

**From:** [Simon Peirce](#)  
**To:** [Mailroom Mailbox](#)  
**Cc:** Plan Change 7 LWRP Further Submission  
Friday, 6 December 2019 2:12:22 PM  
**Subject:** [image004.png](#)  
**Date:**  
**Attachments:**

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Hello,

Please find **attached** a further submission on Plan Change 7 LWRP.

Kind regards,

**Simon Peirce**  
Solicitor

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**FURTHER SUBMISSION ON PLAN CHANGE 7 TO THE  
CANTERBURY LAND AND WATER REGIONAL PLAN  
PURSUANT TO CLAUSE 6 SCHEDULE 1 OF THE  
RESOURCE MANAGEMENT ACT 1991**

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

**Environment Canterbury**

**PO Box 345**

**Christchurch 8140**

**This further submission is filed on behalf of:**

- Mark Edgar Mulligan;
- Ian James Kerse; and
- Neil Sydney Kingston.

(Referred to through this submission as the **Submitters**)

1. This is a further in support of and in opposition to various submissions on Plan Change 7 (**PC7**) to the Canterbury Land and Water Regional Plan (**CLWRP**).
2. The Submitters filed original submission number 384 (**OS384**).
3. The Submitters are persons who have an interest in the particular parts of the submissions outlined in Annexure 1 as they hold resource consents to abstract stream-depleting groundwater from Upper Coopers Creek and are directly affected by the proposed changes to the provisions in PC7. PC7 seeks to introduce a new framework for the renewal of existing resource consents to be in line with the National Policy Statement on Freshwater Management (**NPSFM**).
4. OS384 sought a bespoke flow regime for Upper Coopers Creek that includes the spring-fed section of Upper Coopers Creek that has permanent flow and the lower reach between the spring-fed section and above the State Highway 72 Bridge (**SH72**). The Submitters abstract stream-depleting groundwater from Upper Coopers Creek which has a no more than minor effect on surface water flows in the lower reach.
5. The Submitters understand that a higher minimum flow has sought to be imposed based on a report from Golder Associates (2013) which suggests that a minimum flow of 50 l/s is required to maintain or enhance freshwater ecology at Upper Coopers Creek. For the reasons set out in SO384 the Submitters consider that there are more gains that can be made in terms of enabling the economic capacity of Upper Coopers Creek while also maintaining or enhancing freshwater ecology through a bespoke flow management regime.
6. The flow management regime proposed in PC7 will significantly hinder the Submitters ability to provide for productive economic opportunities that support their social, economic and cultural well-being. This further submission supports the goals for a bespoke flow regime outlined in OS384.

7. The Submitters support the following submissions:
  - (a) Orari Water Users Group (OS145);
  - (b) Fonterra Co-operative Group Limited (OS416);
  - (c) Silver Fern Farms Limited (OS468);
  - (d) Beef + Lamb New Zealand (OS214); and
  - (e) Opuha Water Limited (OS381)
  - (f) Timaru District Council (OS292); and
  - (g) Combined Canterbury Provinces Federated Farmers of New Zealand (OS430).
8. The Submitters oppose the following submissions:
  - (a) Royal Forest and Bird Society of New Zealand Incorporated (OS472);
  - (b) Ngā Rūnanga (OS423)
  - (c) Director-General of Conservation (OS160)
9. The Submitters support and/or oppose the following parts of the submissions as outlined in Annexure 1 (with reference to the submission point from the Summary of Decisions Requested).
10. The reasons for the support and/or opposition to the above submissions and the relief sought in relation to those submissions are outlined at Annexure 1.
11. The Submitters wish to be heard in support of this further submission.



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Bridget Irving / Simon Peirce

Counsel for the Submitters

**DATED** this 6<sup>th</sup> day of December 2019

## Address for service

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**Table of parties to be served with a copy of this further submission:**

| <b>Submitter Name/Number</b>   | <b>Email address for service</b>                                     |
|--|--|
| Orari Water Users Group (OS145)  | mark.mary@xtra.co.nz   |
| Fonterra Co-operative Group Limited (OS416)                            | ben.williams@chapmantripp.com  |
| Silver Fern Farms Limited (OS468)                                      | ben.williams@chapmantripp.com;<br>rachel.robilliard@chapmantripp.com |
| Beef + Lamb New Zealand (OS214)  | lauren.phillips@beeflambnz.com                                       |
| Opuha Water Limited (OS381)  | georgina@gressons.co.nz  |
| Timaru District Council (OS292)  | kate.walkinshaw@timdc.govt.nz  |
| Combined Canterbury Provinces Federated Farmers of New Zealand (OS430) | hume@fedfarm.org.nz  |
| Royal Forest and Bird Society of New Zealand Incorporated (OS472)      | n.snoyink@forestandbird.org.nz                                       |
| Ngā Rūnanga (OS423)  | treena.davidson@ngaitahu.iwi.nz                                      |
| Department of Conservation - Geoff Deavoll (OS160)                     | gdeavoll@doc.govt.nz   |

| Annexure 1 - Further submission table |  |  |          |  |   |
|---------------------------------------|--|--|----------|--|---|
| Submission point                      | Submitter  | Relief sought by submitter   | Position | Reason for further submission  | Relief sought in relation to submission |
| 472.59                                | Royal Forest & Bird Protection Society Incorporated (RFBS) | Amend the activity status of Rule 5.136 so that it is not a permitted activity   | Oppose   | <p>Enabling structures in water is a key part of the Submitters relief. The Submitters seek to reinstate a weir within Upper Coopers Creek to provide an effective monitoring point for their stream-depleting groundwater abstractions. This necessarily will involve the construction of a defence against water and may also involve the disturbance if sediment in the river bed.</p> <p>The relief sought by this submission is vague and will create adverse effects in terms of administrative efficiency in requiring resource consent when adverse effects on the environment are less than minor. This has been recognised in the permitted activity status of these activities.</p> <p>The Submitters suggest that further particulars are required to understand the relief in relation to Rule 5.163.</p> <p>In addition to that relief the Submitters have proposed policies that will provide benefits to the water quality and freshwater ecology of the spring-fed section of Coopers Creek that will exclude stock from that area, remove macrophyte growth regularly; and introduce a coordinated approach to water use in this area.</p> | The relief be disallowed                |
| 472.60                                |  | Amend the activity status of Rule 5.137 so that it is not a permitted activity.  |          |  |   |
| 472.66                                |  | Amend Rule 5.163 as necessary to protect indigenous freshwater species.  |          |  |   |
| 214.4                                 | Beef + Lamb New Zealand                                    | <p>Amend the definition of 'Indigenous Freshwater Species Habitat' as follows: Means an area identified as 'Indigenous Freshwater Species Habitat' on the Planning Maps, and which provides habitat for at least one of the freshwater species listed below <u>where the presence of that species has been confirmed by a suitably qualified and experienced practitioner:</u></p> <p>Giant kokupo / Taiwharu (Galaxias argenteus) Lowland longjaw galaxias (Waitaki) (Galaxias cobitinis) Canterbury mudfish / Kowaro (Neochanna burrowsius) Bignose galaxias (Galaxias prognathus) Shortjaw kokupo (Galaxius postvectis) Northern flathead galaxius (Species N (Undescribed)) Lamprey / Kanakana (Geotria australis) Freshwater crayfish / Kekewai (Paranephrops zealandicus) Freshwater muddel / Kakahi (Echridella menziesi)</p> | Support  | <p>A report by the Golder Associates (2013) has identified Canterbury Galaxias (Galaxias Vulgaris) at the SH72 bridge site. While Upper Coopers Creek has not been identified as an area of Indigenous Freshwater Species Habitat, there is the possibility that this could change in future. If Upper Coopers Creek were to be identified as one of these areas it would come under a much more stringent regime.</p> <p>Without actual sampling records using the same site, method and time of year it is very hard to make any meaningful conclusion on fish abundance. For that reason, the Submitters support the proviso that a suitably qualified and experienced practitioner be hired/instructed to identify the presence of indigenous freshwater species.</p>  | The relief be allowed                   |
| 160.6                                 | Director-General of Conservation                           | <p>Amend clause (a) of Policy 4.61A as follows:</p> <p>a. by refusing any application to take water <u>where the adverse effects of the activity on any Indigenous Freshwater Species Habitat will be more than minor. that would reduce the area or compromise the values of the Indigenous Freshwater Species Habitat, except for an application to take water or a community water supply; and</u></p>  | Oppose   | <p>The intent of the amendment is supported. However, the amendments proposed will provide less certainty to plan users than the notified provision. Inclusion of reference to the values of Indigenous Freshwater Species Habitats is important as it enables an assessment to occur of what values exist which could then enable activities to occur that do not reduce the size or compromise those values. The amendments sought by this relief would introduce uncertainty to this policy making it difficult to understand what the purpose of this policy is.</p>   | The relief be disallowed                |
| 381.36                                | Opuha Water Limited  | <p>If submission PC7-381.35 (retain Policy 14.4.12) is accepted, insert a new policy as follows:</p> <p><u>In considering whether to grant or refuse applications for replacement of existing consents, the consent authority will:</u></p> <p>a. <u>consider whether all reasonable attempts to meet the efficiency expectations of this Section have been undertaken;</u></p> <p>b. <u>recognise the value of the investment of the existing consent</u></p>   | Support  | <p>The intent of this policy is supported as it includes reference to investment of existing infrastructure and maintaining the inclusion of the consent in the allocation limit (if granted). The Submitters are less concerned with the reasonable attempts at efficiency as the Submitters consider that water use should be efficient and the inefficient water use is generally inappropriate.</p>  | The relief be allowed                   |

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|        |                                     | holder; and<br><br><u>c. maintain the inclusion of the consent, if granted, in any allocation limits and priority bands on the water body concerned.</u>   |  |   |  |
| 381.51 |                                     | Amend Policy 14.4.21 as follows:<br><br>Assist with achieving the freshwater outcomes for the Orari, Temuka and Opihi Freshwater Management Units by <u>including, by way of consent review, for reviewing, immediately after plan change 7 is made operative,</u> all surface water and stream depleting groundwater permits with a direct or high stream-depletion effect, <del>and by implementing</del> the environmental flow and allocation regimes in Tables 14 (h) to 14 (y) <del>on all reviewed permits.</del> | Support as an alternative form of relief to 384.26 | The Submitters support this relief as a form of alternative relief to their original submission. This policy, as amended, recognises that consent review is one way in which the freshwater outcomes can be achieved. It also removes the strict timeframes for reviewing all consents immediately after PC7 becomes operative. This is particularly problematic for the Submitters who hold consents for direct or high stream depleting groundwater abstractions.   | The relief is allowed in the event that the Submitters relief in regards to 384.26 is not granted. |
| 468.32 | Silver Fern Farms Limited           | Amend Policy 14.4.8 to clarify how it is intended to work together with Policies 14.4.6A-14.4.7 and 14.4.9, and Rules 14.5.7-14.5.11, particularly in relation to stream depleting takes, but retain intent relating to existing takes and the application of section 124-124C.  | Support  | The Submitters support this relief on the basis that policy 14.4.8 is unclear in its drafting as to who this policy applies to and what the effect of that will be. The policy is also prohibitive in terms of high stream-depleting groundwater takes which are still considered in relation to the T Allocation block as they are not direct stream depleting takes.  | The relief be allowed  |
| 145.3  | Orari Water Users Group             | Require a review of the Orari River allocation, based on the submitter's relief sought in relation to the definition of 'Orari Conjunctive Use Zone' and compare this to the original consent inventory to understand differences.   | Support  | The Submitters sought this relief sought. One of the Submitters is also the Chair of the Orari Water Users Group, which was established in 2010 for the purpose of working with ECan in the development of an environmental flow and allocation regime. That consultation, it would seem, has been totally disregarded leading to a proposed environmental flow regime that is based on inaccurate data and will lead to unreliable water takes.<br><br>The Submitters also support the relief sought in the Orari Water Users Group original submission for the reasons outlined in that submission. | The relief be allowed  |
| 145.4  |                                     | Require a review of the Upper Coopers Creek allocation.  |  |   |  |
| 145.5  |                                     | Amend allocation limit for the Orari River in Table 14(h) such that it is consistent with current allocation.  |  |   |  |
| 145.6  |                                     | Amend Upper Coopers Creek allocation to 124L/s in Table 14(h).   |  |   |  |
| 145.7  |                                     | Require a thorough Section 32 analysis if there is any reduction in allocation below the submitter's proposed allocation limits for the Orari River and Upper Coopers Creek  |  |   |  |
| 145.8  |                                     | Amend A allocation limit for the Orari-Opihi GAZ in Table 14(zb) to 61.1 million m3/yr.  |  |   |  |
| 145.9  |                                     | Amend the T allocation limit in the Orari-Opihi GAZ in Table 14(zb) to 10 million m3/year.   |  |   |  |
| 416.1  | Fonterra Co-operative Group Limited | Amend policy 14.4.7 to more accurately reflect Table 14(zb)  | Support  | This submission is supported as it reflects a general uncertainty in the drafting and intent of Policy 14.4.7. This relief is similar to the relief in relation to submission 145 in the sense that it recognises the inaccuracies with the allocation limits provided for in Table 14(zb) as against the level of over-allocation.   | The relief be allowed  |
| 416.18 |                                     | Amend clause (b) of Policy 14.4.7 to provide greater clarity on how allocation might reduce over time if there is shortfall in allocation.   |  |   |  |
| 423.1  | Ngā Rūnanga                         | Delete the wording "or any re-contouring or re-battering" from the definition of Defence against water.  | Oppose   | The Submitters have an interest in the definition of "defences against water" on the basis that their flow management regime is contingent upon a defence against water being installed to provide a suitable monitoring solution.<br><br>The basis for this submission is that the addition of the notified wording to this  | The relief be disallowed   |

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|         |  |  |         | definition will make the activities to undertake "uncertain". The Submitters do not agree and consider that the addition of these words is reasonably necessary for the purpose of maintenance and minor upgrading which can be required over time.   |                       |
| 423.81  |  | Require the provisions to not only protect the mapped indigenous freshwater species habitat sites, but also manage land and water use activities up and downstream that may affect the habitats.   |         | The Submitters have an interest in the definition of indigenous freshwater species habitats insofar as they might be affected by these provisions in future if it were established that Upper Coopers Creek falls within that definition.   |                       |
| 423.82  |  | Require the mapping to reflect the extent of habitat that some indigenous freshwater species need to survive for their whole lifecycle.  |         | The relief sought by this submission will create a considerable amount of uncertainty as to the boundaries of Indigenous Freshwater Species Habitats on the planning maps. The relief will also be likely to incur considerable costs to the Regional Council to implement and will not guarantee a sufficient level of certainty that will provide a meaningful benefit to the values that this submission is seeking to achieve.  |                       |
| 423.2-6 |  | Amend the definition of Indigenous Freshwater Species Habitat as follows: "means an area identified as 'Indigenous Freshwater Species Habitat' on the Planning Maps, and which provides habitat for at least one of the freshwater species listed below: ..."<br><br>Amend the definition of Indigenous Freshwater Species Habitat to also include longfin eel/tuna ( <i>Anguilla dieffenbachii</i> ).<br><br>Amend the definition of Indigenous Freshwater Species Habitat to also include short finned eel/tuna ( <i>Anguilla australis</i> Richardson).<br><br>Amend the definition of Indigenous Freshwater Species Habitat to also include Pataki/Flounder.<br><br>Amend the definition of Indigenous Freshwater Species Habitat to also include tuaki/cockles. |         | This relief is conditionally opposed on the basis that it is not clear whether any of these species exist in the Upper Coopers Creek Catchment area. If this species do not exist in the Upper Coopers Creek Catchment area then this relief is opposed on the basis that the provisions in relation to Indigenous Freshwater Species Habitats are overbearing and do not provide a reasonable pathway to rolling over existing water take consents.  |                       |
| 423.23  |  | Amend Policy 4.102 as follows:<br><br>Structures enable the safe passage of indigenous fish, while whilst avoiding, as far as practicable, the passage of any invasive, pest or nuisance fish species by:  |         | The Submitters oppose submission on the basis that it seeks to impose additional constraints on structure in water, such as defences against water. The outcome sought by this submission is unclear as it seeks to widen the scope of fish that must be provided safe passage while also avoiding the passage of any invasive pest or nuisance species. In many cases, those two outcomes cannot be achieved.  |                       |
| 423.95  |  | Amend clause (a) of Policy 4.102 as follows:<br><br>a. appropriate design, construction, installation and maintenance of new <del>in-stream</del> structures; and  |         | The Submitters oppose this relief insofar as it places additional constraints on the ability to install defences against water in the Upper Coopers Creek Catchment area.   |                       |
| 423.96  |  | Amend clause (b) of Policy 4.102 as follows:<br><br>b. the <del>removal or</del> modification, <del>reconstruction or removed</del> of existing <del>in-stream</del> structures  |         |   |                       |
| 292.26  | Timaru District Council  | Require any amendments to Rule 5.138 to not be more restricted than notified.  | Support | The Submitters support retaining the activity status of the installation of defences against water subject to amendments to the inclusion of the definition of Indigenous Freshwater Species Habitat (discussed elsewhere in this further submission)   | The relief be allowed |
| 430.4   | Combined Canterbury Provinces Federated Farmers of New Zealand | Delete the definition of 'Indigenous Freshwater Species Habitat' in its entirety.  | Support | The Submitters support this relief insofar as it recognises the significant uncertainty that this poses to the Orari FMU which the Submitters properties are located within. The Submitters are concerned that an entirely new regime of policies and rules will be imposed in respect of their properties without thorough analysis and discussion about what the introduction of these provisions are intended to capture, the value of the habitats sought to be protected and how they will be mapped on an ongoing basis. For example, the recent decision of <i>Lindis Catchment Group Incorporated v</i> | The relief be allowed |

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|         |   |  | <p><i>Otago Regional Council</i> classed trout as “pests” which do not require protection by way of recourse to a naturalised flow state as that would have a negative impact on other native freshwater species.</p> <p>The Submitters support the reasons outlined in this submission for removing this definition.</p>   |
| 430.9   | Delete Policy 4.61A in its entirety.  |  | This policy may have a wide ranging effect on the Submitters in the event that the Upper Coopers Creek Catchment Area is identified as a mapped Indigenous Freshwater Species habitat which might occur if relief sought by other submitters in relation to PC7 is granted.   |
| 430.39  | Amend Rule 5.138 to delete the reference to indigenous freshwater species habitat.  |  | The Submitters have an interest in the provisions seeking the inclusion of “indigenous freshwater species habitats” insofar as they might be affected by these provisions in future if it were established that Upper Coopers Creek falls within that definition. The amendment to rule 5.138 introduces would prevent the installation of a defence against water in an indigenous freshwater species habitat regardless of the effects of the structure on the particular indigenous species in the catchment area.   |
| 430.203 | Amend Policy 14.4.21 as follows:<br><br>Assist with achieving the freshwater outcomes for the Orari, Temuka and Opihi Freshwater Management Units, <u>including by way of the review by reviewing, immediately after Plan Change 7 is made operative, of all surface water and stream depleting groundwater permits with a direct or high stream-depletion effect, with reference to and by implementing the environmental flow and allocation regimes in Tables 14 (h) to 14(y) on all reviewed permits.</u> |  | The Submitters support this relief as a form of alternative relief to their original submission. This policy, as amended, recognises that consent review is one way in which the freshwater outcomes can be achieved. It also removes the strict timeframes for reviewing all consents immediately after PC7 becomes operative. This is particularly problematic for the Submitters who hold consents for direct or high stream depleting groundwater abstractions.   |
| 430.44  | Amend Rule 5.148 to delete the reference to indigenous freshwater species habitat.  |  | <p>The Submitters have an interest in the provisions seeking the inclusion of “indigenous freshwater species habitats” insofar as they might be affected by these provisions in future if it were established that Upper Coopers Creek falls within that definition.</p> <p>Excavation of gravel is particularly important for the lower reach of Upper Coopers Creek above the SH72 monitoring site which is subject to flood events related to flows in the Scotsburn Stream. These flood events deposit a significant amount of gravel in the lower reach of Upper Coopers Creek which stifles flows to the SH72 monitoring point in low flow conditions.</p> <p>The ability to excavate gravel would enable fish to travel downstream but would not be able to occur if Upper Coopers Creek were identified as an Indigenous Freshwater Species Habitat without resource consent.</p> |