
in the matter of: the Resource Management Act 1991

and: submissions and further submissions in relation to proposed **Plan Change 5** to the proposed Canterbury Land and Water Regional Plan

and: **Barrhill Chertsey Irrigation Limited**
Submitter

Summary of submissions on behalf of Barrhill Chertsey Irrigation Limited

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SUMMARY OF SUBMISSIONS ON BEHALF OF BARRHILL CHERTSEY IRRIGATION LIMITED

INTRODUCTION

- 1 These submissions are provided on behalf of Barrhill Chertsey Irrigation Limited (*Barrhill*) in relation to proposed Plan Change 5 (*PC 5*) to the Canterbury Land & Water Regional Plan (*LWRP*).
- 2 Barrhill generally supports the intent of PC 5 (and in particular, the extent to which it attempts to provide a nutrient management regime that is consistent with the National Policy Statement for Freshwater Management 2014 (*NPS*)).
- 3 At the outset it is also noted that as an irrigation scheme (noting irrigation schemes appear to retain a consenting pathway that is not directly reliant on, for example, the Farm Portal), the matters that will affect it are *in theory* more limited than those that will apply to individuals – however Barrhill remains concerned that is not necessarily the case and that aspects of PC 5 are unworkable and will affect it adversely in practice.
- 4 These submissions focus on *some of* the key issues relevant to the Barrhill scheme that arise out of PC 5. These issues are:
 - 4.1 the apparent intention (intended or otherwise) to require irrigation scheme Farm Environment Plans (*FEPs*) to 'go through' the Farm Portal;
 - 4.2 the need for an 'alternative consenting pathway';
 - 4.3 the need for increased clarity as to how PC 5's rules will apply to resource consents that are unimplemented or not yet fully implemented;
 - 4.4 the removal of the permitted baseline by Policy 4.38AB;
 - 4.5 the need to address the issues that arise out of Farm Portal updates; and
 - 4.6 PC 5's impact on permitted takes under section 14 of the Resource Management Act 1991 (*the RMA or the Act*).
- 5 In addition, these submissions briefly address a minor point on the section 42A officers' approach to the submitters' scope for submissions on definitions.
- 6 Notwithstanding this focus, Barrhill fully maintains its original and further submissions.

FARM ENVIRONMENT PLANS

- 7 The Barrhill Chertsey Irrigation Scheme (*Barrhill Scheme*) is fully consented, with core scheme consents relating *inter alia* to the take and use of water that generally expire in ~2035. The only material exception to this is its land use and discharge consent¹ that expires on 9 September 2018 (the intent being that the renewal of that consent will take place under the relevant sub regional chapter(s) and now PC 5).
- 8 In 2018, Barrhill contemplates that although the landuse/discharge consent will be renewed through Rules 5.60 to 5.62 and/or any rules that apply through any relevant sub-regional chapter(s), the conditions that will apply to that resource consent will include, for example, a requirement for FEPs informed by, in particular, Schedule 7 to PC 5.
- 9 In this regard, Barrhill supports the general theme of the notified version of the Schedule 7 amendments: i.e. that FEPs are "*the primary means for managing the loss of nutrients and other contaminants, and assisting with implementing good management practice*".² The issue for Barrhill is the extent to which it will have to comply with all aspects of Schedule 7 – including the possible use of the Farm Portal.
- 1) Irrigation Scheme Farm Environment Plans**
- 10 Schedule 7 requires that FEPs must contain (for example) "*a report from the Farm Portal which shows the Baseline GMP Loss Rate and Good Management Practice Loss Rate for any property or farming enterprise...*".³ (emphasis added)
- 11 Barrhill considers that the effect of the above for properties within irrigation schemes is not clear – or to put that another way, it would be open for a Council Officer processing a resource consent for an irrigation scheme to still 'insist' that the conditions of the resource consent must relate to concepts such as the 'Good Management Practice Loss Rate' (and in doing so requiring irrigation schemes to put all the properties within the scheme through the Farm Portal).
- 12 Barrhill accordingly sought that clause 4B(b) of Schedule 7 be amended (along with other changes) to clarify that irrigation scheme FEP's do not need to 'go through' the Farm Portal.
- 13 This is essentially for two reasons:

¹ CRC162882.

² See section 42A report at 8.1.

³ By the effect of the application sentence that opens Part B and clause 4B(b).

- 13.1 first, irrigation scheme resource consents (or sub-regional plan provisions) collectively allocate nutrient load to whole irrigation schemes. They require reporting on that collective allocation, rather than on an individual property basis. Such consents also generally (and certainly in Barrhill's case) provide controls that prevent the collective allocation 'accumulating' in small areas in a manner that would be likely to cause significant adverse effects. Beyond that, schemes can typically put allocation 'where they want to' (i.e. allowing some 'unders and overs' in the case of compliance). In that context, any requirement that FEPs for properties within a scheme need to go through the Farm Portal is a departure away from the collective management of nutrients at the level of Schedule 7 and seemingly an unintended result of Schedule 7's current drafting;
- 13.2 secondly, as much of **Ms Harris's** evidence illustrates the reliability of Farm Portal outputs are subject to significant uncertainty⁴. If a *single* Farm Portal report is subject to the uncertainty **Ms Harris** describes, it can only follow that a *large set* of budgets will result in a much larger cumulative uncertainty. In that context, determining compliance with irrigation scheme resource consents by adding up a set of Farm Portal-generated budgets means that whole schemes might be put at risk of 'non-compliance'.
- 14 The Officers appear to acknowledge the issues outlined above, but make the point that Barrhill's requested relief is 'superfluous' because of the effect of proposed Rule 5.41A (which makes irrigation under an irrigation scheme consent permitted, and thus outside the strict scope of Schedule 7):⁵
- 8.137 Four submitters, DHL, Hunter Downs, CPW and BCI request amendments to Schedule 7 to provide clarity that farming activities or farming enterprises managed by an irrigation scheme or principal water supplier are not subject to the requirements of 4B and produce nutrient budgets or reports from the Farm Portal. The submitters request instead that a new clause 4C is inserted requiring farming activities managed by schemes to say how they will meet the conditions of the scheme's resource consent. In my opinion, the addition of a new clause is superfluous because Rule 5.41A (a) provides that where the nitrogen loss from the farming activity is being managed under a resource consent held by an irrigation scheme or principal water supplier that contains nitrogen limits, it is a permitted activity and consequently not subject to Schedule 7. Though clearly the property would need to comply with the scheme's FEP and nutrient limits and nutrient budget reporting requirements, which may be similar to Schedule 7 and is likely to utilise the Farm Portal. However, that is the scheme's responsibility.

⁴ To the point that using it as the sole gateway of obtaining resource consents is not tenable, or at least not yet tenable – see submissions on alternative pathway below.

⁵ See section 42A report at paragraph 8.137.

- 15 In Barrhill's submission that narrow view fails to recognise both that many existing irrigation scheme consents will need replacement in short order (as Barrhill's will), and that irrigation scheme consents will very likely be subject to FEP requirements 'led by' the Schedule 7 requirements upon renewal or sooner.

2) Base land use

A narrative description

- 16 Barrhill submits that Schedule 7 should contain requirements to include a narrative description of a farm's 'base land use', being:
- 16.1 the land use(s) on the farm during the 2009-2013 baseline period; or
- 16.2 the lawful use(s) of the relevant land (either through permitted activity rules or resource consents).
- 17 This narrative description would have four functions , being to provide:
- 17.1 a transparent and consistent place to store the information necessary to prepare a baseline nutrient budget;
- 17.2 a way for Schedule 7 to properly deal with the reality that lawful land use intensification may have occurred during or after the baseline period as a result of resource consents granted by ECan;
- 17.3 a transparent set of narrative criteria upon which to consider resource consent applications through an alternative consenting pathway (in this regard it is not as simple as suggesting, as the Officers do, that "*Should BCI require base land use information for its internal management purposes, the Scheme could require this as part of the contractual arrangements with its members*"⁶ – it can also serve a more direct purpose with the Council itself; and
- 17.4 a more practical ability to compare current land use with the land use during the baseline period (on the basis that a compliance officer or anyone involved with preparation of an FEP can quickly see what, if anything, needs to be updated against the original baseline input files).
- 18 As is clear from the above, a base land use description is not intended to be (and in the form sought could not be) a means to avoid obligations to calculate and comply with nutrient limits.

⁶ See paragraph 8.132 of the s42A Report.

- 19 Barrhill submits that including a base land use in Schedule 7 would also enhance the operation of Policies 4.41B(e) and (f), which in its view each include a clear element of prioritising nitrogen budgeting efforts towards poorly performing farms or farms where land use change has occurred.
- 20 From a practical perspective the sale or lease of a property could also occur much more smoothly on the basis that a purchaser/lessor (who may not use the same nutrient advisor) would have easy access to a narrative description of the baseline landuse. This may mean that the new advisor does not need to do a full re-assessment of the OVERSEER® losses.
- 21 Barrhill acknowledges that a base land use requirement will not fully address the information gap in preparing baseline budgets highlighted by **Ms Harris**. But in Barrhill's submission, the resource-prioritisation and consistency advantages offered by a base land use description make it much more than the 'nice to have' that the Officers dismissively described it as in a one-paragraph response.⁷
- 3) Nutrient Management Area Targets**
- 22 On the basis of **Ms Harris'** evidence, it appears that only two Farm Portal proxies (being N fertiliser and Irrigation) cause Baseline GMP outputs to shift significantly.⁸ In Barrhill's submission the Nutrient Management and Irrigation Management Area Targets are therefore the most important of the targets in Schedule 7 for improving catchment nutrient loads.
- 23 Target 1 of the Nutrient Management Area provides that "*Nitrogen Losses from farming activities are at or below GMP Loss Rates for the property*" and, on the basis of the **above** is likely to be at the heart of improving freshwater attribute states.
- 24 Barrhill submits that:
- 24.1 by reason of the definitions involved, Target 1 should only be applicable to individual farms and not farms preparing FEPs under the umbrella of an irrigation scheme; and
- 24.2 Target 1 (as with the other of the Nutrient Management Targets) does not provide a place to record whether the subject farm lawfully intensified during or after the baseline period.
- 25 Accordingly (and whether or not in tandem with base land use requirements), Barrhill submits that Target 1 should be amended to

⁷ As above.

⁸ See Eva Harris' evidence in chief at Figure 5 and the commentary on it.

additionally refer to ensuring nitrogen losses are at or below Good Management Practice Loss Rates (as currently provided for) and, in addition, any applicable consented nitrogen loss rates – also extending to any irrigation scheme discharge allowance (if direct recognition of irrigation schemes is, contrary to Barrhill’s primary submission, included in Schedule 7).⁹

4) Resourcing

- 26 In terms of final brief comment on the FEP’s, **Ms Eva Harris’s** evidence also touches on the resourcing required to undertake OVERSEER® modelling on the scale envisaged by PC 5.¹⁰
- 27 Barrhill submits that this Panel ought to consider the resourcing implications of any FEP (and wider PC 5) requirements. In Barrhill’s submission, PC 5 contains a step change in the modelling and monitoring required, and the personnel resources to ‘operate’ PC 5 over Canterbury’s estimated 5000 farms¹¹ simply does not, at present, exist.
- 28 This issue is only compounded by the effect of model version changes (as also discussed in the evidence of **Ms Harris**)¹² and it is likely to be some time before sufficient trained and experienced people exist to facilitate the implementation and ongoing operation PC 5.

ALTERNATIVE PATHWAY

- 29 Barrhill is very supportive of provision being made for an alternative consenting pathway.
- 30 Stepping right back, the development and use of the Farm Portal is being put forward in circumstances where its authors are putting complete faith in its accuracy, ability and effectiveness (as appears to be the tenor of the discussion in both the section 32 analysis and reporting officers’ discussion).¹³
- 31 The widespread use of the Farm Portal is however unproven and its first ‘real life’ test will be ~5,000 farms in the Canterbury Region. In addition, the inner workings of the model are not transparent and are inherently complex. The people capable of inputting and properly understanding the model are also currently limited. The need for ‘work-arounds’ and the further limitations within

⁹ Ms Harris’s evidence on this point at paragraph 215 is a correction of point 26 of Barrhill’s original submission.

¹⁰ See Ms Harris’s evidence in chief at paragraphs 129 – 136.

¹¹ Ms Harris’s evidence in chief at paragraphs 77.

¹² Ms Harris’s evidence in chief at paragraphs 88 – 93.

¹³ See, for example, paragraphs 6.87 – 6.94 of the section 42A Report and 4-9 and 4-10 of the section 32 Report.

OVERSEER® model itself add further uncertainty to the general proposition put forward by the Officers that it *'should work in all cases'*.

- 32 Barrhill acknowledges that the Farm Portal (in so far as it provides a quantitative method) is *one* means of enabling ECan to "carry out its *catchment accounting requirements*"¹⁴ pursuant to (for example) section 35 of the RMA and Objective CC1 of the NPS – but it is not the only way.
- 33 It also needs to be remembered that (again in light of the NPS framework) the Farm Portal does not measure freshwater attribute states, but merely system inputs. The NPS does not preclude or even discourage the use of other - including more narrative – methods. It is submitted, for example, that there is no NPS reason that a nutrient management regime cannot still incorporate even narrative directions for on farm good management practice provided that it is combined with a monitoring/ measurement regime directed to actual attribute states.
- 34 None of this is to challenge the Farm Portal as the primary tool in PC 5 and 'replace' it with some alternative – it is simply to ensure that the final PC 5 does not bind everyone to the Farm Portal in all cases. Barrhill acknowledges that significant investment and collaborative work has already been made – and given that, Barrhill wishes to be very clear that it does not seek to 'question' ECan's commitment to the use these tools.¹⁵ Both should undeniably form an integral part of PC 5.
- 35 However, the evidence shows that neither OVERSEER® nor the Farm Portal can accurately model all farm systems. Barrhill's own experience (through its use of the Farm Portal and audits) for example has found that although the Good Management Practice Loss Rates ought to be 'inseparable from the GMPs', it appears it they are not – contrary to the general position put in the Officers' report.¹⁶ In fact, it appears that in some cases modelling inputs can be 'guesses' or 'best estimates' – and there is potential for significant separation between the actual losses associated with a farm system, and its modelled loss rates.
- 36 In Barrhill's submission it is clear that material and potentially significant issues with the models remain unresolved. There is little point, in Barrhill's respectful submission, of pretending otherwise.

¹⁴ To use the language of the Section 42A officer at 6.87.

¹⁵ See the evidence of Ms Harris at 60.

¹⁶ See the evidence of Ms Harris at 53 and the section 42A report at paragraph 6.21.

- 37 Again, it does *not* follow that the models should be 'replaced'. The models are obviously appropriate where they accurately model farm systems. But, conversely - in situations where the models cannot model a farm system accurately or at all, Barrhill submits that it would be completely inappropriate not to provide for farming activities to be consented.
- 38 For the reasons above, Barrhill supports the relief sought in the evidence of **Mr Chris Hansen** on behalf of Ravensdown,¹⁷ and **Mr Gerard Willis** of Fonterra Co-Operative Limited.¹⁸

APPLICATION OF PC 5 TO CONSENTS THAT ARE NOT YET FULLY IMPLEMENTED

- 39 Barrhill submits that the extent to which PC 5 will affect resource consents that are not yet implemented or fully implemented is not clear. This issue affects a number of provisions.
- 40 The issue begins with Policy 4.41C(b)(i). This policy stipulates that discharge permits granted to irrigation schemes should be subject to conditions restricting the total nitrogen loss to a limit not exceeding the Baseline GMP Loss Rate for any land within the Red, Lake or Orange Nutrient Allocation Zones.
- 41 For schemes that are consented, but were not fully implemented during the time period for calculation of the nitrogen baseline, this will lead to calculations of Baseline GMP Loss Rate that are not reflective of the intensified land use that was already consented prior to PC 5 coming into effect.¹⁹ This presents a direct tension between existing resource consents and PC 5's policies.
- 42 In another clear example of this issue, Policies 4.37(a) and 4.38(a) are expressed as being subject to Policy 4.38A. The effect of this qualification is that farms (and potentially irrigation schemes if the policies are read as applying to irrigation schemes) will only be able to exceed their nitrogen baseline if it was "*lawfully exceeded prior to 13 February 2016*".
- 43 In cases of existing irrigation like the Barrhill Scheme, it will be possible to show that the nitrogen baseline was lawfully exceeded prior to 13 February 2016. However, others will not have lawfully exceeded the nitrogen baseline by 13 February 2016 (because they had or have not yet installed and began operating the irrigation

¹⁷ Evidence of Chris Hansen on behalf of Ravensdown, dated 22 July 2016, at paragraphs 42, 46, 47, 50, 51 and 52.

¹⁸ Evidence of Gerard Willis on behalf of Fonterra, dated 22 July 2016, at paragraphs 9.7 - 9.9.

¹⁹ Hence the request for definitional links to the highest annual or irrigated land use in the baseline period: see point 3 of Barrhill's original submissions.

infrastructure authorised by their consents). Similarly, future and further expansion of the likes of even the Barrhill Scheme (or individuals who hold unimplemented or partially implemented resource consents) appears to be contrary to the wording of Policy 4.38A.

- 44 For those in the Red and Orange Lake Nutrient Allocation Zones (NAZs), this would result in the situation of being entitled to lawfully operate an intensified operation under their current consents, then upon expiry and renewal or review (pursuant to Policy 4.37(a) and 4.38(a)) being entitled to continue operating *only if* (for example) the N losses of their operation will be below a Baseline GMP Loss rate reflecting a *non-intensified* land use (a position potentially implying a significant reduction).
- 45 Similar issues arise in relation to other provisions, including Policies 4.38AA, 4.38C, and 4.38D.
- 46 Against the above, Barrhill acknowledges that plan changes 'are for' implementing higher order RMA policy documents including the Canterbury Regional Policy Statement (RPS) and the NPS, and that in doing so, plan changes may require some people, existing consent holders included, to change some of the things they do.
- 47 But at least two factors point away from a situation where existing but unimplemented resource consents should, in all cases, be 'reversed out' by a plan change:
- 47.1 first, PC 5 must give effect to the NPS and RPS.²⁰ And in Barrhill's submission, it is clear that neither of those documents provide a rationale for not recognising existing resource consents (i.e. because they are not the concrete or unbending prescriptions for maintaining and improving water quality that the Officers' appear to practically ascribe to them); and
- 47.2 second, the legal position is that existing and unimplemented consents form part of the 'environment' against which plan changes should be measured.
- 48 Each is briefly discussed below.

Higher-order RMA documents

- 49 Taking the starting point that the NPS 'particularises' or embodies Part 2 of the RMA,²¹ Barrhill acknowledges that as a starting point

²⁰ Section 67(3) of the RMA.

²¹ *Environmental Defence Society Inc v NZ King Salmon Company Ltd* [2014] NZSC 38. See also the language of Jackson J in *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81.

Objective A1 and Objective A2 (in and of themselves) are directed at maintaining and improving water quality – but it is submitted that the NPS as a whole does not fundamentally displace or depart from more general concepts of sustainable management (including enabling people and communities to provide for their social, cultural and economic well-being).

- 50 Elsewhere, the NPS also contains clear indications that it is not just about the outright protection of water quality and quantity. For example, Policy CA 2, relating to the development of freshwater objectives, requires consideration of:²²
- 50.1 any choices between the values that the formulation of freshwater objectives and associated limits would require;
 - 50.2 any implications for resource users, people and communities arising from the freshwater objectives and associated limits including implications for actions, investments, ongoing management changes and any social, cultural or economic implications; and
 - 50.3 the timeframes required for achieving the freshwater objectives, including the ability of regional councils to set long timeframes for achieving targets.
- 51 Barrhill submits that in the presence of the above provisions, the NPS should not (and cannot) be read as pursuing the maintenance and enhancement of freshwater quality so absolutely or inflexibly that unimplemented consents (i.e. consents that have been subjected to and 'passed' the environmental scrutiny of the consenting process) should *not* be accommodated.
- 52 Put simply, it is Barrhill's submission that on a proper reading of the NPS, recognition is both available and appropriate.
- 53 Although not covered in any detail in these submissions, the recognition of existing but unimplemented (or partially implemented) resource consents is also consistent with the approach of the RPS.
- 54 While Barrhill similarly acknowledges again that the policy direction in Chapter 7 of the RPS towards maintaining or improving water quality is *strong*, the direction is not absolute or inflexible on the basis that:

²² See Policies CA 2(f)(iv), (v) and (vi) respectively.

- 54.1 it must give effect to the NPS, which itself is not an inflexible prescription;²³ and
- 54.2 there are numerous references to (for example) the need to ensure the management of water is both "*economically feasible and environmentally sustainable*" (Issue 7.1.4) and other provisions that also recognise the economic and social benefits associated with water (for example and Objective 7.2.1, Objective 7.2.4). Of more direct relevance, Policy 7.3.6 differentiates between "*current or reasonably foreseeable values*" associated with water and refers to "*allocation*" as opposed to actual use *per se*.
- 55 Again, in the presence of these policies, Barrhill submits that the RPS does not prohibit or discourage the recognition of unimplemented consents. Indeed, it is submitted it (particularly in Policy 7.3.6) provides that unimplemented consents *should* be recognised.
- Existing environment and plan changes**
- 56 It is also submitted that unimplemented consents form part of the 'environment' against which plan changes should be measured.
- 57 The High Court decision in *Shotover Park v Queenstown Lakes District Council*²⁴ and more recently the Environment Court decision in *Milford Centre Limited v Auckland Council*²⁵ extend the principles in *Queenstown Lakes District Council v Hawthorn*²⁶ to plan changes.
- 58 Barrhill submits that decision-makers must undertake a real world analysis as to whether consents will be implemented.²⁷ If those consents will be implemented on a real world analysis, put simply, Barrhill submits that this will mean accepting that associated intensification *will* follow, and underneath that, accepting that all this will happen because ECan held, in recent consent processes, that it could.
- 59 Accordingly, Barrhill submits that it is on very orthodox ground in seeking that the relief in its submission point 10 on Policies 4.37 to 4.38E, and point 19 on Policy 4.41C.

²³ Section 62(3) of the Act.

²⁴ *Shotover Park v Queenstown Lakes District Council* [2013] NZHC 1712

²⁵ *Milford Centre Limited v Auckland Council* [2014] NZEnvC 23

²⁶ *Queenstown Lakes District Council v Hawthorn* [2006] NZRMA 424.

²⁷ *Shotover Park* at [117].

PERMITTED BASELINE

- 60 Barrhill submits that the effects associated with permitted activities are typically in principle appropriate.
- 61 The orthodox (i.e. discretionary) permitted baseline was arrived at after many years of caselaw.²⁸ Parliament regarded that caselaw important enough to enshrine it in statute, resulting directly in section 104(2) of the Act.
- 62 Quite aside from whether Policy 4.38AB is actually *ultra vires* section 104(2), such a strong policy direction is, in Barrhill's submission, likely to result in ECan officers never (or almost never) applying the permitted baseline. An almost impossible legal situation arises in that:
- 62.1 applying the permitted baseline would open those officers to appeal risk (probably from submitters) for failing to apply Policy 4.38AB correctly; but
- 62.2 failing to apply the permitted baseline where a statutory discretion exists, would also be subject to potential challenge.
- 63 The Officers appear to have taken the view that Policy 4.38AB is necessary to manage cumulative effects of farming activities, and that it provides only strong guidance on the discretion²⁹ (so presumably meeting environmental ends while maintaining the carefully developed legal position now enshrined in section 104(2)).
- 64 On the basis of the legal issues above, and questionable benefits over an orthodox (i.e. discretionary) permitted baseline (which can also meet the environmental ends), Barrhill submits that Policy 4.38AB should be deleted.

FARM PORTAL PROXY UPDATES

Plan change process for proxy changes

- 65 It appears that the Farm Portal proxies were and are supposed to represent the good management practices contained in the "Industry-agreed Good Management Practices" (*Industry Agreed GMPs*).³⁰ Off the back of that, the core issue that appears to have been raised through the hearing process is the extent to which the proxies in fact represent the Industry Agreed GMPs.

²⁸ See for example *Rodney DC v Eyres Eco-Park Ltd* [2007] NZRMA 1 (HC) and the case law culminating in *Arrigato Investments Ltd v Auckland RC* [2002] 1 NZLR 323 (CA).

²⁹ Section 42A report at paragraph 10.43 and 10.46.

³⁰ *Industry-agreed Good Management Practices relating to water quality*, 18 September 2015.

- 66 Barrhill notes the Officers' comments that in choosing an N fertiliser proxy for inclusion in PC 5, ECan simply "*needed to decide what proxy should be included in the Farm Portal.*"³¹ Barrhill merely adds that in no way did that decision settle disagreements on what proxies best represent the Industry Agreed GMPs.
- 67 In this context, Barrhill submits that precisely because of both the ongoing and genuine disagreement on the validity of the various proxies and the possible reality that no proxy will ever be 'perfect' for every party, that it is appropriate for the final provisions of PC 5 to contemplate a plan change when future proxies are developed or there are material changes to those existing and relied on in the current version of the Farm Portal.
- 68 A plan change process would ensure that changes are exposed to robust (i.e. section 32) testing, and do not represent one party's view (i.e. typically ECan's view) of what are supposed to be a reflection of an *agreed* set of standards.

Current alternative proxies

- 69 While not wanting to enter on the discussion on the *content* of any alternative proxy, this submission is made in the context of Barrhill's further submission on Schedule 28, and **Ms Harris'** evidence.
- 70 Barrhill submits that **Ms Harris'** evidence makes relatively plain that the current proxies *do not* represent the Industry Agreed GMPs, particularly on arable and non-dairy farm systems. Others' evidence shows this on other farm systems.³² Despite that evidence, the Officers seem to take a relatively dismissive stance on the matter.³³
- 71 The parameters of the discussion are simple. Barrhill understands that there was disagreement on, in particular, the most reflective fertiliser proxy (the alternative fertiliser proxies took concrete form only after the section 32 report was published). However, in these circumstances, leaving the proxies to lie is to potentially prejudice those that may be required to undertake unnecessary or inappropriate changes in fertiliser use. Such an approach would also be to downplay the importance of clause 5(1)(a) of Schedule 1 of the Act – that plan changes should be underpinned by robust testing through section 32 analysis.
- 72 Barrhill submits that the alternative proxies should quite clearly and can lawfully be tested against the current proxies through a section 32AA report.

³¹ See Section 42A report at paragraph 6.109.

³² See in particular Reuben Edkins' evidence on behalf of Rangitata Diversion Race Management Limited.

³³ See paragraphs 6.107 – 6.118 of the section 42A report.

- 73 For completeness (and as much as anything to assist the Council Officers and other parties both in and outside of the immediate hearing process) it is noted that **Ms Harris** advises that by the end of September 2016 she will have a more robust dataset with year-end 2015/2016 nutrient budgets included. This dataset could be made available to assist with further validating the two proxies.

IMPACT ON PERMITTED WATER TAKES UNDER SECTION 14(3)(b) RMA

- 74 As discussed in **Ms Harris's** evidence,³⁴ Barrhill is concerned about the potential for *Management Area: Water Use Management (excluding irrigation water) (the Target)* in Schedule 7 to remove or fetter statutory rights to take stockwater under section 14(3)(b) of the RMA.
- 75 Schedule 7 currently implies that stock water take monitoring and some standard of efficiency will be necessary in order for such a take to be permitted.³⁵
- 76 Such limits or requirements (including 'blanket monitoring') would also be at least in part inconsistent with:
- 76.1 the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (*Regulations*), which only require metering of consented water takes greater than 5 litres per second³⁶ (bearing in mind that PC 5 must be prepared "*in accordance with*" such regulations under section 66(1)(f)); and
- 76.2 various policies in the RPS which specifically recognise the need to provide for stock water supplies.³⁷
- 77 Finally, given that the amount of water taken for stockwater purposes is comparatively very low, the cost of implementing these it is submitted that the monitoring controls would not be justified by environmental outcomes.³⁸ Barrhill agrees with the Officer that using water efficiently is 'good environmental practice'.³⁹

³⁴ See Ms Harris' evidence at paragraph 234.

³⁵ The Target requires water users to demonstrate "that actual use of water is monitored and efficient".

³⁶ Clause 4 of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.

³⁷ See for example Objective 7.2.1 and Policy 7.3.4 of the Canterbury Regional Policy Statement.

³⁸ See evidence of Ms Harris at paragraph 236.

³⁹ Section 42A Report at paragraph 8.189.

- 78 However, Barrhill submits that:
- 78.1 some explicit efficiency limit or monitoring requirement with no other context will potentially be ultra vires section 14(3)(b) for reasons canvassed above; and
- 78.2 on a purposive reading of that subsection, concerns related to efficiency are already accommodated in section 14(3)(b) because an 'unreasonable' take will be in breach, and enforcement action would be available in such a case.
- 79 Therefore, Barrhill seeks that the Target be deleted from Schedule 7, or be clarified to exclude takes authorised by section 14(3)(b).⁴⁰

SCOPE

- 80 The Officers have taken issue with the scope to make submissions on the definition of the 'nitrogen baseline'. In relation to its submission on that definition, and per its original submission,⁴¹ Barrhill simply wishes to record that it does not seek to change what the concept encompasses, but merely to reinforce its points that Policies 4.34 to 4.38E should not apply to irrigation schemes. In Barrhill's view, such a submission is clearly in scope.
- 81 The Officers also state the view at paragraph 3.69 that Barrhill's further submissions on 'base land use' are also out of scope. The issue of base land use was discussed in detail at point 26 of Barrhill's original submissions, and is (explicitly) only *clarified* by point 65 in its further submissions. Given that it is only clarification, little appears to turn on this issue so it is not addressed in detail in these submissions (i.e. even if the further submission is not accepted the matters raised are consequential to the original submission on the same point).

EVIDENCE TO BE CALLED

- 82 In terms of evidence Barrhill is calling:
- 82.1 **Ms Eva Harris**, who provides a comprehensive overview of the technical limitations in using OVERSEER® and the Farm Portal Proxies; and
- 82.2 **Ms Suzanne Duncan**, with her evidence being taken as read.

⁴⁰ See point 26 of Barrhill's original submissions.

⁴¹ See point 4 of Barrhill's original submissions.

Dated 23 August 2016



Ben Williams / Allan Brent
Counsel for **Barrhill Chertsey
Irrigation Limited**