

**BEFORE THE INDEPENDENT COMMISSIONERS**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of Variation 2 to the proposed Canterbury Land and Water Regional Plan

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**MEMORANDUM ON BEHALF OF CENTRAL SOUTH ISLAND FISH AND  
GAME COUNCIL PROVIDING REQUESTED INFORMATION**

**DATED 16 JULY 2015**

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- 1 During presentation of the case for Central South Island Fish and Game Council ("**Fish and Game**") the Commissioners requested further information. This memorandum responds to those requests.

### **Commissioners' questions**

- 2 *Commissioner van Voorthuysen asked to be provided with "a further copy of Fish and Game's submissions [striking] out relief you are no longer seeking".* Fish and Game is not withdrawing any part of its submission, and it would be misleading to provide a struck out version of Fish and Game's submission. Furthermore other parties lodged further submissions on Fish and Game's submission, and indicating some sort of withdrawal could have unintended consequences in that regard.
- 3 In the alternative Fish and Game brings to the Commissioners' attention Appendix 1 to Peter Wilson's evidence in chief. That Appendix highlights the relief being pursued by Fish and Game as a result of considering further submissions, the section 42A report and evidence presented by other parties. Fish and Game submits that scope for the changes sought derives from its submissions on Variation 2, its original submission and further submissions on the 'parent plan' pCLWRP, and from the submissions of other parties.
- 4 *Commissioner Sheppard asked for an "analysis of all changes that are now asked for by reference to provisions in primary submissions that might make it possible to consider them on their merits."* Fish and Game refers to Appendix 1 of legal submissions, in which it provided a table setting out the changes it proposed and the source of scope for the change from within its submission on Variation 2. Fish and Game has updated that table to include reference to some of the submissions from other parties that provide wider scope for the changes sought, by using the "Point ID" in the Summary of Decisions Requested Report. Please refer to Appendix 1.
- 5 *Commissioner van Voorthuysen asked "Does Variation 2 say anywhere that it is 'interim'?"* The term "interim" is not expressly used in Variation 2. The term is Fish and Game's own descriptor and is used because by

necessity Variation 2 is an interim regime that will operate for an intervening period until the NPSFM is fully implemented. ECan has acted in accordance with Policy E1 of the NPSFM and formally notified that in the Hinds' catchment the NPSFM 2014 will be implemented by 2023/2024, not through Variation 2. Full implementation will require a plan change at that time. In this sense Variation 2 is clearly 'interim' in that it will be replaced by a regime that gives full effect to the NPSFM by 2023/24. This provides the time required for the detailed community based process requirements set out in section C of the NPSFM to be complied with (which have not been done to date) and for the appropriate attribute states to be set and accounting regime established.<sup>1</sup>

- 6 *Commissioner van Voorthuysen asked Fish and Game to point to provisions in the Central South Island Fish and Game Sports Fish & Gamebird Management Plan that specify objectives or outcomes focused policies with which Fish and Game say Variation 2 is inconsistent.* The Plan itself acknowledges that it is "an operational plan as opposed to a regulatory plan. Methods and strategy details in the document are designed to provide **measurable targets** for CSI Fish and Game to achieve its statutory responsibilities and the aspirations of its licence holders."<sup>2</sup> The desired end state for the Hinds catchment is to have the freshwater resources in the catchment at least maintained and preferably enhanced. This is set out as specific desired outcomes throughout the Management Plan. Often the desired outcomes are expressed in conjunction with the proposed method (i.e. process such as advocacy in a particular context) to achieve the outcome. However that does not detract from the fact that the Plan is clear on the outcomes set:

- (a) Section 2.4 *'Habitat preservation, restoration and enhancement in a changing water management environment'*. *"Healthy habitat is essential to the survival and self-sustainability of sports fish and*

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<sup>1</sup> As stated in paragraphs 12 - 14 and 15(b)(iv) of Fish and Game's legal submissions

<sup>2</sup> At page 6, section 1.3.1 'purpose of the plan'

*game bird species in the wild." ..."CSI Fish and Game's aspirations...[relate to] the inherent concept that all New Zealanders have a right to clean water and healthy streams. Achieving this overarching concept will ensure that by protecting natural resources, sports fish and game bird species and recreational opportunity can be preserved for the benefit of anglers and hunters."*<sup>3</sup>

- (b) Section 3 '*Mission statement: to manage, maintain and enhance sports fish and game bird resources on a sustainable basis in the recreational interest of anglers and hunters*'. "*Inherent in that mission statement are the following concepts:...(b) the protection, maintenance and enhancement of sports fish and game bird habitat...*"<sup>4</sup>
- (c) Section 6 '*Species Management*' " *Goal 2: To manage, maintain, and where appropriate enhance sports fish and game bird species populations to levels that provide for sustainable recreational harvest.*" "*Objective 4 - To maintain and, where appropriate, enhance the population of sports fish species throughout the Region.*"
- (d) Section 7 '*Habitat Management*' "*Goal 3: to protect, maintain or restore, and enhance sports fish and game bird habitat to ensure species sustainability in the wild for the enjoyment and benefit of anglers and hunters.*" "*Objective 6 – to promote through statutory processes and mechanisms, the protections, maintenance or restoration, and enhancement of sports fish and game bird habitat.*" "*Policies 6.1 – CSI Fish and Game will, within regional council....statutory plans, promote strategies and policies that maintain, protect and enhance sports fish and game bird habitat, including (a) the establishment of water management regimes that maintain or enhance sports fish and game bird values, and that promote the efficient use of water; ...(c) the establishment of riparian management and other practices to mitigate adverse*

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<sup>3</sup> At pages 13-15

<sup>4</sup> At page 20

*effects resulting from agricultural, industrial and municipal land and water uses. Methods – 6(a) using First Schedule (RMA) consultation and formal submission processes to advocate policy consistent with CSI Fish and Game's statutory plans regarding sports fish and game bird habitat....6(g) promoting restoration, protection and maintenance of any key sports fish habitats through statutory processes."*<sup>5</sup>

- 7 Fish and Game's submission is that accepting the changes it recommends to Variation 2 will satisfy the requirement in section 66(2)(c)(i) of the Act to have regard to the Plan, because the recommended changes accord with the Plan, particularly by ensuring maintenance and eventual enhancement of the degraded Hinds catchment, that is not otherwise ensured.
- 8 *Commissioner van Voorthuysen referred Alison Dewes to her statement in paragraph 51 evidence in chief, "some NZ soils have very low phosphorus retention values" and asked "are these soils present in this catchment?" Ms Dewes' response follows:*
- (a) Soils with very low phosphorus retention values are present in this catchment. Please refer to Appendix 2. Ms Dewes also advises that it is her understanding Landcare Research will be providing Environment Canterbury with an updated P loss vulnerability layer for all of Canterbury in the near future.
- 9 *Commissioner van Voorthuysen referred to Alison Dewes' evidence in chief Appendix 3 page 7 clause (c), where she mentioned a conservative increase of 100%, and asked why she chose that percentage. Ms Dewes' response follows:*
- (a) The overseer and loads calculation referring to the rise in the load between version 6.0 and 6.2 is described in Ms Dewes' evidence

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<sup>5</sup> At pages 36-38, and as referenced at footnote 40 of Fish and Game's legal submissions and attached to the submissions

at paragraphs 126-133. There has been a range in terms of the "rise" in leaching from irrigated farms between the versions and upgrades.

- (b) There was a significant rise in leaching on irrigated farms between version 6.0 and 6.1. Ms Dewes advised her consultancy noted a 100% increase in leaching on the Upper Waikato Irrigated dairy farms her company works on between version 6.0 and 6.1 alone (before the upgrade of 6.1 through to 6.2).
- (c) Ms Dewes advises that cumulatively the lifts in N leaching between versions 6.0 and 6.2 on irrigated properties have been significant.

10 *Commissioner Sheppard referred to Alison Dewes' rebuttal evidence, paragraph 23, where there is reference to "Holling an ecologist (1973)" and asked for a citation. The citation is: Holling, C. (1973). Resilience and stability of ecological systems. Annual review of Ecology and Systematics, 4, 1-23.*

11 *Commissioner van Voorthuysen asked Peter Wilson to point to where in Fish and Game's submission his proposed changes to Schedule 24a are sought.*

Fish and Game's legal submission, Appendix 1, contained a table setting out scope derived from Fish and Game's submission for the changes proposed by Peter Wilson in Appendix 1 to his evidence in chief. The scope for changes to Schedule 24a were listed as "*F&G submission at sub-section 'RMA s69 and Schedule 3' point 35, and within the table at Rule 13.5.8 to Rule 13.5.24.*" Schedule 24a is also raised in Fish and Game's submission within the table at Policy 13.4.10, Rule 13.5.9, 13.5.15, 13.5.16, Schedule 24a(c)(ii) winter grazing and Riparian Protection, FEMP Schedule 7 and Schedule 24a.

12 The change to Schedule 24a(a)(i) proposed in Mr Wilson's Appendix 1, requiring a Certified Nutrient Manager to prepare a nutrient budget, helps to give effect to part of Fish and Game's submission, summarised at V2 pLWRP-527 of the summary of submissions:

*"Amend Schedule 7 and 24a to ensure Overseer assumptions are mandatory requirements and process meets certainty and objectivity requirements."*

By ensuring the person undertaking the Overseer assessment is certified, it will help ensure the process meets certainty and objectivity requirements.

- 13 Additionally, Fish and Game refers to the submission of Ballance Agri-Nutrients Limited, summarised at V2 pLWRP-177 of the summary of submissions, which provide scope for this addition as it relevantly sought to amend Schedule 24(a)(i) as follows:

(i) A nutrient budget based on soil nutrient tests has been prepared, using OVERSEER in accordance with the OVERSEER Best Practice Data Input Standards [2013], or an equivalent model approved by the Chief Executive of Canterbury Regional Council and shall only need to be reviewed annually where;

*(e) All updating of nutrient budgets should be conducted by an appropriately qualified and experienced person.*

*Any similar amendments with like effect.*

*Any consequential amendments that stem from the amendments sort [sic] above.*

- 14 The change to Schedule 24a(a)(iii) in Mr Wilson's Appendix 1<sup>6</sup> is a sentence that helps clarify the preceding words. It does not change the effect of that sub-paragraph, or make a change that other persons who would be affected or potentially affected by the change have not had a fair and reasonable opportunity to respond to. On this basis it is submitted that scope is not really at issue.

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<sup>6</sup> Records of soil nutrient tests, nutrient budgets and fertiliser applications are kept and provided to the Canterbury Regional Council upon request. [This is of particular important \[sic\] for outdoor pork, fruit \(excluding grapes\), berry, and rotational vegetable production or other land uses that are not currently modelled within OVERSEER.](#)

**Case booklet**

- 15 The panel has already been provided with a copy of one case, *J F Investments v QLDC*. Lodged with this memorandum is a case booklet of all cases referred to in Fish and Game's legal submissions.

A handwritten signature in black ink, appearing to read 'J E St John', with a long horizontal line extending to the right.

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**M A Baker-Galloway / J E St John**

Counsel for Fish and Game

16 July 2015



## Appendix 1

Subject	Scope Provided
Part 3: text inserted before heading 13.1 on page 13-2	F&G submission at sub-section Policy 13.4.9 and 13.4.10 provides scope to incorporate the recommendations.
Policy 13.4.9	<p>F&amp;G submission Relief at point 40(a) provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 392</p> <p>V2pLWRP – 394</p> <p>V2pLWRP – 403</p> <p>V2pLWRP – 419</p> <p>V2pLWRP – 547</p>
Policy 13.4.9 (a1)	<p>F&amp;G submission at sub-section Policy 13.4.9 provides scope to incorporate the recommendations. Further, the following submission in "Point ID" in the Summary of Decisions Requested Report provides scope:</p> <p>V2pLWRP – 403</p>
Policy 13.4.9 (a2)	<p>F&amp;G submission at sub-section Policy 13.4.9 provides scope to incorporate the recommendations. Further, the following submission in "Point ID" in the Summary of Decisions Requested Report provided scope:</p> <p>V2pLWRP – 403</p>

Policy 13.4.9 (d)	<p>F&amp;G submission at General Submission point 26, Relief at point 40(p) provides broad scope to incorporate the recommendations. Further, the following submission in "Point ID" in the Summary of Decisions Requested Report provides scope:</p> <p>V2pLWRP – 403</p>
Policy 13.4.9 (d1)	<p>F&amp;G submission at sub-section Policy 13.4.9 and Relief at point 40(p) provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 403</p> <p>V2pLWRP – 459</p>
Policy 13.4.10 (a1)	<p>F&amp;G submission at sub-section Policy 13.4.10 and sub-section Rules 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.</p> <p>F&amp;G submission Relief at point 40 provides scope to incorporate the recommendations.</p> <p>Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 394</p> <p>V2pLWRP – 459</p> <p>V2pLWRP – 403</p> <p>V2pLWRP – 472</p>

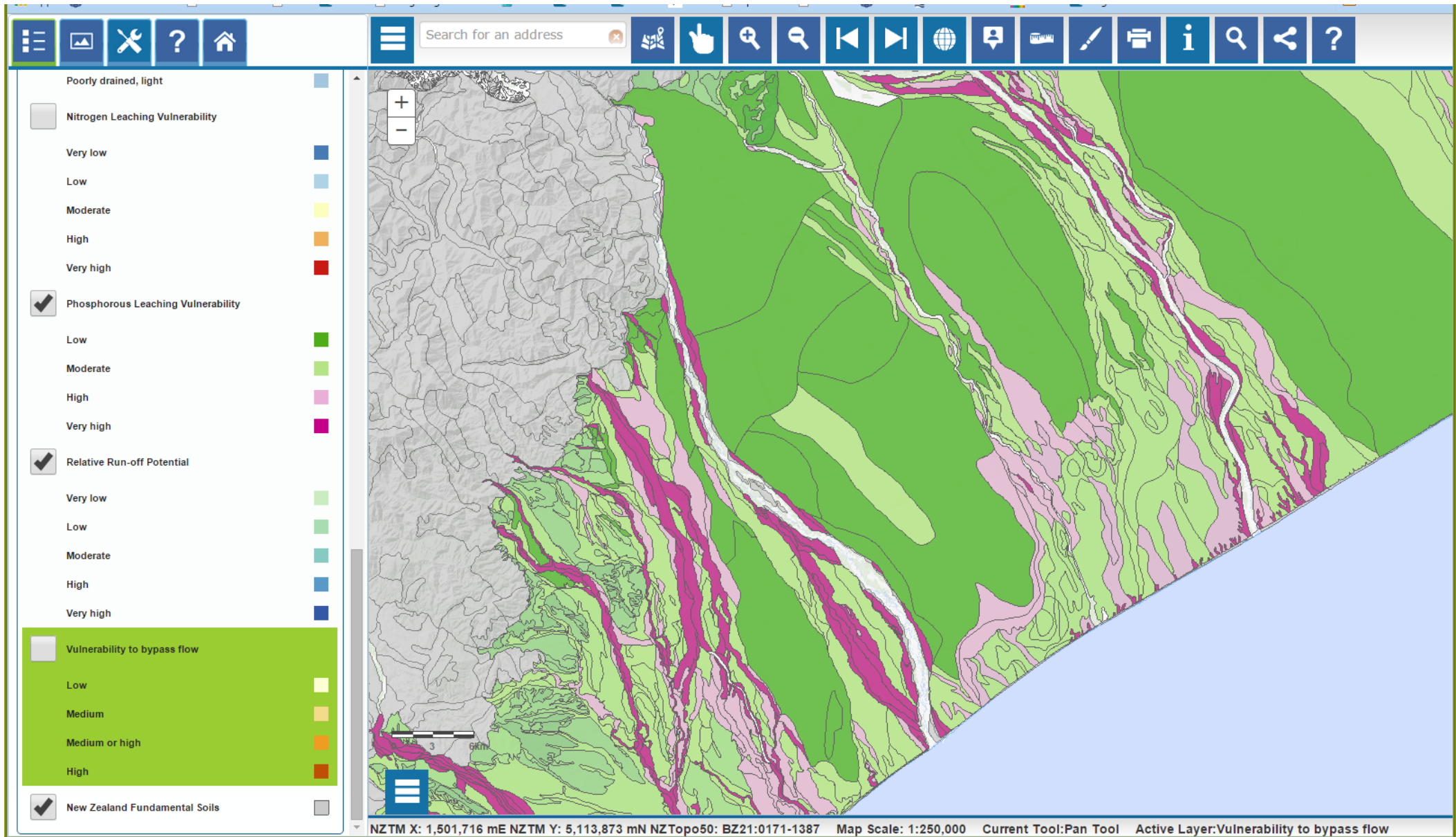
Policy 13.4.10 (b)	<p>F&amp;G submission at sub-section Policy 13.4.10 provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 394</p> <p>V2pLWRP – 403</p> <p>V2pLWRP – 472</p> <p>V2pLWRP – 482</p>
<p>Policy 13.4.11 (a)</p> <p>Policy 13.4.11 (b)</p>	<p>F&amp;G submission at Relief point 40(i)(iii) and sub-section Policy 13.4.11 provides scope to incorporate the recommendations, which reflect the Table 13(g) limit. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 733</p> <p>V2pLWRP – 473</p> <p>F&amp;G submission at sub-section Rule 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 230</p> <p>V2pLWRP – 733</p> <p>V2pLWRP – 557</p> <p>V2pLWRP – 766</p>

Policy 13.4.13 (a)	<p>F&amp;G submission at sub-section Policy 13.4.13 and Relief at point 40(p) provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 174</p> <p>V2pLWRP – 234</p> <p>V2pLWRP – 241</p> <p>V2pLWRP – 559</p> <p>V2pLWRP – 484</p>
Policy 13.4.13 (b)	<p>F&amp;G submission at sub-section Rule 13.5.8 to Rule 13.5.24, and Relief point 40(f) and (r) provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 174</p> <p>V2pLWRP – 234</p> <p>V2pLWRP – 241</p> <p>V2pLWRP – 481</p> <p>V2pLWRP – 559</p>

Policy 13.4.13 (d)	<p>F&amp;G submission at sub-section Rule 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.</p> <p>F&amp;G submission Relief at point 40 provides scope to incorporate the recommendations.</p> <p>Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 474</p> <p>V2pLWRP – 558</p> <p>V2pLWRP – 241</p>
Rule 13.5.9	<p>F&amp;G submission at sub-section Policy 13.4.9 and Policy 13.4.10 provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 403</p> <p>V2pLWRP – 472</p> <p>V2pLWRP – 507</p>
Rule 13.5.10 (4)	<p>F&amp;G submission at sub-section Rule 13.5.10 provides scope to incorporate the recommendation. F&amp;G submitted that farming enterprises should have the same management framework as farming activities. Point 4 provides consistency with the rules for farming activities of Rule 13.5.9. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:</p> <p>V2pLWRP – 472</p> <p>V2pLWRP – 507</p> <p>V2pLWRP – 508</p>

Rule 13.5.14 (5) & (6)	F&G submission at sub-sections Policy 13.4.9 and Policy 13.4.10 and Relief point 40(k) provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:  V2pLWRP – 403  V2pLWRP – 472  V2pLWRP – 513
Rule 13.5.17 (4)	F&G submission at sub-section Policy 13.4.10 provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:  V2pLWRP – 472  V2pLWRP – 516
Rule 13.5.18 (4)	F&G submission at sub-sections Policy 13.4.10, Rule 13.5.10 and Rule 13.5.18 provides scope to incorporate the recommendation. F&G submitted that farming enterprises should have the same management framework as farming activities. Further, the following submission in "Point ID" in the Summary of Decisions Requested Report provides scope:  V2pLWRP – 517
Irrigation Schemes Rules 13.5.21-13.5.22	F&G submission at sub-section Rules 13.5.21 to 13.5.24 provides scope to incorporate the recommendations. Further, the following submissions in "Point ID" in the Summary of Decisions Requested Report provide scope:  V2pLWRP – 553  V2pLWRP – 554
Rule 13.5.31 (6)	F&G submission at New Objective p. 11 and New Policy p. 17 provides scope to incorporate the recommendations.
Rule 13.5.36 1A	F&G submission at sub-section Policy 13.4.14 and Relief point 40(a) provides scope to incorporate the recommendations.

Table 13(a)	F&G submission at sub-sections NPS Freshwater point 39(b) and (d), Relief point 40(i) (i), Table 13(a), Policy 13.4.9, Policy 13.4.11, and Policy 13.4.12, provides scope to incorporate the recommendations.
Table 13(e)	F&G submission at sub-section Policy 13.4.19 and Table 13(d) provides scope to incorporate the recommendation.
Table 13(j)	F&G submission at sub-section RMA s69 and Schedule 3 point 32, NPS Freshwater point 39(d) and (e), Relief point 40(i) (i) and (ii), and Table 13(j) provides scope to incorporate the recommendations.
Schedule 7	F&G submission at sub-section Policy 3.4.9 and Policy 3.4.10
Schedule 24a	<p>F&amp;G submission at sub-section RMA s69 and Schedule 3 point 35, Rule 13.5.8 to Rule 13.5.24 provides scope to incorporate the recommendations.</p> <p>The proposed change to Schedule 24a(a)(i) derives scope from Fish and Game's submission, summarised at V2 pLWRP-527 of the summary of submissions and the submission of Ballance Agri-Nutrients Limited, summarised at V2 pLWRP-177 of the summary of submissions.</p> <p>The proposed change to Schedule 24a(a)(iii) is a sentence that clarifies the preceding words. It does not change the effect of that sub-paragraph, or make a change that other persons who would be affected or potentially affected by the change have not had a fair and reasonable opportunity to respond to. On this basis it is submitted that scope is not really at issue.</p>



**Appendix 2- Map of Hinds/Hekeao Plains area indicating Phosphorous Leaching Vulnerability and Relative Run-off Potential; Source: Environment Canterbury**  
 JES-264450-57-238-V1