

BEFORE THE INDEPENDENT HEARING COMMISSIONERS

UNDER

the Resource Management Act 1991

IN THE MATTER

of proposed Plan Change 1 to the Hurunui and Waiau
River Regional Plan

**OPENING LEGAL SUBMISSIONS OF COUNSEL FOR THE CANTERBURY
REGIONAL COUNCIL
21 October 2019**

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Introduction

- 1 Plan Change 1 to the Hurunui and Waiau River Regional Plan (**Plan** or **HWRRP**) is the result of significant community engagement and consultation over an extended period of time, as you will hear today.
- 2 Plan Change 1 seeks to provide for Low Intensity Dryland Farming as a permitted activity, and the Council will address you further as to how, from a drafting perspective, Plan Change 1 achieves this.
- 3 These opening legal submissions contain:
 - (a) A brief background regarding the operation of the Plan;
 - (b) A summary of what Plan Change 1 is seeking to achieve;
 - (c) A description of the legal framework within which Plan Change 1 has been prepared and will be heard; and
 - (d) Finally, an introduction to the Council officers, who will each address you further regarding Plan Change 1, including by identifying key questions for the Hearing Panel to determine in considering Plan Change 1.

Hurunui and Waiau River Regional Plan

- 4 The Plan manages the land and water resources in the Waiau, Hurunui and Jed River catchments, and specifically applies to:
 - (a) The taking, using, damming and diverting of surface water and stream-depleting groundwater within the Waiau, Hurunui and Jed River catchments;
 - (b) The taking and using of groundwater within the Waiau, Hurunui and Jed River catchments located within Groundwater Allocation Zones (identified in the Plan);
 - (c) The discharge of water used for non-consumptive activities; and
 - (d) The use of land in a Nutrient Management Area (again, identified in the Plan), which may result in the discharge of nitrogen or phosphorus to water.

5 The way in which the Plan manages existing land uses that result in the discharge of nitrogen or phosphorus which may enter water is addressed in further detail in the Council's section 32 report.¹

6 The HWRRP became operative on 20 December 2013.

Plan Change 1

7 Plan Change 1 was promulgated in response to perceived inequities for dryland farming activities resulting from the implementation of the Plan, by providing for 'Low Intensity Dryland Farming' as a permitted activity in proposed Rule 10.1A where:

- (a) The property is either registered in the Farm Portal or is subject to a 'Dryland Farmer Collective Agreement'; and
- (b) Farmers prepare and implement a Management Plan, that must be provided to the Council on request.

8 Plan Change 1 introduces a definition of 'Low Intensity Dryland Farming', which essentially applies to those uses of land for a farming activity which do not involve irrigation, and where the threshold for 'Winter Grazing' (another defined term introduced by Plan Change 1) is not exceeded.²

9 In addition to these changes, Plan Change 1 introduces a new Policy 5.3C, a new definition of 'Dryland Farmer Collective Agreement', amendments to the definition of 'change in land use', new Schedules 2A and 6, and consequential amendments to Rules 10.1, 10.2 and 11.1.

10 Following the receipt and consideration of submissions, the Council's section 42A report suggests a number of amendments in response to submissions. As we understand that the section 42A report has been taken as read, we do not intend to repeat these amendments here.³

11 We now turn to address the legal framework within which Plan Change 1 has been prepared and will be heard.

¹ Proposed Plan Change 1 to the Hurunui and Waiau River Regional Plan: Dryland Farming – Summary of evaluation under section 32 of the Resource Management Act, page 7.

² Which means the grazing of cattle within the period of 1 May to 30 September where the cattle are contained for break-feeding of in-situ brassica and root vegetable forage crops.

³ Officer Recommendations in Response to Submissions pursuant to section 42A of the Resource Management Act 1991, Appendix 1.

Legal Framework

- 12 The legal framework is set out in the section 42A report, including the regulatory framework within which regional councils must prepare and change any regional plans, the role of Part 2 of the Resource Management Act 1991 in assessing planning documents, and matters of scope, both in respect of submissions “on” Plan Change 1 and amendments to Plan Change 1 considered to be within the scope of a submission.⁴
- 13 Counsel does not intend to repeat the legal framework here. However, there is one matter we wish to touch on, being the relevance of the Government’s proposed freshwater management reforms (namely, the Proposed National Environmental Standards for Freshwater and the Draft National Policy Statement for Freshwater Management).
- 14 The Government’s proposed freshwater management reforms were addressed in the section 42A report.⁵
- 15 The legal position in respect of the reforms remains that no weight should be placed on those documents until they are gazetted. We will update the Hearing Commissioners if that position changes prior to any decision in respect of Plan Change 1.

Council Officers

- 16 At this juncture, we introduce you to the Council officers, who will address you further in regards to Plan Change 1:
- (a) Ms Jenkins, who is the Planning Lead on Plan Change 1; and
 - (b) Mr Norton, the Technical Lead on Plan Change 1.

Dated this 21st day of October 2019

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P A C Maw / I F Edwards

Counsel for the Canterbury Regional Council

⁴ Officer Recommendations in Response to Submissions pursuant to section 42A of the Resource Management Act 1991 commencing at paragraphs [30], [54] and [115].

⁵ Officer Recommendations in Response to Submissions pursuant to section 42A of the Resource Management Act 1991 at [113]-[114].