
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: **Central Plains Water Limited**
Submitter

Summary of submissions on behalf of Central Plains Water Limited

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SUMMARY OF SUBMISSIONS ON BEHALF OF CENTRAL PLAINS WATER LIMITED

Introduction

- 1 These submissions are provided on behalf of Central Plains Water Limited (*Central Plains*) in relation to proposed Plan Change 5 (*PC 5*) to the Canterbury Land & Water Regional Plan (*LWRP*).
- 2 The background to the Central Plains Water Enhancement Scheme (the *Scheme*) will be well known to at least some of the Hearing Panel (and 'an updated position' with reference to the consents now held) has been provided in evidence.
- 3 These submissions are accordingly limited – appreciating not only the Hearing Panel's general familiarity with the Scheme but also the fact that in respect of its more general concerns the issues raised have in many cases already been addressed in detail by other submitters. Central Plains is however:
 - 3.1 the only major irrigation scheme (at least outside of the Waitaki catchment) that is both in the development phase and *in theory* 'fully covered' by an existing sub-regional chapter – being what is now referred to as 'Plan Change 1' *Selwyn Te Waihora* (i.e. section 11 to the LWRP (*Section 11*)); and
 - 3.2 given the above it has some issues that are unique to it – and in particular, a large part of the Scheme comprises 'existing irrigated' farmers who have to comply with their existing nitrogen baseline loss rates and *prima facie* the 'individual rules' that relate to non-irrigation schemes farmers in Section 11 (albeit that by virtue of the Central Plains' resource consents held nutrient management for all farmers is now overseen by the Scheme). A number of farmers also have farm enterprises (or equivalent) that overlap or form part of the Scheme.
- 4 Overall, Central Plains is largely content with relying on the evidence it has provided and its original submission. That approach is not in any way to be taken as undermining or reading down its concerns with respect to PC 5 – but it appears that in this instance more assistance can be provided to the Hearing Panel by focusing on a couple of issues (rather than largely duplicating what has at least in part been done – or will be done - by other submitters and is covered in evidence).
- 5 Accordingly, the matters discussed are:
 - 5.1 the actual application of Rule 5.41A and its interface with the PC 5 policies – in light of the fact Central Plains is located in

Selwyn Waihora (where on the one hand the rules in Section 11 prevail over the regional rules, but conversely the policies in Section 11 do not – and are instead to be read alongside the regional policies);

5.2 Schedule 7; and

5.3 Unimplemented resource consents (in light of Policy 4.41C).

Rule 5.41A, application of the policies and use of the Farm Portal

- 6 Like other submitters, Central Plains is starting from the understanding that under PC 5 irrigation schemes will continue to be consented under either Rules 5.60-5.62 (now supplemented by the new Rule 5.41A) **or** any sub-regional chapter - and that proposed Rules 5.43A to 5.59A *should* have no relevance to irrigation schemes.
- 7 For that reason, Central Plains had sought that the introductory wording of Rule 5.41A be amended in the manner set out in its original submission, at point 17 (i.e. so that the introductory wording to the rule be amended to read "*Despite Rules 5.43A to 5.59A 5.62 (or any sub-regional chapter)...*". A consequential/clause 16 change was also sought to an advisory note on page 94 of the parent LWRP on the same basis.
- 8 In this regard, it is noted that the possible amendment to Rule 5.41A is not that straight forward - especially in the Central Plains context - given the pre-existing approach of Section 11 that differentiates between 'existing irrigated land' (where the nutrient load will *ostensibly* continue to be managed at the individual property level) and a further load for the development of 'new irrigation' (which will be directly managed by the Scheme). To demonstrate the difference (and for ease of reference), Table 11(j) from Section 11 that sets out Central Plains' Scheme load is set out below:

Table 11(j): Irrigation Scheme Nitrogen Limits

Irrigation Scheme	Tonnes of nitrogen per year
Central Plains Water	979
For land that was not irrigated (other than by effluent) prior to 1 January 2015	
The load limits in Table 11(j) apply only to land that was not irrigated prior to 1 January 2015. Rules 11.5.6 to 11.5.14 apply to farming activities that are not authorised under Rule 11.5.15.	

- 9 What has actually happened in practice is that despite the apparent 'split' and direction in Table 11(j) when it came to obtaining a discharge consent for the Scheme (and after various discussions with the Council), CRC165686 was granted and covers both 'existing' and 'new' irrigated land (consistent with a further advice note that relates to Rule 11.5.15 to 11.5.17). There are a number

of advantages with this approach – the main ones having the scheme as overall ‘manager’ of nutrient loads among shareholder farmers and having a consistent approach in terms of the Farm Environment Plan framework. It also avoids individual shareholders potentially needing to go through their own individual consenting process (unless, for example, they want to have their own farm enterprise consent). The actual nutrient load for new irrigation is still attributed separately in accordance with Table 11(j).

- 10 So there is to some extent tension or inconsistency between:
- 10.1 the starting position of Table 11(j)/Section 11 (which on their face expect existing irrigated properties to managed on an individual basis);
 - 10.2 the final consent held by Central Plains (which enables irrigation on all Scheme property – with the only potential individual consenting requirement arising where, for example, a farm enterprise regime is also sought); and
 - 10.3 the provisions of PC 5 – and in particular the application of Rule 5.41A (which, still consistent with consent CRC165686, permits discharge on individual properties).
- 11 More generally, as to the relationship between the Section 11 provisions and the LWRP / PC 5 provisions, Section 11 provides that:¹

Notes:

- 1. Rules 11.5.6, 11.5.7, 11.5.8, 11.5.9, 11.5.10, 11.5.11, 11.5.12, 11.5.13 and 11.5.14 prevail over Regional Rules 5.41 to 5.56A (Nutrient Management - Red, Orange and Lake Zones).

- 12 So in simple terms, it appears that on the notified version of PC5, Rule 5.41A is ineffective in respect of Central Plains’ existing irrigated properties as Rules 11.5.6 to 11.5.14 are to prevail over the PC 5 rule (this is despite Central Plains now holding a resource consent to make such discharges permitted – as per Rule 11.5.15 of Section 11). Although not articulated on any clear basis, the Officers Report comments generally that:

- 7.265 The request from some irrigation scheme operators for this region- wide rule to prevail over any sub-region chapter provision goes against the philosophy and structure of the CLWRP, and is not recommended to be included, particularly as it would come into effect after some sub-region sections have been prepared with specific rules for irrigation schemes.

¹ See Note 1 to Section 11, page 200-A

- 13 Having considered the position put by the Officer, Central Plains agrees that from a practical perspective (and at least in the context of Section 11), the Officer is in some respects correct – i.e. in that further reference does not need to be made to “*sub-regional chapter*” (given the Central Plains now holds resource consent all Scheme properties are *prima facie* permitted under Rule 11.5.15). Nevertheless, it is submitted that the reference to 5.60 to 5.62 should still be made (and for completeness it is noted that in the case of Selwyn Waihora there would still be no issue with referencing “*sub-regional chapter*” as all individual shareholder members are now in and of themselves permitted by virtue of the resource consent).
- 14 More generally, Central Plains does not want the Section 11 regime ‘upset’ by PC 5. Accordingly, if it is determined that the ‘existing’ parts of the scheme are unable to take any benefit from Rule 5.41A, then it is important that the management of nutrients on those properties, now by Central Plains, is done in circumstances that are fully aligned with the existing resource consent and Section 11 regime (i.e. with no further requirements being brought across directly or ‘by stealth’ through PC 5).
- 15 Again, the key issues (for both ‘existing’ and ‘new’ irrigation within the scheme) appears to ultimately arise around Schedule 7 and possible use of the Farm Portal – which in Central Plains’ case (as discussed by **Ms Susan Goodfellow**), is already in part expressly referred to in its discharge consent (CRC165686).
- 16 Before turning to Schedule 7 it is however necessary to touch on the policies introduced by PC5. Unlike the rules in Section 11 which are to prevail, this is not the case with the policies. Section 11 records in respect of those that:²

11.4 Policies

The following policies apply in the Selwyn Te Waihora sub-region in addition to those set out in Section 4 of this Plan.

- 17 To use an example, this means that the likes of Policy 4.38B from PC 5 **does** appear to directly apply within the Selwyn Waihora Area. That policy provides that:
- 4.38B Effects on water quality arising from intensification or changes to a farming activity, are monitored through requiring property owners to submit information regarding the type and intensity of their farming activity to the Farm Portal; and the accuracy of any information submitted to the Farm Portal is periodically reviewed by Environment Canterbury as part of its monitoring programme.

² Page 197

- 18 On its face this seemingly makes (in particular) shareholders with 'existing irrigated' land within the Central Plains Scheme, potentially at risk of on the one hand not having the benefit on 5.42A but on the other having to go through the Farm Portal regime. To this extent, the fact that Central Plains already holds a consent that covers all land able to be irrigated by the Scheme does assist but nevertheless from a policy perspective there does appear to be a reasonably direct but unintended link that contemplates at least existing irrigated land within the Central Plains Area using the likes of the Farm Portal.
- 19 To add clarity, Central Plains had sought an advisory note (point 10 of its original submission) noting that Policies 4.37 to 4.38E only apply to individual farming activities and farming enterprises. It would be of assistance if the advisory note were in fact included as it would avoid any assertion, in the case of Central Plains, that 'existing irrigated land' should still be subject to the Farm Portal. It may however assist if the relief sought by Central Plains were amended slightly to provide:

Policies 4.37 to 4.38E only apply to individual farming activities and farming enterprises. Properties irrigated under a discharge consent held by an irrigation scheme are managed through policies 4.40 to 4.41D.

Schedule 7

- 20 As noted, a simplified version of Schedule 7 is already in part expressly referred to in its discharge consent (CRC165686).
- 21 In this regard, the appendix to resource consent CRC165686 refers to it being "... *based on Plan Change One to the LWRP (operative on 1 February 2016) and Schedule 7 of proposed Plan Change Five to the Land and Water Regional Plan (notified on 13 February 2016)*" – emphasising however that the appendix as set out does **not** include what is now clause 4B and, for example, any reference to "*Baseline GMP Loss Rate*" and "*Good Management Practice Loss Rate*". This means that there is no requirement for the Scheme to adopt the use of the Farm Portal.
- 22 Nevertheless, Central Plains does wish to record that it is supportive of its *intent* Farm Portal and does recognise that there are potential benefits that might arise through its use on a more limited basis. As was recorded in its original submission (at point 1):

... CPWL supports irrigation schemes having the flexibility of either using the Farm portal as a 'tool' to assist to manage their scheme losses (or continuing to rely on resource consents). The ability to extract individual good management practice loss rates for individual farmers within the CPWL Scheme is potentially a very useful tool for the management of nutrient losses across the scheme.

- 23 The issue again is a practical one – Central Plains has already and very recently invested considerable time in developing Farm Environment Plans for shareholders (that implement its own nutrient allocation policy developed on the basis of the Section 11 and its resource consent). It does not want to undo or have to update all that work – especially when it is complying with the nutrient allocation framework (and associated reductions) that were determined to be appropriate through the very recent Section 11 framework.
- 24 In addition concepts such as “*Baseline GMP Loss Rate*” and “*Good Management Practice Loss Rate*” have either no or more limited applicability to irrigation schemes that are still in the development phase.
- 25 Accordingly, if Schedule 7 is to apply then at the very least Central Plains’ supports the provision of a proviso (consistent with that discussed earlier in the hearing process relating to clause 4B of Schedule 7 (as per Central Plains’ submission point 18)).
- 26 On further consideration of the discussion that occurred earlier in the hearing process – and accepting that other parts of Schedule 7 are actually useful for irrigation schemes (as is currently demonstrated by the inclusion of the appendix to Central Plains discharge consent), it is also submitted that the Hearing Panel should give careful consideration to providing slightly more policy guidance as to what (if any) parts of Schedule 7 are to apply. This would assist the exercise of any discretion by an Officer at the time any resource consent is applied for.
- 27 In this regard (and appreciating the scope of existing Central Plains’ submissions):
- Policy 4.36**
- 27.1 Central Plains has submitted on Policy 4.36 (seeking amendment to recognise *possible* use of the Farm Portal by irrigation schemes) (see original submission, point 9) – but if the change to Schedule 7 were made above (and accepting that Policy 4.41A is the policy ultimately the specific policy dealing with farm environment plans) then it might be better if any changes to better guide any discretion were directed at the later policy; and
- Policy 4.41A**
- 27.2 Central Plains also submitted on Policy 4.41A seeking an amendment to better recognise the reality that irrigation scheme Farm Environment Plans are (and should be) prepared under scheme resource consents (see original submission, point 13). The Officers have grouped this submission into one of about 25 others dismissed as

unnecessarily expanding the scope of the policy³ - but in light of the need for further guidance Central Plains disagrees. If in 'practical reality' parts of Schedule 7 (i.e. those that do not refer to the Farm Portal) are in fact to apply to irrigation schemes then it is submitted it would be appropriate to accept a slightly amended form of Central Plains' sought relief that refers to irrigation schemes having Farm Environment Plans 'prepared in accordance with [the relevant parts only] of Schedule 7' - i.e.:

4.41A The contribution that the preparation of accurate nutrient budgets and Farm Environment Plans make to the attainment of the water quality outcomes is recognised by:

(a) requiring the preparation of nutrient budgets in accordance with the Overseer Best Practice Input Standards; and

(b) applying to any nutrient budget that forms part of an application for resource consent a level of scrutiny that is proportional to the qualifications, experience and performance of the person who prepared the budget; and

(c) providing a requirement in resource consents held by irrigation schemes and principal water suppliers for the preparation and oversight of Farm Environment Plans prepared in accordance with [the relevant parts only] of Schedule 7; and

(d) providing a controlled activity consent pathway for resource consent applications in relation to properties that do not receive water from an irrigation scheme or principal water supplier that have been prepared or reviewed by an Accredited Farm Consultant.

- 28 More generally it is noted that PC 5 refers to Farm Environment Plans (which is not actually a defined term despite appearing in capitals throughout PC 5) – the approach of including a cross-reference to Schedule 7 is consistent with what is done in other parts of PC 5.

Unimplemented/partial implemented consents and Policy 4.41C

- 29 Although it is acknowledged that in accordance with basic statutory interpretation principles one would expect the specific provisions of

³ See section 42A Report at paragraph 7.249.

Section 11 to prevail over the more general policies (such as Policy 4.41C), given the direction provided in Section 11 that they apply "in addition" to those in section 4, it is worth briefly commenting on Policy 4.41C.

- 30 This policy effectively provides that irrigation schemes cannot have a discharge that is any greater than the Baseline GMP Loss Rate for any land within red, lake or orange allocation zones, or a total of 5kg/N/ha above the Baseline GMP loss rate for any land within the green or light Blue allocation zones. Given the advice note in Section 11 that 'all policies still apply', this policy still applies directly to Central Plains.
- 31 If this were to be applied literally to Central Plains or any other scheme that holds existing resource consent then it would obviously be problematic – and in the case of Central Plains, entirely inconsistent with the allocation provided in Section 11.
- 32 Central Plains therefore respectfully seeks relief in line with its point 14 – i.e. that a further category is enabled, being where the nitrogen loss is authorised by an existing resource consent:

4.41C ~~Maintain~~Manage 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 good management practices 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 nitrogen loss that was authorised by a resource consent that was granted prior to 13 February 2016 (including any renewal or replacement of that resource consent after 13 February 2016); or

(ii) the Baseline GMP Loss Rate for any land within the Red, Lake or Orange Nutrient Allocation Zones; and

...

- 33 Obviously on the basis that Central Plains holds an existing resource consent it is able to rely on its conditions at least until such time as renewed or reviewed. Inclusion of the suggested amendment as set out will nevertheless assist in any future consent process (and will have even more relevance for those irrigation schemes that are consented, in the development phase, and not covered by a sub-regional chapter).

Evidence

- 34 Central Plains is calling evidence from **Ms Susan Goodfellow**.

Dated 25 August 2016



Ben Williams
Counsel for **Central Plains Water Limited**