Plan Change 5 to the Canterbury Land and Water Regional Plan

Responses to Questions of Hearing Commissioners on Council s42A Report

Devon Christensen (DC), Matthew McCallum-Clark (MMC), Philip Maw (PM) and Helen Shaw (HS).

Section 42A Report Paragraph	Question

2.16 **Was Hurunui Water Project eligible under Sched 1 cl 8(1) to lodge a further submission?**

Response – PM:

Yes.

Clause 8 of Schedule 1 in the RMA provides:

8 Certain persons may make further submissions

(1) The following persons may make a further submission, in the prescribed form, on a proposed policy statement or plan to the relevant local authority:

(a) any person representing a relevant aspect of the public interest; and

(b) any person that has an interest in the proposed policy statement or plan greater than the interest that the general public has; and

(c) the local authority itself.

(2) A further submission must be limited to a matter in support of or in opposition to the relevant submission made under clause 6.

Hurunui Water Project Limited (**HWP**)'s further submission on PC5 is dated 13 May 2016. In its submission, it states that it has an interest in the proposal that is greater than the interest of the general public.

HWP did not make an original submission. However, it was eligible to make a further submission if the following requirements are satisfied:

- It has an interest in the plan greater than the interest that the general public has; and
- It cannot gain an advantage in trade competition through the submission.

The section 32 report makes it clear that no part of PC5 applies to the Hurunui, Waiau and Jed River Catchments, which are managed by the Hurunui and Waiau

River Regional Plan.[1] That report did not discuss any implications of PC5 on the Hurunui and Waiau River Regional Plan review.

Amuri Irrigation Company Limited (**AIC**) made an original submission on PC5. AIC is in a similar situation to HWP as its irrigation schemes operate within the Hurunui and Waiau catchments. It submits that specific reference in PC5 is needed to clarify that no part of PC5 applies to the Hurunui, Waiau and Jed River Catchments.

AIC also submits on a number of definitions and policies in PC5. In particular, it opposes the Farm Portal mechanism and Schedule 28 due to concerns with the outcomes of the Farm Portal and the validity of the modelling rules in Schedule 28. AIC seeks an independent peer review of the Farm Portal to determine if the Farm Portal accords with the modelling rules set out in Schedule 28.

In HWP's further submission, it supports particular submissions of a number of parties including AIC. In particular, HWP supports:

- A requirement for an explicit statement that PC5 policies and rules do not apply to the Hurunui, Waiau, and Jed River catchments.
- A review of the Farm Portal.

In its further submission, HWP did not set out grounds for its claim to have an interest greater than the interest of the general public. If it wishes to pursue the relief sought, it should do so at the hearing.

Council is of the view it is likely HWP did qualify to make a further submission pursuant to clause 8, Schedule 1 given:

- HWP operates under the Hurunui and Waiau River Regional Plan and sought to clarify (as did AIC) as to the application (or lack of application) of PC5 to the Hurunui, Waiau and Jed River Catchments.
- It does not appear that HWP can gain an advantage in trade competition through the submission. This is a matter which would require confirmation at the hearing.

3.28 **Paragraphs 3.28 to 3.31 discuss the Horticulture NZ submission point, but no conclusion is provided regarding whether or not it is 'in scope'.**
Do the authors have a recommendation?

Response – PM:

Paragraphs 3.28 to 3.31 discuss that part of the Horticulture NZ submission which requests insertion of a definition of Farm Environment Plan (**FEP**).

[1] Section 32 report at [1.4], [2-6].

Paragraph 3.31 states:
"It is submitted that the lack of specificity or further information within the submission regarding the nature of an 'Industry Audited Self-Management Programme' creates difficulties with assessing whether the relief sought is consequential to the changes proposed by PC5, particularly in relation to Schedule 7. It is also possible that potential submitters would not have received fair and adequate notice of the effects of the submission due to the lack of detail about the new 'programme' which is proposed.'

Due to the issues set out in Paragraph 3.31 of the s42A Report, it is submitted that the definition of FEP sought by Horticulture NZ is not within scope. If Horticulture NZ wishes to pursue this relief, it should demonstrate how the change sought is within the Council's jurisdiction.

3.32 Meridian and Trustpower submission points are stated, but there is no discussion of the matter they raise or whether or not those submissions are 'in scope'. Do the authors have a recommendation?

Response – PM:

Paragraph 3.32 should be deleted.

5.6 Is at least one submitter asking for an alternative as an option, rather than as a replacement?

Response – MMC:

Yes. Paragraph 5.6 is very much a simplification of the range of options sought by the submitters. Some submitters request additions to the policy and rule framework, such that the alternative frameworks requested through these additions may operate in parallel with the PC5 framework.

6.35 Is strike-through of 'good practice' requested in Ngai Tahu submission?

Response – MMC:

Yes, Ngai Tahu requests in their submission that 'good practice' be struck out. This is an error in the s42A report and paragraph 6.35 should read:

"Ngāi Tahu seeks to clarify the intent of Policy 4.36(a) and to amend it as follows:

(a) All farming activities minimising nutrient losses through the implementation of ~~good practice~~ Good Management Practice;"

6.75 Would the information collected (audit grade, auditor details, nutrient losses) be associated on the Farm Portal with identification details, e.g. name, address, description of properties?

Response – PM:

Yes, information to the Farm Portal is associated with identification details.

6.78 Is the Farm Portal a public register? Has the Council adopted a policy of how it will exercise its power to withhold classes of information recorded on the Farm Portal? Is that policy public?

Response – PM:

The Privacy Act 1993 defines a public register as:

(a) Any register, roll, list, or other document maintained pursuant to a public register provision:

(b) A document specified in Part 2 of Schedule 2 to this Act:

Part 2 of Schedule 2 of the Privacy Act refers to documents authorising building works and does not apply to the Farm Portal. Further, a list of "public register provision[s]" is provided in Part 1 of Schedule 2 of the Privacy Act. None of the Acts and provisions listed there are applicable to the Farm Portal. There is no Act in force providing for the Farm Portal to be a public register. Therefore, the Farm Portal does not qualify for inclusion in this definition; it is not a public register for the purposes of the Privacy Act 1993.

A policy on how the Council intends to exercise its power to withhold classes of information recorded on the Farm Portal has not been adopted. Any request for information associated with the Farm Portal will be considered on a case by case basis in accordance with the LGOIMA.

6.112 **"…use of the words 'should be endorsed,' that the process change Schedule 28 …" Is this a reference to Submission Point PC5 LWRP 308? Do the words "that the process change Schedule 28" clearly and completely state what is intended by that phrase?**

Response – MMC:

Yes, it is a reference to the Dairy NZ submission point PC5 LWRP 308. It should be noted the correct wording for that phrase was "…that the process *to* change Schedule 28…".

6.137 **Rule 5.41A is discussed in terms of a permit being granted prior to the notification of PC5. However, Rule 5.41A(b)(i) contains a date of 18 January 2014 whereas the date of notification was 13 February 2016.**

Can the authors clarify the intent?

Response – MMC:

Yes, Rule 5.41A(b)(i) contains a date of 18 January 2014, whereas the s42A report refers to "prior to the notification of PC5". The reference to "prior to the notification of PC5" is an error in the s42A report.

The s32 Report (page 7-5 and 7-6) notes that:
A permitted activity is proposed for land that is subject to a water permit for irrigation, where the permit was granted prior to 18 January 2014 (the date of notification of the CRC's decisions on the proposed CLWRP), and the permit includes conditions on maximum nitrogen leaching rates and requirements for the preparation and implementation of a plan to mitigate the loss of nutrients to water. This will allow land uses authorised by a water take and use permit to continue, without the proposed land use rules affecting the activity, for the period that the permit is valid for. When the permit expires, the activity would then be managed by the proposed CLWRP land use rules. Land subject to a water permit without maximum nitrogen leaching conditions or a FEP-equivalent requirement would be subject to the proposed land use rules immediately and not fall into this permitted activity category. This acknowledges that the effects of nutrient leaching from the exercise of these water permits (i.e. those with specific water quality conditions) has already been considered through the water permit process and the approach recognises the investment into these permits, whilst ensuring that they will be brought into line with the GMP requirements upon the permit's expiry.

Rule 5.42 of the notified version of the proposed CLWRP permitted a change in land use to an existing farming activity provided the land holder was granted a water permit that authorises irrigation on the land and is subject to conditions that specify

the maximum amount of nitrogen that may be leached. Following the notification of the proposed CLWRP in 2012, a number of land holders utilised this permitted activity rule and were granted water permits that included nutrient management conditions.

The decision version of the CLWRP contained different rules in relation to farming activities, such that a change in land use was no longer permitted under the circumstances outlined in the notified version of Rule 5.42.

Proposed Rule 5.41A provides for those land holders that were previously permitted under the provisions of the proposed CLWRP (as notified), which is restricted to activities authorised prior to the notification of the decisions on the CLWRP which occurred on 18 January 2014, along with activities operating under resource consents granted with nutrient limits under previous regional plans (typically larger scale notified resource consent applications, such as Central Plains Water).

6.163 Is the word 'sort' meant to be 'sought?'

Response – MMC:

Yes, this should read 'sought'.

7.5 (*7.4*) "At the end of this section…" Apparently this is not a reference to the end of Section 7. Can a more specific reference be given?

Response – MMC:

The recommendation is at paragraphs 7.199 to 7.209. At an earlier phase of drafting, the recommendation was at the end of section 7. However, the introduction was unfortunately not updated to reflect the final version.

7.66 The definition is about a *person*. Should the word 'that', the first two times it is used, be 'who?'

Response – MMC:

Yes, the definition of "Accredited Farm Consultant" would be more correct if it were to read:

means a person ~~that~~who[2] holds a Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University and who:[3]

...

7.67 Proposed Policy 4.41A(b): Should be word 'proportional' be 'proportionate?'

Response – MMC:

Yes, proportionate reads better than proportional, so 4.41A(b) should be amended to read:

(b) applying to any nutrient budget that forms part of an application for resource consent a level of scrutiny that is ~~proportional~~proportionate[4] to the qualifications, experience and performance of the person who prepared the budget; and

7.104 Does the first line of clause (a) correctly express the amendment requested in Ravensdown's submission at pg 12, top right cell?

Response – MMC:

No, the s42A report does not correctly underline the word "not" from Ravensdown's submission and paragraph 7.104 of the report should read:

Amend Clause (a) to read (or similar):

(a) ~~avoiding~~ the granting of any resource consent ~~that~~ will not allow the nitrogen losses from a farming activity to exceed the Baseline GMP Loss Rate, except where Policy 4.38A applies; and

7.126 Is the reference to Rule 5.45A(3) correct?

Response – MMC:

The submission from Federated Farmers incorrectly references condition (3) of Rule 5.45A when there is no condition as set out below:

[2] Cl 16 minor amendment
[3] Federated Farmers PC5LWRP-2231
[4] Cl 16 minor amendment

Rule 5.45A	Support in part	Reference to Condition 3 in Rule 5.44B should be deleted, consistent with our submission, above, to remove that condition from Rule 5.44B. Under matters for discretion, it would be useful to add an item stating how Industry GMPs will be implemented. This is important given current issues with the portal and the need for an alternative pathway to achieve water quality outcomes (as opposed to N discharge estimates).	1) Delete Condition 3 2) Add a matter for discretion, as follows: Methods for implementing Industry GMPs

The submission point discussion for Rule 5.45A refers to the proposed deletion of condition (3) of Rule 5.44B from an earlier submission point. It incorrectly includes deletion of Condition 3 as part of the proposal for Rule 5.45A. This error was not picked up as part of the summary of decisions requested or s42A report process and incorrectly referenced in both.

Accordingly, paragraph 7.126 of the section 42A report should be amended to read:

"Federated Farmers seeks to ~~delete~~ amend Rule 5.45A~~(3) and mend~~ to include an additional matter of discretion as follows:

Methods for implementing Industry GMPs."

7.134 In the quote from Dairy NZ is the reference to Rule 5.45B correct?

Response – MMC:

The quote from Dairy NZ in paragraph 7.134 of the s42A report is taken from page 53 of Dairy NZ's submission relating to relief sought for Rule 5.47A. The quoted text from the s42A report is the same as in the submission which seeks to amend Rule 5.47A as follows:

"Within the Red Nutrient Allocation Zone, the use of land for a farming activity on a property greater than 10 hectares in area that does not comply with condition 1 of Rule 5.44B, or condition 1 of Rule 5.45A, or condition 1 of Rule 5.45B, or use of land for a farming activity as part of a farming enterprise that does not comply with condition 1 or 3 of Rule 5.46A, is a non-complying activity."

One of the Dairy NZ submissions includes a new Rule 5.45B, set out on page 51 of Dairy NZ's submission. The above quote references the new Rule 5.45B sought by Dairy NZ.

7.182 **Does this discussion address submission points asking to delete the 5kg/ha/yr above Baseline Loss Rate in Policy 4.38AA(a), eg F&B?**

Response – MMC:

No, this discussion does not touch on the submission points that request Policy 4.38AA (a) be deleted, such as the submission from Forest & Bird that asks for all parts of the policy that provides for a 5kg/ha/yr increase in nitrogen leaching be deleted (*PC5 LWRP-1801*).

However, the matter is addressed in relation to the Green and Light Blue NAZ rules, at paragraph 7.197. There is also relevant discussion in response to other questions herein.

7.205 **Are the rule references correct?**

Response – MMC:

Paragraph 7.205 reads:

"Amend Rule 5.54A condition 2 as follows:

> *4. The area of the property used for winter grazing is less than 20 hectares, and any area of winter grazing is set back, and stock excluded from, a distance of not less than 5 metres from the bed of a watercourse[5]; and"*

The amended text is a consequential change as a result of changes to Schedule 7A. However, the references within this paragraph to condition 2 and 4 are not correct. The condition is actually condition 3 of Rule 5.54A and should be referenced as follows:

"Amend Rule 5.54A condition ~~2~~3 as follows:

> *~~4~~3. The area of the property used for winter grazing is less than 20 hectares, and any area of winter grazing is set back, and stock excluded from, a distance of not less than 5 metres from the bed of a watercourse[6]; and"*

[5] Consequential change to changes to Schedule 7A.

7.274 **'…these submission points are discussed in Section 6 …' Give a specific reference to where in Section 6 of this report Beef & Lamb's submission point is discussed.**

Response – MMC/PM:

Beef & Lamb's submission seeks that the farming enterprise rules be deleted and that a collaborative approach is developed and a natural capital approach to the allocation of nitrogen discharge limits is adopted (see for example PC5-LWRP-1342 and Beef & Lamb submission at page 3).

The statement in para 7.274 related to the Beef and Lamb submission is an error. It is not discussed in section 6 of the s42A Report. The discussion, recommending rejection of the relief sought, for the reasons discussed below, was unintentionally omitted.

It is submitted that the development of a collaborative approach and adoption of a natural capital approach is not "on" PC5. The development of a new regime, by undertaking a collaborative approach, is beyond the jurisdiction of the Council in making decisions on PC5.

Further, the decision requested does not give any precise details about the content of the proposed regime. Therefore, the submission does not request sufficiently specific and detailed relief in line with the requirements of the RMA to found a decision to amend the plan change.

Accordingly, it is submitted that the Council does not have jurisdiction to amend PC5 as requested.

If Beef & Lamb wishes to pursue this relief, it should demonstrate how the change sought is within the Council's jurisdiction.

[6] Consequential change to changes to Schedule 7A.

7.293 **Would the amendments requested undermine the intended effect of the terms of existing resource consents?**

Response – MMC:

Yes, the potential undermining of the ability to undertake long-term regional planning is one of the reasons for recommending the amendments be rejected.

7.301 **In the event of failure of compliance with nutrient loss limits and outcomes, does the NUG model assist the Council with its administration/enforcement duties?**

Response – PM/MMC:

As explained in para 7.301, the submitter's requested relief could result in multiple regimes applying the same property. On this basis, I do not believe that this NUG model would assist the Council discharge its administration or enforcement duties.

There may be potential, if a NUG was the only method of 'sharing' nutrient losses, for administration to be more efficient, if the NUG model was structured in a way that enabled the Council to interact with fewer entities. This is what currently occurs with irrigation schemes that manage the nutrient losses of their constituent farmers. However, this is not proposed by the submitter.

8.13 **1. In terms of the issue raised by Beef and Lamb, is there potential for the different content of the Targets in Schedule 7 and the GMPs in Schedule 28 to cause confusion?**

Response – MMC:

Schedule 28 summarises the methodologies, formulae and OVERSEER® settings applied by the Farm Portal to a nutrient budget, when modelling nutrient losses under Good Management Practice. The GMPs included in Schedule 28 are only the ones that are modelled by OVERSEER. The Targets in Schedule 7 are intended to assist the adoption of GMP, including tailoring to suit local conditions and to respond to the particular farming activity. Each FEP must describe the targets and measures that will be used, including the use of the "good management practices" (Part B (5), Schedule 7) to achieve the specified management objectives.

The Schedules are different, but necessarily so. As noted by Beef and Lamb, this does have some potential for confusion, especially if the Schedules are directly compared. However, Schedule 28 is for information purposes and is

not a regulatory requirement – the introductory text at the beginning of Schedule 28 could make its role clearer, to reduce this confusion.

2. Would it be more efficient and effective if those provisions were better aligned?

Response – MMC:

While the two schedules have different purposes and uses, further analysis has identified that there is potential for better alignment between Schedule 7 and Schedule 28, and that such alignment would be more efficient and effective.

8.53 In the first line of proposed Policy 4.41B, is the subject of 'are' 'attainment?' If so, should 'are' be replaced by 'is?'

Response – MMC:

Yes.

8.54 Proposed definition of audit, last word 'property.' Is it the property that is assessed? Or is it the farming activity?

Response – MMC:

The first line of the definition identifies that the "performance of the farming activity" is assessed. Therefore, the final word of the definition should also be "farming activity".

8.80 On the Ngai Tahu request that an auditor is to have completed a course approved by Ngai Tahu, as it is the Council that is the regulator, should the approval function be that of the Council, not Ngai Tahu (even if Ngai Tahu may have a recommendatory role)?

Response – PM:

Yes, Council as regulator holds the approval function. Ngāi Tahu is able to have a recommendatory role.

Farm Environment Plans are one of the tools which the Council uses to control the use of land in the region in order to maintain and enhance the quality of water in

water bodies.[7] Council seeks to maintain the quality of FEPs through the use of certified auditors.

In exercising its function to control the use of land, Council is required to consider and involve local Rūnanga.[8] This encompasses a role in recommending an appropriate course for farm auditors.

If desired, Council can transfer its functions to an iwi authority.[9] It is submitted that in order for Ngāi Tahu to have an approval function as requested, a transfer of function pursuant to section 33 would be required. No transfer of this type has occurred.

8.78 **Proposed amendment to the definition of Certified Farm Environment Plan Auditor, clause (b): 'an auditor that is operating …' As an auditor is to be a person, should 'that' be replaced by 'who'?**

Response – MMC:

Yes, and a similar change is needed in the first line of the definition.

8.88-91 **Does the Part A list in the Table of Contents for Change 5 on page 2 contain an entry for Schedule 7? If so, is that relevant to the Murchisons' submission point?**

Response – PM:

Yes, the Part A list in the Table of Contents for Plan Change 5 does contain an entry for Schedule 7.

Inclusion of Schedule 7 in the Table of Contents is relevant to considering whether sufficient notice was given of changes to Schedule 7. It is submitted that taken together, the contents page and the actual content of Plan Change 5, including changes to definitions and Policies and the multiple references to Schedule 7 contained in the section 32 report, were sufficient to ensure the public were on notice as to the proposed changes to Schedule 7.

This is supported by the fact that over 30 submissions were received on Schedule 7, summaries of which were published in the Summary of Decisions Requested.

[7] section 30(1)(c)
[8] section 30(1), NPSFM Objective D1 and Policy D1.
[9] section 33

8.98 In response to issues raised by Beef and Lamb:

1. **Have the authors considered as a minimum aligning the Management Area topics in Schedule 7 with the Topics in Schedule 28?**

   Response – MMC:

   The Schedules were drafted at different times and for different purposes. A conscious attempt to align them has not previously occurred.

2. **Would aligning the Management Area topics in Schedule 7 with the Topics in Schedule 28 assist with promoting the knowledge of and adoption of the GMPs in the document "Industry-agreed Good Management Practices relating to water quality, 18 September 2015"?**

   Response – MMC:

   Yes. The Industry-agreed Good Management Practices relating to water quality, 18 September 2015 document has a range of 'topics' which are utilised in Schedule 28. Schedule 7 uses similar, but not identical Management Area topics. These could be better aligned. However, changes to Schedule 7 will lead to a need for consequential, and possibly substantial, changes to the Audit Manual.

3. **Some of the GMPs in the document "Industry-agreed Good Management Practices relating to water quality, 18 September 2015" are not included in the GMPs in Schedule 28. Is that because they do not relate to Overseer inputs (e.g. the Land, Ground Cover GMP "Retire all Land Use Capability Class 8 and either retire, or actively manage, all Class 7e to ensure intensive soil conservation measures and practices are in place")?**

   Response – MMC:

   The GMPs that are included in Schedule 28 are ones that are modelled by OVERSEER. It does not include GMPs that are 1) already assumed within with model, 2) not currently able to be modelled by OVERSEER or 3) do not relate to OVERSEER.

4. **Would it be beneficial to include GMPs contained in the document "Industry-agreed Good Management Practices relating to water quality, 18 September 2015" that are not listed as GMPs in Schedule 28 in the Objectives or Targets in Schedule 7?**

Response – MMC:

Analysis has shown that there are a small number of GMPs from the document "Industry-agreed Good Management Practices relating to water quality, 19 September 2015" that are not included in Schedule 7, either explicitly or as a part of another Schedule 7 Objective or Target. Some of these have been excluded because they are not able to be audited, or are environmentally neutral. For ease of use and certainty that a GMP practice is being implemented, it may be helpful that any that have an environmental benefit and are not clearly part of Schedule 28 are included in Schedule 7.

8.133 **Has a word been omitted from the penultimate sentence of this paragraph? How may the author's intention be understood?**

Response – MMC:

Yes, some words have been inadvertently omitted, and the sentence should read:

"On this basis, an addition to a policy, possibly Policies 4.37, 4.38 and 4.38AA, may be appropriate."

8.136 **The "public access routes" might have utility in enhancing public access for the wider community if the individual FEPs are publicly available documents. Will the FEPs be freely publicly available?**

Response – MMC:

I understand that the public access routes identified in FEPs will not be specifically published or publicly notified. However, access to information held by the Canterbury Regional Council is administered in accordance with the Local Government Official Information and Meetings Act 1987 (LGOIMA) and the Privacy Act 1993.

The Canterbury Regional Council has an electronic file system that enables resource consents to be searched on the Canterbury Regional Council website. In addition, resource consents and the associated files can be accessed by the public at the Canterbury Regional Council offices. This public information access system will help resource consent applicants, resource consent holders and the public to be better

informed about resource consents that the Canterbury Regional Council administers. The Canterbury Regional Council may also withhold access to information if specific criteria, set out in s42 of the RMA are met. I understand that the Consents Team at the Canterbury Regional Council are currently advising consent applicants that they are able to request that their FEP is retained on file as a confidential document.

8.151 **1. Would the Irrigation Management Targets (2), (3) and (4) already be required by consent conditions on irrigation water take consents?**

Response – MMC:

Yes, in part, in some cases. This is primarily because there are a range of catchment-based water allocation plans in Canterbury, that have lesser or different requirements to the CLWRP.

2. If so, is there any value in duplicating them in the FEP?

Response – MMC:

Irrigation targets (2), (3) and (4) state:

(2) Existing irrigation systems are calibrated, maintained and operated to apply irrigation water at the optimal efficiency.
(3) All applications of irrigation water are justified on the basis of soil moisture data and climatic information.
(4) The timing and rate of application of water is managed so as to not exceed crop requirements or the available water holding capacity of the soil.

Resource consents for the take and use of water do not typically have any conditions that require that the irrigation system are calibrated, maintained and operated to apply irrigation water at the optimal efficiency. However, consent applications for water permits need to demonstrate that the use of water is technically efficient, i.e. that the rate and volume of water applied for is reasonable and efficient for the intended use. This is a requirement under the LWRP (Policies 4.65-4.69). All resource consents are granted with a condition limiting the abstraction to an annual volume of water that is determined based on soil data and climatic information (Schedule 10).

Resource consents to take and use water for irrigation purposes are also typically granted with the following condition:

"The consent holder shall take all practicable steps to

a. Ensure that the volume of water used for irrigation does not exceed that required for the soil to reach field capacity; and

b. Avoid leakage from pipes and structures; and

c. Avoid the use of water onto non-productive land such as impermeable surfaces and river or stream riparian strips."

These three targets are important from both a water use efficiency perspective and for nutrient management purposes (i.e. improved water use efficiency is likely to result in reduced leaching of nutrients through the soil profile, or via wipe-off water). While some of these matters are typically included in the conditions of water permits, the value of duplicating these as FEP targets is that it provides an opportunity for the land holders to demonstrate how they will meet these requirements, with an obligation to actively record progress towards and compliance with the targets.

More recent consents granted by the Canterbury Regional Council contain conditions that require the preparation and adherence to an FEP, which has been prepared in accordance with guidelines that are attached to the resource consent as an Appendix or Schedule.

8.157 **1. Is the Collected Animal Effluent Management Target (1) already a legal requirement?**

Response – MMC:

Yes. The management objective for Collected Animal Effluent Management is to manage the risks associated with the operation of effluent systems to ensure effluent systems are compliant 365 days of the year. While Target (1) is a legal requirement, it is useful to include it as a measurable and auditable "target" that contributes to achieving the management objective for Collected Animal Effluent Management.

2. Would Targets (2), (3) and (4) already be required by consent conditions on farm diary effluent discharge consents?

Response – MMC:

The targets (1) – (4) state:

(1) Effluent storage facilities and effluent discharges comply with regional council rules or any granted resource consent.

(2) The timing and rate of application of effluent and solid animal waste to land is managed so as to minimise the risk of contamination of groundwater or surface water bodies.

(3) Sufficient and suitable storage is available to store effluent and any wastewater when soil conditions are unsuitable for application.

(4) Staff are trained in the operation, maintenance and use of effluent storage and application systems.

Targets (2) and (3) are typically considered through the consent process for applications for dairy effluent discharge consents (and associated land use consents for the storage of effluent). The conditions of a farm dairy effluent consent typically specify a maximum application rate or depth and performance standards that are consistent with Target (2). Target (4) is not generally required by consent conditions for farm diary effluent discharge consents.

3. If so, is there any value in duplicating them in the FEP?

Response – MMC:

Yes. While Targets (1), (2) and (3) are already considered through the consent process for applications for farm dairy effluent discharge consents and associated land use consents for the storage of effluent, the targets are useful in the sense they are measurable and auditable, enabling the land holder to demonstrate how they will meet the management objective.

I also note that a FEP is required as a condition of Rule 5.36 (RDA for discharges of animal effluent). Including these targets clearly in Schedule 7 is beneficial, as it requires that applicant to show how they will be achieved at the application stage.

While there may be an element of "belt and braces", I do not think that is problematic.

8.172 Can the authors explain what managing "nutrient use efficiently" means?

Response – MR/MMC:

Paragraph 8.172 relates to Schedule 7: Part B and reads as follows:

<u>Management Area: Nutrient Management</u>

Several submitters request amendments to the Objective for the Nutrient Management Area. I support the amendment proposed by Ravensdown for the reason provided by the submitter that the way nutrient use efficiency is interpreted within OVERSEER® Nutrient Budget reports as the ratio of nutrient outputs to inputs may not always represent environmental best practice. I recommend the Objective is amended as the submitter proposes but using the word "efficiently" instead of "responsibly" as follows:

> *To ~~maximise~~ manage nutrient use ~~efficiency~~ efficiently while minimising losses to water*

The first GMP for Nutrient Management in the "Industry-agreed Good Management Practices relating to water quality, 18 September 2015" booklet reads: "Manage the amount and timing of fertiliser inputs, taking account of all sources of nutrients, to match plant requirements and minimise risk of losses". The broad concept of matching supply to demand, and minimising waste (losses) is, in my mind, what is "efficient".

That said, the phrase may have more clarity, if it were to be rephrased as:

> *To use nutrients efficiently and minimise nutrient losses to water.*

8.194 **Last sentence. Would an amendment suggested at the hearing come within the scope of the Council's authority to accept or reject amendments requested in primary submissions?**

Response – PM:

The submitter (Ngāi Tahu) proposes the introduction of an entirely new management area, objective and targets within Schedule 7 that would require landowners to identify known mahinga kai, wāhi tapu or wāhi taonga sites and manage the effects of farming activities to avoid adverse effects on them.[10]

The section 42A report recommends that more explicit consideration of these values may be more appropriately incorporated into the existing management areas. The report invites the submitter to review the existing management area targets to see how they may be amended to better align with the protection of cultural values and sites and to bring the results of this review to the hearing.[11]

The Council would have scope to include an amendment to the submission requested at the hearing only if it fairly and reasonably fell within the general scope

[10] section 42A report, paragraph 8.193.
[11] section 42A report, paragraph 8.194.

of an original submission, or PC5 as notified, or somewhere in between (i.e. on the line between PC5 as notified and a submission).[12] If not, the Council would not have jurisdiction to consider amendments to the management areas requested at the hearing, unless it is consequential or incidental to an amendment in a compliant submission that is being requested.

If Ngāi Tahu intends to request amendments to other management areas within Schedule 7, rather than the insertion of a completely new management area, Ngāi Tahu should demonstrate how the changes sought are within the jurisdiction of the Council. Council is of the view that such changes could be considered within the scope of the original Ngāi Tahu submission, provided the effect (and affected parties) remains the same.

8.203 **Recommended revision of Schedule 7. Irrigation Management Targets Number (2). Would the intent be unaltered but the meaning clearer if this target were to read:**

The performance of existing irrigation systems is assessed annually and all irrigation systems are maintained … efficiency.

Response – MMC:

Yes, this suggested amendment would have the same effect as the wording in the s42A report while making the meaning clearer.

8.230 **Can the authors explain why it is considered appropriate to align Schedule 7A with the GMPs in the document *"Industry-agreed Good Management Practices relating to water quality*, 18 September 2015" but it is not recommended to do the same for Schedule 7?**

Response – MMC:

The submissions on Schedule 7A identified a number of issues with the schedule (see para 8.226 of the s42A Report). However, the changes requested by the majority of submitters were either deletion of the Schedule entirely, replacement with a Schedule to be agreed through further processes or referencing the *Industry-agreed Good Management Practices relating to water quality, 18 September 2015* document.

I am of the opinion that a more complete set of specific requirements would be preferable. However, how the Schedule would best be re-worded did not appear

[12] *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19]; *Campbell v Christchurch City Council* [2002] NZRMA 352 (EnvC) at [20].

particularly clear from the submissions. On that basis, referencing the *Industry-agreed Good Management Practices relating to water quality, 18 September 2015* document was recommended.

Such an approach is not recommended for Schedule 7, as the *Industry-agreed Good Management Practices relating to water quality, 18 September 2015* document does not clearly set out specific and auditable objectives and targets, which are more appropriate for the resource consent framework of FEPs developed and audited in accordance with Schedule 7.

8.233 **Recommended subclause 3(c). By the words "any granted resource consent" do you mean "any condition attached to a current resource consent?"**

Response – MMC:

Not in this instance. A resource consent, particularly one granted some years ago, could be granted for a specific activity that may have only a limited range of conditions attached. The management plan set out in Schedule 7A must still comply with a resource consent as a whole, even if there are no or limited conditions that apply.

10.33 **Identify the recent water quality data referred to that tend to show the limited capacity for further intensification mentioned.**

Response – MMC:

The Memorandum "Nutrient capacity of CLWRP Orange and Green Nutrient Management Zones" (Ford & Meredith, 2016) outlines an analysis of water quality information and nutrient loads, and was used as a basis for the conclusion that there is limited capacity for further intensification. However, that analysis does not include the most up to date data.

A 10-year trend analysis (Jan 2005-Dec 2014) and including the period used for the above Memorandum (2008-2012) indicates that the nutrient status is likely 'the same' or 'worse' than the analysis upon which the Memorandum is based. This analysis is from a report that is currently in draft form and requires an update of data before a final version will be produced.

10.59 **Suggested revision of proposed Rule 5.42A: "…the landholder may, in his or her discretion…" Would this effectively substitute the landholder for the regulator, undermining the ability of the latter to perform its statutory duties?**

Response – PM/MMC:

The section 42A report proposes the following change to Rule 5.42A:

Where any property includes land in more than one Nutrient Allocation Zone as shown on the Planning Maps, and the smaller proportion of that land within a different Nutrient Allocation Zone exceeds 10 hectares in area:

(a) the rules for each Nutrient Allocation Zone apply respectively only to the part of the property within that Zone; and

(b) where the conditions of Rules 5.43A to 5.59A specify a date by which a resource consent application is to be lodged, and the property is located in more than one Nutrient Allocation Zone, compliance with the earliest date is required, and;

for the area of that property located within a Nutrient Allocation Zone that totals less than 10 hectares, the landholder may, in his or her discretion, apply to this area the rules of the predominant NAZ applying to the property.

The "discretion" granted by the proposed change to Rule 5.42A is that a qualifying landholder may choose to apply either NAZ rules relating to the smaller area of land *or* may adopt the NAZ rules that apply across the larger farm area (this choice is restricted by qualifying criteria – namely, the smaller area of land in question must be less than 10 hectares).

The choice given to the landholder is limited to deciding which rule framework it operates under (i.e. it is not a delegation of the Council's functions). The landholder is still subject to the rules, which have been assessed as being the most appropriate to achieve the objectives and policies of the CLWRP and PC5. Accordingly, the Council's ability to perform its functions is not undermined by the change proposed.

10.74 Second sentence "…if the submissions are considered to be 'on' PC 5 …" On what reasoning is it arguable that the amendment would be 'on' the plan change?

Response – PM/MMC:

Beef and Lamb have requested that Policy 4.34(b) be amended as follows:

4.34 The loss of nutrients from any farming activity to water is minimised by:

…

(b) farming activities that have nutrient losses operating at good management practice or better; and…"

The change is supported by the Council, as it aligns Policy 4.34(b) with the defined 'Good Management Practice' term. On that basis, the change is consequential to the

introduction of a definition of 'Good Management Practice' as per clause 10(2)(b) of Schedule 1.

12.14 **This and later passages in the report (eg 14.6, 14.11) refer to the Mackenzie Agreement. I do not think I have a copy of that document. Is it relevant, and appropriate to influence our deliberations on the submissions on PC 5? If so, can copies be provided for us?**

Response – PM:

The Upper Waitaki Zone Committee resolved to use the Mackenzie Agreement to inform Zone Committee work and to give effect to the Mackenzie Agreement where appropriate.[13] The Upper Waitaki Zone Implementation Programme Addendum 2015 records the 'Solutions Package' including the aim to provide opportunities for the establishment or intensification of farming activities on small blocks of land on extensive properties to align with the Mackenzie Agreement, by recommending an enabling consenting pathway for small block development on extensive properties.

The Mackenzie Agreement is not a management plan or strategy prepared under other Acts in terms of section 66(2)(c)(i) of the RMA and is not a mandatory consideration under that section.

Section 66 does not create an exhaustive list of considerations. The High Court has held that regard may be had to non-binding documents, as relevant background material, even if those documents do not have status under the RMA.[14]

Further, Policy 4.9 of the CLWRP provides as follows:
Reviews of sub-region sections will:
…

(b) identify and provide for the social, economic, cultural and environmental values of each catchment; and

(c) have particular regard to collaboratively developed local water quality and quantity outcomes and methods, and timeframes to achieve them, including through setting limits and targets; and …

Although there is no statutory requirement for PC5 to incorporate the Mackenzie Agreement, the document aims to provide for a "*shared vision and strategy for the Mackenzie Country*" and is subject to a wide range of signatories (including Mackenzie District Council and various industry, public interest and community bodies).

[13] Upper Waitaki Zone Implementation Programme Addendum 2015 at 5.
[14] *West Coast Regional Council v Friends of Shearer Swamp* [2012] NZRMA 45.

The Mackenzie Agreement informed the Zone Committee's work in preparing the Upper Waitaki ZIP Addendum. Therefore, the Hearing Commissioners may consider that document as relevant background material and as part of implementing Policy 4.9 of the CLWRP. A copy of the Mackenzie Agreement is attached as **Appendix 1**. A copy was also included on the Canterbury Regional Council website on the Supporting Technical Documents page for PC5, under the heading Additional Technical Information (http://ecan.govt.nz/our-responsibilities/regional-plans/regional-plans-under-development/v5/Pages/Supporting_Technical_Documents.aspx).

15.31 **"…it is suggested that these submitters provide at the hearing the actual standard that they seek." If a submitter asks at the hearing for a standard not detailed in any primary submission, would the Council have scope to include that standard in the plan by decision on the submissions?**

Response – PM:

The Council would have scope to include the standard only if it fairly and reasonably fell within the general scope of an original submission, or PC5 as notified, or somewhere in between (i.e. on the line between PC5 as notified and a submission).[15] If not, the Council would not have jurisdiction to consider an amendment to the standard that is requested at the hearing, unless it is consequential or incidental to an amendment in a compliant submission that is being requested.

15.69 **Would altering values in Table 15B(c) as recommended in this paragraph be authorised by RMA Schedule 1, clause 10(2)(b) or clause 16(2)? Please indicate how the alteration would qualify.**

Response – PM:

The submissions by Killermont Station 2012 Limited, Rietveld J A, Twinburn Ltd, and Haldon Station Limited, sought that the loads set in Table 15B(c) be amended, to confirm that levels set are correct and achievable, to provide clarification as to how they apply and integrate with the rules, and make any consequential amendments (submissions PC5LWRP-951; PC5LWRP-982; PC5LWRP-1112; PC5LWRP-1133). I submit that these submission points would provide scope for the Hearing Commissioners to amend the values in Table 15B(c) to correct the rounding errors and align with the recommendations set out in Shaw (see Appendix G of the Section 42A Report – Section 5).

[15] *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19]; *Campbell v Christchurch City Council* [2002] NZRMA 352 (EnvC) at [20].

15.80 **If the commissioners were minded to amend the Ahuriri Zone nitrogen load limit, what would the amended limit be and which submission point would enable that amendment?**

Response – HS/PM:

If the commissioners were minded to amend the Ahuriri Zone nitrogen limit, the load limit would be amended as follows:
~~*209*~~*213.*

However there may not be a submission that enables the amendment. The submissions by Bellfield Land Co Limited and Mackenzie Irrigation Company Ltd sought that the loads set in Table 15B(f) were correctly and accurately determined (submission PC5LWRP-2041 and PC5LWRP-1559). On balance, I submit that these submission points would not provide scope for the Hearing Commissioners to amend the Ahuriri Zone nitrogen load limit in Table 15B(f) to account for the consent

15.80 **In the last sentence of this paragraph it is suggested that we may consider it appropriate to amend the Ahuriri Zone nitrogen load limit. Would such an amendment be within the scope of the Council's authority in making decisions on the submissions on the plan change; or under Sched 1, cl 16(2)? If so, specifically what amendment is suggested?**

Response – HS/PM:

Refer to the response to the question on para 15.80 above.

15.91 **Shaw and Palmer (2015) (pp.67-68) is referenced. Referring to that report, can the authors briefly explain how the "set CLUES receiving environment load" is determined?**

Response – HS:

The set CLUES receiving environment load (and thus load limits) for the Haldon, Ahuriri, Mid Catchment, Hakataramea and Valley and Tributaries zones were calculated using a calibrated CLUES model.

The CLUES model, which is described in Palliser et al (2015) starts with land use/climate/soil descriptions for the catchment, and aggregates nutrient loss estimates (generated by applying nutrient loss estimates to the land use mix) down the catchment, applying parameters and functions to enable attenuation to be

simulated. The result is nutrient concentrations or loads at a number of locations in the surface water network.

The CLUES model for the Waitaki sub-region was calibrated to current state by applying a current land use mix to the model, and adjusting the model parameters so that in-stream (or in-lake) nitrogen load estimates matched measured water quality data at a number of locations in the sub-region.

The current state CLUES results were then factored up by changing the land use to take into account consented but not yet implemented land use, and headroom allocation regimes, where applicable.

The 'set CLUES receiving environment load' referred to on page 67 of Shaw & Palmer (2015) is described as the 'in-lake Nitrogen load' in Schedule 27.

15.92 **"The submitter provides limited detail …" Is this a reference to submission point PC5 LWRP 402, or what?**

Last sentence: "Submitters are invited to further explain … at the hearing." Is that submission point sufficiently specific and detailed to found a decision to amend the plan change?

Response – PM:

Yes, paragraph 15.92 is referring to Dairy NZ submission point PC5 LWRP 402 seeking to delete Policy 15B.4.12 and insert a new policy which provides for an adaptive management approach, with a focus on good management practice and linking these practices with agreed environmental indicators.

The submission point does not provide any further detail or specificity regarding the nature of the adaptive management approach. The submission does not request specific relief in line with the requirements of the RMA to found a decision to amend the plan change.[16] If Dairy NZ wishes to pursue this relief, it should demonstrate how the change sought is within the Council's jurisdiction by reference to other primary submissions.

16.24 **What iwi resource management plans additional to those listed in para 16.24 (or at 15B.3 Iwi Management Plans) are relevant to Canterbury or parts of Canterbury and should be taken into account in respect of PC5?**

[16] Further discussion on requesting specific relief can be found in the Section 42A Report, Part A, paragraphs 3.58-3.78.

Response – DC:

The Iwi Management Plans listed in para 16.24 or 15B.3 include:

- Kati Huirapa for the area Rakaia to WaitaKI (July 1992)
- Te Whakatau Kaupapa - Resource Management Strategy for Canterbury (1990)
- Te Rununga o Ngai Tahu Freshwater Policy Statement (1999)

Additional Iwi Management plans in Canterbury that should be taken into account include:

- Te Poha o Tohu Raumati (2009)
- Mahaanui Iwi Management Plan (2013)
- Mahere Tukutahi o Te Waihora (2005)
- Kai Tahu Ki Otago (2005)
- Te Taumutu Runanga Natural Resource Management Plan (2003)
- Hazardous Substances and New Organisms Policy Statement (2008)

16.25

1. **The statement "Given appropriate Waitaki specific documentation is in preparation and PC5 is yet to be operative, the Council expects this will be available in the near future to address Ngāi Tahu concerns." Is this statement referring to the 'in preparation' iwi management plan for the Waitaki sub-region referred to in para 16.23?**

   Response – DC:

   Yes. The statement is referring to the 'in preparation' iwi management plan for the Waitaki Sub-region.

2. **Is restricting the matters of discretion (in rules 15B.5.18B, 20, 26, 31 & 45) re wahi tapu and wahi taonga to those identified in an iwi management plan potentially reducing the level of protection where a wahi tapu or wahi taonga may not be identified in an iwi management plan because it is of a sensitive nature or is simply not specified in an iwi management plan?**

   Response – DC:

   Potentially yes. The restriction of discretion to sites identified in an iwi management plan is intended to provide reference for consent applicants so they are aware of sites on their property. I am aware of the approach taken Te Whakatau Kaupapa which identifies the location of sensitive sites within a broader silent file area. This includes an area in the Lower Waitaki. However, other iwi management plans do not identify silent file areas or sensitive sites.

3. **If an iwi management plan is not the primary tool for identifying wahi taonga or wahi tapu, and is rather a primary tool to assist in identifying issues of resource management significance, does the Ngāi Tahu submission requesting deletion of "identified in an iwi management plan" from the matters of discretion in the rules referred to have merit?**

Response – DC:

Yes, for the reasons outlined in the response to Question 2 on para 16.25 above, Ngāi Tahu's submission requesting deletion of "identified in an iwi management plan" from the matters of discretion has merit.

Since the notification of PC5, Policy 4.14B in Plan Change 4 to the Canterbury Land and Water Regional Plan requires regard to Ngāi Tahu values when considering applications for discharges. The policy includes a list of documents or sites in which the values may be identified.

Plan Change 4 Policy 4.14B is as follows:

Have regard to Ngāi Tahu values, and in particular those expressed within an iwi management plan, when considering applications for discharges which may adversely affect statutory acknowledgement areas, nohoanga sites, surface waterbodies, silent file areas, culturally significant sites, Heritage New Zealand sites, any listed archaeological sites, and cultural landscapes, identified in this Plan, any relevant district plan, or in any iwi management plan.

I consider the submission of Ngāi Tahu to be consistent with this policy as it does not constrain the identification of sites to those identified in an iwi management plans.

I recommend the matters of discretion relating to sites of wāhi tapu of wāhi taonga are amended as follows:

The potential adverse effects of the activity on wāhi tapu or wāhi taonga ~~identified Iwi Management Plan~~[17].

16.34 Would the Council have authority, by decision on submissions, or otherwise in a regional plan, to "enable access" by DoC officials to enter private property?

Response – PM:

[17] Ngāi Tahu PC5LWRP-932

No.

The RMA contains limited and specific provisions in respect of access onto private property, for example in relation to certain emergency works, and powers of entry and search (see sections 330 and 332-334 of the RMA). This includes the power of entry for survey for any purpose connected with the preparation, change or review of a plan by any enforcement officer specifically authorised in writing by any local authority to do so (subject to providing reasonable written notice). A local authority may authorise officers of DOC to carry out the functions and powers of an enforcement officer under section 38 of the RMA. However, this power of entry for survey does not extend to enabling access under a rule in regional plan.

Access to private property is not a function of the regional council under the RMA (see sections 30, 63, 67, and 68). The Council does not have jurisdiction to include a rule (or other method) in a regional plan to require or to enable access by DOC officials to enter private property.

In any event, the Council Officer considers that the amendment sought by DOC is inappropriate and recommends rejection of the submission point.

16.37 **The use of kaitiakitanga in policy 15B.4.1 in the manner proposed is potentially confusing. Management of the resource to achieve the freshwater outcomes in Tables 15B(a) and 15B(b) is what is intended, the exercise of kaitiakitanga by manawhenua will assist in achieving that outcome, but kaitiakitanga occurs regardless of the quality of freshwater not because of it. The Policy could be made clearer if the wording or similar to that used in the Tables 15B(a) and 15(B(b) under the heading 'Tangatawhenua Attributes' was incorporated into the policy, ie; instead of referring to the 2 tables in the policy the actual values and activities sought to be achieved are included in the policy. Is that possible using the consequential amendment clause 16 or could it pass as interpretation of the Ngāi Tahu submission point PC5 LWRP-871?**

Response – PM/DC:

The intention of the policy is outlined in the response to the question on paragraph 16.37 below. The placement of the term "kaitiakitanga" confuses the intention of this policy and therefore I recommend the policy should be amended to relocate the term.

We consider that amending Policy 15B.4.1 to include the text that is set out under "Tangata Whenua Attributes" in Tables 15B(a) and 15B(b) instead of referring to "*the tangata whenua freshwater outcomes described in Tables 15B(a) and 15B(b)*" would be an amendment authorised under clause 16(2). This is because such an

amendment would simply remove the cross-reference to Tables 15B(a) and 15B(b) in Policy 15B.4.1 and insert the wording within the Tables. Such amendment would be of neutral effect. A minor amendment to improve the grammar of the Policy is also recommended.

The recommended amendment to Policy 15B.4.1 is as follows:

15B.4.1 The management of ~~F~~freshwater quality in the Waitaki Sub-region ~~is managed to~~ support~~s~~ the exercise of kaitiakitanga ~~customary uses~~[18] and ensures that freshwater mahinga kai species are sufficiently abundant for customary gathering, water quality is suitable for the safe harvesting and eating of mahinga kai.~~to achieve the tangata whenua freshwater outcomes described in Tables 15B(a) and 15B(b)~~[19]

16.37 **With regard to the recommended amendment to Policy 15B.4.1, is the exercise of kaitiakitanga the means by which the tangata whenua freshwater outcomes are to be achieved or is the policy intended to separately support the exercise of kaitiakitanga and the achievement of those outcomes?**

Response – DC:

The policy is intended to separately support the exercise of kaitiakitanga and the achievement of those outcomes.

The exercise of kaitiakitanga is intended to be supported through enabling consideration to be given for Ngai Tahu cultural values in resource consent processes. Policy 15B.4.1 provides direction to consent decision makers when considering matters of control/ discretion that relate to tangata whenua values.

The tangata whenua freshwater outcomes are to be achieved through numerous methods including the setting of water quality limits intended to achieve the freshwater quality outcomes, rule framework intended to manage cumulative effects so that limits are not exceeded, requirements through the rules for property specific consideration of tangata whenua values (including Waitaki specific requirements in Schedule 7 Farm Environment Plan relating to mahinga kai).

Further redrafting of this policy is considered in response to the question on paragraph 16.37 above.

[18] Ngāi Tahu PC5LWRP-871
[19] CL16 Minor amendment

19.31 **The recommended amendment to Policy 15B.4.16 also places a 15 year limit on consent durations for aquaculture. What is the duration of existing aquaculture consents?**

Response – DC:

The duration of existing aquaculture consents in the Waitaki Sub-region is 35 years. It should however be noted that these consents commenced at least 13 years ago (1999-2003) and currently it is general practice for consenting officers to recommend shorter durations (than 35 years) on discharge consents. Information on the existing aquaculture consents in the Waitaki Sub-region is included in Table 1 below.

Table 1. Aquaculture Consents in the Waitaki Sub-region

Consent Number	Consent Holder	Commencement	Expiry	Duration
CRC136965	Mt Cook Salmon	8/4/1999	2034	35
CRC960344.1	High Country Salmon	6/10/1995	2030	35
CRC032103	Hutton	30/10/2003	2038	35

22.7 **Would amending the plan to extend the 90% to additional areas be within the scope of the Council's authority in making decisions in submissions on the plan change?**

Response – PM/DC:

PC5 as notified sought to restrict nitrogen losses in the Hakataramea River Zone and Greater Waikākahi Zone to 90% of the GMP loss rate for the portion of the property irrigated or used for winter grazing (Policy 15B.4.24).

The Section 42A Report recommends that Policy 15B.4.24 is amended so that in the Hakataramea River Zone the requirement to be at 90% of the GMP loss rate applies to the property (and not just the areas irrigated or used for winter grazing) (see paragraph 22.279 of the Section 42A Report).

Ravensdown seeks that Policy 15B.4.24 is amended to address issues with the Farm Portal on the basis that "*the policy appears to be written to determine nitrogen allocation within a property as opposed to a nitrogen discharge allowance for the entire property, as it limits N losses to portions of the property used for irrigation or winter grazing. Ravensdown does not consider this is appropriate or practical and will result in plan implementation issues".* Ravensdown generally seeks such other or

alternative wording for the provisions it seeks changes to which would properly address the concerns raised in its submission. (PC5LWRP-2106, see Ravensdown submission at page 48 for further details). It is submitted that this submission point provides scope for the recommendation.

22.47 Does the current level of activity in the FMUs listed by F & B expose any significant indigenous biodiversity to harm?

Response – DC/HS:

Significant Indigenous Biodiversity is defined in the LWRP as meaning areas or habitats that meet one or more of the criteria in Appendix 3 to the Canterbury RPS 2013.

Using the criteria in Appendix 4, identification of areas of significant indigenous biodiversity will need to be undertaken via ecological ground survey. This work has not yet been carried out.

Using the information relied on for the Waitaki Sub-region analysis, there are some currently 'high biodiversity value' areas in the Lower Waitaki at risk from land use intensification – principally along the beds, margins and floodplains of the rivers: Waitaki, Hakataramea, Kurow, Otiake, Otekaike, Maerewhenua. There are also some 'high value' habitats in the Hakataramea Valley hill slopes (Kirkliston Range and Hunter Hills) that may be at risk.

Biodiversity in the beds, flood plains and river margins are managed under the LWRP region-wide provisions. Policies and Rules in Plan Change 4 to the LWRP provide for additional controls of activities beds and margins of braided rivers relating to vegetation clearance, earthworks and cultivation. Under the CRPS district councils are primarily responsible for the management of significant indigenous biodiversity in areas outside of wetlands, the coastal marine area and land outside of wetlands, the coastal marine area, and beds of rivers and lakes.

There is lack of information available about the location and nature of any significant indigenous biodiversity in these FMUs, for the reason that the region wide provisions now adequately protect biodiversity beds, flood plains and river margins under the Plan Change 4 to the LWRP.

22.48 Could the risk of constraining the policy be avoided by using a phrase such as 'Without limiting the generality of the protection of all significant indigenous vegetation and significant habitats of indigenous fauna and their ecosystem functions …'? Would inserting such a phrase be in scope?

Response – PM/DC:

Yes, the risk of constraining the policy could be avoided by using the phrase 'without limiting the generality of the protection of all significant indigenous vegetation and significant habitats of indigenous fauna and their ecosystem functions'.

It is submitted that DOCs submission points (submission point PC5LWRP-1609 and PC5LWRP-2658) would provide scope for the Hearing Commissioners to amend Policy 15B.4.23 as suggested as a consequential amendment in accordance with clause 10(2)(b) of Schedule 1.

This is on the basis that DOC seeks that a new policy is inserted to refer to maintaining significant freshwater biodiversity in the four FMUs and amend Policy 15B.4.23 to refer to terrestrial biodiversity in the four FMUs (or such further or alternative relief to like effect) as well as the specific relief assessed at paragraph 22.48. This is on the grounds that "The policy omits the need to protect significant freshwater biodiversity and significant habitats of indigenous fauna. Freshwater management however is a role of the Regional Council and the Canterbury Land and Water Plan does not comprehensively address section 6 (c) matters with regard to freshwater" (see DOC submission at pages 11-12 for further details).

15B.4.23 Without limiting the generality of the protection of all significant indigenous vegetation and significant habitats of indigenous fauna and their ecosystem functions, ~~S~~significant indigenous biodiversity is ~~maintained~~ protected[20] in the Haldon Zone and Mid Catchment Zone by:

(a) the implementation of any relevant district council planning provisions that are notified and take legal effect after 13 February 2016 and that require the identification and protection of significant indigenous biodiversity; or

(b) until such district council planning provisions are notified and take legal effect[21], requiring as part of any application for resource consent for a farming activity to exceed the nitrogen baseline, an assessment of environmental effects which identifies the indigenous biodiversity values present within the application area, identifies the sites of significant indigenous biodiversity; and demonstrates that no net loss of significant indigenous biodiversity will occur.

22.74 **Would the intended meaning of the first sentence of this paragraph have been better understood if, after the words 'does not require' the words 'exercise of' had been inserted?**

Response – PM/DC:

[20] Mackenzie DC PC5 LWRP-366
[21] Mackenzie DC- PC5 LWRP-366

The preceding paragraph in the Section 42A Report (22.73) explains that the requirement for a consent to have 'commenced' is different to a requirement that a permit be 'given effect to'. The requirement for a consent to have 'commenced' provides greater certainty, given the requirements in section 116 of the RMA are clear and do not rely on any subjective assessment. This is in contrast to the requirement that a permit be 'given effect to', which can result in disputes as to whether sufficient action has been taken to constitute giving effect to the consent. The exercise of a consent is an action which goes towards that subjective assessment. Given the distinction between the two terms which is articulated in paragraph 22.73, we consider that adding the words 'exercise of' in paragraph 22.74 would not add anything further to the distinction.

22.137

1. **With regard to the recommended amendment to Policy 15B.4.15(a) can the authors explain what the term "the portion of exceeded nitrogen loss" means?**

Response – DC:

There is a small amount of nitrogen headroom is available in both the Hakataramea Flat Zone and the Greater Waikākahi Zone. This headroom is equivalent to all properties in these zones that are below the permitted thresholds for winter grazing (20ha) and irrigation (50ha), having additional nitrogen losses beyond their nitrogen baseline equivalent to carrying out up to 20 ha of winter grazing and up to 10 ha of irrigation (provided the total area of irrigated land is less than 50ha). That additional nitrogen loss is the "portion of exceeded nitrogen loss".

2. **In Policy 15B.4.14(b) should the term "nitrogen losses" be replaced with the term "the nitrogen loss calculation" so as to be consistent with Policies 15B.4.13(b) and 15B.4.15(b)?**

Response – DC:

Yes. Policy 15B.4.14(b) relates to controlled activity Rule 15B.5.7 which classifies farming activities that are managed under a water permit which do not include a limit on nitrogen loss through the root zone as a controlled activity. It is intended that a land use consent granted under Rule 15B.5.7 will include requirements for the nitrogen loss calculation to remain below the Good Management Practice Loss Rate associated with the activity for which the water permit was granted. I recommend Policy 15B.4.14(b) is amended as follows:

…

(b) the nitrogen loss~~es~~ calculation[22] from the farming activity remain~~s~~ below the Good Management Practice Loss Rate for the farming activity proposed at the time the water permit was granted.

[22] CL16 Minor amendment.

22.156 **1. In Policy 15B.4.22 should the terms "average nitrogen loss", "nitrogen losses" and "average nitrogen loss rate" be replaced with the term "nitrogen loss calculation"?**

Response – DC:

No, the terms "average nitrogen loss" and "average nitrogen loss rates" should not be replaced with the term "nitrogen loss calculation". However the term "nitrogen losses" should be replaced with the "nitrogen loss calculation.

The term "average nitrogen loss" and "average nitrogen loss rates" were used intentionally in Policy 15B.4.22 because the policy intends to refer to the nitrogen leached over a fixed period of time 2011-2013 rather than the most recent four year period as specified in the definition of the nitrogen loss calculation. However, I consider that the term "average nitrogen loss" should be applied consistently within the policy and that further amendments could clarify that the "average nitrogen loss" is intended to apply to a property.

The term "nitrogen losses" is inconsistent with the wording used in similar phraseology in PC5 Part A policies and therefore in my opinion should be amended.

I recommend Policy 15B.4.22 is amended as follows:

15B.4.22 Prior to Rules 5.43A, 5.46A, 5.53A, 5.54A, 15B.5.14 to 15B.5.23 becoming operative in accordance with clause 20 of Schedule 1 to the Resource Management Act 1991, water quality outcomes are met:

(a) in the Haldon Zone and Mid Catchment Zone, by requiring farming activities that exceed the average nitrogen loss that occurred on a property[23] between 1 January 2011 and 31 December 2015 to restrict their nitrogen loss~~es~~ calculation[24] to no more than 1.6kgN/ha/yr above the nitrogen baseline for areas of non-irrigated land[25]; and

(b) in the Ahuriri Zone, by requiring farming activities to restrict their nitrogen loss~~es~~ calculation[26] to no more than the average nitrogen loss ~~rate~~[27] that occurred on a property[28]

[23] Fonterra PC5-1207
[24] CL16 Minor amendment.
[25] Haldon Station Ltd – PC5LWRP-1268, Mackenzie Irrigation Company – PC5LWRP-1544, J A Rietveld – PC5LWRP-2742
[26] CL16 Minor amendment.
[27] CL16 Minor amendment.
[28] Fonterra PC5-1207

between 1 January 2011 and 31 December 2015, or the nitrogen baseline.

2. Where those three terms (or variations thereof) appear in any Section 15B.5 rules, should they be amended to "nitrogen loss calculation"?

Response – DC:

No, I do not recommend the three terms are amended to "nitrogen loss calculation" with the exception of Rule 18B.5.18A. For the reasons outlined in the response to question 1 on para 22.156 the terms should not be amended wherever they appear in Section 15B to "nitrogen loss calculation". Additionally the term "nitrogen loss" or "nitrogen losses" is used in matters of control or discretion intentionally to provide consistency with the terminology applied in PC5 Part A. However Rule 15B.5.18A however uses the incorrect term in condition 1 and should be amended.

To maintain consistency with the recommended amendments to Policy 15B.4.22 I recommend that Rules 15B.5.13A and 15B.5.18A are amended to clarify that the term "average nitrogen loss" applies to the property.

I recommend the following amendments:

15B.5.13A Until Rules 5.43A, 5.46A, 15B.5.14 to 15B.5.18 become operative in accordance with clause 20 of Schedule 1 to the Resource Management Act 1991, the use of land for a farming activity within the Ahuriri Zone and Upper Waitaki Hill Zone is a permitted activity, provided the following applicable condition is met:

1. The nitrogen loss calculation from a farming activity on a property greater than 10 hectares does not exceed the average nitrogen loss that occurred on the property[29] between 1 January 2011 and 31 December 2015, or the nitrogen baseline, whichever is greater; or

2. The nitrogen loss from the farming activity is managed under a resource consent that is held by an irrigation scheme or principal water supplier and the resource consent contains conditions which limit the maximum rate or amount of nitrogen that may be leached from the subject land; or

3. The land is subject to a water permit that authorises the use of water for irrigation; and

(a) the permit was granted prior to 13 February 2016; and

[29] Consequential change to changes to Policy 15B.4.22.

(b) *the permit has commenced, in accordance with section 116 of the Resource Management Act (1991); and*

(c) *the permit is subject to conditions that specify the maximum rate of nitrogen (kg/ha/yr) that may be leached from the land; and*

(d) *the water permit is subject to conditions which require the preparation and implementation of a plan to mitigate the effects of the loss of nutrients to water.*

15B.5.18A *Until Rules 5.53A, 5.54A, 15B.5.19 to 5B.5.23 become operative, in accordance with clause 20 of Schedule 1 to the Resource Management Act 1991, the use of land for a farming activity within the Haldon Zone or Mid Catchment Zone, is a permitted activity, provided the following applicable condition is met:*

1. *The nitrogen loss calculation[30] from a farming activity on a property greater than 10 hectares does not exceed the average nitrogen loss that occurred on the property[31] between 1 January 2011 and 31 December 2015, or the nitrogen baseline, whichever is greater; or*
2. *The nitrogen loss from the farming activity is being managed under a resource consent that is held by an irrigation scheme or principal water supplier and the resource consent contains conditions which limit the maximum rate or amount of nitrogen that may be leached from the subject land; or*
3. *The land is subject to a water permit that authorises the use of water for irrigation; and*
   - (a) *the permit was granted prior to 13 February 2016; and*
   - (b) *the permit has commenced, as specified in s116 of the RMA; and*
   - (c) *the permit is subject to conditions that specify the maximum rate of nitrogen (kg/ha/yr) that may be leached from the land; and*
   - (d) *the water permit is subject to conditions which require the preparation and implementation of a plan to mitigate the effects of the loss of nutrients to water.*

[30] CL16 Minor amendment.
[31] Consequential change to changes to Policy 15B.4.22.

22.162 Sections 11.1A and 13.1A of the LWRP define the term 'adaptive management' in relation to groundwater takes in the Selwyn Te Waihora Sub-region and the Hinds/Hekeao Plains Area.

1. The recommended wording for Policy 15B.4.20(d) [at paragraph 22.399] is not reflected in Appendix I. Should it be?

Response – DC:

Yes, the recommended wording for Policy 15B.4.20(d) at paragraph 22.399 should be reflected in Appendix 1. This correction has been provided in the Officers s42A Errata report.

2. If Policy 15B.4.20(d) is not amended as recommended at paragraph 22.399, for the sake of consistency within the LWRP and to assist plan users, should section 15B.1 include a definition of adaptive management?

Response – DC/PM:

If Policy 15B.4.20(d) is not amended as recommended, then including a definition would improve consistency within the LWRP and assist plan users. However, the use of the term "adaptive management" is not considered to be appropriate in Policy 15B.4.20(d). Whilst the section 42A report refers to an adaptive management approach being applied in Policy 15B.4.20(d) (as described in para 22.161) it has become apparent that the intent of the policy is not consistent with more commonly applied adaptive management concepts. In *King Salmon*, the Supreme Court identified the elements of an adaptive management regime. The Supreme Court noted:[32]

> *"We accept that, at least in this case, the factors identified by the Board are appropriate to assess this issue. For convenience, we repeat these here:*
> *(a) there will be good baseline information about the receiving environment;*
> *(b) the conditions provide for effective monitoring of adverse effects, using appropriate indicators;*
> *(c) thresholds are set to trigger remedial action before the effects become overly damaging; and*
> *(d) effects that might arise can be remedied before they become irreversible."*

The intent of Policy 15B.4.20(d) is to seek to provide for conditions that require consent holders to reduce adverse effects if a threshold or limit set

[32] *Sustain our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40 t [133].

out in Tables 15B(c), 15B(d) or 15B(e) (as set out in the consent conditions) is exceeded. This is different to an adaptive management approach which requires a response (i.e. remedial action) prior to the limit being reached. The allocation framework in PC5 enables intensification up to the limits in Tables 15B(c), 15B(d) and 15B(e). The limits are set at a level that ensures the water quality outcomes in Table 15B(a) and Table 15B(b) are met. To require reductions in nitrogen loss prior to these limits being reached would not be consistent with this allocation approach and is not necessary to ensure water quality outcomes are met.

Therefore, I do not recommend inclusion of a definition of "adaptive management" in the context of Policy 15B.4.20. However, the use of a different phrase may be appropriate. I have discussed this further below.

3. What would that definition be?

Response – DC:

As discussed above, the inclusion of the term 'adaptive management' is not recommended. If a definition were to be introduced it is recommended that it is consistent with the intent of the policy rather than the concept of 'adaptive management'.

The definition of 'adaptive management', as it is used in notified Policy 15B.4.20(d), would be as follows:

> *Means a condition or conditions of resource consent that require remediation or mitigation in response to monitoring that identifies an exceedance of water quality limits, provided the exceedance was caused by the activity.*

However, if Policy 15B.4.20(d) is not amended and the Commissioners wish to include a definition, I recommend that the phrase "monitoring and response" be used instead of "adaptive management".

22.168 Would adding to that paragraph a cross-reference to para 22.399 have assisted a reader to see directly the specific amendments being recommended in this paragraph?

Yes, referring to the recommendation in para 22.399 would assist the reader.

Do the recommended amendments to the policy shown in para 22.399 and in Appdx I include the specific details for clause (d) requested by Meridian, Genesis, F & G, and DoC (eg trigger values etc) referred to in para 22.168? If not, where do we see the reasoning addressing the requests for rejecting those requested amendments?

Response – DC:

No the recommended amendments to Policy 15B.5.20(d) do not include the specific details for clause (d) requested by Meridian, Genesis, F & G, and DoC. I set out my specific reasoning for rejecting those requested amendments below.

The amendments to Policy 15B.4.20(d) requested by Meridian , Genesis, Fish and Game and DoC generally relate to:

- Reference to the water quality outcomes tables
- monitoring requirements
- imposing early warning trigger values
- achieving consistency amongst all consents within the same environment
- identifying responsibilities and actions if exceedances occur.

The recommended amendment to Policy 15B.4.20(d) is as follows:

(d) applying to any resource consent granted for the use of land for a farming activity, or any permit granted for a discharge associated with an aquaculture operation or community wastewater activity, ~~adaptive management~~ monitoring and response conditions which accords with the water quality limits set out in Tables 15B(c), 15B(d) and 15B(e) and relates specifically to the effects caused by the activity.

The request to include reference to the water quality outcomes Tables 15B(a) and 15B(b) is not recommended to be accepted in the Section 42A report. The reasoning for this, in relation to Policy 15B.4.20(d) is not provided in the Section 42A Report. I consider that Policy 15B.4.20(d) should not include reference to the freshwater outcomes (Tables 15B(a) and 15B(b)) as it will be difficult to attribute any exceedance to a particular resource consent. Rather, if the outcomes in Tables 15B(a) and 15B(b) are not met, or the load limits are exceeded, I consider it more appropriate that a whole of catchment view is taken.

The amendments to include monitoring requirements are accepted in part through the requirement to apply "*monitoring and response conditions which accords with the water quality limits set out in Tables 15B(c) 15(d) and 15B(e)*". The specific wording "monitoring of the receiving environment" was not recommended to be accepted as the term "receiving environment" can be broadly interpreted to relate

to a larger area. This is not consistent with the intention of that policy to focus on localised effects as outlined in paragraphs 22.165 and 22.166

The request to include early warning trigger values was not recommended to be accepted. The early warning trigger would require a response prior to the limit is reached. While I consider an early warning trigger and response is consistent with a precautionary approach, in this instance, the requirement of a response prior to reaching a limit is inconsistent with the intensification enabled by the PC5 framework. The allocation framework enables intensification up to the limits in Tables 15B(c), 15B(d) and 15B(e) and the limits are set at a level that ensures the water quality outcomes in Table 15B(a) and Table 15B(b) are met. To require reductions in nitrogen loss prior to these limits being reached would not be consistent with this allocation approach and is not necessary to ensure water quality outcomes are met.

The request to include a requirement for conditions to be consistent with other consents was rejected. The conditions that apply to existing consents are described in paragraph 22.163 and relate to the management of cumulative catchment scale effects through requiring all consent holders to respond to the TLI of Lake Benmore. As outlined in paragraph 22.165, 22.166, and 22.168 the policy intends to relate to local effects rather than catchment scale effects.

The inclusion of the requirement "identifying responsibilities and actions if exceedances occur" was accepted in part through the recommended amendment to include "monitoring and response" conditions. The word "response" was used to succinctly give effect to the intention of the submission.

22.229 **Would a cross-reference here to para 22.402 assist a reader to see the specific amendment that would result from the recommendation in the last sentence of this paragraph?**

Response – DC:

Yes, a cross-reference to para 22.402 would assist a reader. However, I note that the last sentence of 22.229 refers to 15B.5.13A. This is a typographical error and the last sentence of 22.229 should refer to Rule 15B.5.18B.

22.279 **1. The recommended wording for Policy 15B.4.24(b) is not reflected in Appendix I. Should it be?**

Response – DC:

Yes, the recommended wording for Policy 15B.4.24(b) at paragraph 22.279 should be reflected in Appendix 1. This correction has been provided in the Officers s42A Errata report.

2. Will the recommended amendment to Policy 15B.4.24(b) yield additional Hakataramea headroom (over and above the 21 tonnes referred to in paragraph 22.271)?

Response – HS:

No. The additional reductions in the Hakataramea River Zone do not contribute to the Hakataramea FMU headroom.

This is because the 90% reduction required in PC5 reduces total nitrogen loading within the Hakataramea FMU by 1 tonne N/year. This amount is considered too small to be distributed through the Hakataramea FMU permitted activity rules. The recommended amendment would reduce total nitrogen loading by approximately 3 tonnes N/yr.

3. If so, what is to happen to that additional headroom?

Response – HS:

The recommended amendments do not allocate any additional nitrogen.

22.311 In light of the recommended change to Policy 15B.4.24(b) [at paragraph 22.279] should provisions such as Rule 15B.5.25 condition (2)(b)(ii) be similarly amended if they remain as conditions?

Response – DC:

Yes. If the recommended amendment to Policy 15B.4.24(b) is accepted, other provisions such as Rule 15B.5.25 condition (2)(b)(ii) should be similarly amended if they remain as conditions.

15B.5.25 …

(b) From 1 July 2020:

(i) either the Baseline GMP Loss Rate or the Good Management Practice Loss Rate for the activity that occurred in the four years prior to 1 July 2020; and

(ii) for that portion of the property in the Hakataramea River Zone ~~and that was used for winter grazing or irrigation in the~~

~~*four years prior to 1 July 2020,*~~[33] *90% of that Good Management Practice Loss Rate figure; and*

…

22.311 **Does the report contain an explanation of how the recommended amendment would improve 'the administrative effectiveness of the rules'?**

Response – DC:

This is discussed in para 22.5 (page 299). Several submitters raise the issue that the framework is difficult to understand. The amendment is intended to simplify the framework so it is clearer what provisions apply through removing repetitiveness and reducing the number of rules that would apply within one area. I consider that making the plan simpler to understand will improve administrative effectiveness.

22.319 **1. Is the omission of the words "prior to 13 February 2013" from Rule 15B.5.31 condition (2) intentional?**

Response – DC:

It is assumed that the question intends to refer to the words "13 February 2016". Yes, the omission of the words "prior to February 2016" from Rule 15B.5.31 condition (2) is intentional.

2. If so, can the authors explain the reason?

Response – DC:

Rule 15B.5.31 is intended to provide a consenting framework that allocates the headroom available in the Hakataramea FMU, in the Hakataramea Flat Zone. The headroom in the Hakataramea FMU is distributed through enabling 20 ha of winter grazing or a 10 ha increase in irrigated area as a permitted activity. Because this headroom is allocated to permitted activities undertaken post 13 February 2016, Rule 15B.5.31 condition (2) does not include a date to ensure the additional nitrogen loss, above the nitrogen baseline that may occur through carrying out a permitted activity is provided for in the consent regime.

The discussion in response to questions on paragraphs 22.137 and 22.378 may also be relevant.

[33] Ravensdown PC5LWRP-2106

22.334 1. **With regard to Policies 15B.4.25(b) and 15B.4.27(b), can the authors explain how a consent application for a single farming activity is expected to demonstrate that the annual median, 95th percentile and annual maximum limits in Table 15B(c) will not be exceeded?**

Response – HS:

A water quality assessment would be required. This would look at the proposed activity and its likely impact on the nearby waterbodies. The applicant would have an estimate of changes in nutrient losses due to the proposed activity, and an assessment would be undertaken to determine whether the scale of change anticipated would result in a change in the in-stream concentrations at the relevant river measurement site where limits have been set.

2. **Does the concept of 'after reasonable mixing' apply to Policies 15B.4.25(b) and 15B.4.27(b)?**

Response – DC:

No. Policy 15B.4.25(b) and Policy 15B.4.27(b) is not intended to relate to point source discharges. Instead it is intended to relate to the effects caused by the loss of contaminants through the root zone and contaminant run-off.

I recommend the following amendments to clarify that the policy does not relate to point source discharges:

15B.4.25

…

(b) only granting a resource consent for the use of land for[34] a farming activity to exceed the nitrogen baseline where the application demonstrates that the local in-stream and groundwater quality limits in Table 15B(c) and 15B(e) will not be exceeded; and

…

15B.4.27

…

(b) only granting a resource consent for the use of land for[35] a farming activity to exceed the nitrogen baseline where the application demonstrates that the local in-stream and groundwater quality limits in Table 15B(c) and 15B(e) will not be exceeded; and

[34] CL16 Minor amendment
[35] CL16 Minor amendment

22.376 **Is the intended effect of the recommended amendment that the consent authority may choose to waive the reduction to 90%? If so, how would the Plan then effectively manage cumulative effects of multiple waivers of that kind in this catchment?**

Response – PM/DC:

Yes. The effect of the recommendation is that the requirement to operate at 90% of the GMP loss rate is a matter of discretion or a matter of control, rather than an entry condition of the rule (where failure to comply would result in a more stringent activity classification, being a prohibited activity in the notified rule regime). This means that a consents officer may decide not to impose the requirement to operate at 90% of the GMP loss rate as a condition of consent.

Cumulative effects of multiple waivers of this kind would need to be assessed on a case-by-case basis by the Council when assessing applications for resource consents under section 104 of the RMA.

Technical assessment of reducing N losses on properties with areas in the Hakataramea river zone was undertaken for the zone committee (Clarke 2015)[36]. The memo demonstrates that the calculated decreases in in-stream nitrogen concentrations due to the required reduction would be modest. The N load decrease due to this provision is not necessary in order to achieve the catchment load limit.

22.377 **As for para 22.311, where does the report explain how the recommended amendment would 'improve the administrative effectiveness of the rules'?**

Response – DC:

This is discussed in para 22.5 (page 299). Several submitters raise the issue that the framework is difficult to understand. The amendment is intended to simplify the framework so it is clearer what provisions apply through removing repetitiveness and reducing the number of rules that would apply within one area. I consider that making the plan simpler to understand will improve administrative effectiveness.

[36] Clarke, G. (2015) Technical discussion on a 'near-river' nitrogen leaching cap for the Hakataramea Catchment. Pp.23. http://files.ecan.govt.nz/public/pc5/Waitaki_Technical_Reports/Zone_Committee_-_Near_stream_N_cap_for_the_Hakataramea.pdf).

22.378 **Can you explain how, with the proposed flexibility exception, it would be assured that the Plan would enable the Council to manage multiple applications so that they could not result in failure to maintain water quality in accordance with the outcomes set in the RPS and the CWMS?**

Response – DC/HS:

The exception provided under 15B.4.13 relates to permitted intensification that occurred prior to the notification of PC5. Farming activities occurring in the Hakataramea FMU were ground truthed during the modelling of nutrient loading in the Hakataramea River and therefore can be accounted for in the load limit.

The exception provided under 15B.4.15 is intended to provide for 20ha of winter grazing and 10ha of irrigation on properties that do not exceed the permitted activity thresholds as at 13 February 2016. The modelling contained in Appendix D of Mojsilovic & Shaw (2015) shows that this amount of intensification within the Hakataramea FMU can be managed within the load limit.

Any permitted intensification that occurred prior to 13 February 2016 has been accounted for in the modelling, and the modelling did not distribute headroom to properties undertaking activities that exceed the permitted activity thresholds (Mojsilovic & Shaw 2015). These activities are provided the loss rates associated with intensification that has occurred as a result of a lawful activity prior to 13 February 2016.

The remaining properties that do not exceed the permitted activity thresholds can undertake, can increase the area used for winter grazing up to 20ha and the area used for irrigation up to 10ha (provided the total amount of irrigated area remains below 50ha) post 13 February 2016. This is a one off occurrence because any properties that exceed these thresholds would be managed to this limit in a consenting framework. PC5 proposes that this intensification is to be classified as a restricted discretionary activity, to enable the council to ensure an application that is consistent with Policy 15B.5.15. I consider that this matter of discretion enables the council to manage multiple applications so they do not result in failure to maintain water quality in accordance with the outcomes set in the RPS and the CWMS.

22.399 **In the recommended amendment to Policy 15B.4.20(d) what would the words "and relates specifically to the effects caused by the activity" mean in practice?**

Response – DC:

In practice "and relates specifically to the effects caused by the activity" is intended to move away from shared catchment scale responsibility and ensure an individual land holder has monitoring and response conditions specific to their activity (and the

effects resulting from that activity). It is likely that this would be implemented through conditions requiring upstream and downstream monitoring.

22.400 **In the recommended amendments to Policy 15B.4.25(c) and Rule 15B.5.35 would it be more appropriate to refer to nitrogen losses rather than nitrogen leaching or leached?**

Response – DC:

Yes it would be more appropriate to refer to nitrogen losses rather than nitrogen leaching or nitrogen leached to improve consistency with the terminology used in Part A. I recommend Policy 15B.4.25(c) is amended as follows:

15B.4.25 …

(c) including, on any resource consent granted for the use of land for a farming activity, conditions that,

(i) specify the maximum amount of nitrogen loss from the property which does not result in the nitrogen load limit calculated in accordance with Schedule 27 to be exceeded; and

(ii) require farming activities to operate at or below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate is less than the maximum amount of nitrogen loss from the property ~~either the Baseline GMP Loss Rate or the agricultural nitrogen load limit as calculated in accordance with Schedule 27~~.[37]

Consequentially I recommend Rule 15B.5.35, matters of discretion 4 and 5 are amended as follows:

4. Methods that limit the maximum amount of nitrogen loss from the ~~loss calculation for the~~ farming activity to a rate not exceeding the agricultural nitrogen load limit, calculated in accordance with Schedule 27 for the relevant zone that the property is located in[38]*; and*

5. Methods that require the farming activity to operate at or below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate is less than the ~~agricultural nitrogen load limit~~ maximum amount of nitrogen loss from the farming activity~~, calculated in accordance with Schedule 27~~[39]*; and*

[37] Fonterra – PC5 LWRP-2057
[38] Fonterra – PC5LWRP-2057
[39] Kakahu Catchment Group – PC5 LWRP 2634; Craigmore Farming – PC5 LWRP 2644

22.403 **Under theS42A recommendations farms in the Greater Waikakahi Zone and Hakataramea River Zone may have to reduce N loss for the portion of the property used for winter grazing or irrigation to 90% of GMP Loss Rate (Rule 15B.5.25 matter of control 5) to provide headroom for the permitted activities provided for under new recommended Rule xx.xx.xx. As that is now only a "may", will there be sufficient headroom for farms that would be permitted under Rule xx.xx.xx?**

Response – DC:

The additional nitrogen made available in the Hakataramea River zone does not contribute to the Hakataramea headroom.

The modelling contained in Appendix D of Mojsilovic & Shaw (2015) shows that the amount of intensification enabled in the Hakataramea Flat Zone permitted Rules the Hakataramea FMU can be managed within the load limit, without the requirement for activities to reduce to 90% of the Good Management Practice Loss Rate.

In regards to the Greater Waikākahi Zone, the assessment undertaken in Appendix D of Mojsilovic & Shaw (2015) illustrates that a reduction to 90% of GMP is necessary to provide for permitted activities. However the modelling undertaken does not take into account reductions in root zone nitrogen loss achieved through a reduction to Good Management Practice. Robson (2016) found that on average, compliance with Good Management Practice Loss Rates required reductions in nitrogen loss ranging from 8% to 25%. Therefore the required reduction may provide sufficient headroom under Rule xx.xx.xx however it is difficult to be certain without information on current nitrogen loss rates that could be used to quantify the reduction to GMP in the area.

24.28 **How could a functionary administering the Plan in practice implement a policy such as that requested here?**

Response – DC:

Para 24.28 states that Meridian and Genesis seek to include a new policy as follows:

<u>15B.4.5A Management of freshwater quality in the Waitaki Sub-region identifies and provides for the national value of the existing hydro-electricity generation from the Waitaki Power Scheme, including as provided for in Policy 4.51.</u>

It is relatively uncertain how a functionary administering the plan would implement a policy such as requested here. I have consulted with the consents team at Canterbury Regional Council and they have identified that consultation with the relevant hydro-electricity generation companies may be required when considering discharge and land use consent applications.

General

Farm Portal

If the Farm Portal calculates an N fertiliser application rate at GMP (kg/ha/year) is the farmer obliged to not exceed that fertiliser application rate or do they instead have to comply with the overall Baseline GMP Loss Rate or GMP Loss Rate by whatever means they chose?

Response – MMC:

The latter is correct – the farmer complies with the overall Baseline GMP Loss Rate or GMP Loss Rate by whatever means he or she chooses.

Appendix B

1.107

It is stated that the provisions of Part B of PC5, relating to the Waitaki sub-region, are set in accordance with the National Objectives Framework of the NPSFM. However, sections 15B.6 and 15B.7 do not appear to identify NPSFM national values, attributes or attribute states (in terms of A, B, C or D grades). Should they?

Response –PM/DC:

Paragraph 1.107 states:

"…The provisions of Part B of PC5, relating to the Waitaki sub-region, are set in accordance with the National Objectives Framework."

Part B (Waitaki sub-region) of PC5, giving effect to the policies of the NPSFM 2014 in respect of water quality for the Waitaki sub-region, was notified in accordance with latest Progressive Implementation Programme.[40]

The National Objectives Framework (NOF) referred to is contained in part CA of the NPSFM 2014. It states:

Objective CA1

To provide an approach to establish freshwater objectives for national values, and any other values, that:

a) is nationally consistent; and

b) recognises regional and local circumstances.

Policy CA1

[40] Progressive Implementation Programme notified 19 December 2015.

By every regional council identifying freshwater management units…

Policy CA2
By every regional council applying the following processes in developing freshwater objectives…

(my emphasis)

Policy CA2 contains the process to be applied in developing water quality freshwater objectives in the Waitaki sub-region. The freshwater objectives that result from this process are contained in Plan Change 5.

It is submitted that in order to *give effect to* the NPSFM, details of the NPSFM process for developing freshwater objectives for the Waitaki sub-region do not have to be included in sections 15B.6 and 15B.7 provided they are followed. Only the freshwater objectives themselves must be included.

Appendix 3 of Plan Change 5 Section 32 provides an evaluation of how PC5 provisions give effect to the NPSFM. This section outlines the process undertaken when developing freshwater objectives.

Appendix C **Paras 1.142 and 1.145 refer to s 63 of the 2010 Act. Should those now be references to s 24 of the Environment Canterbury (Transitional Governance Arrangements) Act 2016?**

Response – PM:

No, the references to the 2010 Act are correct.

Part 3, which includes section 24, (along with section 5 and Schedules 1 to 3) of the Environment Canterbury (Transitional Governance Arrangements) Act 2016 (**2016 Act**) only comes into force on transition day.[41] "Transition day" is defined by the 2016 Act as "the day after the day on which the official result of the 2016 election is declared under section 86 of the Local Electoral Act 2001 in relation to Environment Canterbury".

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (**2010 Act**) is repealed on the close of the day before the transition day.[42]

[41] Environment Canterbury (Transitional Governance Arrangements) Act 2016, s 2(1).
[42] Environment Canterbury (Transitional Governance Arrangements) Act 2016, s 34.

For proposed plans and plan changes that have been notified prior to transition day, sections 61, 62(1), 63 to 68 (and sections 54 and 55) and Schedule 1 of the 2010 Act will continue to apply as if they had not been repealed for the purposes of completing any decisions (including any appeals) relating to the proposed plans and plan change that have not been completed before the transition day.[43]

Accordingly, section 63 of the 2010 Act applies to PC5 and paragraphs 1.142 and 1.145 of Appendix B are correct.

Appendix G Page 84 Should the PC5 notification date be 13 February 2016 (not 2015)?

Response – MMC:

Yes, 13 February 2016 is the correct date.

Appendix G Pages 98 and 99 In Table 15B(c) the dissolved reactive phosphorous and ammoniacal nitrogen in-stream limits represent current state (namely no improvement in existing water quality) and the in-stream nitrate nitrogen concentrations are predictions of what will occur under the Zone Committees' solution packages (namely a deterioration in existing water quality). Is this approach consistent with the case law quoted at Appendix B paragraph 1.85?

Response – HS/PM:

Yes.
Appendix B paragraph 1.85 cites the Environment Court decision in *Ngati Kahungunu Iwi Inc v The Hawkes Bay Regional Council.* The Environment Court in *Kahungunu* involved Proposed Change 5 to the Hawke's Bay Regional Resource Management Plan – Land Use and Freshwater Management (**Change 5 to the HBRRMP**).[44]

Change 5 to the HBRRMP required the maintenance of the *overall quality* of freshwater, in line with the NPSFM 2014. Objective A2 of the NPSFM reads:

"The overall quality of fresh water within a region is maintained or improved while:

- *protecting the significant values of outstanding freshwater bodies;*
- *protecting the significant values of wetlands; and*
- *improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated."*

[43] Environment Canterbury (Transitional Governance Arrangements) Act 2016, Schedule 1, clause 7.
[44] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50.

It was argued by the Hawke's Bay Regional Council that Objective A2 (by reference to "overall water quality") mandated an "overs and unders" approach to fresh water management, being to allow the degradation of water quality in a particular water body or one part of the catchment so long as there was an equivalent improvement in water quality in a different waterbody or different part of the catchment. However, given the hierarchy of planning documents the Court rejected that interpretation of the NPSFM based on the following grounds:

- it was inconsistent with the unqualified function imposed on regional councils in s 30(1)(c)(ii) of the RMA to maintain and enhance water quality in water bodies;
- it was incompatible with the requirements of s 69 of the RMA for the rules relating to water quality; and
- there was a potential issue with s 107 of the RMA regarding the restrictions on grants of certain discharge permits.[45]

Ultimately, the Court decided against the adoption of what was referred to as an "overs and unders" approach.

The Environment Court in *Kahungunu* stated that the minimum requirement is to at least maintain existing water quality i.e. the quality of the freshwater at the time the Council commences the process of setting or reviewing freshwater objectives and limits in accordance with these policies.[46] The Environment Court also stated that while maintaining water quality may be something of a moving target, the requirement is to strive for management practices that will prevent degradation, and to strive to ensure that quality is, at a minimum, maintained.[47]

The Court considered that the "existing" water quality must incorporate the "load to come". The "load to come" being the contaminants leaked through soils and into ground water or surface water that may not be observed until many years later, which meant that even if there was no further land use change in the catchment and no additional contaminants leaked through the soils into water, there would still be unavoidable degradation of water quality observed in the future.[48]

The Environment Court also acknowledged that in respect of Objective A2, it might be appropriate for a Council to regard overall quality as "*permitting some increases in a type of contaminant (nitrate-nitrogen, for instance) in a particular waterbody, so long as that was matched or exceeded in its adverse effects by, say, a reduction in*

[45] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50 at [56]-[58].
[46] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50 at [41]. See also the definition of "existing water quality" in the NPSFM 2014 – "*the quality of the fresh water at the time the regional council commences the process of setting or reviewing freshwater objectives and limits in accordance with Policy A1, Policy B1, and Policies CA1-CA4.*"
[47] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50 at [69]
[48] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50 at [38]-[41].

some other contaminant, so that the …quality of the water… taken overall, was at least no worse."[49] In this context "overall" refers to the water quality within a particular water body, so that a Council may control certain contaminants (and not others) as long as the overall water quality of the water body is maintained. This is different to the balancing ("unders and overs") approach rejected by the Court.

PC5 does not seek to balance degradation of water quality in one area with an improvement in another area. Accordingly, it is submitted that the approach in PC5 is consistent with *Kahungunu.*[50]

Appendix G **Page 102 Can the authors explain why they recommend that the TN limit for Kellands Pond remains at <500 mg/m^3 ?**

Response – HS:

The Water Quality Limits for TN Lakes in table 15B(d) have been based the NPSFM (2014) national objective framework values for the band in which the particular waterbody currently sits. For most of the attributes, Kellands Pond is in the "A" band, however current data for total nitrogen indicates that the pond is in the "B" band for this particular attribute; this sets the limit at <500 mg/m^3. Data for the at-shore monitoring site gives annual median (July-June) values for 2013/14, 2014/15 and 2015/16 of 530, 670 and 485 mg/m^3. Based on these measurements, a limit of <500 mg/m^3 represents current water quality.

Appendix I **On page 5-9 of Appendix 1 to the S42A Report should the recommended amendment to Rule 5.54A Condition 2 have been made instead to Condition 3?**

Response – MMC:

Yes.

Policy 4.37 **Policy 4.37(a) addresses the Baseline GMP Loss Rate and cross-refers to Policy 4.38A. However, Policy 4.38A addresses the Nitrogen Baseline and it does not address the Baseline GMP Loss Rate. Can the authors explain why?**

Response – MMC:

Yes, there is a logic breakdown in these policies, due to adjustments made during the drafting of these policies that were not cross-checked. Therefore, to be

[49] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] NZEnvC 50 at [60].
[50] [2015] NZEnvC 50 at [56].

consistent with Policies 4.37, 4.38 and 4.38AA, it is recommended that the wording of Policy 4.38A be amended to read:

4.38A Within the Lake, Red, or Orange~~, Green or Light Blue~~ Nutrient Allocation Zones, only consider the granting of an application for resource consent to exceed the thresholds in Policy 4.37(a) or Policy 4.38(a) ~~nitrogen baseline~~ where:

(a) the nitrogen baseline has been lawfully exceeded prior to 13 February 2016 and the application contains evidence that the exceedance was lawful; and

(b) the nitrogen loss calculation remains below the lesser of the Good Management Practice Loss Rate or the nitrogen loss calculation that occurred in the four years prior to 13 February 2016.

Policy 4.38AA Cause (a) enables exceedances of the Baseline GMP Loss Rate up to 5kgN/ha/year but clause (c) precludes any exceedance of the Baseline GMP Loss Rate unless water quality is maintained.

1. Would not any increase in N leaching cause deterioration in water quality?

Response – PM/MMC:

Policy 4.38AA provides that freshwater quality is maintained within the Green and Light Blue Nutrient Allocation Zones, through a range of mechanisms.

Together the policy and rule framework provides for increases in nitrogen loss from farming activities up to no more than a total of 5kg/ha/yr above the Baseline GMP Loss Rate to occur as a restricted discretionary activity in Green and Light Blue Zones. Beyond that, resource consent, as a non-complying activity, must be obtained.

Clause (a) in Policy 4.38AA supports the rule framework, and in particular, the restricted discretionary rule which enables consent to be sought to exceed the nitrogen baseline/Baseline GMP Loss Rate by a maximum of 5kg/ha/yr.

The 5kg/ha/yr threshold recognises that increases in the loss of nitrogen of that magnitude may not necessarily result in a decrease of water quality. While water quality has not been defined in the NPSFM, it is considered to encompass more than just one of the individual chemical characteristics which define its quality.

Allowing additional diffuse loss of nitrogen from land of up to 5kg/ha/yr may lead to increased nutrient concentrations; however, it will depend on the actual location of the proposed activity and the individual catchment where the loss is occurring as to whether this will have a consequential effect on

water quality. For example, in some catchments, phosphorus is the limiting nutrient and increases in nitrogen may not cause a decline in water quality.

Clause (c) provides an additional check in the policy framework to ensure that when it comes to the consideration of any restricted discretionary activity application made under the rule framework that the application is not granted unless the applicant demonstrates that the water quality will be maintained.

2. If so, is clause (c) appropriate?

Response – PM/MMC:

Given the way that the policy and rule framework is constructed, it is considered that clause (c) is appropriate as it is the policy ensuring that an application for resource consent to exceed the Baseline GMP Loss Rate by up to 5kg/ha/yr does not cause a decline in water quality in the affected catchment/locality.

Rule 5.50A Is there a reason why Rule 5.50A does not contain a condition similar to Rule 5.44B Condition 3?

Response – MMC:

Rule 5.44B Condition 3 reads as follows:

"The Farm Environment Plan and nutrient budget submitted with the application for resource consent has been prepared or reviewed by an Accredited Farm Consultant."

Rule 5.50A does not have a condition 3, as PC5 sets up a specific controlled activity status to encourage quality FEPs and Overseer budgets in Red, Orange, Green and Light Blue NAZs, as explained in paragraphs 7.87 to 7.93 of the s42A Report.

A controlled activity rule is not considered appropriate in Lake Zones, as they are more sensitive to localised effects, and therefore a restricted discretionary activity status is considered more appropriate. Under a restricted discretionary activity status, the quality of the Overseer budgets and FEP can be assessed through the resource consent process, and there is no need to rely on them being prepared by a certain category of persons.

Rule 5.54A Is there a reason why condition 2 in Rule 5.54A is worded differently to condition 2 in Rule 5.44A?

Response – MMC:

The wording of condition 2 in Rule 5.44A is:

"The area of the property authorised to be irrigated with water is less than 50 hectares; and"

The wording of condition 2 in Rule 5.54A is:

"The area of the property irrigated with water is less than 50 hectares; and"

The intention of condition 2 in both Rules is the same and the wording was not intentionally drafted differently. I recommend Rule 5.45A(2) should be amended to remove "authorised to be", as that term could have an element of uncertainty and is not necessary:

"*2. The area of the property ~~authorised to be~~*[51] *irrigated with water is less than 50 hectares; and*"[52]

Rules 5.45A and 5.50A Is there a reason why matter of control 6 in Rule 5.44B is worded differently to matters of discretion 3 in Rules 5.45A and 5.50A?

Response – MMC:

Matter of control 6 in Rule 5.44B reads:

"*Methods to avoid or mitigate adverse effects of the activity on surface and groundwater quality and sources of drinking water; and*"

Matter of discretion 3 in Rules 5.45A and 5.50A reads:

"*The actual or potential adverse effects of the activity on surface and groundwater quality and sources of drinking water; and*"

CDHB proposed an amendment to matter of discretion 3 that has been recommended to be adopted in part through the s42A Report and this changes the wording to:

"*The actual or potential adverse effects of the activity on surface and groundwater quality and sources of drinking water and how these will be avoided or mitigated*[53]*; and*"

[51] Cl 16 minor amendment
[52] Cl 16 minor change

The intention of matter of control 6 in Rule 5.44B is similar to the matter of discretion 3 in Rules 5.45A, 5.50A, 5.55A and 5.58A. However, as a controlled activity, the resource consent must be granted, and the Council is limited to imposing conditions in relation to those matters over which it has retained control.[54] Matter of control 6 in Rule 5.44B is worded in a manner more applicable to the imposition of conditions, rather than the wider consideration in matter of discretion 3 in Rules 5.45A and 5.50A, which inherently includes whether the application should be granted or not.

Schedule 7 **From the evidence of Reuben Edkins for RDRML (his Appendix 2) it appears that PC5 has amended Schedule 7 to align with the objectives and targets in the *Canterbury Certified Farm Environment Plan (FEP) Auditor Manual (February 2016)*. Is that correct?**

Response – MMC:

The amendments to Schedule 7 and the Canterbury Certified Farm Environment Plan (FEP) Auditor Manual (February 2016) were drafted in parallel. At the time of drafting, neither 'led' the other.

Section 15B **Should all of the rules in Section 15B (except for prohibited activity rules) have conditions requiring the property to be registered in the Farm Portal? For example, under the heading "Greater Waikakahi Zone and Hakataramea Freshwater Management Unit" (as recommend to be amended), Rule 15B.5.24 requires registration, but Rules 15B.5.25 to 15B.5.28 do not. Or is that requirement thought to be covered implicitly by the wording of Schedule 7 Part B, 4B(b)?**

Response – DC:

No, not all the rules in 15B should require registration with the Farm Portal. A number of PC5 permitted activity rules that relate to specific nutrient allocation zones require registration with the Farm Portal. Other PC5 rules in the consenting framework do not require registration with the Farm Portal because information on nutrient loss will be obtained through the resource consent process, conditions on consents or requirements of the FEP audit.

Policy 15B.4.24(b) **With regard to the point raised by Chris Hansen (Ravensdown) at his para 147 what was the intent of clause (b)?**

[53] CDHB PC5LWRP-1257 and 1262
[54] Section 104A(b) of the RMA

Response – DC:

Para 147 of Chris Hansen (Ravensdown) states:

> *I consider it is not clear in the proposed wording which nitrogen loss rate a farming activity has to not exceed. The current wording states either the average nitrogen losses between 1 January 2011 and 31 December 2015 (a calendar five-year period), or the nitrogen losses during the baseline period of 2009 to 2013 are not to be exceeded. Ravensdown considers the clause should refer to the greater of those two nitrogen loss values as being the nitrogen loss rate not to be exceeded. I agree that this clarity has merit and improves the provision.*

The intent of 15B.4.22 clause (b) was to provide for farming activities occurring in the Ahuriri Zone that comply with the average nitrogen loss that occurred between 1 January 2011 and 31 December 2015, or the nitrogen baseline, whichever is the greater. To improve clarity I recommend Policy 15B.4.22(b) is amended as follows:

15B.4.22 …

(b) in the Ahuriri Zone, by requiring farming activities to restrict their nitrogen losses to no more than the average nitrogen loss rate that occurred between 1 January 2011 and 31 December 2015, or the nitrogen baseline, whichever is the greater.

Policy 15B.4.24(b)

1. **Why was the recommended amendment to Policy 15B.4.24(b) [S42A Errata] not recommended for Policy 15B.4.26(b)?**

Response – DC:

There was not a submission seeking an amendment Policy 15B.4.26(b). However, it would be appropriate for the recommended amendment to also be applied in the Greater Waikaikahi Zone.

2. **Has the recommended amendment to Policy 15B.4.24(b) been reflected in consequential recommended amendments to the rules?**

Response – DC:

No the recommended amendment is not consistently reflected in consequential recommended amendments to rules. I recommend that the relevant rules are amended to be consistent with the recommended amendments 15B.4.24(b).

Policy 15B.4.24 and Policy 15B.4.26

Could Policies 15B.4.24 and 15B.4.26 be combined as a consequence of the recommended merging of the rules for those areas?

Response – DC:

Yes.

I recommend Policies 15B.4.24 and 15B.4.26 are amended as follows:

15B.4.24 Freshwater quality is maintained within the Hakataramea Freshwater Management Unit and the Greater Waikākahi Zone by:

(a) avoiding the granting of any resource consent that will allow nitrogen losses from farming activities in the Hakataramea Freshwater Management Unit and Greater Waikākahi Zone to exceed the Baseline GMP Loss Rate, except where Policy 15B.4.13 and 15B.4.15 apply; and

(b) restricting, in the Hakataramea River Zone and Greater Waikākahi Zone, nitrogen losses ~~for the portion of the property irrigated or used for winter grazing~~[55] to 90% or less of the Good Management Practice Loss Rate; and[56]

(c) requiring, in the Hakataramea Hill Zone and the Hakataramea Flat Zone, farming activities to operate at the Good Management Practice Loss Rate, where that loss rate is less than the Baseline GMP Loss rate.

~~*15B.4.26 Freshwater quality is maintained within the Greater Waikākahi Zone by:*~~

~~*(a) avoiding the granting of a resource consent that will allow the nitrogen loss calculation from a farming activity in the Greater Waikākahi Zone to exceed the Baseline GMP Loss Rate, except where Policies 15B.4.13 and 15B.4.15 apply; and*~~

~~*(a) restricting nitrogen losses from the part of the property in the Greater Waikākahi Zone that is irrigated or used for winter grazing*~~[57]~~;~~ ~~*to no more than 90% of the Good Management Practice Loss Rate.*~~

Policy 15B.4.25 and Policy 15B.4.27

Could Policies 15B.4.25 and 15B.4.27 be combined as a consequence of the recommended merging of the rules for those areas?

Response – DC:

[56] CL16(2) minor amendment

Yes.

I recommend Policies 15B.4.25 and 15B.4.27 are amended as follows:

15B.4.25 Freshwater quality is maintained within the Valley and Tributaries Freshwater Management Unit and Whitneys Creek Zone by:

(a) avoiding increases in nitrogen loss from farming activities that would cause the Valley and Tributaries Zone ~~agricultural~~[58] or Whitneys Creek Zone nitrogen load limit calculated in accordance with Schedule 27 to be exceeded; and

(b) only granting a resource consent for the use of land for a farming activity to exceed the nitrogen baseline where the application demonstrates that the local in-stream and groundwater quality limits in Table 15B(c) and 15B(e) will not be exceeded; and

(c) including, on any resource consent granted for the use of land for a farming activity, conditions that,

(i) specify the maximum amount of nitrogen loss from the property and which does not result in the nitrogen load limit calculated in accordance with Schedule 27 to be exceeded; and

(ii) require farming activities to operate at or below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate is less than the maximum amount of nitrogen loss from the property ~~either the Baseline GMP Loss Rate or the agricultural nitrogen load limit as calculated in accordance with Schedule 27~~.[59]

~~15B.4.27 Freshwater quality is maintained within the Whitneys Creek Zone by:~~

~~(a) avoiding increases in nitrogen loss from farming activities that would cause the Whitneys Creek Zone nitrogen load limit, calculated in accordance with Schedule 27, to be exceeded; and~~

~~(b) only granting resource consents for the use of land for a farming activity to exceed the nitrogen baseline where the application demonstrates that the local in-stream and groundwater quality limits in Table 15B(c) and 15B(e) will not be exceeded; and~~

~~(c) including, on any resource consent granted for the use of land for a farming activity, conditions that;~~

~~(i) specify the maximum amount of nitrogen loss from the property and which does not result in the nitrogen load limit calculated in accordance with Schedule 27 to be exceeded; and~~

~~(ii) require farming activities to operate at or below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate is less than the~~

[58] FANZ – PC5LWRP-1700
[59] Fonterra – PC5 LWRP-2057

~~maximum amount of nitrogen loss from the property. either the Baseline GMP Loss Rate or the agricultural nitrogen load limit as calculated in accordance with Schedule 27.~~[69]

Rule 15B.5.7

1. Is the "plan" in Condition 1(b) the FEP referred to in matter of control (1)?

Response – DC:

The "plan" in condition 1(b) is the FEP equivalent that is required as a condition of water permits. This plan is subject to audit requirements through the conditions of the water permit and therefore I consider matter of control (1) not necessary. I therefore now recommend Rule 15B.5.7 matter of control (1) is deleted.

2. Are "Overseer budgets" (matter of control (2)) required by the conditions of the rule?

Response – DC:

Yes. The conditions of Rule 15B.5.7 require an applicant to calculate the nitrogen loss calculation and the Good Management Practice Loss Rate. To calculate the nitrogen loss calculation and the Good Management Practice Loss Rate the applicant will need to use OVERSEER®.

3. Do the "reductions beyond Good Management Practice" (matter of control (4)) relate only to the matters under Condition 2(b)?

Response – DC:

Yes, the reductions beyond Good Management Practice relate (matter of control (4)) only to the matters under condition 2(b).

4. What is the purpose of matter of control (8) when Rule 15B.5.7 is a controlled activity and applications under it must be granted?

Response – DC:

The purpose of matter of control (8) is to ensure consistency with Policy 15B.4.14 (b). However, I consider that this is already achieved through condition 2(a) of Rule 15B.5.7 and therefore matter of control (8) is not

necessary. I therefore now recommend Rule 15B.5.7 matter of control (8) is deleted.

5. How would having regard to Policy 15B.4.14 aid a decision-maker given the existing requirement under Rule 15B.5.7 Condition 2(b)?

Response – DC:
Having regard to Policy 15B.4.14 would not aid a decision-maker given the existing requirement under Rule 15B.5.7 Condition 2(b). As stated above, I now recommend Rule 15B.5.7 matter of control (8) is deleted.

As discussed above, I recommend that Rule 15B.5.7 is amended as follows:

15B.5.7 Despite Rules 5.43A to 5.59A and Rules 15B.5.24 to 15B.5.48, the use of land for a farming activity in the Hakataramea Freshwater Management Unit, Northern Fan Freshwater Management Unit and Waitaki Valley and Tributaries Freshwater Management Unit is a controlled activity, provided the following conditions are met:

1. The land is subject to a water permit that authorises the use of water for irrigation; and

(a) the water permit was granted between 1 November 2009 and 31 August 2010; and

(b) the water permit is subject to conditions which require the preparation and implementation of a plan to mitigate the loss of nutrients to water and that plan specifies auditing requirements; and

2. The nitrogen loss calculation for the property does not exceed:

(a) the Good Management Practice Loss Rate for the farming activity proposed when the applicant's water permit was granted; and

(b) within the Hakataramea River Zone and Greater Waikākahi Zone and from 1 January 2020, 90% of the Good Management Practice Loss Rate for the part of the property used for irrigation or winter grazing authorised by the applicant's water permit.

The CRC reserves control over the following matters:

~~*1. The commencement date for the first audit of the Farm Environment Plan; and*~~

2. The content, quality and accuracy of the OVERSEER® budgets provided with the application for resource consent; and

3. The timing of any actions or good management practices proposed to achieve the objectives and targets described in Schedule 7; and

4. *Methods to ensure compliance with the Good Management Practice Loss Rates for the farming activity or any required reductions beyond Good Management Practice; and*
5. *Methods to avoid or mitigate adverse effects of the activity on surface and groundwater quality and sources of drinking water; and*
6. *Methods to address any non-compliance identified as a result of a Farm Environment Plan audit, including the timing of any subsequent audits; and*
7. *Reporting of estimated nutrient losses and audit results of the Farm Environment Plan to the Canterbury Regional Council; and*
8. ~~*The consistency of the proposal with Policy 15B.4.14*~~

Rule 15B.5.6 **How do Rules 15B.5.6(a) and (b) interact with Rules 15B.5.13A(2) and (3) and 15B.5.18A(2) and (3)?**

Response – DC:

Rules 15B.5.6 (a) and (b) do not have legal effect until they are made operative in accordance with clause 20 of Schedule 1 of the RMA. When Rules 5.43A, 5.46A, 15B.5.14 and 15B.5.18 are made operative, Rules 15B.5.13A and 15B.5.18A cease to apply. It is assumed that when Rule 15B.5.6 is made operative, Rules 5.43A, 5.46A, 15B.5.14 and 15B.5.18 will also be made operative and Rule 15B.5.13A and 15B.5.18A will cease to apply and therefore will not interact with Rules 15B.5.6(a) and (b).

Rule 15B.5.25 **Using Rule 15B.5.25 as an example (this question is relevant to a number of rules), with the recommended deletion of Condition 2(b), what happens after 30 June 2020?**

Response – DC:

Several Rules omit nitrogen loss requirements relating to post 30 June 2020. This is an error in the amalgamation of rules and has been corrected in the response provided to the question on Rule 15B.5.25 below.

Rule 15B.5.25 **1. I assume that farming activities that do not meet the conditions of recommended Rule xx.xx.xx default to Rule 15B.5.25?**

Response – DC:

Yes, farming activities that do not meet the conditions of recommended Rule xx.xx.xx default to Rule 15B.5.25.

2. If so, what are the nitrogen loss restrictions on farming activities in the Hakataramea Flat Zone as condition 2 of Rule 15B.5.25 does not refer to that Zone?

Response – DC:

The recommended amendments in the Section 42A Report intend to reduce repetition and the number of rules that may apply in FMUs by amalgamating the provisions that apply to the Greater Waikākahi Zone, Hakataramea River Zone, Hakataramea Hill Zone and Hakataramea Flat Zone. The recommendations included in the Section 42A Report incorrectly amalgamate these provisions. Due to this error, Rules 15B.5.25 and 15B.5.26 incorrectly exclude nitrogen loss restrictions for the Greater Waikākahi Zone and the Hakataramea Flat Zone. Consequential amendments to Rules 15B.4.25, 15B.5.26, 15B.5.27, 15B.5.28 and 15B.5.29 are also necessary to address this error. I recommend the rules applying to the Hakataramea Freshwater Management Unit and Greater Waikākahi Zone are amended as follows:

1. Regional Red Zone Rule 5.43A applies in the Greater Waikākahi Zone and Hakataramea Freshwater Management Unit ~~River Zone or Hakataramea Hill Zone.~~

2. Rules ~~15B.5.7, xx.xx.xx,~~ 15B.5.24, 15B.5.25, 15B.5.26,15B.5.27 and 15B.5.28 and 15B.5.29 prevail over Regional Red Zone Rules 5.44A, 5.44B, 5.45A, 5.46A, 5.47A and 5.48A in the Greater Waikākahi Zone and Hakataramea Freshwater Management Unit ~~River Zone or Hakataramea Hill Zone.~~

~~3. New Rule 15B.5.7 applies in the Hakataramea River Zone or Hakataramea Hill Zone.~~

xx.xx.xx Within the Greater Waikākahi Zone and the Hakataramea Flat Zone, the use of land for a farming activity on a property greater than 10 hectares in area is a permitted activity provided the following conditions are met:

1. The property is registered in the Farm Portal by 1 July 2017 and information about the farming activity and the property is reviewed and updated by the property owner or their agent, every 24 months thereafter; and

2. The area of the property authorised to be irrigated with water is less than 50 hectares; and

3. For any property where, as at 13 February 2016, the area of land authorised to be irrigated with water is less than 50

hectares, any increase in the area of irrigated land is limited to 10 hectares above that which was irrigated at 13 February 2016; and

4. The area of the property used for winter grazing within the period 1 May to 1 September does not exceed a total area of 20 hectares; and
5. A Management Plan in accordance with Schedule 7A has been prepared and is implemented within 12 months of the rule being made operative, and is supplied to the Canterbury Regional Council on request.

15B.5.24 In the Hakataramea River Zone or Hakataramea Hill Zone, the use of land for a farming activity on a property greater than 10 hectares in area is a permitted activity, provided the following conditions are met:

1. The property is registered in the Farm Portal by 1 July 2017 and information about the farming activity and the property is reviewed and updated by the property owner or their agent, every 24 months thereafter; and
2. No part of the property within the Hakataramea River Zone or Hakataramea Hill Zone is irrigated with water; and
3. No part of the property within the Hakataramea River Zone or Hakataramea Hill Zone is used for winter grazing; and
4. A Management Plan in accordance with Schedule 7A has been prepared and is implemented within 12 months of the rule becoming operative and is supplied to the Canterbury Regional Council on request.

15B.5.25 Within the Greater Waikakahi Zone or Hakataramea Freshwater Management Unit ~~River Zone or Hakataramea Hill Zone~~, the use of land for a farming activity on a property greater than 10 hectares in area that does not comply with one or more of the conditions of Rule xx.xx.xx or Rule 15B.5.24 is a controlled activity, provided the following conditions are met:

1. A Farm Environment Plan has been prepared for the property in accordance with Part A of Schedule 7 and is submitted with the application for resource consent; and
2. The nitrogen loss calculation for the part of the property within the Hakataramea River Zone or Hakataramea Hill Zone does not exceed:
   (a) Until 30 June 2020, the nitrogen baseline, unless the nitrogen baseline was lawfully exceeded prior to 13 February 2016; and the application for resource consent demonstrates that the exceedance was lawful; and
   (b) From 1 July 2020~~:~~

~~(i) either~~ the Baseline GMP Loss Rate or the Good Management Practice Loss Rate for the activity that occurred in the four years prior to 1 July 2020; ~~and~~ or

~~(ii) for that portion of the property in the Hakataramea River Zone and that was used for winter grazing or irrigation in the four years prior to 1 July 2020, 90% of that Good Management Practice Loss Rate figure; and~~

3. Until 30 June 2020, the nitrogen loss calculation for the part of the property within the Hakataramea Flat Zone or the Greater Waikākahi Zone does not exceed the nitrogen baseline, and from 1 July 2020 the Baseline GMP Loss Rate; unless the nitrogen baseline was lawfully exceeded prior to the 13 February 2016, and the application for resource consent demonstrates that the exceedance was lawful; and
4. The Farm Environment Plan and nutrient budget submitted with the application for resource consent has been prepared or reviewed by an Accredited Farm Consultant.

The CRC reserves control over the following matters:

1. The commencement date for the first audit of the Farm Environment Plan; and
2. The content, quality and accuracy of the OVERSEER® budget provided with the application for resource consent; and
3. The timing of any actions or good management practices proposed to achieve the objectives and targets described in Schedule 7; and
4. Methods that limit the nitrogen loss calculation for the farming activity to a rate not exceeding the Baseline GMP Loss Rate and which require the farming activity to operate at below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate is less than the Baseline GMP Loss Rate; and
5. Within the Greater Waikakahi Zone and Hakataramea River Zone m~~M~~ethods that restrict the nitrogen loss calculation ~~for that portion of the property used for winter grazing or irrigation in the Hakataramea River Zone~~ to 90% of the Good Management Practice Loss Rate ~~figure~~ for the activity that occurred in the four years prior to 1 July 2020; and
6. Methods to exclude intensively farmed stock within 12m of the bed of the Hakataramea River and within 5m of the bed of all tributaries; and

7. Methods to avoid or mitigate adverse effects of the activity on surface and groundwater quality and sources of drinking water; and
8. Methods to address any non-compliance identified as a result of a Farm Environment Plan audit, including the timing of subsequent audits; and
9. Reporting of estimated nutrient losses and audit results of the Farm Environment Plan to the Canterbury Regional Council; and
10. The consistency of the proposal with Policy 15B.4.13.

15B.5.26 Within the Greater Waikakahi Zone or Hakataramea Freshwater Management Unit ~~River Zone or Hakataramea Hill Zone~~, the use of land for a farming activity on a property greater than 10 hectares in area that does not meet condition 3 of Rule 15B.5.25, or one or more of the conditions of Rule 15B.5.7, is a restricted discretionary activity, provided the following conditions are met:

1. A Farm Environment Plan has been prepared for the property in accordance with Part A of Schedule 7 and is submitted with the application for resource consent; and
2. The nitrogen loss calculation for the part of the property within the Hakataramea River Zone or Hakataramea Hill Zone does not exceed:
   (a) Until 30 June 2020, the nitrogen baseline, unless the nitrogen baseline was lawfully exceeded prior to 13 February 2016; and the application for resource consent demonstrates that the exceedance was lawful; and
   (b) From 1 July 2020~~:~~
      ~~(i) either~~ the Baseline GMP Loss Rate or the Good Management Practice Loss Rate for the activity that occurred in the four years prior to 1 July 2020.; ~~and~~ or
      ~~(ii) for that portion of the property in the Hakataramea River Zone and that was used for winter grazing or irrigation in the four years prior to 1 July 2020, 90% of that Good Management Practice Loss Rate figure.~~
3. The nitrogen loss calculation for any part of the property within the Hakataramea Flat Zone or the Greater Waikaikahi Zone does not exceed the nitrogen baseline, and from the 1 July 2020 the Baseline GMP Loss Rate, unless the nitrogen baseline was lawfully exceeded and the application for resource consent demonstrates that the exceedance was lawful.

The exercise of discretion is restricted to the following matters:

1. *The content of, compliance with, and auditing of the Farm Environment Plan; and*
2. *The content, quality and accuracy of the OVERSEER® budget provided with the application for resource consent; and*
3. *The potential adverse effects of the activity on mahinga kai; and*
4. *The potential adverse effects of the activity on wāhi tapu or wāhi taonga identified in an iwi management plan; and*
5. *The actual or potential adverse effects of the activity on surface and groundwater quality and sources of drinking water; and*
6. *The timing of any actions or good management practices proposed to achieve the objectives and targets described in Schedule 7; and*
7. *Methods that limit the nitrogen loss calculation for the farming activity to a rate not exceeding the Baseline GMP Loss Rate and which require the farming activity to operate at below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate is less than the Baseline GMP Loss Rate; and*
8. *Within the Greater Waikaikahi Zone and Hakataramea River Zone ~~M~~methods that restrict the nitrogen loss calculation ~~for that portion of the property used for winter grazing or irrigation in the Hakataramea River Zone~~ to 90% of the Good Management Practice Loss Rate figure; and*
9. *Methods to exclude intensively farmed stock within 12m of the bed of the Hakataramea River and within 5m of the bed of all tributaries; and*
10. *Methods to address any non-compliances identified as a result of a Farm Environment Plan audit; and including the timing of subsequent audits; and*
11. *Reporting of nutrient losses and audit results of the Farm Environment Plan to the Canterbury Regional Council; and*
12. *The consistency of the proposal with Policy 15B.4.13 and Policy 15B.4.15.*

15B.5.27 Within the ~~Hakataramea River Zone~~ Greater Waikaikahi Zone or Hakataramea ~~Hill Zone~~ Freshwater Management Unit the use of land for a farming activity as part of a farming enterprise is a discretionary activity, provided the following conditions are met:

1. *A Farm Environment Plan has been prepared for the farming enterprise in accordance with Part A of Schedule 7 and is submitted with the application for resource consent; and*

2. *The nitrogen loss calculation for the farming enterprise does not exceed:*
   (a) *Until 30 June 2020, the nitrogen baseline; and*
   (b) *From 1 July 2020*
      (i) *either the Baseline GMP Loss Rate or the Good Management Practice Loss Rate for the activity that occurred in the four years prior to 1 July 2020; and*
      (ii) *for that portion of those properties in the Greater Waikākahi or Hakataramea River Zone ~~and that was used for winter grazing or irrigation in the four years prior to 1 July 2020,~~ 90% of that Good Management Practice Loss Rate figure.*
3. *The properties comprising the farming enterprise are solely within Hakataramea River Zone or the Hakataramea Hill Zone or the Greater Waikākahi Zone, as shown on the Planning Maps.*

15B.5.28 Within the ~~Hakataramea River Zone~~ Greater Waikākahi Zone or Hakataramea Freshwater Management Unit ~~Hill Zone~~, the use of land for a farming activity on a property greater than 10 hectares in area that does not ~~meet~~ comply with either of conditions 1 or 4 of Rule 15B.5.25, or condition 1 of Rule 15B.5.26, or the use of land for a farming activity as part of a farming enterprise that does not comply with condition 1 of Rule 15B.5.27, is a non-complying activity.

15B.5.29 Within the Hakataramea River Zone or Hakataramea Hill Zone, the use of land for a farming activity on a property greater than 10 hectares in area that does not ~~meet~~ comply with either of conditions 2 of Rule 15B.5.25, or condition 2 or 3 of Rule 15B.5.26, or the use of land for a farming activity as part of a farming enterprise that does not comply with conditions 2 or 3 of Rule 15B.5.27, is a prohibited activity.[61]

General **Can the authors please identify any amendments recommended in the body of the Section 42A report that are not reflected in Appendix I?**

Response – MMC:

There were some inconsistencies in the recommendations and they have now been addressed in the Officers s42A Errata dated 14 July 2016.

[61] Kakahu Catchment Group – PC5LWRP-2634, Craigmore Farming – PC5LWRP-2644