

Plan Change 5 to the Canterbury Land and Water Regional Plan (Nutrient Management & Waitaki)

Responses to Further Questions of Hearing Commissioners on Council Section 42A Report (22 August 2016)

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

Page	Reference	Question
Answers of 12 August		
11	8.13	<p>Is it correct that Schedule 28 is for information purposes only?</p> <p><i>Response (PM):</i></p> <p>No, Schedule 28 is not for information purposes only. Schedule 28 forms part of PC5 and has a regulatory role / purpose in PC5, in the context of the Farm Portal.</p> <p>The intent of the response to the question (as set out on page 11 of the Officer's Response to the Hearing Panel's Questions dated 12 August 2016) was to explain that Schedule 28 does not provide a list of requirements that an individual farmer must meet, except as they ultimately apply via the Farm Portal (e.g. a farmer can comply with the overall Baseline GMP Loss Rate or GMP Loss Rate by whatever means he or she chooses) compared to the requirements set out in Schedule 7 (which do provide prescriptive requirements).</p> <p>If Schedule 28 is amended wouldn't the Farm Portal proxies have to be consequently amended?</p> <p><i>Response (MMC):</i></p> <p>Yes, any change to Schedule 28 would result in changes to the functioning of the Farm Portal.</p>
14	8.98	<p>Should the proper sequence be that the contents of Schedule 7 are settled through PC5 and then the Audit Manual is thereafter amended to align with Schedule 7?</p> <p><i>Response (MMC):</i></p> <p>Yes.</p>
15	8.136	<p>As the FEPs will not be public information, is there any utility in retaining Schedule 7, Part B, 2(i)?</p> <p><i>Response (MMC/PM):</i></p>

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		<p>An FEP will be "official information" held by the Council. Access to an FEP will be administered in accordance with the Local Government Official Information and Meetings Act 1987 (LGOIMA).¹ Applicants are able to request that their FEP is retained on file as a confidential document. However, FEPs will still be subject to the tests contained in the LGOIMA, and may still be disclosed under that Act (which will be assessed on a case-by-case basis). For example, even if an FEP in its entirety is not disclosed, the Council may disclose specific aspects of the FEP under the LGOIMA, including the location of public access routes.</p> <p>Part B, 2(i) states:</p> <p><i>The plan shall contain as a minimum:</i></p> <p>...</p> <p>2. <i>A map(s) or aerial photograph at a scale that clearly shows:</i></p> <p>...</p> <p><u>(i) Public access routes or access routes used to maintain the rivers, streams, or drains.</u></p> <p>In the s42A report, at para 8.136, I identified the importance of public access under s6 of the RMA and that the identification and awareness of public access routes is relevant base information for FEP users.</p> <p>I remain of the view that preparing and implementing an FEP benefits from having this information identified. For example, managing stock exclusion from a waterway, particularly by use of fencing, needs to be cognisant of any public access route or access for maintenance purposes. This information will also be useful for the Council in respect of maintaining up-to-date information on public access routes, and access routes used to maintain rivers, streams or drains.</p> <p>If indeed the information is not publicly available, I am consequently unsure of any potential 'mis-use' of the information.²</p>
19	8.172	<p>1) Would it be clearer and more helpful to plan users if the Schedule 7 objective used the wording for the first GMP for Nutrient Management in the document "Industry-agreed Good Management Practices relating to water quality, 18 September 2015"?</p> <p><i>Response (MMC):</i></p>

¹ During proceedings (e.g. a resource consent hearing) the Canterbury Regional Council may withhold access to information if specific criteria are met in accordance with section 42 of the RMA. This power includes prohibiting or restricting the publication of information where it is necessary to avoid serious offence to tikanga Maori, or to avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied the information. An order in relation to tikanga Maori may have effect for an indefinite period. However, an order in respect of a trade secret / commercial position shall cease to have effect at the conclusion of the proceedings, at which time the LGOIMA will apply.

² See page 12, Beef and Lamb submission

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		<p>The relevant GMP 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.”</p> <p>While the GMP may be “clearer and more helpful to Plan users”, I do not consider that it is appropriate to use this GMP in place of the Schedule 7 Objective, as it is narrower in application than the Schedule 7 Objective. In particular, the GMP manages fertiliser inputs only, whereas the Schedule 7 objective relates to nutrients more generally, and this is supported by the Schedule 7 nutrient targets, which also incorporate a wider range of matters than just fertiliser inputs.</p> <p>2) If so, is there scope to do that?</p> <p><i>Response (PM):</i></p> <p>Beef & Lamb sought a number of changes to Schedule 7 on the basis that Schedule 7 must be rewritten to give effect to the GMPs, delivered through FEPs (see pages 12-14 of Beef and Lamb's submission, submission point PC5LWRP-1553).</p> <p>Several submissions (e.g. J and T Banks submission point PC5LWRP-1598; B Banks submission point PC5LWRP-1021) also sought to retain requirements for all farming activities to use the industry agreed Good Management Practices or other appropriate farm management programmes to minimise the risk of N or P / sediment losses to water.</p> <p>It is submitted that those submission points would provide scope for this amendment.</p>
		<p>1) Would the Schedule 7 Nutrient Management target (2) relating to sediment losses be better placed, or at least replicated, in Schedule 7 “Management Area: Soils Management” as soil is not a nutrient?</p> <p><i>Response (MMC):</i></p> <p>I note there is already reference to sediment in the Management Area: Soils Management, so the question is potentially more about whether sediment should be deleted from Nutrient Management Target (2). Sediment per se is not a nutrient. However, management of sediment will have a significant effect on the management of phosphorus. On the basis that the matter is addressed under the Management Area: Soils Management, I see no difficulty in deleting it from Nutrient Management target (2).</p> <p>2) If so, is there scope to do that?</p> <p><i>Response (PM):</i></p>

Page	Reference	Question
		<p>Deletion of "sediment" from Nutrient Management target (2) would be a minor amendment in accordance with clause 16(2) of Schedule 1 of the RMA. This is because Schedule 7, as sought to be amended by PC5, requires a description of how each of the targets will be met and the specific actions that will be undertaken. Target (2) of Management Area: Soils Management requires farming practices to minimise sediment loss. Therefore, the effect of deleting the reference of "sediment" in target (2) to Nutrient Management would be minor.</p>
21	8.230	<p>Which of the GMPs on pages 8 and 9 of the document “Industry-agreed Good Management Practices relating to water quality, 18 September 2015” are considered to be non-specific and non-auditable?</p> <p><i>Response (MMC):</i></p> <p>Ultimately, all of the GMPs on pages 8 and 9 of the “Industry-agreed Good Management Practices relating to water quality, 18 September 2015” booklet are auditable. The difficulty arises when many auditors are assessing the same criteria, and whether this is completed in a common manner, such that the same grading would result from the same on-farm circumstances when audits are undertaken by a range of different auditors.</p> <p>Many of the GMPs on pages 8 and 9 have been directly carried over as Targets in Schedule 9. Some are less specific and retain considerable discretion. A good example is: “To the extent that is compatible with land form, stock class and intensity, exclude stock from waterways”. As this issue is addressed by other rules in the CLWRP, it has not needed to be incorporated into Schedule 7.</p> <p>As intimated in earlier answers to questions on Schedule 7, Council officers are reconsidering improving the alignment between Schedule 7 and the “Industry-agreed Good Management Practices relating to water quality, 18 September 2015” booklet.</p>
35	22.137	<p>Would it be clearer if Policy 15B.4.15(a) read: “the application ... lawfully exceeded and the exceedance is the result of ...”</p> <p><i>Response (DC):</i></p> <p>Yes. I recommend Policy 15B.4.15(a) is amended as follows:</p> <p><i>(a) <u>the application contains evidence that demonstrates that the nitrogen baseline has been lawfully exceeded and the exceedance³</u></i></p>

³ Forest & Bird – PC5LWRP-1894

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		<u><i>increased nitrogen loss</i></u> is the result of irrigation or winter grazing that has been undertaken as a permitted activity; and
43	22.179(2)	<p>1) Should the first answer be “yes – it is two tonnes of nitrogen more than the original 1 tonne”?</p> <p><i>Response (DC):</i></p> <p>Yes.</p> <p>2) I understood that the requirement to reduce to 90% of GMP on irrigated and winter grazed areas in the Hakataramea River Zone and Greater Waikakahi Zone is the source of the nitrogen headroom for those areas. Is that correct or incorrect?</p> <p><i>Response (DC):</i></p> <p>That is correct for the Greater Waikākahi Zone and incorrect for the Hakataramea FMU. The requirement to reduce to 90% of GMP is not the source of nitrogen headroom in the Hakataramea FMU.</p>
44	22.139(2)	<p>Which permitted activity rules are you referring to (first paragraph, fifth line)?</p> <p><i>Response (DC):</i></p> <p>The reference is to Rule 5.44A (red nutrient allocation zone) which applies in the Hakataramea Flat Zone.</p>
46	22.334(1)	<p>To undertake the water quality assessment would the farmer need to:</p> <ol style="list-style-type: none"> 1) Use Overseer outputs for their farm? 2) Route those outputs through a model similar to the ECan CLUES model? 3) Access ECan’s water quality and quantity databases? 4) And depending on the answers how would they be able to do that? <p><i>Response (HS/DG):</i></p> <p>In summary, the answer to the above questions is yes, and it is normal for applicants / consultants to do this as part of the resource consent application process. Further details are set out below.</p> <p>Overseer outputs, if available, should be used by the applicant to estimate the expected proportional change in nutrient loss as a result of the proposed development. This is a standard undertaking when applying for a consent to change land use.</p> <p>During the calculation of limits for water quality, the technical team used a ‘relative increase’ approach to estimating the limits allowed for at each river measurement site (as listed in Table 15B(c)), based on the percentage increase in nitrogen loss allowed for in each FMU.</p> <p>Environment Canterbury are able to provide a sum of the at-source N loss</p>

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		<p>estimates for the areas upstream of each measuring point in the limits tables using the most up to date version of the MGM loss rate numbers generated by the catchment matrix.</p> <p>The outputs from the Overseer model of the proposed activity can be used to assess the likely proportional change in diffuse N loss as a result of the activity, at the sub-catchment scale.</p> <p>This will result in an estimated new load and concentration for the receiving stream the impacts on water quality and ecology for which can be assessed.</p> <p>This exercise will require the applicant or their consultant to access Environment Canterbury water quality data bases or request data. This is a routine undertaking when preparing an AEE for a consent application.</p>
46	22.334(2)	<p>However, the Memorandum referred to in Footnote 36 (page 5 of 6, bullet point two) implies that any assessment of a farm's diffuse discharges' impact on water quality would have to take into account a zone of reasonable mixing.</p> <ol style="list-style-type: none"> 1) Can you comment? 2) If they do have to take into account reasonable mixing how would a farmer go about doing that? <p><i>Response (DC/HS):</i></p> <p>The definition of 'reasonable mixing' that is included in the LWRP is defined as follows:</p> <p><i>means the mixing that occurs in a mixing zone as defined in Schedule 5 of this Plan.</i></p> <p>The 'zone of reasonable mixing' referred to in the memorandum is not referring to the definition that is applied in the LWRP. The memorandum discusses mixing zones with respect to a calculation of predicted changes in in-stream concentrations of nutrients; the assumption was made that at the in-stream monitoring point, all discharges are considered to be fully mixed with the receiving water body. The memorandum discusses that there are points along the Hakataramea River where nutrient-rich groundwater or surface water can enter either through seepage or via tributaries, but states that this groundwater could be sourced from anywhere in the Hakataramea FMU due to a number of potential sources, and limited denitrification potential in the groundwater. Therefore, whilst the concept of mixing is discussed, it refers to nutrients from throughout the catchment and is not in reference to individual property diffuse or point source discharges.</p> <p>If, as discussed in response to the question on 22.334(1) above, the OVERSEER data is used, along with source-load calculations for the sub-catchment to assess the potential effect on catchment load (and hence proportionally on in-stream concentrations), the effects of attenuation do not need to be considered and therefore an individual farm does not have to take into account reasonable mixing. When setting FMU load limits and allocation regimes, there was an intentional decision to treat the whole</p>

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		catchment similarly, rather than adjusting for attenuation at the property scale.
47	22.376	<p>The Memorandum referred to above seems to provide evidential support for <u>not</u> requiring a reduction to 90% of GMP in the Hakataramea River Zone. What is the utility of such a requirement, particularly if it does not contribute to the Hakataramea nitrogen headroom?</p> <p><i>Response (DC):</i></p> <p>The community involved in the collaborative limit setting process perceived the Hakataramea River Zone to be particularly sensitive and considered intensive agriculture in this area to present a higher risk to water quality. Therefore the Lower Waitaki Zone Committee recommended that a “max cap” or percentage reduction from GMP is applied in the Hakataramea River Zone.</p> <p>The Council Officers considered that requiring a reduction to 90% of GMP be included in PC5, both as part of implementing the ZIP Addendum (as part of having particular regard to the CWMS) and implementing Policy 4.9 of the CLWRP (which provides that reviews of sub-region sections will have particular regard to collaboratively developed local water quality and quantity outcomes and methods).</p> <p>On the above basis, I consider the requirement to reduce to 90% of the Good Management Practice Loss Rate in the Hakataramea River Zone should be retained.</p>
48	22.378	<p>Last paragraph, line 6. Which RDA rules are you referring to?</p> <p><i>Response (DC):</i></p> <p>The paragraph is referring to Rule 15B.5.31 in notified PC5 however the paragraph also applies to Rule 15B.5.40. In Appendix I this would relate to Rule 15B.5.26.</p>
48	22.399	<p>1) So would any breach of Table 15B(c), (d) or (e) trigger a response or would the exceedance need to be attributable to a specific consented activity?</p> <p><i>Response (DC/HS):</i></p> <p>A breach of a limit at one of the sites listed in Tables 15B(c), (d) and (e) may signal a need for a sub-catchment scale response through a further plan change if an exceedance cannot be attributable to a single or group of consented activities. Policy 15B.4.20 (d) is intended to apply to individual consent monitoring to manage an exceedance that is attributable to a specific consented activity.</p> <p>2) If the latter, how would that be determined and by whom?</p> <p><i>Response (DC/HS):</i></p>

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		<p>Consent monitoring conditions can be established which relate to particular monitoring sites, so that an event where the limit is exceeded, contributions from individual consent holders can be assessed and reviewed to respond to the breach in limits. For example up-gradient and down-gradient monitoring.</p>
51	1.107	<p>With reference to the S32 Report (page 211 of 224 – Appendix 3) are the Section 15B.6 Tables 15B(a) and (b) ‘outcomes’ actually NPSFM Policy CA2 compliant freshwater objectives and if so should that be reflected on the face of the plan?</p> <p><i>Response (PM/DC):</i></p> <p>Yes, the Table 15B(a) and (b) ‘outcomes’ are compliant with Policy CA2 of the NPSFM, and are "freshwater objectives" as defined by the NPSFM⁴. This should be reflected on the face of the CLWRP.</p> <p>Section 2.4 of the CLWRP states that:</p> <p><i>“The objectives in Section 3 and Policies 4.1 – 4.6 in this Plan form the ‘freshwater objectives’ for Canterbury Region, as described by the Freshwater NPS.</i></p> <p><i>The objectives in the Plan provide the narrative outcomes sought to be achieved for, or from, fresh water across the whole of the Canterbury region.</i></p> <p><i>The specific freshwater outcomes (numeric and descriptive) to achieve the Plan’s objectives are set out in Table 1 to Policy 4.1. Where they have been collaboratively determined at a catchment scale the specific freshwater outcomes (numeric and descriptive) are included in a sub-region section.”</i></p> <p>In light of section 2.4 of the CLWRP, I consider that no further amendments are necessary. However, if the Panel did want to make it explicit that they are “freshwater objectives” they may wish to amend the heading in Section 15B.6 and the headings to Tables 15B(a) and Table 15B(b) to replace “outcomes” with “objectives”. This amendment would be a minor amendment in accordance with clause 16(2) of Schedule 1 of the RMA.</p>
54		<p>But PC5 does not require any improvement in river water quality parameters to offset the allowable deterioration in existing water quality to the Table 15B(c) nitrate-nitrogen limits. All other Table 15B(c) parameters are based on current state.</p> <p>1) So how is the quoted case law “...the ...quality of the water... taken overall, was at least no worse” met, especially taking into account the ‘load to come’ from existing land use intensification?</p>

⁴ The NPSFM provides that: "‘freshwater objective’ describes an intended environmental outcome in a freshwater management unit".

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		<p><i>Response (PM):</i></p> <p>The Court prefaced the quote in question with "[i]t might, perhaps, be appropriate...". These words make it clear that that part of the Court's decision is <i>obiter dictum</i> and is not binding as legal precedent on decision makers. The quoted case law merely provides an example of what may be an appropriate way of giving effect to Objective A2 of the NPSFM. However, the decision does provide useful guidance.</p> <p>Under Objective A2 of the NPSFM, the Council is required to maintain or improve the overall quality of freshwater (and improve it where it has been degraded by human activities to the point of being over-allocated). There are numerous ways in which the Council can manage freshwater quality (which may differ depending on the particular waterbody in question).</p> <p>In assessing the ecological effects of the Zone Committee's Solution Package, the Council technical team considered water quality in terms of the context of a suite of ecological outcomes rather than a single parameter, e.g. nitrogen.</p> <p>In addition to the quantitative prediction of nitrate-nitrogen concentrations in-stream, the Council technical team used qualitative assessment methods to assess the ecological effects. These assessments considered parameters not specifically identified in limits tables, e.g. fine sediment. The move to GMP and use of FEPs in PC5 was considered likely to result in a reduction in fine sediment, which is consequently likely to have a positive benefit for many streams in the Waitaki sub-region, particularly those that are spring-fed. The assessment also included the non-statutory components of the Zone Committee's solutions package, such as the whole of waterway rehabilitation for the Willow Burn.</p> <p>It is submitted that allowing an increase in one type of contaminant can give effect to Objective A2 of the NPSFM, and be in line with the caselaw set out in <i>Kahungunu</i>, as long as the "overall quality of freshwater" is maintained or improved.</p> <p>2) Has this matter been addressed in earlier LWRP decisions?</p> <p><i>Response (PM):</i></p> <p>The matter of the consistency with the NPSFM of allowing increases of nitrate-nitrogen losses was discussed in the decision on Plan Change 2 to the CLWRP, at section 4.3 (paragraphs [189]-[207]) of the Report and Recommendations of Hearing Commissioners.</p>

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		<p>The relevant excerpt is attached as Appendix A.</p> <p>PC1 to the LWRP Report and Recommendations of the Hearing Commissioners only very briefly referenced the approach taken "in different circumstances" in <i>Kahungunu</i>, but did not discuss the case in further detail.⁵</p> <p>The answer to question (1) above is consistent with the findings of the Hearings Panel in PC1 and PC2 to the LWRP.</p>
57		<p>1) In relation to the above matter, should Policy 4.38AA read “<u>Overall</u> freshwater quality is maintained ...” and is there scope for that change to be made?</p> <p><i>Response (MMC/PM):</i></p> <p>Yes, provided there is scope for this amendment.</p> <p>It is submitted that Ngāi Tahu's submission may provide scope for the amendment. Ngāi Tahu's submission seeks that the use of a GMP Loss Rate is retained as a tool to manage on-farm nutrient losses, and to achieve an overall cumulative reduction in nutrient loss, particularly within over-allocated catchments, and that measures are retained that provide for staged reduction in nutrient loss on farm to assist with overall cumulative reduction in nutrient loss within over-allocated catchments, and maximum nutrient loss rates (nutrient caps) (PC5LWRP-724).</p> <p>2) Would there be any further amendments required as a consequence of such a change to Policy 4.38AA?</p> <p><i>Response (MMC):</i></p> <p>Similar wording could be added to Policy 4.41C.</p>
59	Section 15B	<p>In light of the “No” answer, in terms of NPSFM Section CC catchment accounting, is the Farm Portal only of use for permitted activities?</p> <p><i>Response (DC/MMC):</i></p> <p>Activities that require land use resource consent under the PC5 rules are required to calculate a Baseline GMP Loss Rate and/ or a Good Management Practice Loss Rate. The definitions of these terms in section 2 refer to the use of the Farm Portal. Therefore, while it is not explicit in the rules, the required use of the Farm Portal to calculate these loss rates ensures that activities that require land use resource consent also use the</p>

⁵ Plan Change 1 to the CLWRP, Report and Recommendations of the Hearing Commissioners at [632]-[634] and footnote 274.

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		<p>Farm Portal. The preparation of a report from the Farm Portal is also a requirement of an FEP as set out in Schedule 7, Part B, 4B(b). The Council will also obtain information relevant to catchment accounting via the resource consent process.</p> <p>This is consistent with Policy 4.38B, which reads: <u>Effects on water quality arising from intensification or changes to a farming activity, are monitored through requiring property owners to submit information regarding the type and intensity of their farming activity to the Farm Portal; and the accuracy of any information submitted to the Farm Portal is periodically reviewed by Environment Canterbury as part of its monitoring programme.</u></p> <p>Overall, it would be difficult to progress through the resource consent process without entering the requisite information into the Farm Portal.</p> <p>If not, how should the plan be amended to reflect that and what scope is there to do that?</p> <p><i>Response (DC/MMC/PM):</i></p> <p>If the Panel was of a mind to more explicitly require this, a condition on the relevant rules, similar to the relevant permitted activity condition could be added as follows:</p> <p>“The property is registered in the Farm Portal by [insert date consistent with the relevant rule].”</p> <p>Dairy NZ sought that all properties over 10 ha should be required to use the Farm Portal, and properties of 10 ha or less should not be required to use the Farm Portal (submission-point PC5LWRP-250). It is submitted that Dairy NZ's submission would provide scope for the Hearing Commissioners to amend the rules as suggested, to make it explicit that properties are required to be registered in the Farm Portal, as a consequential amendment in accordance with clause 10(2)(b) of Schedule 1.</p>
64	15B.5.7(3)	<p>So could Matter of Control (4) be amended to more specifically relate to the condition 2(b) matters and is there scope to do so?</p> <p><i>Response (DC/PM):</i></p> <p>Matter of control (4) could be amended as follows:</p> <p><u>Methods to ensure compliance with; the Good Management Practice Loss Rates for the farming activity or in the Hakataramea River Zone and Greater Waikāhahi Zone any required reductions beyond 90% of the Good Management Practice Loss Rate; and</u></p>

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		<p>This amendment would be a minor amendment, to align the matter of control with condition (2) of Rule 15B.5.7(3) and the policy intent in Policy 15B.4.24(b), in accordance with clause 16(2) of Schedule 1 of the RMA.</p>
67		<p>1) Can you please review the utility of having matters of control or discretion that refer to Policies 15B.4.13 to 15B.4.15 in light of the conditions of the relevant CA and RDA rules specifically requiring adherence to the matters covered in the policies?</p> <p><i>Response (DC):</i></p> <p>Policy 15B.4.13 is intended to apply in Part B provisions a similar way that Policy 4.38A is applied in in the Part A provisions, except Policy 15B.4.13 is referred to in controlled activity rules as well as restricted discretionary rules. Policy 15B.4.15 applies to restricted discretionary activities and relates to lawful exceedances that apply before and after 13 February 2016.</p> <p>The matters of control referring to the policies are intended to provide certainty that the nitrogen loss limit applied in resource consent conditions takes into account lawful intensification. However, these matters of control, as currently worded, indicate an area of discretion and are not suitable to be included as a matter of control. I consider that the matters of control referring to Policy 15B.4.13 should be deleted and the matters of control which limit the nitrogen loss calculation should be amended.</p> <p>Therefore I recommend controlled activity rules 15B.5.15, 15B.5.19, 15B.5.34, matter of control (4) and (9) are amended as follows:</p> <p>...</p> <p><u>4 Methods that limit the nitrogen loss calculation for the farming activity to a rate not exceeding:</u></p> <p style="padding-left: 40px;"><u>I. the Baseline GMP Loss Rate; or</u> <u>II. the lesser of the Good Management Practice Loss Rate or the nitrogen loss that occurred in the four years prior to 13 February 2016; and</u></p> <p>...</p> <p>9 The consistency of the proposal with Policy 15B.4.13.</p> <p>And I recommended controlled activity Rule 15B.5.25 is amended as follows:</p> <p><u>4. Methods that limit the nitrogen loss calculation for the farming activity to a rate not exceeding:</u></p> <p style="padding-left: 40px;"><u>I. the Baseline GMP Loss Rate; or</u></p>

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		<p style="text-align: center;"><i>ii. <u>the lesser of the Good Management Practice Loss Rate or the nitrogen loss that occurred in the four years prior to 13 February 2016; and</u></i></p> <p style="text-align: center;"><i><u>4A. which 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 Baseline GMP Loss Rate; and</u></i></p> <p style="text-align: center;"><i><u>10. The consistency of the proposal with Policy 15B.4.13.</u></i></p> <p>2) If the matters of control or discretion referring to those policies are considered to have utility, can you explain what would be expected from the decision-maker when having regard to those policies?</p> <p><i>Response (DC/MMC):</i></p> <p>When considering a restricted discretionary activity under the relevant rules, a decision maker would have regard to these policies in deciding whether to grant the consent, and in relation to determining conditions of consent (including the nitrogen loss limit).</p> <p>There are circumstances that it would not be appropriate to apply resource consent conditions that require the nitrogen loss from a farming activity to comply with the Baseline GMP Loss Rate. Instead the limit on nitrogen loss should include lawful intensification that occurred prior to 13 February 2016 (as per Policy 15B.5.13). This intensification was generally included in the modelling undertaken for the collaborative process.</p> <p>Policy 15B.4.15 relates to lawful intensification that has occurred before and after 13 February 2016 (considered in restricted discretionary activities only) and ensures the nitrogen loss limit applied to the resource consent only includes lawful intensification associated with winter grazing or irrigation that has occurred.</p> <p>3) Are Policies 15B.4.13 to 15B.4.15 required at all in light of the conditions of the rules?</p> <p><i>Response (DC/MMC):</i></p> <p>Part A Policy 4.38A relates specifically to the Nutrient Allocation Zones and therefore does not apply to the Waitaki Sub-region. Part B intends to apply a similar approach as Policy 4.38A to the Waitaki Sub-region through Policy 15B.4.13. Policy 15B.4.13 is considered in restricted discretionary rules where it may guide the grant or decline of resource consent.</p>

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		<p>Policy 15B.4.15 is considered in restricted discretionary recommend Rule 15B.5.26 and consistent with Policy 15B.4.13, may guide the grant or decline of resource consent.</p> <p>The nitrogen loss considered under this policy relates specifically to winter grazing or irrigation undertaken as a permitted activity. The policy is necessary to constrain consideration of nitrogen loss to activities associated with winter grazing and irrigation as these activities were included in the modelling of the Hakataramea FMU load limit.</p>
August 17 Answers		
3	15B.5.25	<p>Can you please expand on your answer in relation to Rule 15B.5.7 (second paragraph) as Policy 15B.4.18(b)(iii) and (iv) only refers to 90% of the GMP Loss Rate and not to the GMP Loss Rate?</p> <p><i>Response (DC/MMC):</i></p> <p>The answer provided is incorrect. Policy 15B.4.18(b)(iii) restricts irrigation schemes to 90% of the Good Management Practice Loss Rate, not the Good Management practice Loss Rate.</p>
		<p>Can you please check the correlation between the recommended amendments to the provisions in the officer answers and the 'track changes' in the latest version of S42A Report Appendix I?</p> <p><i>Response (DC/MMC):</i></p> <p>The response to the question on Policy 15B.4.2 recommends that Policy 15B.4.2 is retained as worded. In Appendix I Policy 15B.4.2 is recommended to be amended as a consequence of amendments recommended in response to questions dated 12 August 2016, on para 16.24(3).</p> <p>The response to questions dated the 17 August 2016, on Rule 15B.5.26, recommends wording that differs from the recommendation in Appendix I. Appendix I includes the correct recommended amendment to Rule 15B.5.26.</p>
	15B.5.29	<p>In Appendix I, should the start of Rule 15B.5.29 be the same as 15B.5.28?</p> <p>Both Rule 15B.5.28 and 15B.5.29 are incorrectly drafted in Appendix I and should read as follows:</p> <p><u>15B.5.28</u> <u><i>Within the Hakataramea River Zone Greater Waikāhahi 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 condition 1 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.</i></u></p> <p><u>15B.5.29</u> <u><i>Within the Hakataramea River Zone Greater Waikāhahi Zone or Hakataramea Freshwater Management Unit Hill Zone, the use of land</i></u></p>

Page	Reference	Question
		<u>for a farming activity on a property greater than 10 hectares in area that does not meet-comply with either of condition 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.</u>

Responses to Additional Questions of Hearing Commissioners:

Reference	Question
Farm Portal	<p>How does the Farm Portal work for "out- of the norm" properties e.g. horticulture?</p> <p><i>Response (MMC):</i></p> <p>A number of 'out-of-the-norm' circumstances were outlined by submitters in their submissions. These have been individually considered and addressed in Appendix E to the s42A Report.</p>
s42A Report p 12 [3.13]	<p>Can the <i>Well Smart</i> decision be provided for the Panel?</p> <p><i>Response (PM):</i></p> <p>The decision of <i>Well Smart Investment Holding (NZQN) Limited v Queenstown Lakes District Council</i> [2015] NZEnvC 214 is provided with this response.</p>
s42A Report p 15 footnote 19 [3.33]	<p>Policy 4.34 says "e.g. Fish and Game...". Where in Fish and Game's submission does it seek changes to Policy 4.34?</p> <p><i>Response (PM):</i></p> <p>The submission of Fish and Game (PC5LWRP-691) sought that Policy 4.34 was amended to include a new clause (d) (and further or alternative relief to the effect of that sought) as follows:</p> <p>"(d) identify where OVERSEER assumed practices are or were not being met, and quantify against comparative improvements or projected improvements in GMP nutrient reductions."</p> <p>This submission point is set out on page 6 of Fish and Game's submission.</p>

s42A Report [3.36]

Policy 4.34 "risk people are denied opportunity" Question whether the amendment to Policy 4.34 by Beef & Lamb and Irrigation NZ are not detailed precisely in their submissions. Is that so?

Response (PM):

The amendment to Policy 4.34 sought by Beef and Lamb is as follows (submission point PC5LWRP-1440):

"Amend Policy 4.34 as follows:

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

(a) raising awareness of the nutrient losses from all land uses ~~by requiring monitoring and record keeping of modelled nutrient loss;~~

(b) farming activities that have nutrient losses operating at ~~Good Management Practice~~ or better; and

(c) requiring the provision of information on modelled nutrient loss from farming activities operating at Good Management Practice to enable better decision-making."

Accordingly, the amendments to Policy 4.34 by Beef and Lamb are detailed precisely in its submission.

The amendments that refer to Good Management Practice are considered to be "on" the Plan Change and within the scope of submissions as it aligns Policy 4.34(b) with the new definition of "Good Management Practice". On that basis, the changes proposed may be considered as consequential to the introduction of a definition of "Good Management Practice" as per clause 10(2)(b) of Schedule 1.

However, it is submitted that Beef and Lamb's proposed amendment to Policy 4.34(a) is not "on" the Plan Change, as the notified version of PC5 did not seek to make any changes to clause (a) to alter the status quo provided by the LWRP as it relates to requirements of monitoring and recording keeping provided by the policy.

Accordingly, it is submitted that the Council does not have jurisdiction to amend Policy 4.34(a) as requested.

In any event, the Council Officers consider that the proposed amendments to Policy 4.34(a) are not appropriate as monitoring and record keeping of all farming activities (not just those operating at GMP) are important aspects of the CLWRP.

	<p>Irrigation NZ seeks the following amendments to Policy 4.34 (submission point PC5LWRP-2076) (Irrigation NZ's proposed amendments in red):</p> <p style="text-align: center;"><i>"Amend Policy 4.34 as follows:</i></p> <p style="padding-left: 40px;"><i>(a) ...record-keeping of modelled nutrient losses</i></p> <p style="padding-left: 40px;"><i>(b) farming activities that have nutrient losses operating at good practice or better<u>the implementation of Good Management Practices</u>; and</i></p> <p style="padding-left: 40px;"><i>(c) requiring the provision of modelled nutrient loss <u>from irrigation schemes, farming enterprises and farming activities</u> to enable better decision making"</i></p> <p>Accordingly, the amendments to Policy 4.34 by Irrigation NZ are detailed precisely in its submission.</p>
s42A Report [3.41]	<p>Policy 4.36C – same question as above</p> <p><i>Response (PM):</i></p> <p>CDHB and Federated Farmers requested amendments to Policy 4.36(c), as referred to in the section 42A Report at [3.37]-[3.41]. The amendments are detailed precisely in their submissions, which are set out below.</p> <p>CDHB sought to amend Policy 4.36(c) as follows (PC5LWRP-1209):</p> <p><i>"(c) encouraging <u>requiring</u> industry and irrigation scheme-based initiatives..."</i></p> <p>Federated Farmers sought to amend Policy 4.36(c) as follows (PC5LWRP-2242):</p> <p><i>"(c) ... and facilitate land use consenting, including irrigation scheme wide initiatives, reporting and auditing of their constituent farms."</i></p> <p>Horticulture NZ sought to amend Policy 4.36(c) (PC5LWRP-1588). However, the submission included a typographical error and was meant to refer to Policy 4.34(bb) (because there is no reference to GMP loss rates in clause (c)).</p> <p>However, it is submitted that CDHB and Federated Farmers proposed amendments to Policy 4.36(c) are not "on" the Plan Change, unless the change is merely incidental or consequential, as the notified version of PC5 did not seek to make any changes to clause (c).</p>
s42A Report [3.45]	Policy 4.39 – same question as above

	<p><i>Response (PM):</i></p> <p>Several submitters did request specific amendments to Policy 4.39 as set out below.</p> <p>Egg Producers Federation and Poultry Industry Association sought to amend Policy 4.39 to exclude poultry farming (PC5LWRP-535).</p> <p>CDHB sought to delete the word "minimise" and replace with "<u>...effectively mitigate impacts on the receiving water body.</u>" (PC5LWRP-1219).</p> <p>Federated Famers sought to amend Policy 4.39(c) as follows (PC5LWRP-2268):</p> <p><u>"(c) wastewater discharge from a hospital, a school or other education or community institution"</u></p> <p>The above amendments to Policy 4.39 are detailed precisely in submissions. However, unless the changes are merely incidental or consequential, the proposed amendments to Policy 4.39 are not "on" the Plan Change, as the notified version of PC5 did not seek to make any changes to clause (c).</p> <p>Several other submitters sought to delete Policy 4.39 and replace it with a new Policy 4.11.⁶ Others sought to delete all policies in Part A and replace them with a new policy.⁷ It is submitted that these submission points seeking the deletion of Policy 4.39 are not "on" the Plan Change as the notified version of PC5 did not seek to amend Policy 4.39.</p>
s42A Report p 167	<p>Recommended new text at front of Schedule 7A "<i>A Management Plan can be either of...</i>". Please confirm or reconsider wording</p> <p><i>Response (MMC):</i></p> <p>Reconsidered wording (showing tracked changes from the s42A Report recommendation) is:</p> <p><i>A Management Plan can be either of:</i></p> <ol style="list-style-type: none"> 1. Completion of A Plan <u>completed in accordance with the requirements of Part B below; or</u> 2. The property on which the activity is undertaken is registered in the Farm Portal as having completed A Plan <u>completed in accordance with an</u>

⁶ Maungatahi Farm Limited PC5LWRP-2800; Hoban J K W and Others PC5LWRP-2861; Murchison JG and LM PC5LWRP-2937; Munro A R and K H PC5LWRP-2954.

⁷ Sloss K PC5LWRP-2818; McLean G and M PC5LWRP-2852; Forrester J and R PC5LWRP-2881; Forrester K PC5LWRP-2901; Rangatahi Downs Land Trust PC5LWRP-2919.

	<p><i>industry prepared Farm Environment Plan template that has been certified as providing at least an equivalent amount of information and good management practice guidance, as contained in Part B below, by the Chief Executive of the Canterbury Regional Council.</i></p>
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