

**IN THE MATTER** of the Resource Management Act 1991

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**IN THE MATTER** of submissions and further submissions by Rangitata Diversion Race Management Limited (**RDRML**) on proposed Plan Change 5 to the Canterbury Land & Water Regional Plan (**Plan Change 5**)

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**MEMORANDUM OF COUNSEL ON BEHALF OF RDRML  
RESPONDING TO QUESTIONS FROM COMMISSIONERS**

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1. Further to RDRML's presentation of its case to the Commissioners on 6 September 2016, this Memorandum of Counsel responds to questions from Commissioner van Voorthuysen.

**Policy 4.11**

2. RDRML's submission sought that Policy 4.11 be deleted. As an alternative, Counsel suggested in legal submissions dated 6 September 2016, that the policy could be amended to relate to land use consents only.
3. Commissioner van Voorthuysen asked whether the relief sought by Opuha Water Limited in its submission would satisfy RDRML's concerns.
4. RDRML has considered the relief sought by Opuha Water Limited which is to add an additional limb to Policy 4.11:
  - (b) Allowing a longer duration where the resource consent includes conditions that enable a review of the resource consent under section 128(1)(a)(iii) of the RMA when a sub-regional section of the Plan has been made operative.
5. This would address RDRML's concerns in principle and is certainly preferable to a decision not to amend Policy 4.11. However, suggested limb (b) relies on a review condition being included in the relevant resource consent. It is possible that a resource consent could omit such a condition if the applicant or

the Council overlook this (or the Council determines not to include one) in which case the limitation on duration would prevail.

6. With a discharge permit it is not necessary for a review condition to be included in a resource consent as a review can be initiated on the basis of s 128(1)(b) to the RMA when:

(b) In the case of a coastal, water, or discharge permit, when a regional plan has been made operative which sets rules relating to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water, and in the regional council's opinion it is appropriate to review the conditions of the permit in order to enable the levels, flows, rates, or standards set by the rule to be met

7. Accordingly, on the basis that the Land & Water Regional Plan provides for principal water suppliers and irrigation schemes to hold discharge permits rather than land use consents,<sup>1</sup> RDRML prefers the relief sought in its submissions (to delete Policy 4.11) or its legal submissions (to amend Policy 4.11 to apply to land use consents). However the relief sought by Ophua Water Limited is certainly preferable to Policy 4.11 in its current form.

### **Irrigation and fertiliser proxies**

8. RDRML acknowledges that if the reply hearing for Plan Change 5 is not to occur until December 2016 that should provide time for the Canterbury Regional Council to test the OVERSEER® files of submitters such as RDRML through an adjusted version of the Farm Portal using the revised irrigation and fertiliser proxies sought through the submissions of Irrigation New Zealand Incorporated and Dairy NZ Limited.
9. RDRML understands that the Council will undertake this work, and confirms that it is willing to make its OVERSEER® files available to the Council for this purpose.

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<sup>1</sup> Rule 5.62.

10. However RDRML considers this process would be assisted by being conducted in the following manner and urges the Commissioners or the Council to consider this:
- (a) The Farm Portal is updated based on the revised irrigation and fertiliser proxies and made available for use and testing by the submitters.
  - (b) The Council obtains the OVERSEER® files of submitters and runs them through the adjusted version of the Farm Portal based on the revised irrigation and fertiliser proxies.
  - (c) The Council makes the results available to submitters.
  - (d) The Council's staff/consultants and submitters' experts get together and try to reach agreement.
  - (e) If/as necessary the proxies are revised and further tested in accordance with the above steps until agreement is reached or areas of disagreement are narrowed.
  - (f) Following the above, there is a report back to the Commissioners.
11. It is submitted that this process has a stronger prospect of resulting in a set of proxies to put before the Commissioners that both Council and relevant stakeholders have confidence in, which if accepted by the Commissioners and Council can only assist in improved nutrient management in the region.

**DATED** at Tauranga this 30<sup>th</sup> day of September 2016



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Vanessa Hamm  
Counsel for Rangitata Diversion Race Management Limited