

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

UNDER: the Resource Management Act 1991

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

**MEMORANDUM OF COUNSEL FOR THE ADAPTIVE MANAGEMENT
WORKING GROUP (SUBMITTER NO. PC7-385) AND THE OPIHI FLOW AND
ALLOCATION WORKING PARTY (SUBMITTER NO. PC7-382)**

Dated: 11 May 2020

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MAY IT PLEASE THE COMMISSIONERS:

1. This memorandum is filed on behalf of the Adaptive Management Working Group (**AMWG**) and the Opihi Flow and Allocation Working Party (**FAWP**) (collectively the **Submitters**). The Submitters made submissions on Part B of Plan Change 7 (**PC7**) concerning the Orari-Temuka-Opihi-Pareora sub-region (Submission Nos PC7-385 and PC7-382 respectively).
2. The purpose of this memorandum is to address and seek directions in relation to the following matters arising from Environment Canterbury's (**ECan's**) Section 42A Report:
 - (a) Potential expert witness caucusing;
 - (b) Omission of references to submission points and submitters names that provide scope for changes recommended to aspects of Part B of PC7 in the 29 April 2020 version of Appendix E.1 of the Section 42A Report (**Appendix E.1**);
 - (c) Clarification of aspects of Part 4 of the Section 42A Report and/or the recommended changes to PC7 set out in Appendix E.1.

Expert Witness Caucusing

3. The Submitters wish to record their preliminary view that certain elements of Part B of PC7 may lend themselves to caucusing between the authors of the Section 42A Report and submitters' expert witnesses prior to the PC7 hearing, e.g. hydrology, freshwater ecology and planning caucusing on the following topics:
 - (a) Artificial freshes;¹
 - (b) Environmental flow, allocation and partial restriction regimes;² and
 - (c) Alternative management regime.³

¹ Policy 14.4.36(e).

² Section 14.6, Tables 14(m), (n), (o), (p), (q), (r), (s), (ua), (v) and (w).

³ Policy 14.4.37, 14.4.38 and 14.4.39; Rules 14.5.29 and 14.5.30; Section 14.6.2, Tables 14(v), (w) and (x).

4. The Submitters acknowledge, however, that the benefit of such caucusing to the hearing process (i.e. to narrow or resolve issues) and the potential scope of caucusing topics would need to be determined following the exchange of submitters' evidence in chief.
5. Minute 3 was issued following the Governments' COVID-19 announcements on 23 March 2020, and signalled the Commissioners' intention to issue a new timetable for lodging evidence, further evidence and hearing dates when a return to more normal conditions could be predicted. The Submitters respectfully request that when that time comes, the Commissioners give consideration to a timetable structure that could accommodate expert witness caucusing and associated steps in the caucusing process (such as the identification of caucusing topics and preparation of joint witness caucusing statements) should it be determined in due course that such caucusing would be beneficial to the PC7 hearing process.

Omission of submission references

6. Paragraph 2.4 of Part 1 of the Section 42A Report advises:

All recommended changes are set out in an accompanying 'tracked changes' versions of PC7 and PC2, and have footnoted references with a submission point and submitter name that provides the scope for the recommended change.

7. Regrettably, that approach has not been fully complied with for the following plan provisions that are central to the Submitters' submissions on PC7:
 - (a) Policy 14.4.35 (at pages 135 of Appendix E.1), where the relevant footnote (footnote 311) has been omitted.
 - (b) Section 14.6.2 Environmental Flow Regimes, Tables 14(n), 14(o), 14(p), 14(q), 14(r), 14(s), 14(ua), 14(v), 14(w) and 14(x) (at pages 163 – 168 of Appendix E.1).
8. With respect to the Tables listed in paragraph 7(b) above, the Submitters acknowledge that a footnote (footnote 371) is included in Appendix E.1 against Table 14(n) (South Opuha Environmental Flow and Allocation Regime), which purports to reference the submission points and submission names providing

scope for “[a]mendments to the Opihi FMU Environmental Flow and Allocation Regime tables”. However, it is unclear from footnote 371 which of the submission point(s) has been relied upon for the recommended changes to each Table. This situation is exacerbated by the absence of an analysis of the relevant submissions within the Section 42A Report or a clear explanation of the reasons for the recommended changes to the Table.

9. The Submitters respectfully request that the Commissioners direct ECan to confirm by way of a further erratum or corrigendum to the Section 42A Report the relevant submitter(s) name and submission point(s) relied upon for the jurisdiction scope for the recommended changes to each plan provision referred to in paragraph 7 above.

Clarification of aspects of the Section 42A Report

10. The Submitters have found that aspects of the analysis of submissions in Part 4 of the Section 42A Report are contradictory, and in some instances, do not align with the recommended changes to Part B of PC7 in Appendix E.1. As noted above, there is also an absence of clear explanations for recommended changes to the minimum flow regimes contained in Section 14.6.2.
11. The aspects of the Section 42A Report of particular concern to the Submitters are:
 - (a) The recommended deletion of clauses (b) to (d) of Policy 14.4.36, which does not align with the commentary at para 9.35 of Part 4 of the Section 42A Report (at page 309).
 - (b) The absence of any clear explanation of the reasons for the recommended changes to the minimum flow regimes in Tables 14(n), 14(p) and 14(r).
 - (c) The recommended changes to the minimum flow regimes in Tables 14(v) and 14(w), and related thresholds in Table 14(x), specifically:
 - (i) The absence of any clear explanation of the reasons for the recommended ‘two tier’ minimum flow regime and deletion of PC7’s discretionary approach to entry into the alternative management regime(s);

- (ii) How the recommended 'two tier' minimum flow regime (addressed at paras 9.53 and 9.54 of Part 4 of the Section 42A Report, page 313) relates to the 'three tier' minimum flow regime with variable monthly lake levels recommended by Mr Clark in Appendix D.6 (addressed at paras 6.59 to 6.64 of Appendix D.6, pages 632 to 635); and
 - (iii) The recommended retention of PC7's mandatory requirement for minimum flow reductions to apply for a minimum period of one month, which does not align with the commentary provided at para 9.62 of Part 4 of the Section 42A Report (page 315).
- 12. The Submitters wish to seek urgent clarification of the Section 42A authors' recommendations on those matters, which are central to the AMWG's and FAWP's submissions on PC7. For completeness, it is noted that none of the matters noted at para 11 have been addressed in the Section 42A Report Errata Table dated 29 April 2020.
- 13. The clarification sought by the Submitters is necessary to ensure their (and potentially other submitters') evidence for the PC7 hearing is appropriately focused on relevant matters and that they are not unduly disadvantaged (e.g. by having no opportunity to adduce evidence in response to any information provided or subsequent changes recommended by the authors of the Section 42A Report in relation to the matters noted at para 11 later in the PC7 hearing process). In the Submitters view, it would be preferable for clarification to be provided by ECan prior to the filing of submitters' evidence.
- 14. The Submitters recognise the need for transparency with respect to such a request. Accordingly, and subject to any alternative approach that the Commissioners may consider appropriate in the circumstances, the Submitters seek leave from the Commissioners to submit a short set of questions seeking clarification from the authors of the Section 42A Report on the matters noted in para 11 above. The questions and any subsequent response could then be made available to all submitters on ECan's PC7 webpage. The Submitters respectfully seek directions from the Commissioners to that effect (or similar).

15. The Submitters also note that the Section 42A Report is absent expert (ecological and/or hydrological) analysis to support the recommended changes in Appendix E.1 to:
 - (a) Policy 14.4.35(e) (regarding artificial freshes); and
 - (b) Tables 14(v) and 14(w) ('two tier' minimum flow regime).

16. The Submitters consider it would be helpful if ECan could confirm whether it intends to complete expert analysis to support the recommended changes to the provisions noted in para 15 above prior to the hearing, and if so, when the results of such analysis will be made available to submitters. The Submitters respectfully request additional directions be made by the Commissioners in relation to that issue.



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