

## Gay Gibson

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**From:** Hans van der Wal <hans.vanderwal@duncancotterill.com>  
**Sent:** Friday, 21 March 2014 9:06 a.m.  
**To:** Mailroom Mailbox  
**Cc:** 'Warwick Pascoe'; Anthony Davoren (tony@hydroservices.co.nz); Gus Walkden (gus@csbc.co.nz)  
**Subject:** TRIM: HydroTrader Ltd Submission on Variation 1 to the pLWRP [DC-Documents.FID1576026]  
**Attachments:** Submission Variation 1 HydroTrader (\_4413692\_1) (\_4420475\_1).PDF  
**HP TRIM Record Number:** C14C/43351

Please find **attached** by way of lodgement the submission of HydroTrader Ltd on Variation 1 to the pLWRP.

We would be grateful for acknowledgement of receipt.

Thank you.

**Hans van der Wal**  
Special Counsel

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# Submission on Variation 1 to the Proposed Canterbury Land and Water Regional Plan

**Form 5: Submissions on a Publicly Notified Proposed Policy Statement or Regional Plan under  
Clause 6 of Schedule 1 of the Resource Management Act 1991**

Freepost 1201 Variation 1 to pLWRP  
Environment Canterbury  
P O Box 345  
Christchurch 8140

**Organisation:** HydroTrader Ltd (“HydroTrader”)

**Phone:** 379-2430

\* the organisation that this submission is made on behalf of

**Postal Address:** C/- Hans van der Wal, Duncan Cotterill, PO Box 5, Christchurch 8150

**Phone (Cell):** 021-878052

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**Contact name and postal address for service of person making submission** (if different from above):

## Trade Competition

HydroTrader Ltd could not gain an advantage in trade competition through this submission

**Signature:**



**Date:** 21 March 2014

(Signature of person making submission or person authorised to sign on behalf of person making the submission)

Please note:

(1) all information contained in a submission under the Resource Management Act 1991, including names and addresses for service, becomes public information.

I do wish to be heard in support of my submission; and if so,

If others make a similar submission, I will consider presenting a joint case with them at the hearing.

## Submission on Variation 1 to the Proposed Land and Water Regional Plan

To: The Canterbury Regional Council

HydroTrader Ltd (“HydroTrader”) makes a submission on Variation 1 to the Proposed Canterbury Land & Water Regional Plan (“Variation 1”).

1. HydroTrader makes the submissions, and seeks the relief identified in the sections below. It could not gain an advantage in trade competition through this submission.

### Scope of the Submissions

2. HydroTrader submits on the following parts of Variation 1:
  - 2.1 Policy 11.4.22;
  - 2.2 Rule 11.5.37, and in particular Conditions 3 and 4;
  - 2.3 Rule 11.5.39;
  - 2.4 Any other provisions that are affected by or rely on the above provisions.

### Submission

3. HydroTrader submits that the Canterbury Regional Council:
  - 1.1 Lacks the power to impose a condition requiring the surrender of part of an existing allocation on transfer;
  - 1.2 Lacks the power to make the transfer of water a prohibited activity, including when such a condition is breached;
  - 1.3 Has failed in its obligations under s32 to establish that:
    - 1.3.1 Policy 11.4.22, and in particular Clauses (a) to (c) are the most appropriate way of giving effect to the purposes of the Act and objectives and policies in applicable national and regional planning documents, and that
    - 1.3.2 Rule 11.5.37, and in particular Conditions 3 and 4, and Rule 11.5.39, are the most appropriate means of giving effect to the applicable planning document policies and objectives, and the purposes of the Act.

### Reasons

4. A condition requiring a surrender of allocation is not available under s77A, as it is not a condition that would be available under s108. It reduces an existing grant in a way that is provided for only through consent reviews under s128 or cancellation of unused consents under s126. It does not address effects necessarily arising out of the transfer, but out of the initial grant of the allocation.
5. Section 136 only provides for the making of rules that either permit a water transfer or enable an application for water transfer to be made. It does not provide for or envisage a situation where no application for the transfer of water could be made.
6. Under s32 the consent authority bears the duty to establish that the applicable policies and methods meet the “most appropriate” threshold in s32(1). In the absence of adequate

evidence and analysis this threshold is not met and the basis for adopting the policies and methods is not established. The s32 report fails to provide the necessary level of evidence and analysis to demonstrate that prohibiting all groundwater transfers that do comply with conditions 3 and 4 of Rule 11.5.37, meets the “most appropriate” threshold.

### Relief Sought

7. Amend Policy 11.4.22 as follows (underlined text signifying requested insertions and strikethrough text signifying requested deletions):

~~Restrict~~ Manage the transfer of water permits within the Rakaia-Selwyn and Selwyn-Waimakariri water allocation zones to minimise the cumulative effects on flows in hill-fed lowland and spring-fed plains rivers from the use of allocated but unused water, by requiring that:

~~(a) Irrigation scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps do not transfer their permits to take and use groundwater; and~~

~~(b) No permit to take and use groundwater is transferred from down plains to up plains; and~~

~~(c) In all other cases 50% of any transferred water is surrendered~~ appropriate conditions are imposed to avoid increases in water usage that will have an adverse effect (cumulatively or otherwise) on flows in hill-fed lowland and spring-fed plains rivers.

8. Delete conditions 3 and 4 of Rule 11.5.37 and delete Rule 11.5.39. Alternatively as secondary and less preferred relief, amend Rule 11.5.39 as follows (underlined text signifying requested insertions and strikethrough text signifying requested deletions):

The transfer, in whole or in part, of a water permit to take or use surface water or groundwater in the Selwyn Waihora catchment that does not meet one of the conditions of Rule 11.5.37 or Rule 11.5.38 is a ~~prohibited~~ discretionary activity.

9. All such further and consequential relief, including amendments to other rules, objectives and policies as are necessary to achieve the above changes in accordance with the purposes of the Act and/or the reasons for the submission.