We have corrected this typographical error Opuha's preferred version.

Comment [A2]: These words are essentially the same as those in Policy 4.38A, which is the equivalent policy for individual consent applications.

Comment [A3]: We note Opuha did seek the same relief for the Green or Light Blue zones as its scheme is not affected the framework for these zones.

