Tabled at Hearing 30/09/14

Before the Independent Commissioners

In the Matter of:	the Resource Management Act 1991
And	
In the Matter of:	the hearing of submissions and further submissions on Variation 1 to the Proposed Canterbury Land and Water Regional Plan (Selwyn - Te Waihora) (**Variation 1**)

Legal Submissions on behalf of ANZCO Foods Limited (Submitter ID 52274)

Dated: 30 September 2014

Hearing dates: 16 September to 28 November 2014

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Introduction

1. I appear on behalf of ANZCO Foods Limited (**ANZCO**).

2. As owner and operator of a livestock processing plant in Knyvetts Road, Rakaia, ANZCO has an interest in and is affected by Variation 1 to the Proposed Canterbury Land and Water Regional Plan (Selwyn - Te Waihora) (**Variation 1**). It has accordingly made submissions and further submissions on Variation 1.

3. Evidence in support of ANZCO's submissions will be given by:

   (a) Mr Mark Clarkson, Managing Director of ANZCO. Mr Clarkson will provide a broad overview of ANZCO's operations and the basis for ANZCO's involvement in Variation 1.

   (b) Mr Dallas Woodford, Plant Manager at ANZCO's Rakaia livestock processing plant. Mr Woodford will provide an overview of the nature and scale of ANZCO's operations at Rakaia and its resource consenting framework. .

   (c) Mr Stephen Douglass, hydrogeologist, URS New Zealand Ltd. Mr Douglass will address the technical aspects of the rules in Variation 1 concerning industrial and trade waste discharges, with a particular focus on the limits for catchment nitrogen loads proposed in the notified version of Rules 11.5.25 and Table 11(i).

   (d) Mr Tim Ensor, environmental planner, URS New Zealand Ltd. Mr Ensor will address the aspects of Variation 1 raised in ANZCO's submissions from a planning perspective, and set out the textual amendments he considers are appropriate to address ANZCO's concerns.

4. The legal submissions that follow will focus on the following:

   (a) a brief overview of ANZCO's interest in Variation 1;

   (b) preliminary legal matters;

(c) discussion of key issues of concern to ANZCO; and

(d) summary of decisions sought by ANZCO.

ANZCO's Interest in Variation 1

5. ANZCO's Knyvetts Road plant (**Plant**) is a livestock processing facility located on land that ANZCO shares with the venison processing plant operated by Mountain River Limited. For the purposes of this hearing, it is relevant to note that the Plant lies within the Rakaia-Selwyn combined surface and groundwater allocation zone.

6. The Plant currently processes in the order of 270, 000 stock units per annum (comprising 12% of the livestock produced in the South Island annually)[1] and employs 92 staff who are predominantly residents of the local community.[2] The Plant supports the Ashburton District and Canterbury Regional economy not only through employment, but also through the engagement of local contractors and other local suppliers of goods and services.[3] In doing so, the Plant contributes to the social and economic well-being of the District and wider Canterbury Region.

7. As the Plant is located in a rural area with no access to reticulated services, ANZCO's operations are reliant on a secure potable groundwater supply.[4] Land based wastewater disposal is also an essential part of the Plant's operations.[5]

8. ANZCO holds a suite of regional resource consents that authorise the Plant's current operations and make provision for its processing capacity to increase to one million stock units per annum.[6] In doing so, the consents give ANZCO the flexibility it needs to be able to adjust its operations to meet seasonal demand and the changing needs of its farm suppliers into the future (including during drought periods).[7]

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[1] Evidence in Chief (**EIC**) of Mr Woodford, at para 21.
[2] Ibid, at para 23.
[3] Ibid, at para 26.
[4] Ibid, at paras 40 to 41.
[5] Ibid, at para 49.
[6] Ibid, at paras 65 and 66. Copies of these consents are included as Annexure C to the EIC of Mr Woodford.
[7] Ibid.

9. ANZCO has become involved in Variation 1 primarily to ensure that it:[8]

   (a) can continue to operate at the processing levels contemplated by its resource consents; and

   (b) has the ability to seek resource consents:

      (i) when its current consents expire;

      (ii) to alter current consents to take account of changing conditions; and

      (iii) to further develop the business in response to opportunities.

Preliminary Legal Matters

10. The Section 42A Report provides a summary of the statutory requirements for regional plans and the associated tests.[9] For the sake of brevity, I do not propose to repeat those here. Accordingly, I respectfully refer to and adopt that summary.

11. Mr Maw, for the Council, has subsequently provided supplementary legal submissions to the Panel on the implications of the National Policy Statement for Freshwater Management 2014 (**NPSFM**) for Variation 1 (dated 16 September 2014). I concur with Mr Maw's analysis of the key provisions of the NPSFM and accept the Council's position on this issue.

Key Issues

12. ANZCO has refined its position on the matters raised in its submissions and further submissions on Variation 1 following a review of the Council's Section 42A Report (**Officer's Report**) and through the preparation of expert evidence.

13. The legal submissions that follow therefore focus on the residual issues of concern to ANZCO, which relate to:

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[8] Clarkson EIC, at para 22.
[9] Section 7 (pages 68 to 98).

(a) industrial discharges vs farming activities (concerning ANZCO's submission on Policy 11.4.16 and Rules 11.5.6. to 11.5.17);

(b) nutrient limits for industrial discharges (concerning ANZCO's submission on Table 11(i), Policies 11.4.6, 11.4.10 and 11.4.11, and Rules 11.5.25 and 11.5.26);

(c) water takes for industrial purposes (concerning ANZCO's submission on Policy 11.4.23 and Rule 11.5.36); and

(d) transfers of water permits (concerning ANZCO's submission on Policy 11.4.22 and Rules 11.5.37 and 11.5.38).

14. The decisions now sought by ANZCO, in terms of specific textual amendments to the notified version of Variation 1, are set out in **Annexure A** to these legal submissions.

Industrial Discharges vs Farming Activities

15. ANZCO's submission sought various amendments to clarify that the policies and rules in Variation 1 concerning farming activities do not apply to the land based disposal of industrial processing wastewater.[10]

16. As Mr Ensor will explain, providing such clarification is necessary to remove the ambiguities that currently exist in Variation 1 and to avoid the debate that could occur at consenting stage around which rules are intended to apply to industrial wastewater discharges.[11]

17. While this view does not appear to be shared by the Reporting Officer,[12] Mr Ensor considers that ANZCO's concerns could and should be addressed by:[13]

(a) the deletion of the words "*Despite Rules 11.5.6 to 11.5.15....*" at the beginning of Rule 11.5.25; and

(b) the inclusion of the following new rule:

[10] Submission Point Id V1pLWRP-1474, 1476 and 1477.
[11] Ensor EIC, at paras 68 and 70.
[12] See for example page 209 of the Section 42A Report, at para 11.330.
[13] Ensor EIC, at paras 69 and 72.

"11.5.X Rules 11.5.6 to 11.5.15 do not apply to the use of land for the land based disposal of wastewater from industrial processing plants, including livestock processing plants."

18. In my submission, these proposed amendments are necessary and appropriate to ensure that the rules in Variation 1 are applied in the way intended by the Council and do not give rise to the inefficiencies identified by Mr Ensor in his evidence.

Nutrient Limit for Industrial Discharges

19. The notified version of Rule 11.5.25 provides for the replacement of existing consented industrial wastewater discharges as a discretionary activity, provided that:

    (a) the discharge in additional to all lawfully established discharges does not exceed the nitrogen load limit in Table 11(i) for industrial or trade processes of 106 T/year (condition 1); and

    (b) the best practicable option is used for the treatment and discharge (condition 3).

20. It is understood that the 106 T/year limit in Table 11(i) is intended to reflect the cumulate load of all existing consented discharges from industrial and trade process activities within the Selwyn-Te Waihora Sub-Regional Area (**Sub-Regional Area**), and is based on the estimates provided in the Loe Report.[14]

21. ANZCO's concerns with this Rule and the supporting policy framework for industrial discharges are set out in the evidence of ANZCO's technical witness, Mr Douglass. In summary, it is Mr Douglass' evidence that:

    (a) The estimates provided in the Loe Report were not intended to be used as a basis for establishing and implementing catchment limits

[14] Loe B. (2013). "*Selwyn-Waihora Catchment: Estimating nitrogen and phosphorus contributions to water from discharges of sewage effluent from community sewerage systems, and milk processing wastewater*" (report prepared for the Council by Loe Pearce and Associates).

for Nitrogen.[15] The Loe Report specifically acknowledges this, noting that a more specialised assessment procedure would be required, particularly for meat processing and centralised wastewater systems.[16]

(b) The Loe Report relies on only generalised estimates of Nitrogen loads for the smaller-scale point source discharges (including those from ANZCO's Rakaia operations).[17] However, it is absent any details of the methodology used to derive those estimates, particularly those from livestock processing wastewater discharges.[18]

(c) There is no information in the Loe Report, section 32 report or other supporting documentation for Variation 1 that enables ANZCO to determine how much of the proposed Nitrogen limit is attributed to its discharges.[19] This provides no certainty for ANZCO's Rakaia operation as to its assumed baseline nitrogen load and how this should be managed in the future.[20]

(d) The policy and rule framework for industrial discharges under Variation 1 provides no accounting system or other mechanism that enables consent holders to determine when the Nitrogen limit in Table 11(i) has been reached.[21]

(e) Variation 1 should maintain its focus on farming activities, while enabling the industrial and trade water activities to continue to operate in accordance with good management practice.[22]

22. In response to ANZCO's (and other parties') submissions, the Reporting Officer recommends that:[23]

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[15] Douglass EIC, at para 38.
[16] Ibid.
[17] Ibid, at para 39.
[18] Ibid, at para 30.
[19] Ibid, at para 27.
[20] Ibid, at para 39.
[21] Ibid, at para 28.
[22] Ibid, at para 35.
[23] Section 42A Report, at pages 164, 203 to 205.

(a) the Nitrogen Limit for industrial and trade processes be deleted from Table 11(i); and

(b) Policies 11.4.6 and 11.4.11 be deleted and that consequential amendments be made to Policy 11.4.10.

23. It is understood that the Reporting Officer's recommendations are intended to allow the continuation and subsequent renewal of existing consented discharges, and to ensure that existing consents are not required to be reviewed when Variation 1 becomes operative.[24]

24. ANZCO's expert witnesses, Mr Douglass and Mr Ensor, agree with the Reporting Officer's recommendations in so far as they relate to existing consented discharges and their renewal.

25. In my submission, the Officer's recommendations are appropriate and should be adopted as they recognise:

(a) the level of existing investment in industrial processing activities in the Sub-Regional Area and the role those activities have in terms of supporting primary production activities and the Region's economy and the well-being of its communities.

(b) that based on current estimates, the contribution of industrial wastewater discharges to the overall Nitrogen load for the Sub-Regional Area is very small (2%) and is even smaller for meat and food processing (less than 1%).[25]

(c) that industrial wastewater discharges are already carefully managed and controlled through resource consent conditions (including restrictions on mass nitrogen loading rates).[26]

New Industrial Discharges

26. Rule 11.5.25 as notified introduces a discretionary consenting option for new industrial or trade process discharges that replace an existing farming

[24] Ibid.
[25] Douglass EIC, at para 31.
[26] Ibid, at para 32.

activity. To utilise this consenting option, discharges must comply with a 15 kgN/ha/year limit (condition 2).

27. In response to submissions, the Reporting Officer recommends that the 15 kgN/ha/year limit be deleted and that new discharges instead be enabled *"only where the nitrogen loss from the discharge is less than the lawfully permissible nitrogen loss from the farming activity that is replaced."* (Policy 11.4.10(c) and Rule 11.5.25(2)).[27]

28. However, as Mr Douglass and Mr Ensor will explain, both the notified version and the Officer's recommendations of Policy 11.4.10 and Rule 11.5.25 effectively preclude livestock processors such as ANZCO from accessing this discretionary consenting option. In summary, this is because in order to comply with the conditions of this option:[28]

    (a) the discharge would have to replace an existing farming activity with a lesser potential water quality effect. In ANZCO's case, replacing an existing dairy farming activity would be the only option if it needed more land for its wastewater discharges. However, the lack of availability of such land adjacent to the Plant and the costs associated with piping wastewater to the nearest available land, leave few options for ANZCO.

    (b) ANZCO would need to store its wastewater so that it could discharge only minimal amounts to land during periods when soil moisture is high and pasture growth low. This is simply not a practicable option for ANZCO, as it is unable to store wastewater for long periods of time.

29. Mr Douglass and Mr Ensor also note that the approach adopted in the Reporting Officer's recommendations relies on the use of OVERSEER$_{TM}$ to estimate Nitrogen loss.[29] However, OVERSEER was not developed to be used to model livestock processing wastewater discharges to land[30] and the use of "nitrogen loss" is inconsistent with the current management

[27] Section 42A Report, at pages 204 and 205.
[28] Douglass EIC (paras 41 to 56); Ensor EIC (paras 43 to 52).
[29] Ensor EIC, para 55.
[30] Douglass EIC, para 51.

practice adopted for ANZCO's and other meat processing facilities in the Sub-Regional Area, which is based on Nitrogen loading.[31] In ANZCO's case, the load limit is 150 kgN/ha/year averaged over two years.[32]

30. In Mr Douglass' view, adopting a net loading rate limit of 150 kgN/ha/yr averaged over two years would enable livestock processors such as ANZCO to utilise the discretionary consenting option under Rule 11.5.25(2).[33] Mr Ensor agrees and has proposed amendments to Policy 11.4.10 and Rule 11.5.25(2) accordingly.[34]

31. In Mr Ensor's opinion, the proposed amendments will contribute to meeting the objectives of the NPSFM, Canterbury Regional Policy Statement and the proposed Canterbury Land and Water Plan and are more efficient than the notified version of Policy 11.4.10 and Rule 11.5.25. Mr Ensor also considers that, due to the modest expansion forecast for the livestock processing industry for the life of Variation 1 and the proposed Nitrogen load limit, the environmental benefits of the notified version of Policy 11.4.10 and Rule 11.5.25 will not be substantially reduced by the amendments he has proposed.

32. In my submission, based on Mr Ensor's evidence, the proposed amendments will provide an appropriate and equitable framework for new industrial (or expansion of existing) discharges within the Sub-Regional Area.

Industrial Water Takes

33. ANZCO's submission[35] raised concerns about the requirement under the notified version of Policy 11.4.23 that takes for irrigation would only being reallocated to existing resource consent holders (on consent renewal) at a rate and volume that reflects "*demonstrate use*". ANZCO was concerned that this approach did not reflect the realities of industrial users in the Sub-

[31] Ensor EIC, para 53.
[32] Douglass EIC, para 55.
[33] Ibid.
[34] Ensor EIC, para 59.
[35] Submission Point ID V1pLWRP-14787 and 93.

Regional Area, particularly livestock processors who must secure water allocation ahead of demand.

34. A similar concern was raised by ANZCO in relation to Rule 11.5.32(6).

35. In relation to Policy 11.4.23, the Reporting Officer accepts that an exemption for industrial and trade processors is appropriate and has recommended an amendment to that effect in Policy 11.4.23 (i.e. linking Policy 11.4.23 to "reasonable use" and Schedule 10 of the pLWRP).[36] No change to Rule 11.5.32(6) is recommended.

36. In Mr Ensor's view, the Reporting Officer's recommended amendment is appropriate.[37] It is therefore respectfully requested that the Officer's Recommendations on Policy 11.4.23 be adopted by the Hearings Committee.

37. I note for completeness that ANZCO accepts the Reporting Officer's explanation and response in relation to its submission on Rule 11.5.32(6).[38] Accordingly, ANZCO seeks no further amendments to Rule 11.5.32(6).

Water Permit Transfers

38. ANZCO's final concern relates to Variation 1's regime for water transfers. Due to the allocation status of the Rakaia-Selwyn combined surface and groundwater allocation zone, water permit transfers would provide the only option for ANZCO to secure additional water for its Rakaia operations, should that become necessary in the future.

39. However, as currently drafted, Policy 11.4.22(c) and Rule 11.5.37(4) prohibit such transfers unless 50% of the allocation to be transferred is surrendered. It is understood that this approach is intended to deter transfers from taking place, and that is the method the Council has chosen for implementing Policy B6 of the NPSFM (i.e. phasing out over-allocation).[39]

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[36] Section 42A Report, at page 250.
[37] Ensor EIC, para 76.
[38] Section 42A Report, at page 271 (paras 13.247 and 248).
[39] Section 32 Report, page 176.

40. ANZCO's submission[40] therefore sought amendments to Policy 11.4.22(c) and Rule 11.5.37(4) to remove the 50% surrender requirement and instead allow a case by case assessment of the rate and volume of water allocation that may be required to assist in phasing out over-allocation.

41. Mr Ensor will address the merits of the Council's policy and rule framework for water permit transfers. It is his view that, unlike the amendments sought by ANZCO, the current framework will not give effect to Policies B3 (efficient allocation of water) or B6 of the NPSFM.[41] Nor would it be consistent with the approach taken by the Hearings Commissioners in respect of the water transfer provisions in the pLWRP.[42]

42. Mr Ensor is also of the view that other mechanisms are available to the Council to address over-allocation (such as consent review under section 128 of the RMA), which could be initiated should it appear that insufficient process is made in meeting the objectives of the NPSFM, RPS and pLWRP in time.[43]

43. Mr Ensor has proposed amendments to Policy 11.4.22 and 11.5.37 to enable the case by case assessment proposed by ANZCO,[44] which are reproduced in **Annexure A** to these legal submissions. Mr Ensor also offers a proposed amendment to Rule 11.5.38 (Community Water Supplies), which he considers would also address ANZCO's concerns.

44. In my submission, the amendments proposed by Mr Ensor would provide a more appropriate, equitable and efficient approach to water permit transfers than currently provided for under Variation 1.

Summary of Decisions Sought by ANZCO

45. ANZCO respectfully requests that its submission and further submissions be allowed to the extent that the policies and rules in Variation 1 be amended in the manner set out in **Annexure A** to these legal submissions.

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[40] Submission Point ID V1PLWRP-1510 , 1511 and 1512.
[41] Ensor EIC, at paras 86 to 92.
[42] Report and Recommendations of the Hearings Commissioners adopted by the Council as its decision on 5 December 2013, at paras 362 to 363 (pages 73 - 74).
[43] Ensor EIC, para 93.
[44] Ensor EIC, Annexure B.

46. I concur with the Council's suggestion[45] that before making its final decision on Variation 1, the Hearings Commissioners produce an interim report to give the Council and submitters a chance to comment on its recommendations. In my submission, this would provide an appropriate method whereby unintended consequences of the Hearings Commissioners recommendations and/or minor errors can be identified and addressed prior to the Commissioners' final decision being issued.

G C Hamilton
Counsel for ANZCO Foods Limited
30 September 2014

[45] Set out at page 108 of the Section 42A Report (at para 7.209).

ANNEXURE A – SUMMARY OF DECISIONS SOUGHT BY ANZCO FOODS LIMITED

<table>
<tr><th>Variation 1 Provision:</th><th>Decisions sought by ANZCO (incorporating changes resulting from review of the Section 42A Report and expert evidence)[1]</th></tr>
<tr><td colspan="2">Industrial Wastewater Discharges / Nutrient Limits</td></tr>
<tr><td>Table 11(i)</td><td>Amend Table 11(i) as follows:
Table 11(i): Catchment Target and Limits for Nitrogen Losses from Farming Activities. ~~Community Sewerage Systems and Industrial or Trade Processes~~
<table>
<tr><th>~~Catchment~~</th><th>~~Activity~~</th><th>~~Nitrogen Load (tonnes/year)~~</th><th>~~Limit/ Target~~</th></tr>
<tr><td>Selwyn Waihora</td><td>Farming</td><td>4830</td><td>Target to be met by no later than 2037</td></tr>
<tr><td></td><td>~~Community Sewerage systems~~</td><td>~~62~~</td><td>~~Limit~~</td></tr>
<tr><td></td><td>~~Industrial or trade processes~~</td><td>~~106~~</td><td>~~Limit~~</td></tr>
</table></td></tr>
<tr><td>Policy 11.4.6</td><td>Delete Policy 11.4.6:
~~"11.4.6 Limit the total nitrogen load entering Te Waihora/Lake Ellesmere by restricting the losses of nitrogen from farming activities, industrial and trade processes and community sewerage systems in accordance with the target (the limit to be met over time) and limits in Table 11(i).~~"</td></tr>
<tr><td>Policy 11.4.10</td><td>Amend Policy 11.4.10 as follows:
"11.4.10 Require any person discharging wastewater, liquid waste or sludge waste from an industrial or trade process into or onto land to:
(a) adopt the best practicable option to manage the treatment and discharge of contaminants ~~and meet the nitrogen load limit for industrial and trade processes in Table 11(i) unless Policy 11.4.11 applies~~; and
(b) comply with the terms of any discharge permit that existed as at 13 February 2014, for the term of that discharge permit; and
(c) enable new discharges only where the net nitrogen ~~loss~~ load ~~from the change is less than the lawfully permissible nitrogen loss from the farming activity that is replaced~~ does not exceed 150 kg nitrogen per hectare per annum."</td></tr>
</table>

[1] Amendments recommended in the Officer's Report are shown in tracked changes (additions shown in underline; deletions in ~~strikethrough~~). Additional amendments sought by ANZCO are shown in tracking and grey shading.

Variation 1 Provision:	***Decisions sought by ANZCO (incorporating changes resulting from review of the Section 42A Report and expert evidence)*** [1]
Policy 11.4.11	Delete Policy 11.4.11: *~~"11.4.11 Enable the discharge of wastewater, liquid waste or sludge waste from an industrial or trade process into or onto land which cumulatively will result in the exceedance of the nitrogen load limit for industrial and trade processes in Table 11(i) only in circumstances where the activity is replacing a farming activity and the discharge will not exceed 15 kg nitrogen per hectare per annum."~~*
Rule 11.5.25	Amend Rule 11.5.25 as follows: *"11.5.25 ~~Despite Rules 11.5.6 to 11.5.15, w~~Within the Selwyn Te Waihora catchment the discharge of any wastewater, liquid waste or sludge waste from an industrial or trade process, including livestock processing, excluding sewerage, into or onto land, or into or onto land in circumstances where a contaminant may enter water is a discretionary activity where the following conditions are met:* *1. The discharge ~~in addition to all lawfully established existing discharges does not exceed the nitrogen load limit in Table 11(i) for industrial or trade processes~~ was lawfully established prior to 13 February 2014; or* *2. ~~The activity is replacing an existing farming activity and the discharge does not exceed 15 kg nitrogen per hectare per annum~~ ~~Where the nitrogen loss from the discharge is less than the lawfully permissible nitrogen loss from the farming activity that is replaced~~ ~~The net nitrogen load does not exceed 150 kg nitrogen per hectare per annum~~; and* *3. For all discharges, the best practicable option is used for the treatment and discharge."*
Industrial Discharges / Farming Activities	
Policy 11.4.16	Retain notified version of Rule 11.4.16 (as follows), provided that a new rule 11.5.X (as outlined below) is included in the Variation: *"11.4.16 Despite Policy 11.4.14 and 11.4.15, from 2037 no property or farming enterprise shall leach more than 80 kg of nitrogen per hectare per annum."*
Rules 11.5.6 to 11.5.15	Include a new Rule before Rule 11.5.6 which provides as follows (or similar): *~~"11.5.X Rules 11.5.6 to 11.5.15 do not apply to the use of land for the land based disposal of wastewater from industrial processing plants, including livestock processing plants."~~*
Rule 11.5.16	Retain notified version of Rule 11.5.16 (as follows) provided that a new Rule 11.5.x (as noted above) is included in Variation 1. *"11.5.16 The discharge of nitrogen, phosphorus, sediment and microbial contaminants onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene s15(1) of the RMA, in the Selwyn Waihora catchment, is a permitted activity, provided the following condition is met:* *1. The land use activity associated with the discharge is authorised under Rules 11.5.6 to Rule 11.5.14."*

Water Abstraction	
Policy 11.4.23	Amend Policy 11.4.23 as follows: *"11.4.23 Only reallocate water to existing resource consent holders at a rate and volume that reflects ~~demonstrated~~ reasonable use as calculated in accordance with Schedule 10 to provide a volume required to meet demand conditions in eight and a half out of ten years for a system with an application efficiency of 80%."*
Transfer of Water Permits	
Policy 11.4.22	Amend Policy 11.4.22 as follows: *"11.4.22 Restrict the transfer of water permits within the Rakaia-Selwyn and Selwyn-Waimakariri water allocation zones to minimise the cumulative effects on flows in hill-fed lowland and spring-fed plains rivers from the use of allocated but unused water, by requiring that:* *(a) Irrigation scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps do not transfer their permits to take and use groundwater; and* *(b) No permit to take and use groundwater is transferred from down-plains to up-plains~~; and~~* *~~(c) In all other cases 50% of any transferred water is surrendered.~~"*
Rule 11.5.37	Amend Rule 11.5.37 as follows: *"11.5.37 The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of water relates and where the location of the take and use of water does not change) of a water permit to take or use surface water or groundwater within the Selwyn Waihora catchment, is a restricted discretionary activity, provided the following conditions are met:* *...* *~~4. If the transfer is within the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones 50% of the volume of transferred water is to be surrendered."~~* ***The exercise of discretion is restricted to the following matters:*** *...* *6. The method of preventing fish from entering any water intake~~;~~ **and*** *~~7. Where the surface water and/or groundwater allocation limits set in Section 11 are exceeded any reduction in the rate or volume of take that may be required to assist with the phasing out of that exceedance.~~*
Rule 11.5.38	Amend Rule 11.5.38 as follows: *"11.5.38 Despite Rule 11.5.37, the permanent transfer, in whole or in part, of a water permit to take or use surface water or groundwater in the Selwyn Waihora catchment, is a discretionary activity provided the following condition is met:* *1. The take ~~is to be transferred to a local authority and~~ is to be used for community water supply."*