

30 September 2018

## MEMORANDUM

FROM: Olivia Cook  
TO: Andrew Parrish  
SUBJECT: Changes to be made to Plan Change 5 (Nutrient Management and Waitaki) to the Canterbury Land and Water Regional Plan pursuant to Clauses 16 and Clause 20A of Schedule 1 to the Resource Management Act 1991 (RMA)

## BACKGROUND

In 2016, the CRC notified Plan Change 5 to the Canterbury Land and Water Regional Plan (LWRP). PC5 was prepared by the Council to deliver improved water quality outcomes for the Canterbury region (Part A of PC5) and to achieve community aspirations for water quality in the Waitaki catchment (Part B).

An independent hearing panel (IHP) was appointed to receive submissions, hear evidence and prepare recommendations on proposed PC5. In 2017, the Council received the recommendations from the IHP and adopted them as the Council's 'decision' on proposed PC5. The decision was publicly notified on 24 June 2017, with eight appeals lodged in the High Court in respect of that decision.

In early 2018 the Council and appellants lodged a joint memorandum with the High Court setting out proposed terms for settlement of the appeals. In August 2018, the High Court made judgements in respect of those appeals and issued orders directing changes to PC5 in accordance with the terms set out in the joint memoranda.

The final step in the plan-making process is for the Council to pass a resolution to make PC5 operative. Staff will present a paper at the Council meeting on 13 December 2018 which requests the plan change is approved and made operative from 1 February 2019.

### **Clauses 16(2) and 20A of Schedule 1 to the RMA**

Prior to final approval of proposed PC5 there is an opportunity to correct any minor errors or make alterations of minor effect. In addition, the Council has authority to correct any minor errors in the operative Land and Water Regional Plan that may be required as a consequence of incorporating the proposed plan change.

The authority to alter information in a proposed plan change or an operative plan without using the process described in Schedule 1 to the Resource Management Act (1991), is provided in Clauses 16(2) and 20A of Schedule 1 to the RMA.

Clause 16(2) of Schedule 1 to the RMA states:

*"A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors"*

Clause 20A of Schedule 1 to the RMA states:

*“A local authority may amend, without using the process in this schedule, an operative policy statement or plan to correct any minor errors.*

As can be seen by the text in Clauses 16(2) and 20A the authority to alter information is qualified; any amendment must be for the purpose of correcting a minor error of the alteration must be of minor effect.

The changes recommended in this memo satisfy the tests in Clause 16(2) and Clause 20A of Schedule 1 of the RMA and accordingly it is recommended these changes are made under delegated authority.

**Recommended changes to be made to Part A (region-wide) of proposed PC5 using Clause 16(2) of Schedule 1 to the RMA.**

Table 1 – Definitions (Section 2 of the LWRP)

Location	Type of amendment	Recommended changes	Reason
Accredited Farm Consultant	Renumbering	means a person... and who: (a) has been certified... <del>(ba)</del> (b) is a Certified... <del>(b)</del> (c) holds any other...	The change is recommended to ensure the provisions are ordered in a logical sequence.
Certified Farm Environment Plan Auditor	Formatting, renumbering	means a person... ... (b) is an ...Part C of Schedule 7; <del>and</del> <u>and</u> 1. has at least... <del>(a)</del> (i) holds a Certified... <del>(b)</del> (ii) holds a tertiary...	The word ‘and’ is recommended to be relocated to the following line to clarify that the requirements of condition 1 apply in addition to those set out in clauses (a) and (b) of the definition.  The definition includes two sets of clauses numbered (a) and (b). To avoid confusion it is recommended that the second set of clauses is renumbered to (i) and (ii)
Equivalent Baseline GMP Loss Rate	Grammatical	<del>Equivalent Baseline GMP Loss Rate</del> means <u>a the average nitrogen loss rate below the root zone</u> , expressed in kg...	The phrase ‘Equivalent Baseline GMP Loss Rate’ is recommended to be deleted as it has been repeated at the start of the definition.  The definition of ‘Equivalent Baseline GMP Loss Rate’ is a modified version of the ‘Baseline GMP Loss Rate’. The words ‘average’ and ‘below the root zone’ are recommended to be included for consistency with the parent definition.

Table 2 – Policies (Section 4 of the LWRP)

All policies and clauses referred to in Column 1 of Table 2 reflect the numbering as shown in the Council's decision on PC5

Location	Type of amendment	Recommended changes	Reason
Policies	Renumbering	<p>Renumber provisions and references to provisions as follows:</p> <p>Policy 4.36(<del>bb</del>)(c)                      Policy 4.36(<del>bbb</del>)(d)                      Policy 4.36(<del>e</del>)(e)                      Policy 4.38AA 4.38A                      Policy 4.38AA(d)                      4.38A(c)                      Policy 4.38AB 4.38B                      Policy 4.38A 4.38C                      Policy 4.38BA 4.38D                      Policy 4.38BB 4.38E                      Policy 4.38B 4.38F                      Policy 4.38C 4.38G                      Policy 4.38D 4.38H                      Policy 4.38E 4.38I                      Policy 4.41A(<del>ba</del>)(c)                      Policy 4.41A(<del>e</del>)(d)                      Policy 4.41C(<del>ab</del>)(b)                      Policy 4.41C(b)(c)</p>	Renumbering of provisions is recommended to enable a logical and sequential order of provisions.
Policy 4.38E(c)	Grammatical	... (c) requiring actions <del>that</del> <u>will to be implemented</u>	<p>This policy set out actions to be implemented to manage the loss of phosphorus to water from farming activities.</p> <p>In the context of this policy the term 'to' is more appropriate as it directs a future action that is yet to be implemented.</p>
Policy 4.41A(c)	Grammatical	... (c) providing, except where...a controlled activity <del>consent</del> pathway for resource consent...	The word 'consent' has been repeated in the policy. Removal of the term is recommended to avoid duplication.

Table 3 – Policies (Section 5 of the LWRP)

All rules, conditions and clauses referred to in Column 1 of Table 3 reflect the numbering as shown in the Council's decision on PC5

Location	Type of amendment	Recommended changes	Reason
Nutrient Management (notes)	Deletion	<p><b>Nutrient Management</b></p> <p>Notes:</p> <p>4. The Nutrient Management Rules set out a different set...</p>	<p>Note 2 was included in proposed PC5 to advise readers that operative rules in the LWRP will cease to have effect once proposed PC5 is made operative.</p> <p>Once PC5 is made operative the note will be redundant and</p>

		<del>2. Nutrient Management Rules 5.41A, 5.42A... cease to have legal effect.</del>	accordingly it is recommended to be omitted.
Rules	Renumbering	<p>Renumber provisions and references to rules as follows:</p> <p>Rule <del>5.41A</del> <u>5.41</u>  Rule <del>5.42A</del> <u>5.42</u>  Rule <del>5.42B</del> <u>5.42A</u>  Rule <del>5.42C</del> <u>5.42B</u>  Rule <del>5.42D</del> <u>5.42C</u>  Rule <del>5.43A</del> <u>5.43</u>  Rule <del>5.44A</del> <u>5.44</u>  Rule <del>5.44B</del> <u>5.44A</u>  Rule <del>5.45A</del> <u>5.45</u>  Rule <del>5.46A</del> <u>5.46</u>  Rule <del>5.47A</del> <u>5.47</u>  Rule <del>5.48A</del> <u>5.48</u>  Rule <del>5.49A</del> <u>5.49</u>  Rule <del>5.50A</del> <u>5.50</u>  Rule <del>5.51A</del> <u>5.51</u>  Rule <del>5.52A</del> <u>5.52</u>  Rule <del>5.53A</del> <u>5.53</u>  Rule <del>5.54A</del> <u>5.54</u>  Rule <del>5.54B</del> <u>5.54A</u>  Rule <del>5.55A</del> <u>5.55</u>  Rule <del>5.56AA</del> <u>5.56</u>  Rule <del>5.56AB</del> <u>5.56A</u>  Rule <del>5.57A</del> <u>5.57</u>  Rule <del>5.57B</del> <u>5.57A</u>  Rule <del>5.57C</del> <u>5.57B</u>  Rule <del>5.58A</del> <u>5.58</u>  Rule <del>5.58B</del> <u>5.58A</u>  Rule <del>5.59A</del> <u>5.59</u></p>	Renumbering of provisions is recommended to enable a logical and sequential order of provisions.
Rule 5.42B(b), 5.42C(b) 5.42D(b)	Grammatical	... (b) more than...option in OVERSEER® and <u>where</u> the OVERSEER® Best...	The word 'where' is recommended for insertion to clarify the circumstances under which clause (b) applies.
Rules 5.44A, Condition 4; Rules 5.54A, 5.57B Condition 5	Grammatical	A Management Plan <u>has been prepared in accordance with</u> Schedule 7A <del>has been prepared</del> and is implemented... made operative, <del>is</del> supplied to...	Schedule 7A prescribes the contents of the Management Plan but does not prescribe how that Management Plan is to be implemented. Given the reference to Schedule 7A is only relevant with respect to the preparation of the plan it is recommended to move the phrase 'has been prepared' to the start of the condition.
Rule 5.44B Matter of control 6  Rule 5.57C Matter of control 6	Minor correction	Methods to address... activity on surface <u>water quality</u> , <del>and</del> groundwater	The terms 'surface water' and 'groundwater' have been independently defined in Section 2 of the LWRP. Given these terms have been defined the

Rule 5.45A Matter of discretion 3	Minor correction	The actual or potential... on surface <u>water quality</u> , <del>and</del> -groundwater quality and...	phrase should refer to these terms in full.
Rule 5.50, Matter of discretion 3			
Rule 5.54B Matter of discretion 6			
Rule 5.55A, Matter of discretion 3			

Table 4 – Schedules (Section 16 of the LWRP)

Location	Type of amendment	Recommended changes	Reason
Section 16, Schedule 7, Part B	Formatting	<b>8. Hinds</b>  Within the Hinds/Hekeao Plains Area <del>Part B clause 5A shall also include the following:</del> <u>include a description of how the following objectives will be met:</u> <u>Nutrient Management:</u> <u>(a) To maximise the nutrient use efficiency while minimising nutrient losses to water.</u> • <u>(b) Achieve from...</u> • <u>(c) In the Upper and...</u>	PC5 proposed new GMP objectives and targets for farming activities in Canterbury. Changes proposed by PC5 have resulted in changes to the structure and format of Section 5 of Part A of Schedule 7.  To ensure Schedule 7 follows a logical order it is recommended to relocate all catchment-specific provisions to the end of the schedule.
Schedule 7, Part B, 5A Targets	Renumbering	<b>5A Management Area: Nutrients</b> ... <b>Targets:</b> (1) Nitrogen losses from... <del>(1A)</del> (2) Available nitrogen... <del>(2)</del> (3) Phosphorus and... <del>(3)</del> (4) Manage the amount... <del>(4)</del> (5) Store and load...	Renumbering of provisions is recommended to enable a logical and sequential order of provisions.
Schedule 7, Part B, 5B Targets	Renumbering	<b>5B Management Area: Irrigation</b> ... <b>Targets:</b> ... <del>(5)</del> (4) Staff are trained...	
Schedule 7, Part B, 8	Renumbering	<del>8-9.</del> <b>Waitaki – Additional Requirements</b>	
Schedule 28, Table s28 Nutrient Management	Grammatical	<b>Nutrient Management</b> The following rules are applied: • Nitrogen fertiliser... • <del>A</del> n fertiliser inefficiency...	Use of the term 'an' is only appropriate where this term precedes a vowel.  In this instance it precedes the term 'fertiliser' which starts with a consonant. A correction is

			recommended to address the error.
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**Recommended changes to be made to Part A of proposed PC5 using Clause 20A of**

Table 5 – Definitions (Section 2 of the LWRP)

Location	Type of amendment	Recommended changes	Reason
Nitrogen Baseline	Correction	means: (a) the discharge... except in relation to Rules <u>5.46, 5.56, 5.58A</u> and 5.62, where it...	The definition of nitrogen baseline states that a nitrogen baseline is to be expressed as a kg/ha/yr rate, except in relation to rules for farming enterprises and irrigation schemes where it is expressed as a total tonnage per annum.  PC5 has inserted new rules that provide for the establishment of a farming enterprise within the Orange and Green and Light Blue Nutrient Allocation Zones (Rules 5.56, 5.58A). A change to the definition of nitrogen baseline is required to include reference to these new rules.

**Recommended changes to be made to Part B (Waitaki) of proposed PC5 using Clause 16(2) of Schedule 1 to the RMA.**

Table 6 – Rules (Section 15B.5 of the LWRP)

Location	Type of amendment	Recommended changes	Reason
Section 15B	Renumbering	Renumber provisions and maps, and references to provisions and maps as follows:  <del>Figure 1</del> <u>Map 15B.1</u> <del>Figure 2</del> <u>Map15B.2</u> Policy 15B.4.15(b)(v)(iii) 15B.4.20(e)(b) <del>Note 2A. 2.</del> <del>Note 2. 3.</del> Rule 15B.5.9A10 Rule 15B.5.9B11 Rule 15B.5.9C12 Rule 15B.5.4013 Rule 15B.5.4414 Rule 15B.5.4216 Rule 15B.5.4317 Rule 15B.5.4418 Rule 15B.5.4519 Rule 15B.5.45A20 Rule 15B.5.4621 Rule 15B.5.4722 Rule 15B.5.4823 Rule 15B.5.4924	Renumbering of provisions is recommended to enable a logical and sequential order of provisions.

		<p>Rule 15B.5.19 Matter of Discretion <del>5.4.</del></p> <p>Rule 15B.5.19 Matter of Discretion <del>6.5.</del></p> <p>Rule 15B.5.19 Matter of Discretion <del>7.6.</del></p> <p>Rule 15B.5.19 Matter of Discretion <del>8.7.</del></p> <p>Rule 15B.5.19 Matter of Discretion <del>9.8.</del></p> <p>Rule 15B.5.19 Matter of Discretion <del>10.9.</del></p> <p>Rule 15B.5.19 Matter of Discretion <del>11.10.</del></p> <p>Rule 15B.5.<del>20</del><u>25</u></p> <p>Rule 15B.5.<del>20A</del><u>26</u></p> <p>Rule 15B.5.<del>20B</del><u>27</u></p> <p>Rule 15B.5.<del>24</del><u>28</u></p> <p>Rule 15B.5.<del>22</del><u>29</u></p> <p>Rule 15B.5.22 Matter of discretion <del>5.4.</del></p> <p>Rule 15B.5.22 Matter of discretion <del>6.5.</del></p> <p>Rule 15B.5.22 Matter of discretion <del>7.6.</del></p> <p>Rule 15B.5.22 Matter of discretion <del>8.7.</del></p> <p>Rule 15B.5.22 Matter of discretion <del>9.8.</del></p> <p>Rule 15B.5.22 Matter of discretion <del>10.9.</del></p> <p>Rule 15B.5.22 Matter of discretion <del>11.10.</del></p> <p>Rule 15B.5.<del>23</del><u>30</u></p> <p>Rule 15B.5.<del>24</del><u>31</u></p> <p>Rule 15B.5.<del>25</del><u>32</u></p> <p>Rule 15B.5.<del>25A</del><u>33</u></p> <p>Rule 15B.5.<del>26</del><u>34</u></p> <p>Rule 15B.5.<del>27</del><u>35</u></p> <p>Rule 15B.5.<del>27</del><u>35</u> Matter of control <del>10.9.</del></p> <p>Rule 15B.5.<del>28</del><u>36</u></p> <p>Rule 15B.5.<del>29</del><u>37</u></p> <p>Rule 15B.5.<del>30</del><u>38</u></p> <p>Rule 15B.5.<del>31</del><u>39</u></p> <p>Rule 15B.5.<del>32</del><u>40</u></p> <p>Rule 15B.5.32 Condition <del>6.5.</del></p> <p>Rule 15B.5.32 Condition <del>7.6.</del></p> <p>Rule 15B.5.<del>33</del><u>41</u></p> <p>15B.5 Irrigation Schemes Note <del>4.3.</del></p> <p>Rule 15B.5.<del>34</del><u>42</u></p> <p>Rule 15B.5.<del>35</del><u>43</u></p> <p>Rule 15B.5.<del>36</del><u>44</u></p> <p>Rule 15B.5.<del>37</del><u>45</u></p> <p>Rule 15B.5.<del>38</del><u>46</u></p> <p>Rule 15B.5.<del>39</del><u>47</u></p> <p>Table 15B(a) Footnote <sup>14</sup></p> <p>Table 15B(a) Footnote <sup>21</sup></p> <p>Table 15B(a) Footnote <sup>45</sup></p>	
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		Table 15B(a) Footnote <sup>52</sup>	
Section 15B, paragraph 10	Grammatical	Waterbodies in the Waitaki are provides essential...	The suffix 's' in 'provides' is only appropriate where it is preceded by a term shown in the singular form. In this sentence the term 'provide' is used in association with a plural form of a noun. An amendment is recommended to correct the error.
Policy 15B.4.22	Grammatical	Water quality is maintained within the Greater Waikakahi Zone by, <del>from 1 July 2020:</del> (a) <del>avoiding from 1 July 2020,</del> the granting of a... (b) <del>requiring, from 1 July 2020,</del> farming activities in...	The phrase 'from 1 July 2020' is recommended to be relocated to the start of each of the clauses in Policy 15B.4.22 to improve clarity.
15B.5 Rules Aquaculture, note	Grammatical	Note: Rules 15B.5.3, 15B.5.4 ... of <u>proposed Plan Change 5 (13 February 2016)</u> .	The note describes the date at which rules in proposed PC5 (as publicly notified for submissions) took legal effect. The date these provisions took legal effect is recommended to be included for purposes of transparency.
Rule 15B.5.9 Matter of control 5	Minor correction	... 5. Methods to address... activity on surface <u>water quality</u> , <del>and groundwater</del> ...	The terms 'surface water' and 'groundwater' have been independently defined in Section 2 of the LWRP. Given these terms have been defined the phrase should refer to these terms in full.
Rule 15B.5.9A Rule 15B.5.9B Rule 15B.5.9C	Minor correction	Despite rules... (a) (b) more than 20%... OVERSEER® and <u>where</u> the OVERSEER® Best... ...	The word 'where' is recommended to be inserted to clarify the circumstances under which clause (b) applies.
15B.5 rules Individual Farming Activities	Minor correction	<b>Ahuriri Zone, Upper Waitaki Hill Zone... Waikākahi Zone</b>  Notes: 1. Rules 15B.5.10 and... of <u>proposed Plan change 5 (13 February 2016)</u> .	The note describes the date at which rules in proposed PC5 (as publicly notified for submissions) took legal effect. The date these provisions took legal effect is recommended to be included for purposes of transparency.
Rule 15B.5.12, Conditions	Grammatical	Conditions: 1. ... 2. The area of the property <del>that is</del> authorised to be... 3. The area of the property... 4. For any property with <del>an</del> <del>area</del> less than 50 hectares...there is no increase in the area of land <del>that is</del> irrigated ... winter grazing beyond <del>the area of land that which</del> was irrigated or used...	Minor changes are recommended for the purpose of clarity.

		5. A Management Plan <del>in accordance with Schedule 7</del> has been prepared <u>in accordance with Schedule 7</u> and is implemented within...	
15B.5.13, Conditions	Grammatical	Conditions: ... 3. For any property where, any increase in the <u>irrigated</u> area of the property <del>that is irrigated</del> is limited to... 4. The area of the ... not exceed <del>a total area of 20</del> ... 5. A Management Plan <u>has been prepared</u> in accordance with Schedule 7A <del>has been prepared</del> and is implemented...	Minor changes are recommended for the purpose of clarity.
15B.5.14 Matter of control 4	Minor correction	... 4.(ii) the lesser of the... lawful nitrogen loss <u>rate</u> that occurred... ...	The word 'rate' has been omitted in error and is recommended to be inserted.
15B.5.14 Matter of control 6  15B.5.21 Matter of control 6	Minor correction	6. Methods to avoid or... on surface <u>water quality, and</u> groundwater quality	The terms 'surface water' and 'groundwater' have been independently defined in Section 2 of the LWRP. Given these terms have been defined the phrase should refer to these terms in full.
15B.5.15 Matter of discretion 6 15B.5.19 Matter of control 5  15B.5.27 Matter of control 6  15B.5.28 Matter of control 6	Minor correction	The actual or potential... on surface <u>water quality, and</u> groundwater quality and...	The terms 'surface water' and 'groundwater' have been independently defined in Section 2 of the LWRP. Given these terms have been defined the phrase should refer to these terms in full.
15B.5 Rules Haldon Zone and Mid Catchment Zone	Grammatical	Haldon Zone and Mid Catchment Zone 1. Rules 15B.5.18, ... Mid Catchment Zone) <del>have had</del> legal effect <del>at from</del> the date of notification <del>of proposed</del> Plan Change 5. 2. All other rules have... clause 20 of Schedule 1 of <u>to the Resource</u> ... 3. Rules 15B.5.18, 15B.5.19 and 15B.5.20 <del>will ceased</del> to have legal effect at the point <u>at which in time that</u> Rules 15B.5.20A and 15B.5.20B <del>are were</del> made operative <del>in</del>	The note refers to events that occurred in the past. Amendments are recommended to clarify that these events are now in the past.

		<del>accordance with clause 20 of Schedule 1 to the Resource Management Act.</del>	
15.5.38 Note preceding rules relating to transfers of water permits from Whitneys Creek		Whitneys Creek Transfers of Water Permits  Notes: 1. Rule 15B.5.38... Regional Rule 5.133 <del>to</del> <u>for applications to transfer a water permit to take or use surface water from Whitneys Creek.</u> 2. Rule 15B.5.39 is a new rule which applies to <u>applications to transfer a water permit to take or use water from Whitneys Creek.</u>	Minor amendments to the note that precedes Rule 15B.5.38 are recommended to clarify the application of the rules.

Table 7 – Schedules applicable to Waitaki (Section 16 of the LWRP)

Location	Type of amendment	Recommended changes	Reason
Schedule 27, Part A, <b>The input data includes:</b>	Minor alteration	B = Unutilised portion of the Community Wastewater load limit <del>set out in Table 15B(h)</del> <u>(22.1 tonnes)</u> for the Haldon Zone.	Schedule 27 sets out a formula for calculating nitrogen loads for the Waitaki catchment. The schedule includes a list of 'input' data to be used when calculating the nitrogen load for the Haldon and MidCatchment Zone. The figure used to represent the unutilised portion of the community wastewater load is a fixed input. For the purposes of transparency the load it is recommended to include the load in the formula.

### Recommendation

The changes set out in this memo are:

- (a) approved as alterations of minor effect or minor corrections to come into effect on the date that Plan Change 5 to the Canterbury Land and Water Regional Plan becomes operative; and
- (b) the provisions are amended using the authority provided by clauses 16(2) and 20A of Schedule 1 to the RMA; and
- (c) a copy of the changes is displayed on the Environment Canterbury Website.

Delegated Authority: Andrew Parrish, Regional Planning Manager

Signature:



Date: 4 December 2018