

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

UNDER: the Resource Management Act 1991

AND: the Environment Canterbury
(Transitional Governance
Arrangements) Act 2016

IN THE MATTER OF: Proposed Plan Change 7 to the
Canterbury Land and Water Regional
Plan – Section 14: Orari-Temuka-
Opihi-Pareora

**LEGAL SUBMISSIONS ON BEHALF OF
KEVIN and KAREN O'KANE
(SUBMITTER NO. PC7- 354)**

Dated: 21 October 2020

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May it please the Commissioners:

1. These submissions are presented on behalf of Kevin and Karen O'Kane.
2. Mr and Mrs O'Kane are members of the Seadown Water Users Enhancement Group whose members are all, to varying extents, impacted by Plan Change 7 Part B's proposal to bring the rules for the OTOP sub-region into line with the region-wide stream depletion methodology. All members of this Group have made submissions on PC7B.
3. Not being conversant with RMA plan processes, Mr and Mrs O'Kane did not understand the requirement to file evidence in accordance with the Commissioners' earlier directions. Mr O'Kane's hearing statement is intended to assist the Commissioners by providing some historical context to the Seadown Drain, its location and a brief overview of the potential impact of PC7B on their interests.
4. The submissions made by Mr and Mrs O'Kane (and those of other members of the Seadown Water Users Enhancement Group) have been made primarily for the purpose of ensuring the Commissioners are fully appraised of:
 - (a) the implications for groundwater permit holders in the Seadown area (part of the Timaru Freshwater Management Unit) of the re-classification of groundwater takes to high or direct stream depleting takes and the imposition of new partial restriction conditions linked to flows in the Seadown Drain; and
 - (b) The need for PC7B to make adequate provision for options that would enable permit holders to off-set any consequential loss of water availability for current consented irrigation arising from any such new conditions.
5. While the Group's individual submissions seek a range of amendments to PC7B, following an examination of the Section 42A Report and the recent unsuccessful attempts to secure viable deep groundwater in the Seadown area, Mr and Mrs O'Kane have resolved to pursue only those submission points that seek that PC7B provides a consenting pathway for the future

augmentation of the Seadown Drain to maintain water quantity and improve flow and water quality, including that of the downstream Waitarakau/Washdyke Lagoon. The other submission points are no longer being pursued.

6. It is noted that the submissions made by members of the Seadown Water Users Enhancement Group sought a reduction in the minimum flow established by Table 14(z) – Environmental flow for Seadown Drain from 150l/s to 100l/s. This submission point was predicated on the results of an independent freshwater quality study conducted by Ryder Environmental in 2016 which recommended that in order to maintain the desired depth of 20 centimetres, a flow of approximately 100 l/s was required. Recognising that this report has not been presented as evidence, the Group members understand that this point of their submissions may not be able to be given effect to.
7. It is submitted however that the Ryder Report does provide important and up to date information about the ecosystems created and being maintained as a result of the Seadown Drain having become part of the existing environment, particularly in its role in relation to the Waitarakau/Washdyke Lagoon. For this reason, the inclusion of a policy to improve the water quality and quantity and maintain connectivity to the Waitarakau/Washdyke Lagoon by facilitating the augmentation of the Seadown Drain is considered appropriate to be included in the Plan.
8. As Mr O'Kane has stated, the Seadown Drain was built in 1938 to deal with the by-wash from the Levels Plains Irrigation Scheme and has become part of the existing environment. If the water from this source is further reduced, the ability to maintain a minimum flow of 150 l/s is likely to be compromised, adversely affecting not only the irrigation permit holders but also the current attributes of the existing environment.
9. The requirement for a minimum flow of 150l/s coupled with the drive for increased efficiency for the Levels Plains irrigation scheme which necessarily

results in a diminishing supply of by-wash water, means that flows will start to spend more time at the minimum flow end of the spectrum.

10. As described by Mr O’Kane, accessing deep groundwater is not a realistic alternative.
11. It is submitted that including Plan provisions that allow for augmentation of the Seadown Drain would give effect to the National Policy Statement for Freshwater Management 2020 in that it would provide for the health and well-being of water bodies and freshwater ecosystems.
12. Making provision for the ability to augment the Seadown Drain would allow the connectivity between the Seadown Drain and the Waitarakau/Washdyke Limited to be maintained and for the attributes of the fresh water system and mataitai reserve to be preserved.
13. The alternative is that by not allowing for augmentation, the supply of water to the Seadown Drain reduces in reasonably short order, affecting the ability to not only abstract water for irrigation in the Seadown area which would have significant economic and social implications, but also the availability of water for the receiving environment which would have significant implications for the existing freshwater ecosystems.
14. The Section 42A Report, in recommending that the request for a specific policy, definition, objectives and rules regarding the augmentation of the Seadown Drain be declined, reasons that augmentation is provided for in the Region wide rules. (Paragraph 8.8 of the Section 42A Report, pages 320-303). It is submitted that the Region wide provisions do not provide a sufficiently certain consenting pathway for the augmentation of the Seadown Drain. It is also submitted that a source of water does not need to be identified as part of the proposed provisions as has been suggested by the Section 42A Report.
15. Definitions, objectives and rules regarding augmentation have been provided for elsewhere in the Canterbury Land and Water Regional Plan including for

Selwyn/Te Waihora (Rules 11.5.42 and 11.5.43) and Hinds/Hekeao Plains Area (Rules 13.5.35 to 13.5.37).

16. To do so for the Seadown Drainage system would therefore not be inconsistent with other parts of the Plan and would provide for a certain consenting pathway for the members of the Seadown Water Users Enhancement Group to pursue augmentation of the Seadown Drain.
17. The suggested definition (Section 14.1A) for augmentation in the Seadown Drain (as part of the Timaru Freshwater Unit) is:

Augmentation = means the discharge of water to the Seadown Drain, the primary purpose of which is to improve water quality and quantity by meeting and sustaining a minimum flow of 150l/s in the Seadown Drain at Aorangī Road.

18. The proposed rules as set out in Annexure A to Mr and Mrs O'Kane's original submission are considered to be consistent with other provisions in the Plan and PC7 and contain enough protections to ensure that all relevant matters will be taken into account when considering an application.

The discharge of water into the Seadown Drain for augmentation purposes, is a restricted discretionary activity, provided the following conditions are met:

1. *The activity does not take place on land that is listed as an archaeological site; and*
2. *The activity is not within a Community Drinking Water Protection Zone as defined in Schedule 1; and*
3. *The discharge is not within 100m of any abstraction point used for drinking water; and*
4. *A management plan is prepared and submitted with the application for resource consent; and*
5. *The discharge does not result in the erosion of the bed or banks of any receiving waterbody.*

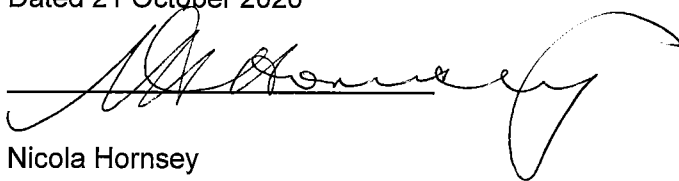
The exercise of discretion is restricted to the following matters:

1. *The appropriateness of the location of the discharge points.*
2. *The content and quality of the management plan, and the methods proposed to:*
 - a. *monitor and report on the discharges to the drain and*
 - b. *manage the timing of the discharge to the drain; and*
3. *The appropriateness of integration with existing or planned infrastructure and water conveyance systems; and*
4. *Effects on people and property arising from raised groundwater levels and reduced drainage capacity in the drainage system; and*
5. *Effects on water quality in Waitarakao/Washdyke Lagoon and significant habitats of indigenous flora and fauna and*
6. *Effects on sites or areas of wahi tapu, wahi taonga or mahinga kai; and*
7. *The potential benefits of the activity to the community and the environment; and*
8. *Effects on Ngai Tahu cultural values; and*
9. *The rate and volume of the discharge.*

The discharge of water into Seadown Drain for augmentation purposes that does not meet one or more of the conditions of Rule XXX is a discretionary activity.

19. Mr and Mrs O'Kane are committed to improving the environment and understand that as farmers, they have an important role to play in achieving this. Without the ability to access reliable water however, their ability to continue farming and make continual improvements will be significantly compromised. In order to provide for the ability to augment the Seadown Drain specifically, the additions to the Plan as detailed above are sought.

Dated 21 October 2020



Nicola Hornsey

Counsel for **Karen and Kevin O'Kane**