

**Before the Independent Commissioners**

In the Matter of                      the Resource Management Act 1991

And

In the Matter of                      the Proposed Canterbury Land and Water Regional Plan

**Legal Submissions on behalf of ANZCO  
Foods Limited, CMP (Canterbury)  
Limited, and Five Star Beef Limited**

Dated: 28 March 2013

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## Introduction

1. ANZCO Foods Limited, CMP (Canterbury) Limited and Five Star Beef Limited (and together referred to as **ANZCO** unless stated otherwise) made a submission and further submission on the Proposed Land and Water Regional Plan (**LWRP** or **Plan**).
2. Given the brief timeslot, I wish to outline the issues of most concern but note that evidence has been provided on a full range of issues. All of the changes sought by ANZCO are attached to these submissions as **Appendix A** and are shown as tracked changes to the Plan provisions.
3. As you have already received legal submissions on the statutory requirements for regional plans and the associated legal tests. I do not propose repeat those here. Accordingly, I respectfully refer to and adopt the summary provided by my friends in their legal submissions.<sup>1</sup>

## ANZCO's Case and Evidence

4. Messrs **Clarkson** (Chief Executive Officer) and **MacFarlane** (Director and Farming Consultant) will give you a broad overview of ANZCO's operations in particular the Canterbury livestock processing facilities and Five Star Beef which is New Zealand's largest feedlot producing high quality meat for export.
5. Mr **Copeland** (Economist) focuses on the significant contribution the companies make to the region.
6. Mr Clarkson and Mr Macfarlane explain ANZCO's complete reliance on its resource consents and on primary farming activities and simultaneously, the complete reliance Canterbury farmers have on livestock processing plants to buy their stock and process it into food for consumers.
7. Livestock processors and intensive feed lots are no longer suitable activities to be located in urban fringe areas where there would be access to reticulated water and waste.

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<sup>1</sup> In particular the comprehensive summary provided at pages 2 - 6 of Mr Pizzey's legal submissions tabled on 1 March 2013.

8. Consequently, this type of activity is subject to some difficult consenting issues. Such issues include being able to obtain a high quality, year round supply of water, and enough land area to effectively discharge its wastewater.
9. Both Mr **Ensor** (planner) and Mr **Douglass** (hydrologist) deal with the appropriateness of prohibited activity status for new water takes in those zones described as over allocated and the basis for the allocation limits proposed. It is their view that water takes for livestock processing activities should be catered for by a new “exemption” rule and their evidence explains in detail why and how that could work.
10. Mr Ensor and Mr Douglass also discuss their concerns in relation to the transfer rules and in particular the requirement to surrender a proportion of water on transfer (or otherwise be required to obtain a non-complying consent).
11. The evidence produced by the expert witnesses is not confined to providing reasons why the Plan provisions are not the most appropriate, but goes further and assesses the basis for alternative provisions (in **Appendix A**) which I trust will be of use to the Commission.
12. Overall, ANZCO is not here to complain. It embraces the need for regulation; it has been obtaining consents for a number of years. Rather, it has taken a solution focussed approach to the Plan and has proposed sound alternatives supported by evidence.

## **OBJECTIVES AND POLICIES**

13. Under Part 2 of the Act an overall broad judgment is required to be made as to whether the provisions promote the sustainable management of natural and physical resources. As noted in *North Shore City Council v Auckland Regional Council*<sup>2</sup> that “recognises that the Act has a single purpose. Such a judgment allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome”.

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<sup>2</sup> *North Shore City Council v Auckland Regional Council* 97 NZRMA 59 at page 347 of the ELRNZ.

14. ANZCO and its experts accept that in dealing with the important issues of water quality and quantity, the Officers have attempted to undertake that comparison of conflicting considerations and produce a Plan that meets the purpose of the Act.
15. However, it is my submission, and the evidence of ANZCO's experts that the final outcome displays an inappropriate and unjustified bias towards certain values. This has resulted in:
  - (a) Provisions which seek: no adverse effects; a preference to "avoid" adverse effects over remedying or mitigating; or which seek an unnecessarily stringent test, such as "protection" of certain values and achieving "maximum" social and economic benefits<sup>3</sup>; and
  - (b) Various worthy considerations being left out of the policy framework such as recognition of the significant level of existing investment and contribution that various activities make to the social and economic well-being of people.
16. In respect of point (a) above, while there is no hierarchy between "avoid, remedy or mitigate", the "*grammatical construction is such that they are to be read conjunctively and with equal importance*"<sup>4</sup>. There may well be certain significant values present or a likelihood of significant adverse effects however (such as values attached to rare vegetation or ONL's) that justify an "avoidance" of adverse effects in the first instance, and / or are afforded a higher degree of protection<sup>5</sup>.
17. However, ANZCO's witnesses have examined those objectives and policies and do not consider the values or effects that are present warrant such a stringent test.
18. They conclude that the wording in those instances is not the most appropriate, for a variety of reasons, including:
  - (a) The Plan goes further than the NPS Freshwater and CRPS and imports a higher threshold not supported in the superior policy instruments; and

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<sup>3</sup> For example Objective 3.11 and Policies 4.3, 4.11, 4.20, 4.28, 4.30, 4.35 and 4.46.

<sup>4</sup> *Winstone Aggregates Limited v Papakura DC* A049/02, para 24

<sup>5</sup> See paras [2-39] and [3-64] *Day v Manawatu-Wangauni Regional Council* [2012] NZEnvC 182 which is under appeal to the High Court.

- (b) The Plan goes further than Part 2 by importing an unqualified protection at all costs approach in certain provisions (such as objectives 3.3, 3.9, and 3.10).
19. Amendments are accordingly proposed in **Appendix A** which the witnesses consider are the most appropriate when considered overall.
  20. In respect of (b) above, you will have heard legal submissions and evidence from numerous parties as to the economic significance of those respective parties' operations. While it may seem trite for ANZCO to present evidence on its economic significance and contribution to the region, it is a highly relevant factor in plan decision making and is embodied in the overall purpose of the Act.
  21. One of the fundamental tenets of sustainable management is the use, development and protection of natural and *physical resources* (which includes buildings and structures)<sup>6</sup> in a way, or at a rate, which enables, amongst other things, people and communities to provide for their social, economic and cultural wellbeing.
  22. ANZCO has invested significantly in physical resources such as land and buildings and the use, development and protection of those physical resources enable a large number of people to provide for their social and economic wellbeing.
  23. The evidence of Messrs **Clarkson, MacFarlane** and **Copeland** set out that while ANZCO's operations are in actual fact comparatively small in terms of the amount of water they use and the waste they discharge, they punch far above their weight in terms of the social and economic contribution to the region. For example within the Ashburton District, ANZCO's operations generate expenditure of \$400 million per annum, create more than 2,600 jobs, and create wages and salaries of \$165 million per annum<sup>7</sup>.

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<sup>6</sup> See s2 definition of "Natural and Physical Resources" which "*includes land, water, air, soil, minerals, and energy, or forms of plant and animals (whether native to New Zealand or introduced), and all structures*". See also the definition of "Structures" which means "*any building, equipment, device, or other facility made by people and which is fixed to land*".

<sup>7</sup> Copeland para 16.

24. However, there is little if any recognition in the Plan of the significance of companies like ANZCO in terms of their contribution to the social and economic wellbeing of people and communities.
25. Overall, ANZCO is not seeking more emphasis be given to social and economic considerations when compared with other considerations, but rather it is seeking an approach which more accurately reflects the purpose of the Act. These are detailed in **Appendix A**.

## **DISCHARGES**

26. In respect of discharges, it will be apparent from the evidence of Mr Ensor and Mr Douglass that ANZCO's primary concerns are that:
  - (a) Livestock processors are very much a unique set of industrial activities and should not be treated as "farming activities"; and
  - (b) The way the rules have been drafted, a discharge from livestock processing is caught by four different (and potentially conflicting) categories of rules<sup>8</sup>, and Fives Star Beef's discharges by three<sup>9</sup>.
27. Mr Ensor and Mr Douglass explain that the livestock processing plants create waste which is required to be applied to land.
28. It is a complex model where the processing plant and surrounding land operate as an integrated system. That system encompasses aspects of what might at first sight be considered "traditional farming" in that in order to manage the discharge, plants are grown to uptake nutrients and improve soil health.
29. However, it is important to understand that those "traditional" aspects of farming are very much a product of managing the industrial discharge and not farming itself (and many of these aspects are in fact typically required by the conditions of ANZCO's discharge consents). It is not farming land for farming purposes<sup>10</sup>.

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<sup>8</sup> Industrial discharges (Rules 5.69 and 5.70); stockholding areas, the use of land for the collection, storage and treatment and discharge of animal effluent (Rules 5.35 and 5.36); nutrient loss from farming activities (Rules 5.39 – 5.51); and fertilizer rules (Rules 5.52 to 5.54).

<sup>9</sup> Stockholding areas, the use of land for the collection, storage and treatment and discharge of animal effluent (Rules 5.35 and 5.36); nutrient loss from farming activities (Rules 5.39 – 5.51); and fertilizer rules (Rules 5.52 to 5.54).

<sup>10</sup> This is discussed extensively by Mr Douglass and in particular at paras 62 to 81

30. ANZCO's submission requested clarification on this issue and while the S42A (Vol. 2) Report recommends ANZCO's relief be accepted in relation to the fertilizer rules<sup>11</sup> the Report does not consider the issue in relation to the remaining rules.
31. ANZCO is not seeking to avoid obtaining consents or be exempt from rules unfairly. ANZCO's operations have been obtaining discharge consents for a number of years. It implements sophisticated environmental management plans and nutrient budget models. For example, it has been recording nitrogen below the root zone for nearly 20 years.
32. The nutrient loss rules were clearly intended to capture those land use activities with potential effects on water quality, which had previously escaped such regulation. ANZCO's livestock processing operations do not fall within that category.
33. In my submission and in having regard to the rules' efficiency and effectiveness under s32(3)(b), the rules in their present form are not the most appropriate for achieving the objectives. For the one discharge to be assessed under now three different and potentially conflicting categories of rules is inefficient and unnecessary<sup>12</sup>.
34. Accordingly, some minor but necessary amendments have been proposed Rules 5.35, 5.36 and 5.69 and the definition of "farming activities" (in **Appendix A**).

#### **Definition of property – Rule 5.35 (and new rule 5.36)**

35. Rule 5.35 is now proposed by the S42A Report (Vol. 2) to be split into 3 separate rules which is supported by ANZCO<sup>13</sup>.
36. Rule 5.36 which relates to discharge of animal effluent or water containing effluent onto land is a restricted discretionary activity provided it "does not occur beyond the boundary of the site".
37. Although a new definition of "property" has been proposed in the S42A (Vol. 1) that has not filtered into Volume 2 in respect of this rule.

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<sup>11</sup> Where discharge consent is obtained under the industrial rules, no further consent is required under the fertilizer rules.

<sup>12</sup> For example, discharge of animal effluent is classed as restricted discretionary whereas industrial discharges are discretionary.

<sup>13</sup> See pages 33-46 s42A Volume 2 Report.

38. In my submission, if the operator creating the contaminant in Rule 5.36 has any sort of legal interest in the land to which the contaminant is being discharged, including a leasehold or contractual interest, there is no reason to distinguish that land on the basis it is not in the same ownership, title or operating unit.
39. To fall to be a non-complying activity on the basis that the discharge area does not fall strictly within the definition of “site”, is in my submission, not effects based and is not supported in terms of the objectives and policies to which the rule relates. Nor does it reflect the commercial and practical realities of rural based activities.

## **WATER**

### **The “Exemption” to the rule and Prohibited activity status**

#### *Case for an exemption*

40. ANZCO has proposed a new rule (with associated changes to objectives and policies) applying to livestock processors, which effectively creates an exemption from the prohibited activity Rule 5.104.
41. For a variety of reasons, such provisions are put forward as being the most appropriate and overall it is submitted, creates a more equitable solution. These reasons are summarised as:
- (a) The interrelationship with farmers: livestock processors co-exist with farmers and they rely on each other. Canterbury farmers (and the wider economy) benefit from having livestock processing located in Canterbury and it is appropriate to provide for that relationship<sup>14</sup>;
  - (b) They provide an essential service to farmers: related to (a) above and particularly in times of drought<sup>15</sup>. Allocating a small share of water for livestock processing enables the economic and social benefits associated with farming to be realised<sup>16</sup>;

<sup>14</sup> Discussed extensively by Mr MacFarlane, and Mr Ensor at paras 20-23, 89, 90 and 136.

<sup>15</sup> See MacFarlane at paras 46-51

<sup>16</sup> As explained throughout the evidence of MacFarlane, Copeland, Ensor and Douglass



- (c) The lag effect: also related to (a) above, livestock processors respond to and exist because of farming but the demand for livestock processing is driven by expansion in the farming sector, and so livestock processors generally sit behind the supply / demand development curve<sup>17</sup>;
- (d) An exemption will assist in addressing inequities created by the first in first served approach: The Council has recognised in the past the inequities created by the first in first serve approach and that it does not provide for primary processing industries in particular<sup>18</sup>;
- (e) Livestock processing takes are comparatively very small: when compared to all takes. For example, combining all of the food processors (ie not just livestock processors) shows only 0.2% in the Rakaia Selwyn groundwater zone, and 8.2% in Ashburton Lyndhurst (where they are over represented due to a concentration of food processors in that zone)<sup>19</sup>;
- (f) Any expansion is likely to be modest: given it responds to farming expansion<sup>20</sup>;
- (g) Therefore, the resultant effect are likely to be minimal: and can be managed through the consenting process proposed<sup>21</sup>;
- (h) Securing water in advance of demand is inefficient: a likely outcome with prohibited activity status is for livestock processors to secure water in advance of demand (by obtaining transfers) which in turn means investment occurs well in advance of demand which creates both economic and resource inefficiencies<sup>22</sup>;
- (i) ANZCO has no other choice but to rely on abstraction: due to being located in rural areas<sup>23</sup>;
- (j) It has no choice but to discharge to land: due to being located in rural areas<sup>24</sup>;

<sup>17</sup> Explained by Ensor paras 90, 135 – 138 and 164 and MacFarlane at paras 52-53

<sup>18</sup> See Ensor para 103-104

<sup>19</sup> See Ensor evidence para 130

<sup>20</sup> See Ensor at para 148 and Ensor's Appendix A: Section 32 analysis

<sup>21</sup> See Ensor at paras 148 and 149, Appendix A of Ensor's evidence and Douglass at para 107-110 and 139

<sup>22</sup> Ensor paras 90, and 108 – 111.

<sup>23</sup> See evidence of MacFarlane, Ensor and Douglass

- (k) And water is essential to minimise effects of disposal:
- (i) Water is the essential ingredient in effective waste disposal - it dilutes the waste stream and is used to irrigate the waste disposal area;
  - (ii) This improves both soil health and the pasture crop between waste applications;
  - (iii) This in turn maximises plant growth and hence nutrient uptake – and therefore reduces nutrient loss;
  - (iv) In fact, the ability to use water in this process allows the waste to be turned into something beneficial for the soil and overall, improves soil health<sup>25</sup>;
- (l) Water assists in turning waste into something profitable: the “cut and carry” system allows the pasture to be cut and sold to farmers for feed and use on their own farms<sup>26</sup>;
- (m) There is extra capacity available that the limits have not considered: this is addressed below and by Mr Douglass;
- (n) The NPS and CRPS can still be “positively implemented”<sup>27</sup>: this is discussed in the evidence of both Mr Ensor and Mr Douglass.
- (o) The intent of the Plan’s objectives and policies can be maintained: this is explained in the evidence of both Mr Ensor<sup>28</sup>.

42. Mr Ensor has undertaken a comparative evaluation of the proposed exemption for livestock processing activities and has concluded that such an exemption would be most appropriate in terms of section 32 and would overall, achieve the purpose of the Act.

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<sup>24</sup> As per the evidence of Mr Douglass

<sup>25</sup> Discussed extensively throughout the evidence of Mr Douglass for example paras 20-25, 30-52 and 90 -91. Regular testing of soils is undertaken within ANZCO’s disposal areas which shows improvements to organic matter and soil fertility which in turn increases water holding capacity and soil depth.

<sup>26</sup> As addressed by Mr MacFarlane

<sup>27</sup> As per the test set out in *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211

<sup>28</sup> particularly at 153 – 155 and the section 32 analysis attached as Attachment A to Mr Ensor’s evidence.

*Why prohibited activity status is not the most appropriate*

43. Additionally, ANZCO seeks to change the proposed prohibited activity status to non-complying for additional abstractions. The following submissions also further the argument above in relation to the “exemption rule”.
44. The S42A Report traverses the situations listed in *Coromandel Watchdog* that may be valid examples of when prohibited activity status might be the most appropriate<sup>29</sup>. I do not disagree with that summary but rather how it has been applied.
45. In my submission, the finding that some of the *Coromandel Watchdog* examples may be present is a starting point, but such a finding should not end the inquiry there. The critical question remains whether in these particular circumstances prohibited activity status is the most appropriate.<sup>30</sup> In my submission, that conclusion can only be reached after a comparative evaluation under section 32.<sup>31</sup>
46. I now turn to two of the examples listed in the 42A Report that are relied on primarily to justify the use of a prohibited activity status.

*Precautionary approach*

47. Taking a precautionary approach may in some instances lead to a prohibited activity status. However, that relies on the premise that there is “insufficient information about the activity”<sup>32</sup>.
48. Much evidence has been produced (not just by ANZCO’s witnesses) that there is substantial and reliable information available that challenges the information relied on by the officers. Examples have been produced which indicates there is additional capacity beyond the 2004 interim limits<sup>33</sup>.

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<sup>29</sup> Pages 34 and 35 of Volume 1 S42A Report, which summarises some of the situations which may warrant prohibited status; the overall requirement to find that prohibited activity status is the most appropriate; and that decision can only be reached after a comparative evaluation under section 32.

<sup>30</sup> In particular see paras [37] of *Coromandel Watchdog* and [45] of *Thacker v CCC C026/2009*

<sup>31</sup> See *Thacker* at [49]-[50]

<sup>32</sup> Para [34](a) of *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development and Anor CA285/05*

<sup>33</sup> For example McIndoe and Callender evidence in chief dated 4 February 2013 (on behalf of Irrigation New Zealand, Federated Farmers and Horticulture New Zealand) and Douglass paras 94 – 108.

49. In my submission, this challenges the Council's justification that it should take a precautionary approach and adopt a prohibited activity status on the basis there is "insufficient information available". It also tests the limits themselves which rely on outdated information.

*It is necessary to give effect to the NPS?*

50. The S42A Report considers prohibited activity status is appropriate to allow an expression of social and cultural outcomes and expectations including as expressed through the Freshwater NPS<sup>34</sup>.
51. It further considers prohibited status as being "*primarily in response to the Freshwater NPS and CRPS*" and also in "*response to the multitude of applications it has received to exceed [those limits]*"<sup>35</sup>.
52. However, the Freshwater NPS is clear that the freshwater objectives to be drafted into regional plans are to be established with a variety of competing values in mind. The Preamble to the Freshwater NPS states that "*water quality and quantity limits must reflect local and national values*"<sup>36</sup>.
53. It recognises as a "national value" that water is valued for "*commercial and industrial processes*", "*food production*", "*cleaning, dilution and disposal of waste*" as well for its intrinsic values.
54. However, these values have been afforded very little recognition in the Plan.
55. The Court in *Road Metals Company v Selwyn District Council*<sup>37</sup> discussed the Preamble to the Freshwater NPS. It noted the list of values was "*helpful in understanding the relative values of freshwater and understanding that all of these values are important*".
56. The proposed allocation limits are the key tool by which freshwater objectives are to be met. Once those objectives are established then the limits will flow from that. If the proposed freshwater objectives do not give appropriate recognition to those other non-intrinsic values then neither will the provisions that follow them.

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<sup>34</sup> Page 35 of S42A Volume 1

<sup>35</sup> Page 102 of S42A Volume 1

<sup>36</sup> Page 3 Freshwater NPS

<sup>37</sup> [2012] NZEnvC 214 para 59

57. In my submission, that is what has happened here. The 2004 limits have been rolled over from the NRRP. This has resulted in the relevant objectives and policies and consequently the rules, being drafted primarily to give effect to the 2004 interim limits. Therefore, that top down focussing of the values and objectives has not driven the establishment of the limits.
58. This is illustrated by the Officers placing a great deal of emphasis on the first part of Objective B2 which is the key objective in respect of limits. That seeks to “*avoid any further over-allocation*”.
59. While no doubt that is an important objective, there are a variety of objectives and policies in the NPS, not just that Objective in isolation.
60. Further, in determining whether the resource is in fact over-allocated the “*process for setting limits should be informed by the best available information and scientific and socio-economic knowledge*”<sup>38</sup>. Referring to my submissions above, the best available information has not been used by the officers.
61. Even assuming the limits proposed are correct, then avoiding further over allocation does not automatically translate into a prohibited activity status.
62. In support of that, I refer to *Wairoa River Canal Partnership v Auckland Regional Council* [2010] NZEnvC 309. There, the Regional Council had adopted a policy in its RPS which sought to avoid development in certain areas. The Court noted an important point: that the policy did “*not attempt to impose a prohibition on development - to avoid is a step short of to prohibit*”<sup>39</sup>.
63. Further, I submit that a NPS while certainly must be given effect to, should not “*not overwhelm all other planning considerations*”<sup>40</sup>.
64. In my submission, Objective B2 does not require use of a prohibited activity status. Objective B2 could be “*positively implemented*”<sup>41</sup> through a variety of mechanisms. And of course, in order to determine what mechanisms are most appropriate, there must first be a top down focussed approach taken that requires a consideration of all of the relevant values. From there it is

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<sup>38</sup> Page 3 Freshwater NPS

<sup>39</sup> At para [15]

<sup>40</sup> See *Day* (supra) at para [2-41] in relation to the NPSREG

<sup>41</sup> *Clevedon Cares* (supra)

necessary to have a detailed understanding of all the information available before determining the methodology and then whether against that background, there might be provision for further abstractions.

65. For all those reasons, it is my submission that the limits proposed in the Plan do not give effect to the Freshwater NPS.

**Proposed “Claw back mechanisms”: transfer rules and associated policies**

66. The Officers’ justification for the automatic surrender of water on transfer relies primarily on their view that the resource is over-allocated, that the rule will give effect to the NPS,<sup>42</sup> and will improve efficiencies and encourage more effective distribution of water to meet economic and social outcomes<sup>43</sup>.
67. In my submission, you should treat this view with caution.
68. Much of the above submissions also relate to the justification for the transfer rules. If the allocation limits themselves are not defensible or based on the best available information, the justification for surrendering water on transfer is also questionable (as they are a direct response to over-allocation).
69. Mr Ensor and Mr Douglass discuss alternative methods in detail that will both give effect to the NPS and overall be in my submission will be more appropriate. They discuss how implementing a variety of methods, based on sound and best available information will cause less hardship over a more a reasonable timeframe as envisaged by the NPS, and ensure that inequitable situations do not arise. They consider that transfers assist in alleviating the bias created by a first in first served approach and this, along with the imposition of “adaptive management” conditions, and the creation of a “B allocation block” for those consents, have not been contemplated by the Officers.
70. In respect of the Officers’ assumption that the transfer rules will improve efficiencies and encourage more effective distribution of water to meet

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<sup>42</sup> At page 42 of the S42A

<sup>43</sup> At page 42

economic and social outcomes, there has, in my submission, been valuable evidence that suggests otherwise<sup>44</sup>.

71. The Freshwater NPS Implementation Guide, developed to provide guidance and considerations to local authorities in responding to, and giving effect to the NPS<sup>45</sup> states:

Efficiency of allocation is discussed further under Objective B3. Policy B3 seeks to ensure councils' approach to transfers of water take permits contributes to the efficient allocation of water; and, by implication, the achievement of freshwater objectives and compliance with limits. Transfers may be appropriate where the person/company undertaking the relevant activity changes, or to allow the movement of water from one user/use to another. Shifting allocations over time recognises that fresh water may be valued differently at different times by different parties. Regional councils are required to state in regional plans their assessment criteria for approving the transfer of water take permits in order to improve and maximise the efficient use of water. The NPSFM seeks to encourage appropriate transfers by increasing certainty and removing unnecessary administrative barriers or inefficiencies. Policy B3 is subject to the provisions of the Act, including sections 30 and 136. For example, the matters specified in section 104, and the effects of the transfer, must be considered under section 136(4)(b)(ii). Policy B3's focus on transfer is anticipated as the first step in creating a greater uptake of transfer of consents to maximise efficient allocation. The broader area of 'dynamic efficiency' is considered to provide opportunities for new approaches in trading and transfer systems that enable appropriate consideration of both environmental and economic outcomes. For example, short consent terms may help achieve dynamic efficiency and enable regular review, but would not always be economically efficient for investment<sup>46</sup>.

72. Accordingly, the NPS Implementation Guide specifically acknowledges appropriate transfers should be encouraged by increasing certainty and removing unnecessary administrative barriers or inefficiencies. Transfers are anticipated as the first step in creating a greater uptake of transfer of consents to maximise efficient allocation.
73. It is Mr Douglass' view that there is little analysis or justification for the surrender on transfer. In my submission, these proposed provisions are not the most appropriate and Condition 5 of Rule 5.107 should be deleted as well as rule 5.108.

<sup>44</sup> For example Butcher and Willis evidence-in-chief dated 4 February 2012, and the evidence of ANZCO's witnesses

<sup>45</sup> As stated at section 1.1 of the Implementation Guide

<sup>46</sup> In the discussion of Policy B3 at page 29 of the Guide.

**Changes sought – dealing with any issues of scope**

74. You will note that the changes sought in **Appendix A** have altered in some respects from the original submission. This is as a result of further consideration of these issues as the plan change process has progressed, including as a result of reviewing the S42A Report.
75. In our view the changes sought are consequential and are firmly within the broad scope of ANZCO's original and further submissions.

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Jane Walsh  
Counsel for ANZCO foods Limited, CMP Canterbury Limited and Five Star Beef Limited  
28 March 2013