

**BEFORE INDEPENDENT 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 Submissions and further submissions on Proposed
Plan Change 7 to the Canterbury Land and Water
Regional Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF RANGITATA SOUTH
IRRIGATION LIMITED (SUBMITTER ID: PC7-235) RESPONDING TO
PANEL QUESTIONS**

11 December 2020

Tavendale and Partners
Lawyers, Christchurch
Level 3, Tavendale and Partners Centre, 329 Durham Street North
P O Box 442
Christchurch 8140
Telephone: (03) 374-9999, Facsimile (03) 374-6888

Solicitor acting: J R King

MEMORANDUM TO THE PANEL**MAY IT PLEASE THE COMMISSIONERS:**

- 1 This memorandum is filed on behalf of Rangitata South Irrigation Limited (**RSIL**), in response to questions from the Panel during RSIL's appearance at the Plan Change 7 hearing on 2 December 2020.
- 2 The Hearing Panel invited RSIL to reconsider the drafting of its proposed exemption relief, including whether the requested relief could be drafted as an advice note to proposed policy 14.4.18.
- 3 Counsel and Ms Ruston have considered the Panel's questions. In **Annexure A** to this Memorandum Ms Ruston has provided a supplementary statement of evidence, being her response to the Panel's questions above.

Application of the RSIL exemption

- 4 Out of the 42 RSIL shareholder properties, 35 intensified (or expanded) during or after the Nitrogen Baseline period of 2009-2013. Of those 35 properties, 20 already qualify under the existing dairy exemption in the Nitrogen Baseline definition.¹
- 5 The intention behind RSIL's submission was to provide the alternative calculation for the 15 remaining shareholder properties which intensified or expanded and do not qualify under the 'dairy exemption' in the Nitrogen Baseline definition (subparagraph b).²
- 6 That leaves 7 shareholder properties which did not intensify during the 2009-2013 period, and ought not be affected by the proposed RSIL exemption.
- 7 The drafting now proposed by Ms Ruston appropriately confines the application of the RSIL exemption to the 15 properties intended by the RSIL submission.³
- 8 The amended drafting no longer refers to the holding or issuing of shares; rather the required criteria is the receipt of RSIL Scheme water on the relevant property during the required period.

¹ Evidence of Eva Harris dated 17 July 2020, at paragraph 31.

² Evidence of Eva Harris dated 17 July 2020, at paragraph 32.

³ Supplementary Statement of Evidence of Sue Ruston dated 10 December 2020, at paragraphs 10-14.

- 9 It is submitted it is appropriate to have a definition that relates to a single group of landowners in this way. The CLWRP already has an alternate nitrogen baseline definition that applies to landowners in a particular area in the Ashburton subregion⁴ and rules that provide more enabling status for activities in relation to irrigation schemes.⁵ In addition, PC7 as notified introduced a definition framework to apply to water permits held by Opuha Water Limited shareholders.⁶

Scope

- 10 It is submitted the requisite scope exists to grant the alternative drafting now proposed by Ms Ruston. The amended drafting of RSIL's requested relief clarifies the function of, and therefore more precisely implements, the exemption sought.
- 11 Put simply, RSIL's submission sought to introduce a mechanism in the OTOP sub-region for RSIL shareholders to calculate their nitrogen baseline across a different time period, so that their baseline was reflective of their farming operation after Scheme water became available.⁷
- 12 The left-most column of RSIL's submission sought the RSIL exemption be implemented at pages 126-129 of PC7, being the list of Orari-Temuka-Opihi-Pareora Definitions (Section 14.1A).
- 13 The reasons included in the submission clarified RSIL's intention to provide this mechanism for those shareholders who had changed (ie expanded or intensified) their land use following or in conjunction with receiving RSIL water:

RSIL is concerned that for properties that intended to intensify before or during the baseline period (ie held shares in the Scheme), but were unable to convert until water was able to be delivered by the Scheme, will be pegged to their unconverted baseline loss rates, when applying for FLU consents. Those farmers have most recently converted their farms with considerable time and investment. This situation would be unduly arduous and costly to them, and in some cases could prevent them from being able to continue in their current farming operation, only by virtue of unfortunate timing.

⁴ Refer definition of Nitrogen Baseline in Section 13.1A of the CLWRP (Ashburton subregion).

⁵ Refer rules 5.125C and 5.125D relating to the Opuha Scheme and Rangitata Diversion Race.

⁶ PC7, Section 14.1A, at pages 126-128.

⁷ RSIL Submission Point PC7-235.21 (at pages 11-12 of RSIL's Original Submission), which sought the following addition to the application of the existing nitrogen baseline definition in the OTOP subregion:

in the case where shares were purchased with Rangitata South Irrigation Scheme prior to 31 December 2013, the calculation of (a) will be on the basis of the farming activity enabled by the shares was operational.

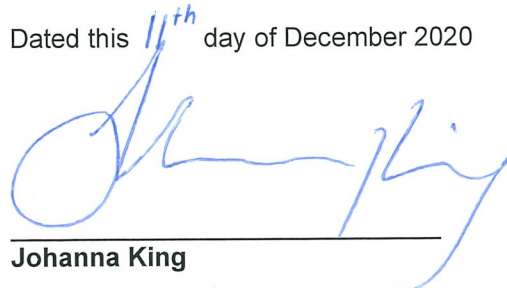
The nitrogen baseline definition does not specifically allow for land use change which occurred subsequent to the delivery of Rangitata South Irrigation Scheme water.⁸

- 14 Evidence submitted on behalf of RSIL confirmed that the majority of intensification or expansion on shareholder properties was undertaken after the nitrogen baseline period (ie post-Scheme water)⁹, and that its requested relief targeted those shareholder properties which had intensified or expanded and were not did not already able to use an 'operational' baseline under the existing dairy exemption.¹⁰
- 15 It is therefore submitted the RSIL exemption (as pursued in evidence and as amended following questioning from the Hearing Panel) was fairly and reasonably raised in RSIL's original submission. No persons directly or potentially affected by the requested relief have been denied an opportunity to respond. No rebuttal evidence was received in opposition to the RSIL exemption.

Conclusion

- 16 Counsel and Ms Ruston remain available should the Panel have further questions in respect of the contents of this Memorandum and the supplementary statement annexed.

Dated this 11th day of December 2020



Johanna King

Counsel for Rangitata South Irrigation Limited

⁸ RSIL Submission Point PC7-235.21 (at page 12 of RSIL's Original Submission).

⁹ Evidence of Eva Harris dated 17 July 2020, at paragraphs 27-30, and Appendices 2 and 3; Evidence of Dr Treweek dated 17 July 2020, at paragraphs 42, 47 and at Table 2.

¹⁰ Evidence of Eva Harris dated 17 July 2020, at paragraphs 31-34 and 37-40.

**Annexure A – Supplementary Statement of Evidence of Ms Ruston dated 10
December 2020**