

From: [Keri Johnston](#)
To: [Plan Hearings](#)
Subject: Rooney Farms Limited - Plan Change 7 Evidence
Date: Friday, 17 July 2020 9:43:06 am
Attachments: [image002.png](#)
[image003.png](#)
[Rooney Farms Limited Richard Draper Evidence LWRP_PC7_FINAL_170720.pdf](#)
[Rooney Farms Limited Statement of Evidence Keri Johnston_FINAL_170720.pdf](#)

Please find this attached.

Kind regards,

Keri



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**BEFORE THE COMMISSIONERS APPOINTED BY
THE CANTERBURY REGIONAL COUNCIL**

IN THE MATTER of Proposed Plan Change 7 to the
Canterbury Land and Water
Regional Plan

SUBMITTER **ROONEY FARMS LIMITED**
(SUBMITTER NUMBER PC7-453)

STATEMENT OF EVIDENCE OF KERI JOHNSTON

INTRODUCTION

1. My full name is Keri Joy Johnston. I am a director and principal of Irricon Resource Solutions Limited (**Irricon**), a role I have been in since 2007. Irricon is a resource management and environmental engineering consultancy, working extensively in the field of water resources management.
2. Prior to this, I worked for RJ Hall Civil and Environmental Consulting Limited as an Environmental Engineering Consultant, Environment Canterbury as a Consents Planner and Environmental Management Systems Engineer, and Meridian Energy Limited as a Graduate Civil Engineer.
3. I have 20 years' experience as a Natural Resources Engineer. My expertise is in managing water resources (quantity and quality) from all aspects including design of flow and allocation regimes, planning and consenting, hydrology, farm environment planning, and modelling.

Qualifications and experience

4. I hold a Bachelor of Engineering in Natural Resources Engineering from the University of Canterbury. I am a Professional Member of Engineering New Zealand and a Chartered Professional Engineer (CMEngNZ).
5. I also hold a National Certificate (Level 4) in Irrigation Evaluation, a certificate in the design and management of farm dairy effluent systems, and I am an accredited RMA Decision Maker.
6. Since 2019, I have been the chair of Irrigation New Zealand.

Background

7. I am familiar with the provisions of PC7 to which these proceedings relate. In preparing my evidence, I have reviewed the relevant parts of the section 32 Report and the section 42A Report in respect of the Rooney Farms Limited (RFL) submission.

Code of Conduct

8. I have been given a copy of the Environment Courts code of conduct for expert witnesses. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I have not omitted to refer to any relevant document or evidence except as expressly stated. I agree to comply with the code and in particular to assist the Commissions in resolving matters that are within my expertise.
9. I have been asked by the Submitters to provide this brief of evidence in relation to their submission (OS384) on the Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan (**PC7**).

Scope of Evidence

10. My evidence addresses:
 - The Rooney Farms Limited resource consent process to date to renew a resource consent in a High Naturalness Waterbody;
 - Plan Change 7 as notified and comments on the Section 42 Report.

RENEWAL OF A RESOURCE CONSENT IS A HIGH NATURALNESS WATERBODY

11. RFL, along with WH Orbell, lodged resource consent CRC166770 on 11 March 2016. CRC166770 seeks to renew resource consent CRC142533¹ which authorises a take and use of surface water from the Orari River for the irrigation of 160 hectares (90 hectares on Dry Creek Station (RFL) and the balance on Clayton Station (Orbell)).
12. CRC142533 is subject to a minimum flow of 2,203 L/s at the Orari Gorge. A copy of CRC142533 is attached to my evidence in **Appendix One**. The location of the take and the area irrigated is attached to my evidence in **Appendix Two**.

¹ The application is in the name of Mr GH Rooney and Mr WH Orbell.

13. The take is located in the area defined as a High Naturalness Waterbody in Section 14.8 of the Land and Water Regional Plan (LWRP) (and carried through into Section 14.8 of Plan Change 7).
14. This area was also defined as a High Naturalness Waterbody in the Natural Resources Regional Plan (NRRP) as well (Policy WQN1 of the NRRP).
15. The applicant sought no change to the rate of take, volume or land use, and proposed to accept the appropriate minimum flow for the Orari River as set out in Table 15 of Section 14 of the LWRP, which means a change in minimum flow and location from the Orari Gorge to the Orari River upstream of Ohapi. But because the take is from a High Naturalness River, the activity does not meet the conditions of Rule 5.123 (restricted discretionary activity) of the LWRP and is therefore non-complying under Rule 5.124.
16. This rule framework is replicated in Plan Change 7, with Rule 14.5.4 being the restricted discretionary rule, and because the take is in a High Naturalness Waterbody, becomes non-complying under Rule 14.5.5.
17. On 16 March 2016, the applicant was issued with a letter advising that as the application has been lodged with Environment Canterbury for a replacement consent prior to 12 March 2016, i.e. within the period specified in Section 124(1)(d) of the Resource Management Act 1991, the applicant was authorised to continue operating under existing resource consent CRC143522 until a determination is made on your current application.
18. A request for further information was received on 23 June 2016. This is attached to my evidence as **Appendix Three**. The primary issue to be addressed was in respect of the objectives and policies relating to the High Naturalness Areas. The relevant policy is 4.6 of the LWRP, which states:

In high naturalness water bodies listed in Sections 6 to 15, the damming, diverting or taking of water is limited to that for individual or community stock or drinking water and water for the operation and maintenance of existing infrastructure.

19. A response was provided to Environment Canterbury (ECan) on 22 February 2017. This is attached as **Appendix Four**. In the response, it was stated that:

The take is in a high naturalness water body listed in Section 14 of the LWRP. This policy limits the taking of water in these areas to individual or community stock or drinking water and water for the operation and maintenance of existing infrastructure. In this case, water is taken and used primarily for irrigation purposes. However, the infrastructure is existing. Section 30 of the RMA defines infrastructure. Clause (e) of Section 30 includes 'a water supply distribution, including a system for irrigation'.

Therefore, it is the applicant's view that this policy does not prevent the continued use of existing infrastructure, including irrigation systems, and therefore, the renewal of such consents. It is supported that it intended to prevent new infrastructure being developed in these areas.

20. The response also addresses the NRRP policies and notes the explanation to Policy WQN13.2 (emphasis added):

Where water is proposed to be taken, dammed or diverted, the effect on that particular water body, and the overall effect on any water body downstream that is within the high naturalness area, shall be not significant and the natural characteristics should not be diminished. If takes are proposed from lakes within the high naturalness area, these should not diminish the natural functioning of the lake, or streams that are fed by the lake that are within high naturalness areas. Also, existing consents will be able to be renewed subject to review of their effect and reasonable use.

Any take will have to be within the allocation limits that are set for the catchment where a water management regime has been established.

21. ECan replied to the response with the following:

I have had comment back from the planning team regarding what we would define as infrastructure. The definition under the RMA includes irrigation, however our interpretation of it is that the policy would cover if you have existing infrastructure that requires you to take water so you

can maintain or operate it, then this policy would allow the water to be taken in high natural areas for that purpose. However, in this case, the situation is almost switched around. The irrigator is a result of being granted a water permit. If there was no water permit in the first place, then there would be no need for an irrigator, therefore I am not sure I would consider that this policy would cover this situation.

22. Further information was provided to ECan by e-mail. This is from the Section 42 report for the LWRP which noted the following in relation to Policy 4.6. Please note that Policy 4.6 was Policy 4.5 in the notified version of the LWRP.

In high naturalness waterbodies listed in Sections 6-15, the damming, diverting or taking of water is limited to that for individual or community stock or drinking water and water for the operation and maintenance of infrastructure. Transpower and the Fuel Companies seek to retain this policy. Ellesmere Irrigation Society seeks that this policy be deleted until Sub-Regional Sections 6-15 of the pLWRP are completed. DOC and Whitewater NZ seek to delete “and water for the operation and maintenance of infrastructure” while EDS simply seeks to clarify the meaning of this statement to ensure water for irrigation or hydro-electric purposes are not included.

Ngā Rūnanga seek: “In high naturalness water bodies listed in sections 6-15, the damming and diverting or taking of water is limited to that for individual or community stock or drinking water, to support research purposes or customary uses, or the operation or maintenance of existing infrastructure.” Fish & Game: In those high naturalness value waterbodies listed in Sections 6-15 and in Schedule XX, the damming, diverting or taking of water is limited to that for individual or community stock or drinking water and water for the operation and maintenance of infrastructure or which maintains the identified values and community outcomes and does not cause significant adverse effects to them. The DOC, Whitewater NZ and EDS submissions on this policy seem to be focussed on infrastructure and the potentially wide definition of “infrastructure” under the RMA. The policy was developed, in part, to recognise existing infrastructure, through the choice of “operation and maintenance”, and specifically did not include “establishment”. In order to make this clearer,

“existing” is recommended to be added before infrastructure. The Fish & Game submission includes the “Schedule XX”, which is discussed further below in Section 11 of this Report.

In general, the Fish & Game requested changes to the policy seem rather confused and circular and are not supported. Recommendation R4.5 That Policy 4.5 be amended as follows: 4.5 In high naturalness waterbodies listed in Sections 6-15, the damming, diverting or taking of water is limited to that for individual or community stock or drinking water and water for the operation and maintenance of existing infrastructure.

23. In my view, this supports the premise that existing infrastructure rights, including irrigation, would be maintained going forward, however, ECan continued to disagree with this assertion, and maintained the view that Policy 4.6 of the LWRP was a barrier to the renewal of water rights from a High Naturalness Waterbody. .
24. The purpose of this section of my evidence is to highlight the issues being experienced in the renewal of water rights from High Naturalness Waterbodies. Policy 4.6 of the LWRP, and ECan’s interpretation of the term *“water for the maintenance and operation of existing infrastructure”* within that policy means that the renewal of these consents is difficult. ECan has taken the view that any water takes from a High Naturalness Waterbody are not anticipated by the LWRP regardless of the significant investment in irrigation infrastructure made by the applicants.
25. It was agreed, following many discussions on this, that the application would be placed on hold. The Plan Change 7 process was beginning, and it had been indicated that this was an opportunity to address and clarify the renewal issue for takes from a High Naturalness Waterbody.
26. Feedback on the ability to renew water rights within a High Naturalness Waterbody was given to the Orari-Temuka-Opihi-Pareora Zone Committee, and in the final Zone Implementation Programme Addendum (ZIPA) released in December 2018, the following recommendation was made:

4.5.4 Recommendation: High Naturalness Waterbodies

- (i) *The Orari upper catchment and its tributaries (for its high degree of naturalness, high amenity values and very high water clarity), and Milford Lagoon (Opihi Lagoon) and Orakipaoa Creek (for their cultural and ecological significance) are classified as 'High Naturalness Waterbodies' for inclusion in the OTOP sub-region section of the Land and Water Regional Plan.*
 - (ii) *The policy and rule framework for High Naturalness Waterbodies recognises the value of, and investment in, existing irrigation infrastructure when considering resource consent applications that will replace an existing resource consent for the same activity on essentially the same terms and conditions.*
27. On the basis of this recommendation, both ECan staff and the submitter were hopeful of a positive outcome for water right renewals from High Naturalness Waterbodies, and the application remains on hold to this day until the outcome of Plan Change 7 is known.

PLAN CHANGE 7

28. The notified version of Plan Change 7 failed to give effect to Recommendation 4.5.4 of the ZIPA. The Section 32 report also makes no mention of the consideration of mechanisms to enable the renewal of existing water rights in High Naturalness Waterbodies.
29. RFL submitted on Plan Change 7 and requested that a policy be added to enable the renewal of existing irrigation water takes from a high naturalness waterbody where this was lawfully established and the renewal is for the same activity on the same terms.
30. The RFL submission is not even mentioned in the Section 42 report in relation to High Naturalness Waterbodies, and other submissions received, such as those from the Orakipaoa Water Users Group, who also sought similar relief in that they seek a pathway to allow for the

renewal of water takes from High Naturalness Waterbodies, have been disregarded. Paragraph 14.26 of the Section 42 report states:

...Similarly, there does not appear to be acknowledgement of existing water takes that may be affected by the quite directive Policy 4.6....Within the Orari-Opihi groundwater allocation zone, there is groundwater available in the T block which is intended to be used by people surrendering surface water or stream depleting groundwater takes. This groundwater availability will help ensure that landowners who rely on surface water takes, will still be able to continue to irrigate their properties. We are therefore confident that the availability of deep groundwater may be a suitable and viable alternative water source for those landowners affected by the High Naturalness classification of the water body.

31. However, earlier in the Section 42 report, it was recommended that the T allocation be removed. The inconsistency between this response and that at para 14.26 above has been identified by the Hearings Commissioners in their questions of 28 May 2020. The Officers' response is as follows:

Yes, the analysis is incorrect, as this section had been prepared prior to the T block analysis, and not reconsidered – we apologise for that oversight.

Under Rule 14.5.5, the replacement of these surface water takes would be non-complying activities, and Policy 4.6 would be a significant hurdle. Policy 4.6 reads:

In high naturalness water bodies listed in Sections 6 to 15, the damming, diverting or taking of water is limited to that for individual or community stock or drinking-water and water for the operation and maintenance of existing infrastructure.

We are of the view that the High Naturalness classification of these waterbodies ought to remain, along with the existing non-complying activity status for new takes. We are conscious of the significant difficulty that these existing abstractors would face if the T block is not available.

Upon reconsideration, we recommend that if the T block is removed, then the ability for this small number of abstraction points to move to groundwater that is not hydraulically connected to these surface waterbodies, potentially through a bespoke rule limited to replacement of surface water abstractions affected by new High Naturalness classifications. If the Hearing Panel were minded to delete the T block and grant this subsequent relief, we could provide such a rule to the Hearing Panel.

32. The Officers response assumes that deep groundwater is a viable alternative for all existing water users from High Naturalness Waterbodies. Mr. Richard Draper for RFL advises in his evidence that there is no option for deep groundwater at their site. There is simply no groundwater there.
33. Mr. Richard Draper also sets out in his evidence that the significant investment made in irrigation infrastructure and what it would mean for RFL if the water right was not able to be renewed.
34. The submitter seeks that their relief is given full consideration by the Commissioners. Despite not proposing wording for a policy, the intent in their submission was very clear.
35. For existing takes from a High Naturalness Waterbody, any relief needs to recognise that there are existing takes, and implement the recommendation in the ZIPA that the policy and rule framework for High Naturalness Waterbodies recognises the value of, and investment in, existing irrigation infrastructure when considering resource consent applications that will replace an existing resource consent for the same activity on essentially the same terms and conditions.
36. If the Commissioners were of a view to insert a policy into Plan Change 7 that enabled the renewal of existing water rights within a High Naturalness Waterbody, I would like to offer the following wording:

In considering whether to grant or refuse applications for replacement of existing consents from a High Naturalness Waterbody listed in Section 14.8, the consent authority will:

- a) *consider whether all reasonable attempts to meet the efficiency expectations of this Section have been undertaken.*
- b) *recognise the value of the investment of the existing consent holder; and*

- c) *consider whether the take will result in the exceedance of any allocation limit, or rate of take, or seasonal annual volume limit set in Tables 14(h) to 14(za);*

Dated 17 July 2020

Keri Johnston

