BEFORE THE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE CANTERBURY REGIONAL COUNCIL

UNDER THE Resource Management Act 1991

IN THE MATTER of Submissions and Further Submissions by Federated Farmers on Plan Change 5 to the Canterbury Land and Water Regional Plan

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MEMORANDUM OF COUNSEL RESPONDING TO QUESTIONS RAISED AT HEARING

Dated 17 October 2016

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MAY IT PLEASE THE COMMISSIONERS:

1. The purpose of this Memorandum is to respond to questions asked by the Commissioners of Federated Farmers at the hearing on PC5 on 23 and 24 August 2016. The issues covered in this Memorandum relate to:

    a. The scope for particular amendments requested by Federated Farmers;

    b. The activity status sought for activities seeking to rely on the alternative consenting pathway;

    c. Clarification of the decision sought in relation to the definition of Accredited Farm Consultant; and

    d. Responses to the questions asked of Andrew Barton on 24 August 2016.

SCOPE

2. The Commissioners have queried whether certain of the amendments requested by Federated Farmers are within scope. In particular, Commissioner Sheppard has questioned whether, in the case of Federated Farmers' submissions on particular (identified) policies and rules, there was sufficient detail in the decisions sought to establish scope. The following paragraphs discuss the case law relevant to these issues. The specific amendments queried by Commissioner Sheppard are then reproduced in the Appendix to this Memorandum, along with a discussion for each amendment as to why it is submitted that the amendment is within scope.

Local Authority's Decision Making Jurisdiction

3. A local authority's jurisdiction in relation to a decision on a proposed plan change is contained in Clause 10 of Schedule 1 of the Resource Management Act 1991. The local authority is required to give a decision *"on the provisions and matters raised in submissions"*.[1] Clause 10(2) sets out matters that the decision *must* include and matters that the decision *may* include. Of particular relevance to the current questions, Clause 10(2)(b) states that the local authority's decision may include:

    a. Matters relating to any consequential alterations necessary to the proposed plan arising from the submissions; and

    b. Any other matter relevant to the proposed plan arising from the submissions.[2]

[1] Clause 10(1) Schedule 1 Resource Management Act 1991
[2] Clause 10(2)(b) Schedule 1 Resource Management Act 1991

4. Whether an amendment to a plan change is within jurisdiction is determined by considering whether the amendment proposed is reasonably and fairly raised in the submissions on the plan change. This has been held to be a question of fact and degree, which must be judged by the terms of the proposed instrument and the content of submissions.[3]

5. When determining whether a matter is one which is reasonably and fairly raised in a submission, the submission must be considered as a whole, in terms of whether it raises the relevant relief, expressly or by implication.

6. Jurisdiction will exist even if an amendment has not been specifically requested by any submitter, provided the submissions in substance effectively raised the issue.[4] For example, in *GUS Properties Ltd v Marlborough DC*[5] the Planning Tribunal found that the Council had jurisdiction to amend a permitted activity to a controlled activity in response to submissions. This change was not specifically requested by any submitters, but the Tribunal found that the Council could make a finding on the basis of submissions that the degree of control which could be applied to the activity if it was permitted was not sufficient

7. The decision of the full Court of the High Court in *Countdown Properties (Northlands) Ltd v Dunedin City Council*[6] is the leading authority on this issue. The decision concerned an appeal from the Planning Tribunal. The Tribunal set out five categories of amendments to a Plan, stating that the first four were permissible. The categories were:

    a. Amendments sought in written submissions;

    b. Amendments that corresponded to grounds stated in submissions;

    c. Amendments that addressed cases presented at the hearing of submissions;

    d. Amendments to wording not altering meaning or fact;

    e. Other amendments not in groups (a) to (d).[7]

8. The High Court approved of this categorisation. Clause 10(2)(b)(i) now adds an additional category, relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions.

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[3] *Whitford Residents & Ratepayers Assn Inc v Manukau CC* [1974] 2 NZLR 340 (SC); *Melanesian Mission Trust Board v Auckland CC* EnvC A056/97; *Atkinson v Wellington RC* EnvC W013/99; *Network Tasman Ltd v Tasman DC* EnvC C057/08

[4] *Johnston v Bay of Plenty RC* EnvC A106/03;

[5] W075/94 PT

[6] [1994] NZRMA 145. Although Clause 10 has been amended several times since 1994, subsequent decisions have confirmed the approach set out in this decision remains appropriate. See for example *Environmental Defence Society Inc v Otorohanga District Council* [2014] NZEnvC 70.

[7] Ibid at [164] – [168]

9. In response to a submission on behalf of the appellants that a council had no authority other than to accept or reject a submission, the High Court stated:

> *"Councils customarily face multiple submissions, often conflicting, often prepared by persons without professional help. We agree with the Tribunal that councils need scope to deal with the realities of the situation. To take a legalistic view that a council can only accept or reject the relief sought in any given submission is unreal. As was the case here, many submissions traversed a wide variety of topics; many of these topics were addressed at the hearing and all fell for consideration by the council in its decision".*[8]

10. The decision in *Countdown Properties* was considered by the Environment Court in *Campbell v Christchurch CC,*[9] and the Court stated that the following three points were particularly worth noting in relation to the decision:

> *"(1) That some of the modifications to the proposed plan change were not specifically sought as "relief" in a submission, but were contained in "grounds". Thus there is High Court authority for the proposition that one cannot rule out relief based on reasons in a submission.* ***Countdown*** *was followed by the Environment Court in re an Application by Vivid Holdings Ltd*[10] *where the reasons for a reference were held to give guidance as to the real relief sought.*
>
> *(2) It is "unreal" and legalistic to hold that a Council can only accept or [reject] relief sought in any given submission. In other words the local authority may amend its proposed plan in a way that is not sought by <u>any</u> submission – subject presumably to the constraints that the change must be fair and reasonable, and it must achieve the purpose of the RMA.*
>
> *(3) The High Court also stated*[11]
>
> *Adopting the standpoint of the informed and reasonable owner is only one test of deciding whether the amendment lies fairly and reasonably within the submissions filed. In our view, it would neither be correct nor helpful to elevate the "reasonable appreciation" test to an independent or isolated test. The local authority or Tribunal must consider whether any amendment made*

[8] Ibid at [165]
[9] [2002] NZRMA 352 (EnvC)
[10] [1999] NZRMA 467 at 477
[11] [1994] NZRMA [145] at [166]

to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change".[12]

11. The Court in *Campbell* then went on to set out the following factors that it considered relevant in determining whether a submission reasonably raises the particular relief:

    a. The submission must identify what issue is involved and some change sought in the proposed plan;

    b. The local authority must be able to summarise it accurately and fairly; and

    c. The submission should inform others what it is seeking, but it will not be automatically invalid if unclear.[13]

12. The importance of not importing undue formality into the issue of jurisdiction has also been noted in many decisions. The following passage from the High Court decision in *Royal Forest and Bird Protection Society Incorporated v Southland District Council*[14] is often quoted in this regard:

> *"…it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety".*[15]

13. The issue of jurisdiction was also considered in the earlier case of *Atkinson* v *Wellington Regional Council*[16], where the Environment Court stated:

> *"As to the fact that the qualifying term "notified" resource consents is missing from the originating submission*[17] *to accommodate it legally within the circumference of the reference, Mr Lynch submitted that as the relief was not "expressly" sought in the original submission and the relief sought is not perfectly clear, it cannot be sought from this Court now.*
>
> *It is my conclusion that is the wrong test to apply. The test is whether the relief goes beyond what is reasonably and fairly raised in submissions, usually a question of degree to be judged by the terms of the proposed instrument and the content of submissions."*[18]

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[12] *Campbell v Christchurch City Council* [2002] NZRMA 352 at [17]
[13] Ibid at [42]
[14] [1997] NZRMA 408
[15] Ibid at 413
[16] EnvC W013/99
[17] The original submission stated that all aerial drops of 1080 should require resource consent, but did not specify that the submitter wished the resource consents to be notified.
[18] Ibid at [76] and [77]

14. The Court also went on to refer to the relevance of oral evidence and stated as follows:

> *"Further, I note the amended Clause 10(1) states that "whether or not a hearing is held" the Authority shall give its decisions which shall include the reasons for accepting or rejecting any submissions. If there is a hearing, which in this case there was, the Authority has the right to take into account any oral submissions made and it is quite clear from the evidence before me that [the submitter] was submitting on notified resource consents".*[19]

Scope of a Submission

15. In order to provide jurisdiction for an amendment, a matter raised within a submission must itself be within the scope of the plan change. The test is whether a submission is "on" a plan change. If a submission is not "on" a plan change then the council cannot consider it.[20] In order to be "on" a plan change, a submission must stay within the ambit of the plan change and focus on the extent to which the plan change affects the status quo. The submission will not be valid if it goes beyond this in such a way that the ability of people potentially affected if the submission was accepted have not been given an effective opportunity to participate in the process.[21] The leading authorities on this issue are the High Court decisions of *Clearwater Resort Ltd v Christchurch City Council*[22] and *Palmerston North CC v Motor Machinists Ltd*[23]

16. In *Clearwater Resort Ltd v Christchurch City Council* the High Court stated (when dealing with a variation) that its preferred approach was:

> *"1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.*
>
> *2. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation."*[24]

[19] Ibid at [79]
[20] *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290
[21] *IHG Queenstown Ltd v Queenstown Lakes DC* EnvC C078/08
[22] HC Christchurch AP34/02 14 March 2003
[23] Ibid
[24] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02 14 March 2003 at [66]

17. This approach was confirmed in *Palmerston North CC.* The High Court stated in that case that the first limb in *Clearwater*:

> *"serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself two aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration."*[25]

18. The Court in *Palmerston North CC* also referred to the requirements in the prescribed form for submissions and noted that it could be seen from the prescribed form that the focus of submissions must be on *"specific provisions of the proposal"*.[26]

19. The various authorities on this issue, including *Clearwater,* were examined in *IHG Queenstown Ltd v Queenstown Lakes District Council.*[27] The Environment Court stated in that case:

> *"…the wider the extent to which a change or variation changes the pre-existing status quo, the wider will be the scope for a submission to be made "on" the change or variation. But whatever the breadth of the change or variation may be, a submission needs to stay within the ambit of the change or variation as indicated or deducible by the extent of alteration to the pre-existing status quo. And as William Young J went on to hold in Clearwater, if the effect of upholding a submission which is alleged to be "on" a change or variation would permit a plan to be "appreciably amended without real opportunity for participation by those potentially affected", that is a powerful consideration against the allegation.*
>
> *We are well aware that submitters often suggest quite wide-ranging modifications to the contents of a change or variation – modifications that collectively in some instances can be said potentially to alter the thrust or tenor of what the council is proposing in a fundamental way. While it may be argued that in such cases the submission is "on" the change or variation, inasmuch as it cites important parts of it and expresses adamant dissent, if the effect of allowing the relief sought would be to result in the district plan being "appreciably amended without real opportunity for participation by those potentially affected" (to use William Young J's words), then the result is very likely to be that the decision-maker will conclude that the outcome sought by the submission is not "on" the change but a request for something that is different in kind or substance from what the change is directed to. In shorter*

[25] *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290 at [80]
[26] Ibid at [38]
[27] EnvC C078/08

vein, does the submission in effect seek an outcome from "left field" (to again use William Young J's expression) having regard to what the change or variation is really dealing with? In such a case the submitter is propounding something that is so at variance with the change or variation by way of relief sought, as to render it unreasonable for others who may be affected to anticipate, let alone contest, the issues that stem from what the submitter is seeking."[28]

Scope for the Particular Amendments Requested by Federated Farmers

20. In summary, it is submitted that the following points are relevant to the issue of whether the amendments requested by Federated Farmers are within scope:

    a. Any submission point must be "on" PC5 – it must address the extent to which PC5 seeks to change the status quo.

    b. A submission that is "on" PC5 will provide jurisdiction for an amendment if the amendment can be said to be reasonably and fairly raised in the submission. This is a question of fact and degree.

    c. The submission should inform others what it is seeking, but the issue of whether a matter is reasonably and fairly raised in the submission should be approached in a realistic, workable fashion, rather than from the perspective of legal nicety.

    d. The amendment sought need not be explicitly stated. Jurisdiction can be established for an amendment if the amendment is sought either expressly or by implication in a submission, even if the relief arises from the grounds in the submission.

    e. Any necessary consequential amendments can be made under the authority of Schedule 1 Clause 10(2)(b)(i).

    f. Oral submissions made at the hearing can be taken into account.

    g. Any amendment must still achieve the purpose of the Act.

Scope for the Particular Amendments Requested by Federated Farmers

21. The particular amendments requested by Federated Farmers and queried by Commissioner Sheppard in regard to scope are set out in the Appendix to this Memorandum, along with a discussion for each amendment as to why it is submitted the amendment is within scope.

[28] Ibid at [32] and [33]

OTHER ISSUES

Activity Status Under the Alternative Consenting Pathway

22. Commissioner van Voorthuysen asked what activity status Federated Farmers requests for the alternative consenting pathway (path) for situations where the Farm Portal does not work or produces aberrant results?

23. On page 3 of Federated Farmers' submission restricted discretionary status was requested. It is submitted that this would not place an undue additional burden on those needing to use the alternative path and would be generally consistent with the rules that the alternative path would be required to work within and alongside.

Decision Sought in Relation to the Definition of Accredited Farm Consultant

24. Commissioner Sheppard asked Federated Farmers to clarify the decision sought from its submission in relation to the definition of Accredited Farm Consultant

25. It is Federated Farmers' submission that the definition is unclear as to whether the opening sentence applies as an alternative to parts a or b, or in addition to parts a or b. In other words, should the word "and" or the word "or" be inserted at the end of the opening sentence. Federated Famers submitted that the word "or" should be inserted because the qualification under part b may well exceed a Certificate of Completion in Advanced Sustainable Nutrient Management (as required by the first sentence). The section 42A reporting officers agreed that the meaning of the definition was unclear but used Federated Farmers' submission as justification to amend the definition by insertion of the words "and that" at the end of the opening sentence, which would have the opposite effect from the amendment requested by Federated Farmers.

Questions Asked of Andrew Barton (24 August 2016)

26. The Commissioners asked Mr Barton whether the farming land-use (resulting from implementation of water permit CRC080842) is in fact a restricted discretionary activity rather than non-complying?

27. The activity is assessed against the relevant rules as follows:

    a. Rule 5.41A (permitted activity): The farming land-use is not permitted by this rule because the date selected for making land-use associated with water permits permitted (18 January 2016) pre-dates the granting of water permit CRC080842. In addition, no nitrogen leaching condition was sought because it was anticipated that the discharge permitted for an Orange Zone under the Land and Water Regional Plan (20 kg N/ha/year) would be sufficient.

    b. Rule 5.54A (permitted activity): The farming land-use is not permitted under this rule because the irrigated area is greater than 50 ha.

c. Rule 5.54B (controlled activity): The farming land-use will not be a controlled activity under Rule 5.54B because the nitrogen baseline will be exceeded until 30 June 2020 and the Baseline GMP Loss Rate will be exceeded from 1 July 2020, because both reflect the dryland farming (pre-irrigation) situation.

d. Rule 5.55A (restricted discretionary activity): This rule allows the nitrogen loss calculation to exceed the nitrogen baseline (until 30 June 2020) or Baseline GMP Loss Rate (from 1 July 2020), if the nitrogen baseline was lawfully exceeded prior to 13 February 2016. However, the irrigation system was not installed until May 2016 and will not be used until October 2016. Consequently, the nitrogen baseline will not be exceeded until the 2016-2017 growing season. Therefore the farming land-use does not meet condition 2 of this rule.

e. Rule 5.56AA (discretionary activity): The nitrogen baseline will be exceeded until 30 June 2020 and the Baseline GMP Loss Rate will be exceeded from 1 July 2020, because both reflect the dryland farming (pre-irrigation) situation. Therefore, Condition 2 of this rule will not be met.

f. Rule 5.56AB (non-complying): The farming land-use falls under Rule 5.56AB. Therefore, it is classified as a non-complying activity.

28. The Commissioners also requested Mr Barton to provide the policy number referred to in evidence, to which change was recommended by the s42A reporting officer in response to the submission by N. Barton.

29. The policy with recommended amendment is Policy 4.38A. Policy 4.38A states that:

Within the Red, Orange, Green or Light Blue Nutrient Allocation Zones, only consider the granting of an application for resource consent to exceed the 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) <u>other than in Green or Light Blue Nutrient Allocation Zones</u>[61] 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.

30. The amendment recommended by the authors of the Section 42A Report, in response to the submission of N. Barton, is underlined.

Dated this 17th day of October 2016

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K G Reid

Counsel for the Combined Canterbury Provinces of Federated Farmers of New Zealand

APPENDIX: SPECIFIC QUESTIONS REGARDING SCOPE

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 5.44A	Amend Rule 5.44A as follows: 1) Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 2) Delete the notified Condition 5 and replace with: 5. All farming activities to achieve Industry GMP by 30 June 2020.
Discussion Regarding Scope Although Federated Farmers did not provide specific wording for an amended Condition 1 of the rule, it did make a specific request for an alternative pathway to the Farm Portal. What was meant by an alternative pathway is explained more fully on page 3 of Federated Farmers' submission under the heading *Alternative consenting pathway (in addition to that in the notified Plan Change, which relates to the Farm Portal)*. For several other policies and rules where Federated Farmers made a similar request, this was followed up in the further submission by supporting the specific wording of another submitter, principally DairyNZ or Fonterra. Federated Farmers did not do so in this case because neither DairyNZ or Fonterra (or any other submitter) proposed specific wording for an alternative pathway. Although Rule 5.44A is a permitted activity rule, and the Farm Portal output is not being used to determine compliance with the nitrogen baseline or the Baseline GMP Loss Rate, there seems little point in using the Farm Portal in situations where it does not work or produces aberrant results. It would be better to focus on achieving industry GMP as per the requested amendment to condition 5. Further, on page 4 of the submission, Federated Farmers requested that any consequential amendments will be made to give effect to the submissions. Given that Federated Farmers made specific requests for an alternative consenting pathway, via the primary and further submissions, consistent application of this approach throughout the plan would fall under the heading of consequential amendments.	
Specific Provision Queried	*Decision Sought by Federated Farmers*

Policy 15B.4.12	Replace Policy 15B.4.12 with an adaptive management approach, focusing on good management practice and linking this with environmental indicators.
Discussion Regarding Scope Although Federated Farmers did not provide specific wording for an alternative policy, it did suggest two specific policy principles, namely an adaptive management approach focussing on good management practice and that this should be directly linked with environmental indicators. This approach would provide a much more direct connection between land use and environmental impacts than the proposed numbers-based approach.	
Specific Provision Queried	*Decision Sought by Federated Farmers*
Policy 15B.4.20	Amend Policy 15B.4.20 to provide a degree of flexibility to farming activities in the Ahuriri Zone or Upper Waitaki Hill Zone to accommodate the normal cyclical nature of farming and to enable adjustments of land use in response to physical conditions and markets. Provide a land use flexibility cap allowing N discharge of up to 10kg/ha/year as a permitted activity.
Discussion Regarding Scope Although Federated Farmers did not draft an amended policy, we did make a very specific request as to what the policy should be amended to contain. Other submitters should have been in no doubt about the nature of the request, particularly because flexibility caps have been used in several previous plan changes to the Canterbury Land and Water Regional Plan.	
Specific Provision Queried	*Decision Sought by Federated Farmers*
Policy 15B.4.22	Amend Policy 15B.4.22 to provide a degree of flexibility to farming activities in the Ahuriri Zone to accommodate the normal cyclical nature of farming and to enable adjustments of land use in response to physical conditions and markets. Provide a land use flexibility cap allowing N discharge of up to 10kg/ha/year as a permitted activity.

Discussion Regarding Scope

Federated Farmers requested the use of a flexibility cap allowing N discharge up to 10 kg N/ha/year as a permitted activity.

Again, we made a very specific request as to what the policy should be amended to contain. Other submitters should have been in no doubt about the nature of the request, particularly because flexibility caps have been used in several previous plan changes to the Canterbury Land and Water Regional Plan.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Policy 15B.4.24	Amend Policy 15B.4.24 to focus on good management practices which would produce positive environmental outcomes, with an alternative consenting framework as outlined on page 3 of this submission. Alternatively, mend as follows: a. Avoiding the granting of any resource consent that will allow nitrogen losses from farming activities in the Hakataramea Fresh Water Management unit to exceed the Baseline GMP Loss Rate <u>plus 5 kgN/ha/year,</u> except where Policies 15B.4.13 and 15B.4.15 apply; b. Restricting, in the Hakataramea River Zone, nitrogen losses for the portion of the property irrigated or used for winter grazing to ~~90% or less of~~ the Good Management Practice Loss Rate.

Discussion Regarding Scope

Federated Farmers requested amendment of the policy *to focus on good management practices which would produce positive environmental outcomes within an alternative consenting framework*.

In the further submission Federated Farmers supported in part the submission of Fonterra Co-operative Group and others, with regard to wording for the provision of an alternative to the Farm Portal.

The amendments requested link back to the general discussion on page 4 of the submission relating to flexibility of landuse.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Policy 15B.4.25	Amend Policy 15B.4.24 to focus on good management practices which would produce positive environmental outcomes, within an alternative consenting framework as outlined on page 3 of this submission. Alternatively, mend as follows: ~~Only g~~Granting a resource consent for a farming activity to exceed the nitrogen baseline where the application demonstrates that the local in-stream and groundwater quality limits in Tables 15B(c) and 15B(e) will not be exceeded as a result of the farming activity.

Discussion Regarding Scope

Again Federated Farmers requested amendment of the policy *to focus on good management practices which would produce positive environmental outcomes within an alternative consenting framework*.

In the further submission Federated Farmers supported the submission of DairyNZ, with regard to specific wording for the provision of an alternative to the Farm Portal.

The amendments requested link back to the general discussion on page 4 of the submission relating to embedding the Baseline GMP Loss Rate within the FEP process and to flexibility of landuse.

Federated Farmers also confirms that the reference to Policy 15B.4.24 in the decision requested is a typo, the reference should be to Policy 15B.4.25.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Policy 15B.4.26	Amend Policy 15B.4.24 to focus on good management practices which would produce positive environmental outcomes, within an alternative consenting framework as outlined on page 3 of this submission. Alternatively amend to provide an alternative consenting pathway, as outlined on page 3 of this submission for use in situations where the Farm Portal is not capable (e.g. for farm systems such as arable) or produces aberrant results.

Discussion Regarding Scope

In the further submission Federated Farmers supported the submission of DairyNZ, with regard to specific wording for the provision of an alternative to the Farm Portal.

The focus on good management practices links back to the discussion on page 4 of the submission regarding embedding the Baseline GMP Loss Rate within the FEP process.

Federated Farmers also confirms that the reference to Policy 15B.4.24 in the decision requested is a typo, the reference should be to Policy 15B.4.26.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Policy 15B.4.27	Amend Policy 15B.4.24 to focus on good management practices which would produce positive environmental outcomes, within an alternative consenting framework as outlined on page 3 of this submission. Alternatively, mend as follows: ~~Only g~~Granting a resource consent for a farming activity to exceed the nitrogen baseline where the application demonstrates that the local in-stream and groundwater quality limits in Tables 15B(c) and 15B(e) will not be exceeded as a result of the farming activity.

Discussion Regarding Scope

Again Federated Farmers requested amendment of the policy *to focus on good management practices which would produce positive environmental outcomes within an alternative consenting framework*.

In the further submission Federated Farmers supported the submission of DairyNZ, with regard to the provision of specific wording for an alternative to the Farm Portal.

The focus on good management practices links back to the discussion on page 4 of the submission regarding embedding the Baseline GMP Loss Rate within the FEP process.

Federated Farmers also confirms that the reference to Policy 15B.4.24 in the decision requested is a typo, the reference should be to Policy 15B.4.27.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Section 15B Rule Framework	Build a system of flexibility caps into the Section 15B Rule framework to enable a degree of flexibility for low N dischargers. This will allow land users a limited degree of flexibility to adjust land use in response to physical conditions (such as climate) and markets, and simply to accommodate to cyclical nature of farming. We suggest flexibility caps of 10Kg N/ha/year for Upper Waitaki and 15 kg/ha/year for the Lower Waitaki Zones. As well as providing a degree of land use flexibility this will increase the proportion of farming activities having permitted activity status, which will benefit both the regulator and land users.
Discussion Regarding Scope Federated Farmers requested that a system of flexibility caps be built into the Section 15B Rule framework to enable a degree of flexibility for low N dischargers. Federated Farmers stated that this would allow land users a limited degree of flexibility to adjust land use in response to physical conditions (such as climate) and markets, and simply to accommodate the cyclical nature of farming. Although Federated Farmers did not draft amended wording, the submission did make a very specific request as to what the rule framework should contain. Other submitters should have been in no doubt about the nature of the request, particularly because flexibility caps have been used in several previous plan changes to the Canterbury Land and Water Regional Plan.	
Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.29	Amend Rule 15B.5.29, as follows: 1) Change activity status to non-complying because of the current problems with the Farm Portal. 2) Provide an alternative pathway to estimate N baselines and Baseline GMP Loss Rates, for farm systems and individual situations where the portal is not capable of produces aberrant results.

Discussion Regarding Scope

Federated Farmers requested that activity status be changed from prohibited to non-complying because of current problems with the farm portal and to provide an alternative pathway to the farm Portal, which would operate in Rules 24-27, to avoid the situation where farm systems for which the Farm Portal does not work, would end up in the 'blind alley' of prohibited activity status. Although Federated Farmers requested the alternative pathway in its submission on this rule, it would operate in the earlier Rules 25-27. In the further submission Federated Farmers supported the submissions of DairyNZ (on Rules 15B.5.28 and 15B.5.29), to consolidate all matters with non-complying activity status into Rule 15B.5.28. This is consistent with Federated Farmers' original submission requesting the removal of prohibited activity status.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.30	Amend Rule 15B.5.30 as follows: 1) Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 2) Amend Condition 2 to enable the nitrogen loss calculation to come up to the nitrogen baseline plus 5 kg N/ha/year (up to 30 June 2020) or the GMP Loss Rate plus 5kg N/ha/year (from 1 July 2020). 3) Delete Condition 3. 4) Add matter for control, as follows: Methods to ensure the quality of the Farm Environment Plan and nutrient budget.

Discussion Regarding Scope

Federated Farmers requested the amendment of Rule 15B.5.30 to provide an alternative pathway for farm systems and individual situations where the portal is not capable or produces aberrant results.

Although Federated Farmers did not request specific wording for an amended rule, it is submitted that the request was clear. Federated Farmers followed up by supporting, by way of further submission, the DairyNZ submission which provides wording for an alternative to the Farm Portal.

Because the Hakataramea Zone is largely an Orange Zone, Federated Farmers requested that Condition 2 be amended to enable the nitrogen loss calculation to come up to the nitrogen baseline plus 5 kg N/ha/year (up to 30 June 2020) or the GMP loss rate plus 5 kg N/ha/year (from 1 July 2020).

Although Federated Farmers did not request specific wording for an amended policy, the request was clear and other submitters/potential further submitters should have been in no doubt about its meaning.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.31	Amend Rule 15B.5.31 as follows: 1) Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 2) Amend Condition 2 to enable the nitrogen loss calculation to come up to the nitrogen baseline plus 5 kg N/ha/year (up to 30 June 2020) or the GMP Loss Rate plus 5 kg N/ha/year (from 1 July 2020).

Discussion Regarding Scope

Although Federated Farmers did not request specific wording for an amended rule, it is submitted that the request was clear. Federated Farmers followed up by supporting, by way of further submission, that part of the DairyNZ submission which provides wording for an alternative to the Farm Portal.

Because the Hakataramea Zone is largely an Orange Zone, Federated Farmers requested that Condition 2 be amended to enable the nitrogen loss calculation to come up to the nitrogen baseline plus 5 kg N/ha/year (up to 30 June 2020) or the GMP loss rate plus 5 kg N/ha/year (from 1 July 2020). Although Federated Farmers did not request specific wording for an amended rule, the request was clear and other submitters/potential further submitters could be in no doubt about its meaning.

The request is specifically linked to the discussion on page 4 of the submission relating to flexibility of landuse.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.33	Amend Rule 15B.5.33, as follows: 1) Change activity status to non-complying because of the current problems with the Farm Portal. 2) Provide an alternative pathway to estimate N baselines and Baseline GMP Loss Rates, for farm systems and individual situations where the portal is not capable or produces aberrant results.
Discussion Regarding Scope Federated Farmers requested that activity status be changed from prohibited to non-complying because of current problems with the farm portal and to provide an alternative pathway to the Farm Portal, which would operate in Rules 30-31, to avoid the situation where farm systems for which the Farm Portal does not work, would end up in the 'blind alley' of prohibited activity status. Although Federated Farmers requested the alternative pathway in its submission on this rule, it would operate in the earlier Rules 30-31. In the further submission Federated Farmers supported the submissions of DairyNZ (on polices 15B.5.32 and 15B.5.33), to consolidate all matters with non-complying activity status into Rule 15B.5.32. This is consistent with Federated Farmers' original submission requesting the removal of prohibited activity status.	
Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.34	Amend Rule 15B.5.34 as follows: 1) Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 2) Delete Condition 3. 3) Add matter for control, as follows: Methods to ensure the quality of the Farm Environment Plan and nutrient budget.

Discussion Regarding Scope

Federated Farmers requested the amendment of Rule 15B.5.34 to provide an alternative pathway for farm systems and individual situations where the portal is not capable or produces aberrant results.

Although Federated Farmers did not request specific wording for an amended rule, it is submitted that the request was clear. Federated Farmers followed up by supporting, by way of further submission, that part of the DairyNZ submission which provides wording for an alternative to the Farm Portal.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.39	1) For Green Zone land (or any other land on which water quality outcomes are now met): apply rules which are the same as those for the Valley and Tributaries Zone, with our requested amendments (Rules 15B.5.34 – 15.5.38). 2) Amend Rule 15B.5.39 as follows: Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 3) Delete Condition 3. 4) Add matter for control, as follows: Methods to ensure the quality of the Farm Environment Plan and nutrient budget.

Discussion Regarding Scope

Federated Farmers requested that for Green Zone land (or any other land on which water quality outcomes are now met), the rules to be applied should be the same as those for the Valley and Tributaries Zone (Rules 15B.5.34 – 15.5.38), with Federated Farmers' requested amendments. In other words, Federated Farmers submitted that there is no justification for the 90% of GMP N loss limit for Green Zones. Although Federated Farmers did not write down specific wording for an alternative rule, it is submitted that the intention was clear and Federated Farmers did specifically

state that the rules should be the same as for the Valley and Tributaries Zone (Rules 15B.5.34-15B.5.38).

Federated Farmers further requested the provision of an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results.

Again, although Federated Farmers did not request specific wording for an amended rule, the request was clear. We followed up by supporting, by way of further submission, the DairyNZ submission which provides wording for an alternative to the Farm Portal.

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.40	Amend Rules 15B.5.40 as follows: 1) Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 2) For Green Zone land (or any other land on which water quality outcomes are now met): apply rules which are the same as for the Valley and Tributaries Zone, with our requested amendments (Rules 15B.5.34 – 15.5.38).

Discussion Regarding Scope

Federated Farmers requested the provision of an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results.

Again, although Federated Farmers did not request specific wording for an amended rule, it is submitted that the request was clear. Federated Farmers followed up by supporting, by way of further submission, that part of the DairyNZ submission which provides wording for an alternative to the Farm Portal.

Federated Farmers also requested that for Green Zone land (or any other land on which water quality outcomes are now met), the rules to be applied should be the same as those for the Valley and Tributaries Zone (Rules 15B.5.34 – 15.5.38), with Federated Farmers' requested amendments. In other words, Federated Farmers submitted that there is no justification for the 90% of GMP N loss limit for Green Zones. Although Federated Farmers did not write down specific wording for an alternative rule, the intention was clear and Federated Farmers did specifically state that the rules should be the same as for the Valley and Tributaries Zone (Rules 15B.5.34-15B.5.38).

Specific Provision Queried	*Decision Sought by Federated Farmers*
Rule 15B.5.41	Amend Rule 15B.5.41 as follows: 1) Provide an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results. 2) For Green Zone land (or any other land on which water quality outcomes are now met): apply rules which are the same as those for the Valley and Tributaries Zone, with our requested amendments (Rules 15B.5.34 – 15.5.38).

Discussion Regarding Scope

Federated Farmers requested the provision of an alternative pathway for farm systems and individual situations where the Farm Portal is not capable or produces aberrant results.

Again, although Federated Farmers did not request specific wording for an amended rule, it is submitted that the request was clear, particularly when considered alongside other parts of this submission, including the paragraph on page 3 of Federated Farmers' submission, headed *Alternative consenting pathway (in addition to that in the notified Plan Change, which relies on the Farm Portal)*.

Federated Farmers also requested that for Green Zone land (or any other land on which water quality outcomes are now met), the rules to be applied should be the same as those for the Valley and Tributaries Zone (Rules 15B.5.34 – 15.5.38), with Federated Farmers' requested amendments. In other words, Federated Farmers submitted that there is no justification for the 90% of GMP N loss limit for Green Zones. Although Federated Farmers did not write down specific wording for an alternative rule, the intention was clear and Federated Farmers did specifically state that the rules should be the same as for the Valley and Tributaries Zone (Rules 15B.5.34-15B.5.38).