

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

Questions from the Hearing Commissioners on the Section 42A Report

Paragraph	Question
2.16	Was Hurunui Water Project eligible under Sched 1 cl 8(1) to lodge a further submission?
3.28	Paragraphs 3.28 to 3.31 discuss the Horticulture NZ submission point, but no conclusion is provided regarding whether or not it is 'in scope'. Do the authors have a recommendation?
3.32	Meridian and Trustpower submission points are stated, but there is no discussion of the matter they raise or whether or not those submissions are 'in scope'. Do the authors have a recommendation?
5.6	Is at least one submitter asking for an alternative as an <i>option</i> , rather than as a <i>replacement</i> ?
6.35	Is strike-through of 'good practice' requested in Ngai Tahu submission?
6.75	Would the information collected (audit grade, auditor details, nutrient losses) be associated on the Farm Portal with identification details, eg name, address, description of properties?
6.78	Is the Farm Portal a public register? Has the Council adopted a policy of how it will exercise its power to withhold classes of information recorded on the Farm Portal? Is that policy public?
6.112	"...use of the words 'should be endorsed,' that the process change Schedule 28 ..." Is this a reference to Submission Point PC5 LWRP 308? Do the words "that the process change Schedule 28" clearly and completely state what is intended by that phrase?
6.137	Rule 5.41A is discussed in terms of a permit being granted prior to the notification of PC5. However Rule 5.41A(b)(i) contains a date of 18 January 2014 whereas the date of notification was 13 February 2016. Can the authors clarify the intent?
6.163	Is the word 'sort' meant to be 'sought'?
7.5	"At the end of this section..." Apparently this is not a reference to the end of Section 7. Can a more specific reference be given?
7.66	The definition is about a <i>person</i> . Should the word 'that', the first two times it is used, be 'who'?
7.67	Proposed Policy 4.41A(b): Should be word 'proportional' be 'proportionate'?
7.104	Does the first line of clause (a) correctly express the amendment requested in Ravensdown's submission at pg 12, top right cell?
7.126	Is the reference to Rule 5.45A(3) correct?
7.134	In the quote from Dairy NZ is the reference to Rule 5.45B correct?
7.182	Does this discussion address submission points asking to delete the 5ha/ha/yr above Baseline Loss Rate in Policy 4.38AA(a), eg F&B?
7.205	Are the rule references correct?
7.274	'...these submission points are discussed in Section 6 ...' Give a specific reference to where in Section 6 of this report Beef & Lamb's submission point is discussed.
7.293	Would the amendments requested undermine the intended effect of the <i>terms</i> of existing resource consents?
7.301	In the event of failure of compliance with nutrient loss limits and outcomes, does the NUG model <i>assist</i> the Council with its administration/enforcement duties?
8.13	1. In terms of the issue raised by Beef and Lamb, is there potential for the different content of the Targets in Schedule 7 and the GMPs in Schedule 28 to cause confusion?

Paragraph	Question
	2. Would it be more efficient and effective if those provisions were better aligned?
8.53	In the first line of proposed Policy 4.41B, is the subject of 'are' 'attainment?' If so, should 'are' be replaced by 'is?'
8.54	Proposed definition of <i>audit</i> , last word 'property.' Is it the <i>property</i> that is assessed? Or is it the <i>farming activity</i> ?
8.73}	
8.80}	On the Ngai Tahu request that an auditor is to have completed a course approved by Ngai Tahu, as it is the Council that is the regulator, should the <i>approval</i> function be that of the Council, not Ngai Tahu (even if Ngai Tahu may have a <i>recommendatory</i> role)?
8.78	Proposed amendment to the definition of <i>Certified Farm Environment Plan Auditor</i> , clause (b): 'an auditor that is operating ...' As an auditor is to be a person, should 'that' be replaced by 'who'?
8.88-91	Does the Part A list in the Table of Contents for Change 5 on page 2 contain an entry for Schedule 7? If so, is that relevant to the Murchisons' submission point?
8.98	In response to issues raised by Beef and Lamb: <ol style="list-style-type: none"> 1. Have the authors considered as a minimum aligning the Management Area topics in Schedule 7 with the Topics in Schedule 28? 2. Would aligning the Management Area topics in Schedule 7 with the Topics in Schedule 28 assist with promoting the knowledge of and adoption of the GMPs in the document "<i>Industry-agreed Good Management Practices relating to water quality, 18 September 2015</i>"? 3. Some of the GMPs in the document "<i>Industry-agreed Good Management Practices relating to water quality, 18 September 2015</i>" are not included in the GMPs in Schedule 28. Is that because they do not relate to Overseer inputs (e.g. the Land, Ground Cover GMP "Retire all Land Use Capability Class 8 and either retire, or actively manage, all Class 7e to ensure intensive soil conservation measures and practices are in place")? 4. Would it be beneficial to include GMPs contained in the document "<i>Industry-agreed Good Management Practices relating to water quality, 18 September 2015</i>" that are not listed as GMPs in Schedule 28 in the Objectives or Targets in Schedule 7?
8.133	Has a word been omitted from the penultimate sentence of this paragraph? How may the author's intention be understood?
8.136	The "public access routes" might have utility in enhancing public access for the wider community if the individual FEPs are publicly available documents. Will the FEPs be freely publicly available?
8.151	<ol style="list-style-type: none"> 1. Would the Irrigation Management Targets (2), (3) and (4) already be required by consent conditions on irrigation water take consents? 2. If so, is there any value in duplicating them in the FEP?
8.157	<ol style="list-style-type: none"> 1. Is the Collected Animal Effluent Management Target (1) already a legal requirement? 2. Would Targets (2), (3) and (4) already be required by consent conditions on farm diary effluent discharge consents? 3. If so, is there any value in duplicating them in the FEP?
8.172	Can the authors explain what managing "nutrient use efficiently" means?
8.194	Last sentence. Would an amendment suggested at the hearing come within the scope of the Council's authority to accept or reject amendments requested in primary submissions?
Pg 160	Recommended revision of Schedule 7. Irrigation Management Targets Number (2). Would the intent be unaltered but the meaning clearer if this target were to read: The performance of existing irrigation systems is assessed annually and all irrigation systems are maintained ... efficiency.

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8.230	Can the authors explain why it is considered appropriate to align Schedule 7A with the GMPs in the document <i>"Industry-agreed Good Management Practices relating to water quality, 18 September 2015"</i> but it is not recommended to do the same for Schedule 7?
8.233	Recommended subclause 3(c). By the words "any granted resource consent" do you mean "any condition attached to a current resource consent.?"
10.33	Identify the recent water quality data referred to that tend to show the limited capacity for further intensification mentioned.
10.59	Suggested revision of proposed Rule 5.42A: "...the landholder may, in his or her discretion..." Would this effectively substitute the landholder for the regulator, undermining the ability of the latter to perform its statutory duties?
10.74	Second sentence "...if the submissions are considered to be 'on' PC 5 ..." On what reasoning is it arguable that the amendment would be 'on' the plan change?
12.14	This and later passages in the report (eg 14.6, 14.11) refer to the Mackenzie Agreement. I do not think I have a copy of that document. Is it relevant, and appropriate to influence our deliberations on the submissions on PC 5? If so, can copies be provided for us?
15.31	"...it is suggested that these submitters provide at the hearing the actual standard that they seek." If a submitter asks at the hearing for a standard not detailed in any primary submission, would the Council have scope to include that standard in the plan by decision on the submissions?
15.69	Would altering values in Table 15B(c) as recommended in this paragraph be authorised by RMA Schedule 1, clause 10(2)(b) or clause 16(2)? Please indicate how the alteration would qualify.
15.80	If the commissioners were minded to amend the Ahuriri Zone nitrogen load limit, what would the amended limit be and which submission point would enable that amendment?
15.80	In the last sentence of this paragraph it is suggested that we may consider it appropriate to amend the Ahuriri Zone nitrogen load limit. Would such an amendment be within the scope of the Council's authority in making decisions on the submissions on the plan change; or under Sched 1, cl 16(2)? If so, specifically what amendment is suggested?
15.91	Shaw and Palmer (2015) (pp.67-68) is referenced. Referring to that report, can the authors briefly explain how the "set CLUES receiving environment load" is determined?
15.92	"The submitter provides limited detail ..." Is this a reference to submission point PC5 LWRP 402, or what? Last sentence: "Submitters are invited to further explain ... at the hearing." Is that submission point sufficiently specific and detailed to found a decision to amend the plan change?
16.24	What iwi resource management plans additional to those listed in para 16.24 (or at 15B.3 Iwi Management Plans) are relevant to Canterbury or parts of Canterbury and should be taken into account in respect of PC5?
16.25	1. The statement "Given appropriate Waitaki specific documentation is in preparation and PC5 is yet to be operative, the Council expects this will be available in the near future to address Ngāi Tahu concerns." Is this statement referring to the 'in preparation' iwi management plan for the Waitaki sub-region referred to in para 16.23? 2. Is restricting the matters of discretion (in rules 15B.5.18B, 20, 26, 31 & 45) re wahi tapu and wahi taonga to those identified in an iwi management plan potentially reducing the level of protection where a wahi tapu or wahi taonga may not be identified in an iwi management plan because it is of a sensitive nature or is simply not specified in an iwi management plan? 3. If an iwi management plan is not the primary tool for identifying wahi taonga or wahi tapu, and is rather a primary tool to assist in identifying issues of resource management significance, does

Paragraph	Question
	the Ngāi Tahu submission requesting deletion of “identified in an iwi management plan” from the matters of discretion in the rules referred to have merit?
16.34	Would the Council have authority, by decision on submissions, or otherwise in a regional plan, to “enable access” by DoC officials to enter private property?
16.37	The use of kaitiakitanga in policy 15B.4.1 in the manner proposed is potentially confusing. Management of the resource to achieve the freshwater outcomes in Tables 15B(a) and 15B(b) is what is intended, the exercise of kaitiakitanga by manawhenua will assist in achieving that outcome, but kaitiakitanga occurs regardless of the quality of freshwater not because of it. The Policy could be made clearer if the wording or similar to that used in the Tables 15B(a) and 15(B(b) under the heading ‘Tangatawhenua Attributes’ was incorporated into the policy, ie; instead of referring to the 2 tables in the policy the actual values and activities sought to be achieved are included in the policy. Is that possible using the consequential amendment clause 16 or could it pass as interpretation of the Ngāi Tahu submission point PC5 LWRP-871?
16.37	With regard to the recommended amendment to Policy 15B.4.1, is the exercise of kaitiakitanga the means by which the tangata whenua freshwater outcomes are to be achieved or is the policy intended to separately support the exercise of kaitiakitanga and the achievement of those outcomes?
19.31	The recommended amendment to Policy 15B.4.16 also places a 15 year limit on consent durations for aquaculture. What is the duration of existing aquaculture consents?
22.7	Would amending the plan to extend the 90% to additional areas be within the scope of the Council’s authority in making decisions in submissions on the plan change?
22.47	Does the <i>current level</i> of activity in the FMUs listed by F & B expose any significant indigenous biodiversity to harm?
22.48	Could the risk of constraining the policy be avoided by using a phrase such as ‘Without limiting the generality of the protection of all significant indigenous vegetation and significant habitats of indigenous fauna and their ecosystem functions ...’? Would inserting such a phrase be in scope?
22.74	Would the intended meaning of the first sentence of this paragraph have been better understood if, after the words ‘does not require’ the words ‘exercise of’ had been inserted?
22.137	<ol style="list-style-type: none"> 1. With regard to the recommended amendment to Policy 15B.4.15(a) can the authors explain what the term “the portion of exceeded nitrogen loss” means? 2. In Policy 15B.4.14(b) should the term “nitrogen losses” be replaced with the term “the nitrogen loss calculation” so as to be consistent with Policies 15B.4.13(b) and 15B.4.15(b)?
22.156	<ol style="list-style-type: none"> 1. In Policy 15B.4.22 should the terms “average nitrogen loss”, “nitrogen losses” and “average nitrogen loss rate” be replaced with the term “nitrogen loss calculation”? 2. Where those three terms (or variations thereof) appear in any Section 15B.5 rules, should they be amended to “nitrogen loss calculation”?
22.162	<p>Sections 11.1A and 13.1A of the LWRP define the term ‘adaptive management’ in relation to groundwater takes in the Selwyn Te Waihora Sub-region and the Hinds/Hekeao Plains Area.</p> <ol style="list-style-type: none"> 1. The recommended wording for Policy 15B.4.20(d) [at paragraph 22.399] is not reflected in Appendix I. Should it be? 2. If Policy 15B.4.20(d) is not amended as recommended at paragraph 22.399, for the sake of consistency within the LWRP and to assist plan users, should section 15B.1 include a definition of adaptive management? 3. What would that definition be?

Paragraph	Question
22.168	<p>Would adding to that paragraph a cross-reference to para 22.399 have assisted a reader to see directly the specific amendments being recommended in this paragraph?</p> <p>Do the recommended amendments to the policy shown in para 22.399 and in Appdx I include the specific details for clause (d) requested by Meridian, Genesis, F & G, and DoC (eg trigger values etc) referred to in para 22.168? If not, where do we see the reasoning addressing the requests for rejecting those requested amendments?</p>
22.229	<p>Would a cross-reference here to para 22.402 assist a reader to see the specific amendment that would result from the recommendation in the last sentence of this paragraph?</p>
22.279	<ol style="list-style-type: none"> 1. The recommended wording for Policy 15B.4.24(b) is not reflected in Appendix I. Should it be? 2. Will the recommended amendment to Policy 15B.4.24(b) yield additional Hakataramea headroom (over and above the 21 tonnes referred to in paragraph 22.271)? 3. If so, what is to happen to that additional headroom?
22.311	<p>In light of the recommended change to Policy 15B.4.24(b) [at paragraph 22.279] should provisions such as Rule 15B.5.25 condition (2)(b)(ii) be similarly amended if they remain as conditions?</p>
22.311	<p>Does the report contain an explanation of how the recommended amendment would improve 'the administrative effectiveness of the rules'?</p>
22.319	<ol style="list-style-type: none"> 1. Is the omission of the words "prior to 13 February 2013" from Rule 15B.5.31 condition (2) intentional? 2. If so, can the authors explain the reason?
22.334	<ol style="list-style-type: none"> 1. With regard to Policies 15B.4.25(b) and 15B.4.27(b), can the authors explain how a consent application for a single farming activity is expected to demonstrate that the annual median, 95th percentile and annual maximum limits in Table 15B(c) will not be exceeded? 2. Does the concept of 'after reasonable mixing' apply to Policies 15B.4.25(b) and 15B.4.27(b)?
22.376	<p>Is the intended effect of the recommended amendment that the consent authority may choose to waive the reduction to 90%? If so, how would the Plan then effectively manage cumulative effects of multiple waivers of that kind in this catchment?</p>
22.377	<p>As for para 22.311, where does the report explain how the recommended amendment would 'improve the administrative effectiveness of the rules'?</p>
2.378	<p>Can you explain how, with the proposed flexibility exception, it would be assured that the Plan would enable the Council to manage multiple applications so that they could not result in failure to maintain water quality in accordance with the outcomes set in the RPS and the CWMS?</p>
22.399	<p>In the recommended amendment to Policy 15B.4.20(d) what would the words "<i>and relates specifically to the effects caused by the activity</i>" mean in practice?</p>
22.400	<p>In the recommended amendments to Policy 15B.4.25(c) and Rule 15B.5.35 would it be more appropriate to refer to nitrogen losses rather than nitrogen leaching or leached?</p>
Pg 415, para 24.28	<p>How could a functionary administering the Plan in practice implement a policy such as that requested here?</p>
Appendices	
Appendix B 1.107	<p>It is stated that the provisions of Part B of PC5, relating to the Waitaki sub-region, are set in accordance with the National Objectives Framework of the NPSFM. However, sections 15B.6 and</p>

Paragraph	Question
	15B.7 do not appear to identify NPSFM national values, attributes ¹ or attribute states (in terms of A, B, C or D grades). Should they?
Appdx C, pg 28	Paras 1.142 and 1.145 refer to s 63 of the 2010 Act. Should those now be references to s 24 of the Environment Canterbury (Transitional Governance Arrangements) Act 2016?
Appendix G Page 84	Should the PC5 notification date be 13 February 2016 (not 2015)?
Appendix G Pages 98 and 99	In Table 15B(c) the dissolved reactive phosphorous and ammoniacal nitrogen in-stream limits represent current state (namely no improvement in existing water quality) and the in-stream nitrate nitrogen concentrations are predictions of what will occur under the Zone Committees' solution packages (namely a deterioration in existing water quality). Is this approach consistent with the case law quoted at Appendix B paragraph 1.85?
Appendix G Page 102	Can the authors explain why they recommend that the TN limit for Kellands Pond remains at <500 mg/m ³ ?
General Questions	
Policy 4.37	Policy 4.37(a) addresses the Baseline GMP Loss Rate and cross-refers to Policy 4.38A. However, Policy 4.38A addresses the Nitrogen Baseline and it does not address the Baseline GMP Loss Rate. Can the authors explain why?
Policy 4.38AA	Cause (a) enables exceedences of the Baseline GMP Loss Rate up to 5kgN/ha/year but clause (c) precludes any exceedence of the Baseline GMP Loss Rate unless water quality is maintained. <ol style="list-style-type: none"> 1. Would not any increase in N leaching cause deterioration in water quality? 2. If so, is clause (c) appropriate?
Rule 5.50A	Is there a reason why Rule 5.50A does not contain a condition similar to Rule 5.44B Condition 3?
Rule 5.54A	Is there a reason why condition 2 in Rule 5.54A is worded differently to condition 2 in Rule 5.44A?
Rules 5.45A and 5.50A	Is there a reason why matter of control 6 in Rule 5.44B is worded differently to matters of discretion 3 in Rules 5.45A and 5.50A?
Rule 15B.5.25	<ol style="list-style-type: none"> 1. I assume that farming activities that do not meet the conditions of recommended Rule xx.xx.xx default to Rule 15B.5.25? 2. If so, what are the nitrogen loss restrictions on farming activities in the Hakataramea Flat Zone as condition 2 of Rule 15B.5.25 does not refer to that Zone?
	Can the authors please identify any amendments recommended in the body of the Section 42A report that are not reflected in Appendix I?

¹ Noting that Tables 15B(a) and (b) do use the word "Attributes" in the header row.