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**To:** [Mailroom Mailbox](#)  
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**Subject:** Plan Change 7 to the LWRP Submission - M A Orchards Limited, Kerrytown Orchards Limited Partnership and Falvey Orchards Limited Partnership  
**Date:** Friday, 13 September 2019 4:52:52 PM  
**Attachments:**

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Dear Sir/Madam

Please find **attached** a submission by M A Orchards Limited, Kerrytown Orchards Limited Partnership and Falvey Orchards Limited Partnership on Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan.

Kind regards,

Georgina Hamilton  
Partner



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# **SUBMISSION ON PROPOSED PLAN CHANGE 7 TO THE CANTERBURY LAND AND WATER REGIONAL PLAN**

*Clause 6 First Schedule, Resource Management Act 1991*

**TO:** Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan

Environment Canterbury  
PO Box 345  
Christchurch 8140

By email: mailroom@ecan.govt.nz

## **Name of submitter:**

1 M A Orchards Limited, Kerrytown Orchards Limited Partnership and Falvey Orchards Limited Partnership (**Submitters**).

Address: c/- Gresson Dorman & Co  
P O Box 244  
TIMARU 7940

Contact: Georgina Hamilton

Email: georgina@gressons.co.nz

## **Trade competition statement:**

2 The Submitters could not gain an advantage in trade competition through this submission.

## **Proposal this submission relates to is:**

3 This submission is on proposed Plan Change 7 to the Canterbury Land and Water Regional Plan (**PC7**), specifically the Orari-Temuka-Opihi-Pareora (**OTOP**) sub-region component of PC7, comprising "Part B".

## **The specific provisions of PC7 that this submission relates to:**

4 This submission is confined to the allocation limits for groundwater proposed under Table 14(zb) of PC7 and the planning framework for the take and use of groundwater from the Levels Plain Groundwater Allocation Zone (**Levels Plain GAZ**), including:

4.1 Policy 14.4.7;

4.2 Rules 14.5.9 and 10;

4.3 "Notes" associated with Rules 14.5.1 to 14.5.11; and

4.4 Section 14.6.3 Groundwater Allocation Zone Limits: Table 14(zb).

## **Submission**

### Background to the Submitters and their interest in PC7

5 The Submitters each own and operate apple orchards over 80 hectares in the Levels Plain area. The orchards grow Honeycrisp apples from approximately 175,000 apple

trees for export, primarily supplying markets in the United States. The Submitters are presently transitioning the orchards to full organic status.

- 6 The Submitters' orchard operations in South Canterbury are managed collectively with the support of 25 permanent employees and up to 300 pickers during the annual harvest, comprising in total 92 full time equivalent employees across the Submitters operations. The Submitters are presently in the planning process for the development of packhouse and coolstore facilities in South Canterbury over the next 2 to 3 years for the produced grown in their orchards as well as supporting other growers in the region. Once established, the operation of those facilities will require the support of an additional 50 staff for six months of the year.
- 7 The Submitters' presently manage the water requirements for their orchards by way of a surface water take from Opuha Water Limited's Levels Plain scheme, with potable water for its spraying requirements via the Timaru District Council's Seadown water supply scheme. Deep groundwater is an alternative water source that the Submitters have recently been investigating as it is more suited to meeting all water requirements for their orchards. Those investigations were premised on the pre-PC7 allocation status of the Levels Plains GAZ and associated planning framework, which allowed applications for water permits to take deep groundwater for use in horticultural growing operations to still be made.
- 8 The Submitters understand that PC7 proposes to change the status quo, which means they are now precluded from progressing the deep groundwater take option on the basis that the Levels Plain GAZ is, under PC7, deemed over-allocated and/or there is a desire to set allocation limits for the GAZ that correspond with the existing level of consented allocation (i.e. the position is not entirely clear from PC7 or the documents supporting PC7).
- 9 The Submitters acknowledge that the option of transferring existing groundwater permits in the Levels Plain GAZ under section 136 of the Resource Management Act 1991 (**RMA**) still appears to be available under PC7. However, even if such transfers were possible (which is predicated on the existence of permits being available for transfer), it appears likely that any such transfer would require the surrender of a proportion of groundwater allocation commensurate with the extent of the purported over-allocation of the Levels Plain GAZ.
- 10 In the Submitters view, access to deep groundwater is critical to not only their present and future orchard operations, but also the social and economic wellbeing of the South Canterbury community through the employment and the support of local services created by those operations and their associated businesses.

#### Summary of the Submitters' position on PC7

- 11 In the Submitters' view, the approach taken by PC7 in relation to groundwater abstraction and the accounting of groundwater allocation is very confusing. Certainly, it does not appear that the PC7 provisions concerning those matters have been properly considered or informed by accurate allocation data and robust GAZ-specific technical and/or planning assessments, which would be expected for a sub-regional plan change such as PC7.
- 12 The Submitters are genuinely concerned that without significant revision and/or amendments, these aspects of PC7 would:

- 12.1 Compromise the efficient operation of the Submitters' orchard operations, and consequently the social and economic wellbeing of the South Canterbury community through the employment opportunities and support for local services provided by their orchard businesses;
  - 12.2 Not give effect to the National Policy Statement for Freshwater Management 2014 (updated 2017), particularly Objectives A4 and B5;
  - 12.3 Be inconsistent with the Canterbury Land and Water Regional Plan, particularly Objective 3.11; and
  - 12.4 Not represent the most appropriate plan provisions for achieving the purpose of the RMA.
- 13 The Submitters specific concerns with these aspects of PC7B together with a summary of the decisions they seek from Environment Canterbury are set out in **Annexure A** attached to this submission.

**Decisions sought by the Submitters:**

- 14 The Submitters seeks the following decisions from Environment Canterbury:
- 14.1 that the decisions sought in **Annexure A** to this submission be accepted; and/or
  - 14.2 alternative amendments to the provisions of PC7 to address the substance of the concerns raised in this submission; and
  - 14.3 all consequential amendments required to address the concerns raised in this submission and ensure a coherent planning document.

**Wish to be Heard:**

- 15 The Submitters wish to be heard in support of this submission.
- 16 The Submitters would be prepared to consider presenting a joint case with others making similar submissions at the hearing.



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**M A Orchards Limited, Kerrytown Orchards Limited Partnership and Falvey Orchards Limited Partnership**

By their Solicitors and authorised Agents  
Gresson Dorman & Co: Georgina Hamilton

Date: 13 September 2019

**ANNEXURE A – REASONS FOR SUBMISSION AND DECISIONS SOUGHT BY THE SUBMITTERS**

(1) The specific provisions of Proposed Plan Change 7 (PC7) that the Submitters' submission relates to are:		(2) The Submitters' submission is that:		(3) The Submitters seek the following decisions from Environment Canterbury (Note: amendments sought to the text of PC7 are shown in tracked changes, with additions shown in <u>underline</u> and deletions shown in <del>strikethrough</del> ).
Section & Page No.	Sub-section/ Point	Oppose/ support	Reasons	
14.4 Policies (page 132)	14.4.7 (Groundwater allocation limits)	Oppose	<p>Clause (a) of Policy 14.4.7 indicates that “A” allocation limits are proposed to be established by PC7 to provide for <i>all existing lawfully established groundwater abstractions</i>. The implications of this significant change from the status quo is that:</p> <ul style="list-style-type: none"> <li>• “New” groundwater takes from the Levels Plains GAZ would be prohibited other than by way of transfers under section 136 RMA; and</li> <li>• There is likely to be a requirement for reductions in consented volumes being required on transfer, given ECan’s recent analysis that the Levels Plain GAZ is “over-allocated”.</li> </ul> <p>The Submitters strongly oppose this approach as it fails to take account of:</p> <ul style="list-style-type: none"> <li>• The pre-PC7 allocation status of the Levels Plain GAZ (i.e. that allocation was still available); and</li> <li>• Groundwater allocation attributable to existing permits, which as a result of PC7, are deemed to authorise direct or high stream depleting groundwater abstractions (and therefore, in the Submitter’s view, should be accounted for in surface water allocation blocks not groundwater allocation blocks).</li> </ul> <p>It is the Submitters’ view that further sustainable groundwater abstraction is still possible from the Levels Plain GAZ, and PC7 should not unnecessarily restrict the ability for the future grant of</p>	<p>Amend Policy 14.4.7 as follows:</p> <p><i>Groundwater in the Orari-Temuka-Opihi-Pareora sub-region is managed through establishing A and T allocation limits, the purpose of which is to:</i></p> <p>a. <i>provide for all existing lawfully established groundwater abstractions, and for the <u>Levels Plain GAZ, abstraction of groundwater within sustainable limits (the A allocation limit)</u></i>;</p> <p>b. ....</p>

(1) The specific provisions of Proposed Plan Change 7 (PC7) that the Submitters' submission relates to are:		(2) The Submitters' submission is that:		(3) The Submitters seek the following decisions from Environment Canterbury (Note: amendments sought to the text of PC7 are shown in tracked changes, with additions shown in <u>underline</u> and deletions shown in <del>strikethrough</del> ).
Section & Page No.	Sub-section/ Point	Oppose/ support	Reasons	
			new abstractions from it, subject to the relevant tests, including efficiency and reasonable use.	
(page 134)	14.4.13 (Transfers of Water Permits)	Oppose in part	<p>The Submitters understand that there the Resource Consent Inventory for PC7 contains numerous errors and omissions, including in relation to consented groundwater allocations.</p> <p>The Submitters are genuinely concerned about how ECan would implement the proposed requirement under clause (b) of Policy 14.4.13 to surrender a proportion of consented allocation on transfer. This is because there is considerable uncertainty about the robustness of the Resource Consent Inventory for PC7 and the methodology ECan has used for determining the allocation status of GAZs in the OTOP sub-region, and consequently the actual allocation status of each of those GAZ. In the absence of robust information in relation to such matters, the Submitter believes that clause (b) should be deleted and the region-wide policies for water permit transfers should apply.</p>	Delete clause (b) of Policy 14.4.13.
14.5 Rules (pages 146 - 147)	14.5.9 – 14.5.10 (Take and use of Groundwater)	Support	Subject to the Submitters' submissions on Policy 14.4.7, Table 14(zb) and the interpretation "notes" for Rules 14.5.1 – 14.5.11, the Submitters support the restricted discretionary activity status for groundwater takes that comply with groundwater allocation limits as proposed by Rule 14.5.9.	Retain Rules 14.5.9 and 14.5.10 as notified.
(page 148 – 149)	14.5.12 – 14.5.13 (Transfer of Water Permits)	Oppose in part	The Submitters support the ability for transfers of groundwater permits in the Levels Plains GAZ. However, for the reasons noted in their submission on Policy 14.4.13 they oppose condition 5(b) of Rule 14.5.12 and consider that it should be amended to reflect the present absence of any robust information concerning the actual allocation status of each of the GAZ in the OTOP sub-region.	Amend condition 5(b) of Rule 14.5.12 as follows:  <i>....if the proposed transfer is located within an over-allocated surface water catchment or groundwater allocation zone, the resource consent application includes a percentage of water to be surrendered, <del>up to a maximum of 75%, that matches the extent to</del></i>

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Section & Page No.	Sub-section/ Point	Oppose/ support	Reasons	
				<del>which the surface water catchment or groundwater allocation zone is over-allocated.</del>
14.6.3 Groundwater Allocation Zone Limits (page 173)	Table 14(zb): Orari-Temuka-Opihi-Pareora Groundwater Limits	Oppose	<p>The Submitters strongly oppose the suggestion made in the Section 32 Report for PC7 (Section 10.6.1; page 226) that the Levels Plain GAZ is "over-allocated". Such a claim, fails to take into account the following key factors:</p> <ul style="list-style-type: none"> <li>• The pre-PC7 allocation status of the Levels Plain GAZ (i.e. that allocation was still available); and</li> <li>• Groundwater allocation attributable to existing permits, which as a result of PC7, are deemed to authorise direct or high stream depleting groundwater abstractions (and therefore, in the Submitter's view, should be accounted for in surface water allocation blocks not groundwater allocation blocks).</li> </ul> <p>In the Submitters' view, an urgent and robust scientific analysis is required to determine an appropriate allocation limit for the Levels Plain GAZ, based on the above factors and an appropriate assessment of the sustainable yield of the GAZ (which has been expanded under PC7), and/or to substantiate the Levels Plain GAZ "A" allocation limit of 32.9 million m<sup>3</sup>/yr. Such an analysis is also required to provide some certainty about the current allocation status of the Levels Plains GAZ, and ensure the efficient administration and implementation of PC7.</p>	<p>Urgently re-assess and/or derive an allocation limit for the Levels Plain GAZ in Table 14(zb), and confirm the allocation status of that GAZ, using a robust scientific methodology that takes into account the following:</p> <ul style="list-style-type: none"> <li>• all groundwater allocations consented at the date of notification of PC7;</li> <li>• all consented groundwater allocations outside of the pre-PC7 Levels Plains GAZ boundaries;</li> <li>• all permits deemed to authorise direct or high stream depleting groundwater abstractions as a result of PC7 (and therefore which should be accounted for as surface water allocation, not groundwater allocation);</li> <li>• the estimated annual volume of Land Surface Recharge for the Levels Plain GAZ.</li> </ul>
Schedule 9 Assessment of Stream Depletion Effect (pages 203/204)		Oppose	The Submitters consider the proposed inclusion of a new note (3) in Schedule 9 (relating to the "amount allocated from the groundwater zone") would have the effect of requiring the stream-depleting component of takes to be counted against allocations in both the applicable Groundwater and Surface Water Allocation Zones. Such	Delete Note 3 from Table S9.1.

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<b>Section &amp; Page No.</b>	<b>Sub-section/ Point</b>	<b>Oppose/ support</b>	<b>Reasons</b>	
			double counting is unnecessarily conservative and has the effect of misrepresenting the allocation status of both Zones.	
Schedule 13 Requirements for implementation of water allocation regimes (pages 205/206)		Oppose	The Submitters consider the proposed inclusion of the new "note" in Schedule 13 (relating to the "amount allocated from the groundwater zone") would have the effect of requiring the stream-depleting component of takes to be counted against allocations in both the applicable Groundwater and Surface Water Allocation Zones. Such double counting is unnecessarily conservative and has the effect of misrepresenting the allocation status of both Zones.	Delete the new "note" from Schedule 13.