

Tabled at Hearing on 3 November 2015

**BEFORE INDEPENDENT COMMISSIONERS**

**UNDER** the Resource Management Act  
1991

**IN THE MATTER** of Plan Change 3 to the  
Canterbury Land and Water  
Regional Plan

**OPENING LEGAL SUBMISSIONS OF COUNSEL FOR THE CANTERBURY  
REGIONAL COUNCIL**

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## Introduction

1. These opening legal submissions provide a brief description of:
  - (a) the operation of the partially operative Canterbury Land and Water Regional Plan ("LWRP" or "Plan");
  - (b) the South Coastal Canterbury Area;
  - (c) Plan Change 3 ("PC3") to the LWRP; and
  - (d) issues arising in evidence in relation to the proposed nitrogen limits.

## LWRP

2. The LWRP manages land and water in the Canterbury region. As set out in the Section 42A Report, it became partially operative on 1 September 2015.<sup>1</sup>
3. The Plan operates at two levels. There is a region-wide part, which contains the objectives, policies and rules (section 3, 4 and 5 respectively) that apply across the region. There are also ten sub-region sections (sections 6 to 15). Each part of the region is covered by one and only one sub-region section.
4. The sub-region sections contain policies and rules which are specific to the catchments covered by that section. The policies and rules in the sub-region sections implement the region-wide objectives in the LWRP in the most appropriate way for the specific catchment or catchments covered by that section. Where the Plan contains policies and rules on the same subject matter, the more specific sub-region provision will take precedence, except in relation to Strategic Policies 4.2 to 4.8, and Policy 4.9 in relation to the review of sub-region sections. Policy 4.1, in relation to freshwater outcomes, will also take

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<sup>1</sup> Section 42A Report at [6.224]. For completeness, on 15 October 2015, after the preparation of the Section 42A Report, the Council approved to make operative the remaining parts of Section 13 (the Ashburton sub-region), which are to become operative on 1 December 2015.

precedence unless catchment specific outcomes are specified in the sub-region section.

### **South Coastal Canterbury Area**

5. PC3 primarily amends Section 15 (Waitaki and South Coastal Canterbury) of the LWRP by introducing a new Section 15A, comprising catchment-specific freshwater outcomes, limits and water quality and quantity rules for the South Coastal Canterbury Area.
6. The South Coastal Canterbury Area is a sub-area in the Waitaki and South Coastal Canterbury sub-region. The remainder of Section 15 (which is the Waitaki portion of the sub-region) will be addressed by way of a further plan change in the future.
7. The South Coastal Canterbury Area comprises the area between the Otaio River in the north, Morven Drain in the south, the Hunter Hills to the east and the Pacific Ocean to the west. The South Coastal Canterbury Area is located in the Waimate District and is within the takiwā of Te Rūnanga o Arowhenua and Te Rūnanga o Waihao.
8. The South Coastal Canterbury Area is made up of hill-fed intermittent flowing rivers and lowland springs. Wainono Lagoon is the distinguishing feature of this area and holds important ecological values and is a taonga for tangata whenua.
9. As a result of the geography and distinguishing features, the South Coastal Canterbury Area has been divided into three areas to manage freshwater quality:
  - (a) The Northern Streams Area includes the Otaio River and the Makikihi River catchments and is characterised by the rivers and streams flowing directly to the Pacific Ocean.
  - (b) The Waihao-Wainono Area includes all the waterbodies from the Hook Beach drain catchment to the Waihao River which flow to, or have a flow connection with, Wainono Lagoon.
  - (c) The Morven-Sinclairs Area includes Morven Drain and Sinclairs Creek catchments. The streams in this area flow directly to the Pacific Ocean.

10. Included in the Northern Steams and Waihao-Wainono Areas are the coastal hills (greater than approximately 15 degree slope) that form the western edge to the coastal plain. These hills have been identified as the Hill Area.

#### **Key Issues addressed by PC3**

11. The proposed regulatory provisions in PC3 reflect the recommendations made by the Lower Waitaki-South Coastal Canterbury Zone Committee in the South Coastal Canterbury Zone Implementation Programme Addendum (ZIP Addendum) for the South Coastal Canterbury Area. Mr Murphy, the Zone Committee Chair will provide a summary of the Zone Committee process and recommendations.
12. PC3 describes the limits, targets, timeframes and additional policies and rules to address over-allocation of water quantity and water quality in the South Coastal Canterbury Area.
13. PC3 seeks to delete the two operative rules in Section 15 of the LWRP that apply in the South Coastal Canterbury Area.<sup>2</sup>
14. PC3 seeks to amend the region-wide rules in relation to stock exclusion as they apply in the South Coastal Canterbury Area, by the rules also applying to drains in the South Coastal Canterbury Area.
15. Several new sub-region rules are introduced by PC3 that prevail over the relevant region-wide rules in relation to:
  - (a) nutrient management (including for irrigation schemes);
  - (b) sewage systems;
  - (c) industrial and trade waste;
  - (d) take and use of surface water;
  - (e) take and use of groundwater; and
  - (f) transfer of water permits.

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<sup>2</sup> being Rule 15.5.1 in relation to the transfer of water permits; and, Rule 15.5.2 in relation to the damming of water in the North Branch of the Waihao River.

16. PC3 also introduces new sub-region rules for:
  - (a) sewage systems;
  - (b) industrial and trade waste;
  - (c) restoration projects (for the Wainono Lagoon and in general);
  - (d) augmentation of the Wainono Lagoon
  - (e) take and use of surface water;
  - (f) take and use of groundwater; and
  - (g) dams and damming.
17. A new Schedule 24b (Farm Practices) sets out management practices relating to nutrient management, irrigation management, grazing of intensively farmed stock, cultivation and collected animal effluent. These management practices are referred to in the South Coastal Canterbury Area rules.
18. PC3 also seeks to amend the Canterbury Map Series in the LWRP Planning Maps as they apply to the South Coastal Canterbury Area, showing the extent of areas or zones referenced in PC3.

#### **Issues arising from Evidence**

19. Evidence lodged on behalf of submitters indicates that nutrient modelling will be a key issue during the hearing. In particular, updating the nitrogen limits (the flexibility caps in Table 15(m) and maximum caps set out in Table 15(n)) in light of the new version of OVERSEER (version 6.2) that was released after PC3 was notified.
20. To address the version change, the Council Officers recommended recalculating the nitrogen limits using OVERSEER version 6.2. The revised calculations for the flexibility caps did not result in significantly different numbers and as such, the numbers in Table 15(m) were not updated. As a result of the recalculation of the maximum caps, the Council Officers recommended amending the maximum cap for poorly

drained soils in Table 15(m). The Section 42A Report discussed the assumptions used in the recalculations.<sup>3</sup>

21. Evidence from submitters has raised issues with the input assumptions used for the OVERSEER modelling. Given the importance of this issue, we consider that caucusing between the parties may be beneficial.
22. Accordingly, Counsel respectfully seeks the Panel to direct expert caucusing between the parties in relation to the input assumptions used for the OVERSEER modelling.

**DATED** this 3<sup>rd</sup> day of November 2015



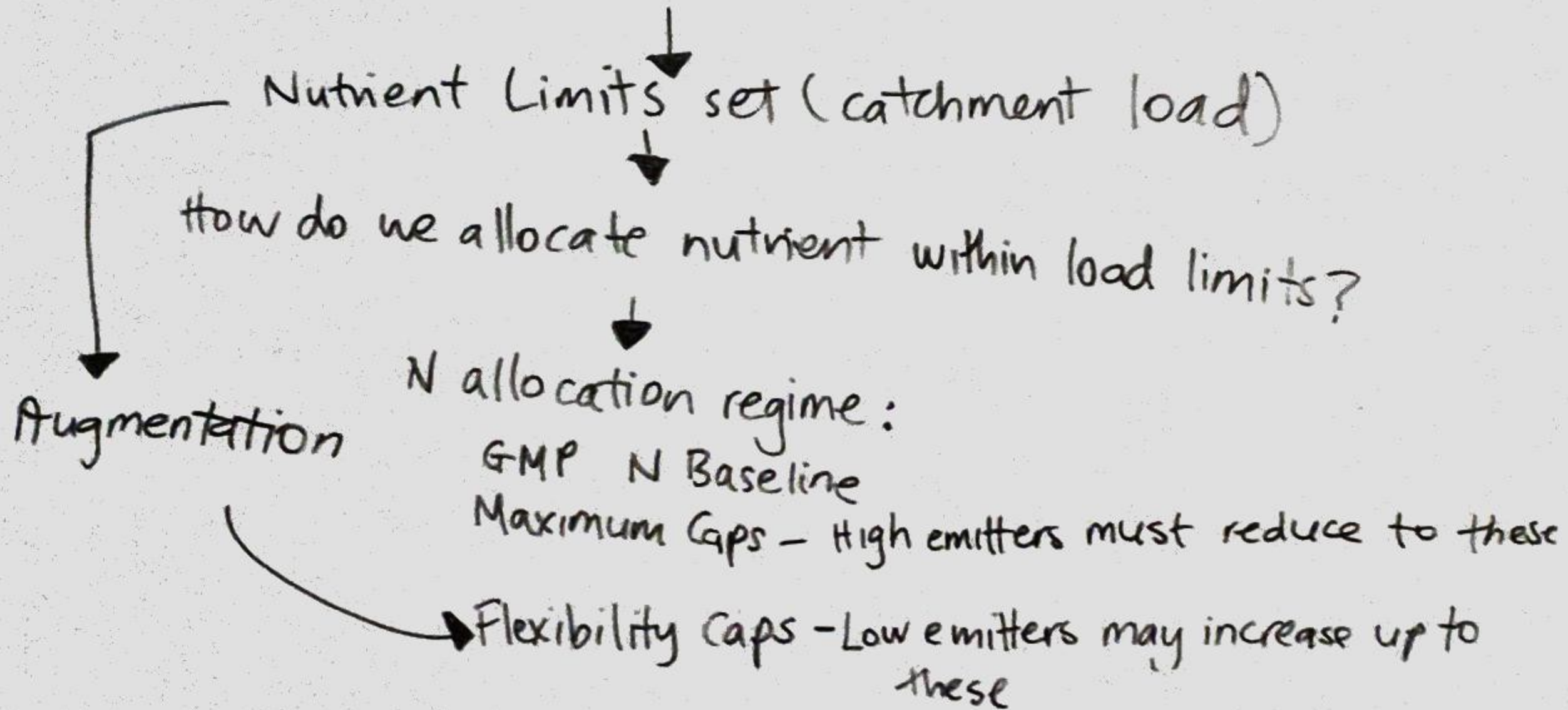
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P A C Maw

Counsel for the Canterbury Regional Council

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<sup>3</sup> See Section 42A Report at [10.388], [10.397], [10.398] and Technical Memorandum prepared by Ned Norton set out at Appendix 2.

# SCC Freshwater Outcomes



Example: Low emitting farming property, soil type Pd  
 N baseline = 12 kg N/ha/year  
 Waihao-Wainono Plains Area

① Today - No augmentation  
No change in land use or farming practice

Rule 15.5.2

1)(a) → see table 15(m)  
 → Flexi cap = 10 kg N/ha/yr

3) does not exceed  
 Maxi cap in Table 15(n)  
 max cap = 35 kg N/ha/yr

4) Does not apply

5) Must adhere to  
 GMP

∴ Permitted

if no change

→ if not GMP = 15.5.3 RAA

② Exceeds baseline or want to exceed baseline

can not meet cond<sup>n</sup> 1(a)  
 see Rule 15.5.4A

cond 1+2: exceedance of N  
 lawful?

Yes = Discretionary

No = see Rule 15.5.5  
 = PROHIBITED

see options

OPTIONS

Ⓐ Farming Enterprise

15.5.6 - 15.5.8

Ⓑ Nutrient User Group

15.5.9 - 15.5.10

Ⓒ Irrigation Scheme

15.5.11 - 15.5.12A