

From: Johanna King [<mailto:johanna.king@tp.co.nz>]

Sent: Thursday, 24 March 2016 4:31 p.m.

To: Raymond Ford

Subject: RE: Ophua Water Limited submission on Plan Change 5 - clarifying a decision sought

Hi Raymond,

Thank you for your email raising the discrepancy.

That is incorrect: the relief sought should also apply to Rule 5.58B(2).

Regards,
Johanna

Johanna King | Solicitor



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and Partners

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From: Raymond Ford [<mailto:Raymond.Ford@ecan.govt.nz>]

Sent: Thursday, 24 March 2016 8:23 a.m.

To: Johanna King

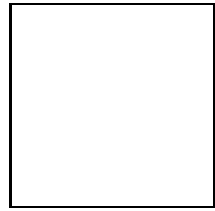
Subject: Ophua Water Limited submission on Plan Change 5 - clarifying a decision sought

Dear Ms King

On page 9 of the Ophua Water Limited submission, the subsection referred to Rules 5.46A, 5.56AA, 5.58A and 5.58B, but the relief sought only applies to Rules 5.46A(2) and 5.56AA(2). Is this correct?

Regards
Raymond

Raymond Ford
Principal Planner
Environment Canterbury



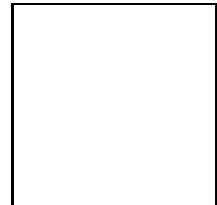
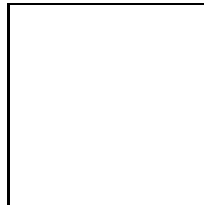
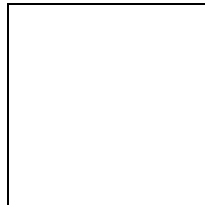
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*Facilitating sustainable development in the
Canterbury region*

ecan.govt.nz

From: [Johanna King](#)
To: [Mailroom Mailbox](#)
Cc: [Alanya Limmer](#)
Subject: Submission on Plan Change 5 - Opuha Water Limited
Date: Friday, 11 March 2016 8:57:40 a.m.
Attachments: [tplogo93db21](#)
[Submission on Plan Change 5 - Opuha Water Limited - 11 March 2016.pdf](#)

Dear Sir/Madam,

Please find **attached** a submission on Plan Change 5 to the partially Operative Canterbury Land and Water Regional Plan for Opuha Water Limited.

Please confirm receipt of this submission. If you have any questions, please do not hesitate contact us.

Regards,

Johanna King | Solicitor



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SUBMISSION ON PLAN CHANGE 5 TO THE PARTIALLY OPERATIVE CANTERBURY LAND AND WATER REGIONAL PLAN

Clause 6 First Schedule, Resource Management Act 1991

TO: Environment Canterbury
Freepost 1201
Plan Change 5 to the Canterbury Land and Water Regional Plan
PO Box 345
Christchurch 8140

By email: mailroom@ecan.govt.nz

Name of Submitter:

- 1 Opuha Water Limited (**Submitter**)

Address: c/- Tavendale and Partners Limited
PO Box 442
Christchurch 8140

Contact: Alanya Limmer / Johanna King

Phone: (03) 374 9999

Email: alanya.limmer@tp.co.nz / johanna.king@tp.co.nz

Trade Competition Statement:

- 2 The Submitter could not gain an advantage in trade competition through this submission.

Proposal this submission is on:

- 3 This submission is on proposed Plan Change 5 to the partially Operative Canterbury Land and Water Regional Plan (**PC5**).

The specific provisions of PC5 that this submission relates to:

- 4 The specific provisions of PC5 that this submission relates to are:
 - 4.1 Amended Policy 4.11;
 - 4.2 Proposed new Policy 4.41C(b)(i);
 - 4.3 Proposed new Rule 5.41A;

- 4.4 Amended Policy 4.36(b) and new Rules 5.44A(5), 5.54A(4), 5.57B(4) – Management Plans for permitted activities;
 - 4.5 New Policy 4.41A(c) and new Rules 5.44B(3), 5.54B(3), 5.57C(3) – Accredited Farm Consultants;
 - 4.6 Proposed new Rules 5.44A and 5.54A;
 - 4.7 Proposed Definition of “winter grazing” and subsequent references in new Policy 4.41B and Proposed new Rules 5.44A, 5.54A and 5.57B;
 - 4.8 Proposed new Rules 5.46A, 5.56AA, 5.58A, 5.58B – farming enterprise;
 - 4.9 Proposed Amendment to Definition of “Principal Water Supplier”;
 - 4.10 Proposed new Policy 4.38A and Proposed new Rules 5.45A(2), 5.55A(2), 5.58A(2) – lawful exceedances;
 - 4.11 Proposed Schedule 7A – contents of Management Plans;
 - 4.12 Proposed new Rules 5.43A, 5.49A, 5.53A, 5.57A – permitted activity status for properties less than 10 hectares;
 - 4.13 Proposed Definition of ‘Good Management Practice’ and Amended Policy 4.37(c); and
 - 4.14 Proposed new Policy 4.38E – Phosphorus losses.
- 5 The Submitter is not opposed to and recognises the need for limits and targets to improve and protect water quality in the Canterbury region. However, the Submitter opposes fully or in part the provisions in paragraphs 4.1–4.8

Submission

Introduction

- 6 The Opuha Dam is situated at the confluence of the North and South Opuha Rivers 17 kilometres north-east of Fairlie. The Opuha Dam is a 50 metre high earth dam, with a single hydro turbine and a lake covering up to 710 ha and storing over 74million cubic metres of water.
- 7 The Submitter’s scheme operates by releasing water into the Opuha River which flows into the Opihi River. Irrigation takes associated with the scheme are from the Opuha, and Opihi rivers (above and below the dam) and the Te Ngawai river. Irrigation water is abstracted directly from the rivers by approximately 70 individual consent holders across the scheme and supplied via four sub-schemes (Levels Plain, Kakahu, Totara Valley, Sutherlands) off the Opuha and Opihi rivers. These sub-schemes comprise networks of water races, channels and pipe to distribute water to approximately 170 irrigators. The total area presently irrigated is 16,300 ha and the maximum irrigation flow is 6.6 cumecs.

- 8 The Submitter has the benefit of many resource consents with CRC, including those transferred to it by the Levels Plain Irrigation Scheme, Kakahu Irrigation Scheme, and Totara Valley Irrigation Scheme. The resource consents authorise the necessary activities of the scheme's dam and irrigation operations, in order to supply farmers in the scheme area with water for irrigation.
- 9 After nearly ten years of initial operation, the scheme was purchased outright by the farmer irrigators who are now 100% shareholders of the ownership company Opuha Water Limited. The Submitter is principally concerned in representing the interests of its shareholders and therefore is expressly interested in the farming activity rules in PC5.
- 10 The farms which receive Scheme water are predominantly "orange zone" for nutrient discharges. A proportion of the Scheme's farms are within a red nutrient allocation zone.

Submitter's Overall Position

- 11 Overall, the Submitter **opposes** the aspects of PC5 referred to above at paragraphs 4.1–4.8 as it considers they:
- 11.1 would not promote the sustainable management of the Canterbury Region's resources;
 - 11.2 would not enable the social and economic well-being of the rural communities of the Canterbury Region;
 - 11.3 would not enable the efficient use and development of the Submitter's assets and the resources which those assets are dependent on;
 - 11.4 do not represent the most appropriate plan provisions in terms of section 32 of the Resource Management Act 1991 (**RMA**); and
 - 11.5 would otherwise be contrary to the RMA, particularly Part 2.

Specific Concerns

- 12 Without limiting the generality of the foregoing, the Submitter's specific concerns together with a summary of the decisions it seeks from Environment Canterbury are set out in **Annexure A** attached to this submission.

Decisions Sought by Submitter:

- 13 The Submitter seeks the following decisions from Environment Canterbury:
- 13.1 that the decisions sought in **Annexure A** to this submission be accepted; and/or
 - 13.2 alternative amendments to the provisions of PC5 to address the substance of the concerns raised in this submission; and

13.3 all consequential amendments required to address the concerns raised in this submission and ensure a coherent planning document.

Wish to be Heard:

14 The Submitter wishes to be heard in support of this submission.

15 The Submitter would be prepared to consider presenting a joint case with others making similar submissions at the hearing.



Opuha Water Limited

By its solicitors and authorised agents

Tavendale and Partners Limited: A C Limmer / J R King

Date: 11 March 2016

ANNEXURE A – DECISIONS SOUGHT BY OPUHA WATER LIMITED

Specific Provision of PC5 that Submission Relates To		Submission		Decisions Sought
Section & Page Number	Sub-section/Point	Oppose/support	Reasons	
Section 4 Page 4 -2	Proposed amendment to Policy 4.11	Oppose (in part)	<p>Some farmers within the Submitter's scheme are already applying for resource consents and others will need to do so shortly or in the foreseeable future. The Submitter is concerned a situation will arise where some farmers will have to go through the resource consent process three times due to the limited duration of consents – now, 5 years after the sub-regional is expected to be notified (under a different but still region-wide rule framework), and then again (under the sub-regional framework) when the second consent expires.</p> <p>This situation would be unduly arduous and costly to those farmers, only by virtue of unfortunate timing. It is not inconceivable this scenario could occur given the potential for delays in plan change notifications and the potential for considerable time to be taken before a notified plan change becomes operative.</p> <p>Whilst the Submitter does not dispute the intention of the Policy, it submits the administrative burden and costs of uncertainty to farmers should be</p>	<p>Amend Policy 4.11 by allowing longer durations where appropriate review conditions are proposed. For example:</p> <p>The setting and attainment of catchment specific water quality and quantity outcomes and limits is enabled through:</p> <p>(a) Limiting the duration of any resource consent granted under the region-wide rules in this Plan to a period not exceeding five years past the expected notification date (as set out in the Council's Progressive Implementation Programme) of any plan change that will introduce water quality or water quantity provisions into Section 6 – 15 of this Plan; or</p> <p>(b) <u>Allowing a longer duration where the resource consent includes conditions that</u></p>

			<p>minimised. It considers both aims can be achieved by amendments to the Policy that allow a longer term than currently provided for if appropriate grounds for review under section 128 are included in the consent.</p> <p>The Submitter's proposal will ease the burden on farmers, and provide greater certainty to them, by allowing for resource consents to be of longer duration in certain circumstances (ie beyond 5 years of the expected notification date sub-regional rules). The intent of the Policy is achieved by requiring review conditions related to the nutrient management aspects of those resource consents, so compliance with the nutrient management regime of the Land and Water Regional Plan can be achieved prior to and after sub-regional rules are made operative.</p>	<p><u>enable a review of the resource consent under section 128(1)(a)(iii) of the RMA when a sub-regional section of the Plan has been made operative.</u></p>
<p>Section 4 Pages 4 -6 and 4 -7</p>	<p>Proposed new Policy 4.41C(b)(i)</p>	<p>Oppose (in part)</p>	<p>The proposed provisions¹ enable an individual consent holder to apply for a land use consent that would allow them to discharge nitrogen at a loss rate greater than the baseline, if the baseline had been lawfully exceeded prior to 13 February 2016. The proposed new Policy does not provide a corresponding allowance to Irrigation Schemes/Principal Water Suppliers supplying to those properties.</p> <p>The Section 32 Report states "The</p>	<p>Amend Policy 4.41C(b)(i):</p> <p>(b) discharge permits granted to irrigation schemes or principal water suppliers to be subject to conditions that restrict the total nitrogen loss to a limit not exceeding:</p> <p>(i) the Baseline GMP Loss Rate for any land within the Red, Lake or Orange Nutrient Allocation Zones <u>unless the nitrogen baseline has been lawfully exceeded prior to 13 February 2016</u>; and</p>

¹ PC5, proposed new Policy 4.38A(a), proposed new Rules 5.54A(2), 5.55A(2), 5.58A(2).

			<p><i>consent holders would also be restricted to a total nitrogen load based on GMP being implemented across the scheme/supplier area. The management of nutrient losses on individual farms within the scheme/supplier area would therefore become the responsibility of the scheme or supplier, who would oversee the uptake of GMP²</i></p> <p>Policy 4.36(c) encourages irrigation schemes to assume responsibility for nutrient discharges from farms within the scheme's purvey. However, not providing a corresponding allowance may discourage schemes from applying for resource consent to discharge nutrients, as the maximum rate available may be less than that which an individual farmer would obtain.</p> <p>Nitrogen losses able to be granted to Irrigation Schemes / Principal water Suppliers should be equivalent to the sum of the GMP loss rates and the 'lawful exceedances' applicable to individual properties. An area (ie group of farmers) should not be subject to more restrictive nitrogen losses because the Scheme or Water Supplier is the consent holder. This would be an undue disadvantage to those participating in schemes.</p>	(ii) a total of 5kg/ha/yr above the Baseline GMP loss rate for any land within the Green or Light Blue Allocation Zones.
Section 5	New Rule 5.41A	Oppose (in part)	It is unclear how the new Rule 5.41A	Clarify, through amendments to or deletion of,

² Section 32 Report, section 7.1.2, page 7 -5

Page 5 -3		<p>relates to existing Rules 5.60 – 5.62. There is confusion as to whether PC5 is proposing to require a scheme to obtain discharge consent or whether it is retaining status quo (as explained in the “Notes” preceding Rules 5.60 – 5.62).</p> <p>The Section 32 Report does not greatly assist in confirming the position either way³: <i>“The CLWRP authorises as a permitted activity, until 1 January 2017, the discharge of nutrients from irrigation schemes that have already been granted a consent, provided the consent includes conditions specifying the maximum amount or rate at which nutrients can be discharged (Rule 5.61). Where the maximum amount or rate is not stated as a condition in a resource consent, or after 1 January 2017, a discharge permit must be obtained as a discretionary activity (Rule 5.62). Where the discharge is permitted or resource consent has been obtained under Rule 5.62, farming activities on properties irrigated with water from a scheme or principal water supplier are a permitted activity.”</i></p> <p>On balance the Submitter considers there is no overt intention to alter the regime around schemes to a mandatory one. However, the Submitter seeks clarity as to the optionality of discharge consents for Scheme operators.</p>	<p>Rule 5.41A that:</p> <ol style="list-style-type: none"> (1) schemes can apply for nutrient discharge consents on the grounds set out in Rules 5.60 and 5.62 and where such a consent is held, farmers do not need to comply with the other land use rules; but (2) schemes do not have to apply for such consents and where they have not, a farmer must comply with the other rules applying to nutrient discharges.
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³ Section 32 Report, section 4.1, page 4 -4;

<p>Section 4 Pages 4-2 and 4-3;</p> <p>Section 5 Pages 5-4; 5-9; 5-12</p>	<p>Amended Policy 4.36(b) <i>and</i> new Rules 5.44A(5), 5.54A(4), 5.57B(4)</p>	<p>Oppose (in part)</p>	<p>The Section 32 Report states that Management Plans, “as a minimum” include a basic list of ‘Good Practices’ to introduce stronger requirements relating to GMP for permitted activities⁴.</p> <p>The Opuha Water Limited irrigation scheme requires all farms in the scheme to prepare and implement a FEP. The Section 32 Report expressly contemplates this as a condition of irrigation scheme resource consents over the last few years and in years to come⁵.</p> <p>To avoid unnecessary administrative duplication, the Submitter suggests a FEP prepared in accordance with Schedule 7 should also suffice under these provisions. The Submitter therefore seeks clarification that a FEP can serve in place of a Management Plan.</p>	<p>Insert the following into the proposed Definition of ‘Management Plan’:</p> <p><i>...for the avoidance of doubt, a Farm Environment Plan prepared in accordance with Schedule 7 is a Management Plan.</i></p>
<p>Section 4 Page 4-6;</p> <p>Section 5 Pages 5 -4 and 5 -5; 5 -9; 5 -12</p>	<p>New Policy 4.41A(c) <i>and</i> new Rules 5.44B(3), 5.54B(3), 5.57C(3).</p>	<p>Oppose</p>	<p>New Policy 4.41A(c) imposes an obligation on farmers to have their Farm Environment Plan (FEP) prepared or reviewed by an Accredited Farm Consultant (AFC) in order to benefit from controlled activity status.</p> <p>The Section 32 Report states that in order to encourage the uptake and use of FEPs PC5 proposes to provide “a</p>	<p>Move conditions (3) from Rules 5.44B, 5.54B and 5.57C and into the matters over which CRC reserves control, for those rules; and</p> <p>Amend Policy 4.41A to reflect the above change;</p> <p>or</p> <p>Amend Policy 4.41A and conditions (3) of Rules 5.44B, 5.54B and 5.57C to provide more options</p>

⁴ Section 32 Report, section 7.1.2, page 7 -3

⁵ Section 32 Report, section 4.1, page 4 -4

		<p>simpler consent pathway if a FEP has been prepared by someone with the appropriate professional expertise and it satisfies the requirements of Schedule 7⁶.</p> <p>This imposes additional review costs on farmers who have already prepared their FEPs under the current LWRP policies and rules⁷. Insofar as the Submitter is concerned, FEPs have already been prepared for most of the scheme, and to a high standard.</p> <p>The Submitter does not accept a FEP needs to be developed by an AFC to be of appropriate quality and calibre. In the Submitter's experience, a FEP developed by the farmer or someone who has a good understanding of the catchment and scheme the farmer is part of will be as good if not better.</p> <p>Under the proposed provisions, farmers would have to revisit this process and cost again if they wanted to benefit from controlled status (and the certainty of outcome that provides). The Submitter appreciates CRC also seeks certainty in assuring the quality of FEPs behind resource consent applications.</p> <p>In a joint initiative with Waimkariri Irrigation Limited, the Submitter lodged an online FEP template with CRC. This</p>	<p>around who can prepare the FEP in order to attain controlled activity status. For example, add the words "...or suitably experienced person" at the end.</p>
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⁶ Section 32 Report, section 4.1, page 4 -5

⁷ Operative LWRP – Policies 4.40, 4.41, 4.61(h), 4.63(g), and Rules 5.26(1), 5.28(1), 5.36(2), 5.40(1), 5.45(3), 5.46(1), 5.49(3), 5.50(3), 5.55(2), 5.58(1), 5.67(1).

			<p>template was approved by CRC as an Industry Template⁸ and is the template The Submitter requires its shareholders to use. The Submitter considers that a FEP developed by someone of the appropriate quality and calibre (as discussed above) and following an Industry Template will be at least as good as a FEP developed by a AFC.</p> <p>The Submitter seeks amendments to recognise this.</p>	
<p>Section 5 Pages 5 -4; 5 -9</p>	<p>Proposed new Rules 5.44A and 5.54A</p>	<p>Support (in part)</p>	<p>The Submitter supports the Rules in part.</p> <p>The Submitter seeks clarity as to the difference in wording between the concept of size restrictions for irrigated property areas regarding permitted activities in the Red and Orange Zones.</p> <p>The Submitter is conscious that an argument could arise as to the meaning of the difference in wording between “the area of land authorised to be irrigated” in Rule 5.44A and “area of the property irrigated” in Rule 5.54A.</p> <p>A resource consent held by a scheme or a farmer may specify a command area which is not necessarily the irrigated area (i.e. the command area may be larger than the number of hectares able to be irrigated). In theory, the consent authorises irrigation over the entire command area but irrigation</p>	<p>Amend Rules 5.44A(2) and (3) so it aligns with Rule 5.54A(2):</p> <p>(3) For any property where, as at 13 February 2016, the area of land <u>authorised to be the property</u> irrigated with water is less than 50 hectares, any increase in the area <u>of the property</u> of irrigated land is limited to 10 hectares above that which was irrigated at 13 February 2016;</p>

⁸ <http://www.ecan.govt.nz/news-and-notice/news/pages/opuha-waimakariri-farm.aspx>

			<p>may only be occurring on a portion of it (due to other restrictions in the consent as to irrigable area).</p> <p>The Submitters seeks deletion of the words “land authorised to be” in order to avoid any ambiguity or potential argument in this regard.</p>	
<p>Section 2 Page 2 -3</p>	<p>Proposed Definition of “winter grazing”</p> <p><i>and</i></p> <p>subsequent references in new Policy 4.41B and new Rules 5.44A, 5.54A and 5.57B</p>	<p>Support (in part) and Oppose (in part)</p>	<p>The Submitter <u>supports</u> the inclusion of winter grazing as a matter to be considered in determining permitted activity status and the use of narrative measures in doing so.</p> <p>The Submitter <u>opposes</u> the use of ‘total area grazed’ as the narrative measure of permissible winter grazing.</p> <p>The Section 32 Report states the intention behind the narrative criteria for winter grazing was to “<i>broadly separate high and low risk activities</i>”⁹.</p> <p>The narrative criteria for winter grazing activities is too broad. Using a total area measure for winter grazing will ‘catch’ many activities that would result in less nitrogen loss than activities on smaller areas. The Submitter accepts that an area measure would be a convenient method, however it is flawed as an efficient and effective means of permitting low risk activities because it</p>	<p>Amend the definition of “winter grazing” to the following effect:</p> <p>Means the grazing of cattle within the period of 1 May to September, where the cattle are contained for break-feeding of in-situ forage <u>brassica and root vegetable crops</u> or supplementary feed that has been brought onto the property.</p> <p>Amend Policy 4.41B(f)(ii) to recognise the environmental effects of winter grazing are not solely related to the size of the area used</p>

⁹ Section 32 Report, section 4.3, page 4 -8

			<p>fails to adequately recognise that effects depend on the circumstances, which include intensity and timing, not just area size.</p> <p>The Policy Working Group did not reach consensus on what thresholds would be appropriate to use in the permitted activity rules¹⁰. As such, the Section 32 Report is silent as to how the 20ha threshold was arrived at. This lack of information makes engagement on the proposed threshold difficult.</p> <p>In the absence of information as to the rationale for the 20ha threshold, the Submitter suggests a new definition of winter grazing to better reflect the farming activities which are high risk for nutrient losses to waterways.</p>	
<p>Section 5 Pages 5 -6; 5 -11; 5 -13</p>	<p>Proposed new Rules 5.46A, 5.56AA, 5.58A, 5.58B</p>	<p>Support (in part) and Oppose (in part)</p>	<p>The Submitter <u>supports</u> the extension of general farming enterprise provisions into Orange, Green and Light Blue zones.</p> <p>The Submitter seeks an amendment to farming enterprise provisions in the Red and Orange zones for similar reasons advanced above for Policy 4.41C(b)(i).</p> <p>The proposed provisions¹¹ enable an individual consent holder to apply for a land use consent that would allow them to discharge nitrogen at a loss rate</p>	<p>Amend Rules 5.46A(2) and 5.56AA(2):</p> <p>(2) Until 30 June 2020 the nitrogen loss calculation for the farming enterprise does not exceed the nitrogen baseline unless the nitrogen baseline has been lawfully exceeded prior to 13 February 2016; and, from 1 July 2020 the Good Management Practice loss rate; and</p>

¹⁰ Section 32 Report, section 4.3, page 4 -8

¹¹ PC5, proposed new Policy 4.38A(a), proposed new Rules 5.54A(2), 5.55A(2), 5.58A(2).

			<p>greater than the baseline, if the baseline had been lawfully exceeded prior to 13 February 2016. The proposed rules do not provide a corresponding allowance to farming enterprise activities.</p> <p>Nitrogen losses able to be granted to farming enterprise activities should be equivalent to the sum of the GMP loss rates and the 'lawful exceedances' applicable to individual properties. Farming properties should not be subject to more restrictive nitrogen losses because they are part of a farming enterprise. This would be an undue disadvantage to those participating in farming enterprise activities .</p> <p>The Submitter seeks amendments to recognise this.</p>	
Section 2 Page 3 -2	Proposed Amendment to Definition of "Principal Water Supplier"	Support	The Submitter supports the amended definition.	No decision sought
Section 4 Page 4 -4; Section 5 Pages 5 -5; 5 -10; 5 -13	Proposed new Policy 4.38A <i>and</i> Proposed new Rules 5.45A(2), 5.55A(2), 5.58A(2),	Support	The Submitter supports the reference of certain lawful exceedances when considering resource consent applications	No decision sought

Section 16 Pages 6 -9 and 6 -10	Schedule 7A	Support	The Submitter supports the minimum content for Management Plans as proposed in Schedule 7A but seeks changes to the definition so that a Schedule 7 FEP can suffice if one has already been prepared.	No decision sought
Section 5 Pages 5 -4; 5 -7; 5 -9; 5 -11	Proposed new Rules 5.43A, 5.49A, 5.53A, 5.57A	Support	The Submitter supports permitted activity status for farming activities on properties less than 10 hectares	No decision sought
Section 2 Page 3 -2; Section 4 Page 4 -3	Proposed Definition of 'Good Management Practice' <i>and</i> Amended Policy 4.37(c)	Support	The Submitter supports the requirement for FEPs to achieve Good Management Practices (GMPs). The Submitter supports "on-farm actions" as able to be specific to the FEP and therefore the particular farm and operation.	No decision sought
Section 4 Page 4 -5	Proposed new Policy 4.38E	Support	The Submitter supports the approach of addressing Phosphorus losses by way of the mechanisms in proposed Policy 4.38E	No decision sought