OFFICER RECOMMENDATIONS IN RESPONSE TO SUBMISSIONS

Pursuant to section 42A of the Resource Management Act 1991
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<td>RMA</td>
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<td>National Policy Statement on Freshwater Management</td>
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<td>Hurunui Waiau Zone Committee</td>
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<td>Hurunui and Waiau River Regional Plan</td>
<td>HWRRP or Plan</td>
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<tr>
<td>Canterbury Regional Council</td>
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<td>Canterbury Regional Policy Statement 2013</td>
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<td>Plan Change 1 to the Hurunui Waiau River Regional Plan</td>
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<tr>
<td>Canterbury Water Management Strategy</td>
<td>CWMS</td>
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<tr>
<td>Low Intensity Dryland Farming</td>
<td></td>
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<tr>
<td>Means the use of land for a farming activity, where:</td>
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<td>a. no part of the property is irrigated;</td>
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<td>and</td>
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<tr>
<td>b. the area of the property used for Winter Grazing is less than:</td>
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<tr>
<td>i. 10% of the area of the property, for any property between 100</td>
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<td>hectares and 1000 hectares in area; or</td>
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<tr>
<td>ii. 100 hectares, for any property greater than 1000 hectares in</td>
<td></td>
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<tr>
<td>area; and</td>
<td></td>
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<tr>
<td>c. the farming activity does not include the farming of more than</td>
<td>Low Intensity</td>
</tr>
<tr>
<td>25 weaned pigs or more than 6 sows, or the farming of poultry</td>
<td>Dryland Farming</td>
</tr>
<tr>
<td>fowl at a stocking rate of more than 10 birds per hectare, up to</td>
<td></td>
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<tr>
<td>a maximum of 1000 birds; and</td>
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<tr>
<td>d. the farming activity does not include a component where livestock</td>
<td></td>
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<tr>
<td>are confined within a hard-stand area for the purpose of intensive</td>
<td></td>
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<tr>
<td>controlled feeding with the purpose of encouraging high weight gain.</td>
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<td>Submitter</td>
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<td>--------------------------------------------------------------------------</td>
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<tr>
<td>Amuri Irrigation Company Limited</td>
<td>Amuri Irrigation</td>
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<td>NC Fish &amp; Game</td>
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<tr>
<td>North Canterbury Province, Federated Farmers of New Zealand</td>
<td>NC Federated Farmers</td>
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<td>Royal Forest &amp; Bird Protection Society Inc.</td>
<td>Forest &amp; Bird</td>
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<tr>
<td>Rural Advocacy Network</td>
<td>RAN</td>
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<tr>
<td>Te Rūnanga o Ngāi Tahu</td>
<td>Ngāi Tahu</td>
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Introduction

1. This report is prepared under section 42A of the RMA and assesses the decisions requested in the submissions on Plan Change 1 to the HWRRP.

2. Plan Change 1 to the HWRRP is a targeted Plan Change intended to enable existing dryland farms to continue to operate without resource consent within the Nutrient Management Area of the Hurunui and Waiau Zone.

Reporting assumptions and disclaimers

3. Fourteen submissions were lodged on Plan Change 1, and five further submissions. The submissions relate to all aspects of the Plan Change and, in this report, have been dealt with in plan provision order.

4. There are further submissions on 55 submission points. The further submissions have been reviewed and all are from people or organisations that have lodged submissions in the first instance and therefore already involved in the process. There are no consistent patterns or overwhelming numbers of further submissions on particular issues. On this basis, the further submissions have not been identified in the text of this report.

5. The majority of this report has been authored by three people (Lisa Jenkins, Sam Leonard, and Ned Norton). For these parts of the report, it is written in the first person, present tense, without identifying which of these three authors have written which part of the report. Further, for these parts of the report, there is collective responsibility for the report content and all three of these authors have reviewed the entire report.

6. Parts of the report have been prepared by legal counsel for the Canterbury Regional Council (being Philip Maw and Imogen Edwards of Wynn Williams). The parts of the report prepared by Mr Maw and Ms Edwards have been identified in the footnotes.

7. Profiles of the authors are included below.

8. Recommendations are made where appropriate, and these are either to retain provisions without amendment, add to or amend the provisions with the amendment shown by way of strikeout and underlining, or to delete the provisions. Where the authors consider that amendment may be appropriate, but wish to hear further evidence, before making a final recommendation, this is made clear within the report. All recommended changes have a footnoted reference with a submission point and submitter name that supports the recommended change. This has been done as a means of confirming that there is scope within the submissions to make the requested change, rather than identifying or prioritising particular submitters. Where provisions are recommended to be retained without amendment, no submissions are referenced.

9. Any conclusions or recommendations made in this report are not binding on the Hearing Panel and it should not be assumed that the Hearing Panel will reach the
same conclusion, having considered all of the information in submissions and evidence presented at the hearing.

10. The overall intent in considering and analysing the submission points is to better give effect to Part 2 of the RMA, the CRC’s responsibilities under section 30 of the RMA, the Objectives of the HWRRP, and the NPS-FM, and to improve proposed Plan Change 1 in terms of clarity, workability and certainty. The submissions were assessed against these criteria and the wider legal framework in the RMA, and the reasoning given in the report for recommended changes often relate to these criteria, even where it is not explicit.

11. The report provides some background information relating to Plan Change 1. However, the section 32 report provides much greater detail and it is recommended that the section 32 report and the technical documents it references are read in conjunction with this report.

Report author profiles

Lisa Jenkins

12. Lisa Jenkins is the team leader of the Land and Freshwater planning team at the CRC. She holds a Bachelor of Resource Studies from Lincoln University.

13. Lisa has 15 years’ experience in planning and resource management, with over ten years in plan development. She was a principal author of the CRPS and the Canterbury Air Regional Plan. She has led the development of Plan Change 1.

14. Lisa has been the lead author for the following sections of this report:
   - Reporting assumptions and disclaimers
   - Approach to Plan Change 1
   - Plan Change Development
   - Response to submissions

Ned Norton

15. Ned Norton is a Resource Management Consultant and Director of LWP (LandWaterPeople) Ltd, a small consultancy based in Christchurch. He holds a Master of Science with major in Biochemistry, and a Bachelor of Science with majors in Microbiology and Ecology from the University of Canterbury.

16. Ned has 23 years’ experience including contributing to development of national and regional level water policy, collaborative community processes, multidisciplinary land and water resource modelling, environmental impact assessments and monitoring.

17. Ned has been a technical advisor to Environment Canterbury and played the role of Technical Lead during the Zone Committee-led collaborative process to “fix the 10% rule”, leading to development of proposed Plan Change 1.

Sam Leonard
18. Sam Leonard is a Senior Planner at the CRC. He holds a Bachelor of Laws and a Bachelor of Science with a major in Environmental Studies and minor in Biology from Victoria University of Wellington.

19. Sam has 4 and a half years’ experience in planning and resource management, including two different roles for the CRC in planning and implementation. Sam’s experience includes providing regional policy advice and planning assistance to the Canterbury territorial authorities, as well as providing planning interpretation and implementation advice to colleagues, stakeholders, and the general public.

**Philip Maw**

20. Philip Maw is the National Managing Partner of the law firm Wynn Williams and a partner in the firm’s Resource Management and Environmental Law team. He holds a Bachelor of Laws and Bachelor of Science. Philip has over 15 years’ of experience and regularly appears before Councils, the Environment Court and the High Court for a range of clients.

21. Philip has particular expertise in freshwater management, having acted as lead counsel on the development of the Canterbury Land and Water Regional Plan (including sub-region catchment sections), the Hurunui and Waiau River Regional Plan, and the proposed Southland Water and Land Plan. He is a member of the Resource Management Law Association and was previously a member of the National Committee of the Resource Management Law Association.

**Imogen Edwards**

22. Imogen Edwards is an Associate at Wynn Williams in the firm’s Resource Management and Environmental Law team. She holds a Bachelor of Laws and Bachelor of Arts. Imogen has 4 and a half years’ experience in the field of resource management law.

23. Imogen advises a range of local authority clients in respect of both resource management and planning processes, including in relation to freshwater management and air quality management, and the development of pest management plans. Imogen is a member of the Resource Management Law Association and is a member of the Committee of the Young Resource Management Law Association (Canterbury branch).

**Conflicts of interest**

24. Ms Jenkins, Mr Leonard, and Mr Norton report have reviewed the entire report and accept responsibility for its content.

25. Although this is not an Environment Court hearing, Ms Jenkins, Mr Leonard, and Mr Norton have all read, and agree to abide by, the Code of Conduct for Expert Witnesses, as contained in section 7 of the Environment Court of New Zealand Practice Note 2014.
Background and context

26. This section sets out the resource management framework under which the HWRRP and Plan Change 1 were developed and outlines the approach taken in the development of Plan Change 1.

National Policy Statement for Freshwater 2014 (as amended in 2017)

27. The HWRRP was promulgated under the provisions of the NPS-FM 2011. Plan Change 1 to the HWRRP has been prepared under provisions of the NPS-FM 2014 (as amended in 2017) which replaced the NPS-FM 2011. The NPS-FM 2014 (as amended in 2017) provides national direction for a sustainable, integrated approach to the management of freshwater. It requires, among other things, that councils recognise the national significance of freshwater and Te Mana o te Wai (the mana of the water).

28. The specific directions that the CRC must give effect to are outlined in Appendix 1 of the section 32 report. Plan Change 1 has been developed to give effect to these requirements, within the limited scope of Plan Change 1.

New Zealand Coastal Policy Statement 2010

29. The RMA requires that Regional Plans give effect to the New Zealand Coastal Policy Statement\(^1\). The HWRRP was developed to give effect to the New Zealand Coastal Policy Statement and Plan Change 1 does not seek to amend any limits or Objectives within the HWRRP. Plan Change 1, as proposed, will not alter the extent to which the HWRRP gives effect to the New Zealand Coastal Policy Statement.

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2016\(^2\)

30. The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2016 (ECan Act 2016) came into force on 10 May 2016.\(^3\) This provides CRC with the continuation of certain powers from the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 that it would not otherwise have, to address issues relevant to the efficient, effective, and sustainable management of freshwater in the Canterbury region.

31. In considering Plan Change 1, particular regard must be had to the vision and principles of the CWMS, which are set out in Schedule 3 of the ECan Act 2016. This is in addition to the matters relevant under the RMA to its decisions made under

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\(^1\) RMA, s67(3).
\(^2\) This part has been prepared by Philip Maw and Imogen Edwards.
\(^3\) For completeness, we note that section 5, Part 3, and Schedule 1 to 3 of the ECan Act 2016 came into force on the transition day, as defined in the ECan Act 2016.
clause 10(1) of Schedule 1 of the RMA. Section 21(2) of the ECan Act 2016 states that the inclusion of the vision and principles of the CWMS in Schedule 3 does not accord to the CWMS or its vision and principles any status in law other than as provided in that Act.

32. The vision of the CWMS is:

"To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework."

33. The fundamental principles of the CWMS are sustainable management, a regional approach, and kaitiakitanga. The supporting principles are natural character, indigenous biodiversity, access, quality drinking water, recreational and amenity opportunities, and community and commercial use.

34. While section 24 of the ECan Act 2016 requires particular regard to be had to the vision and principles of the CWMS, the vision and principles of the CWMS are also being given effect to in Canterbury through the wider auspices of the CWMS as a whole. The CWMS ushered in a collaborative and integrated management approach to freshwater management, seeking to maximise opportunities for the region's environment, economy and community. The CWMS identified that a shift was required from effects-based management of individual consents, to integrated management based on water management zones, and the management of cumulative effects of both water abstraction and land use intensification. In order to give effect to the CWMS vision and principles, a collaborative Zone Committee process was established through the CWMS to enable community informed outcomes.

35. The CWMS and the Hurunui Waiau ZIP Addenda is the outcome of extensive consultation and community participation aimed at reaching a consensus as to how to best manage the freshwater resources in the Hurunui Waiau sub-region. The CWMS has been endorsed by the CRC and all of the territorial authorities in the Canterbury region. As such, it provides valuable guidance about how the people and communities of Canterbury wish to see provision for their wellbeing and health and safety, through the management of the use, development and protection of resources, including water and land. In addition, the CWMS and the Zone Committee process established under it, is one way that the CRC has sought to involve the community, including iwi and hapū, in how best to give effect to the NPS-FM 2014.

36. Although there is no statutory requirement for Plan Change 1 to incorporate or give effect to the entire content of the CWMS, the document as a whole is an important component in determining the most appropriate way of achieving the purpose of the RMA. A decision maker may also have regard to the CWMS as a whole as a relevant consideration. The CWMS is not a "strategy prepared under other Acts", in terms of section 61(2)(a)(i) of the RMA, and so is not a mandatory consideration under that section. However, section 61(2)(a) does not create an exhaustive list of considerations. The High Court has held that regard may be had to non-binding national policy documents, as relevant background material, even if those documents
do not have any status under the RMA. Further, it is submitted, that in having particular regard to the vision and principles of the CWMS, it is necessary to have regard to the CWMS as a whole and the Zone Committee process established under the CWMS, and the ZIP Addendum, in order to give effect to the vision and principles of the CWMS (and the NPS-FM).

**Canterbury Regional Policy Statement 2013**

37. Plan Change 1 has been developed to give effect to the CRPS, and in particular Chapter 7 of the CRPS which addresses the resource management issues relating to water quality.

38. Appendix 1 of the section 32 report describes the key objectives and policies in Chapter 7 of the CRPS as they relate to Plan Change 1 in more detail.

**National Environmental Standards**

39. The Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007 require regional councils to consider the effects of activities on community drinking water sources when including or amending permitted activity rules in a regional plan. There are community drinking water sources throughout the Hurunui and Waiau catchments. However, because Plan Change 1 does not seek to change Plan limits, or provide for the intensification of dry land farms, it is not anticipated that the proposed provisions will result in the water supply becoming unsafe for human consumption or increase the concentration of health-related contaminants by more than a minor amount.

**Approach to Plan Change 1**

**Background**

40. The HWRRP manages the cumulative effects of land use on water quality by allowing for existing land uses (as at 20 December 2013, the Plan operative date) to continue as permitted activities (with a 10% variance in nutrient loss rates from a baseline established in 2013) but requiring resource consent when land use is “changed”. This assumes that so long as existing land use does not intensify beyond a 10% nutrient loss variance, load limits will be met. Where there is headroom within load limits, resource consent processes ensure land use changes can be accommodated within load limits.

41. Low Intensity Dryland Farming has particular challenges with operating within a 10% nutrient loss variance. In many instances, the nutrient loss rates for Low Intensity

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4 West Coast Regional Council v The Friends of Shearer Swamp [2012] NZRMA 45.
5 Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007, regulations 9 and 10.
6 As defined in the Proposed Plan Change (see abbreviations table for full definition)
Dryland Farming are so low that it is possible for small, normal changes in the farming operation to cause a greater than 10% variance in nutrient losses (estimated using OVERSEER®). For example, during a drought dryland farms will often de-stock and significantly reduce their nutrient losses, then following on from a drought re-stocking is likely to increase nutrient losses by more than 10%. However, environmental constraints on dryland farms limit how much they can intensify.7 It is unlikely that the alternative rule framework, proposed in Plan Change 1, will lead to more than a 14% variance in nutrient losses from Low Intensity Dryland Farming activities.8

42. The variance that has occurred on dryland farms in the Hurunui Waiau Zone since before the HWRRP was developed is likely to be within 14%. The operative HWRRP underestimated the nutrient loss from “normal” dryland farming (being Low Intensity Dryland Farming) and Plan Change 1 proposes to enable that existing land use to continue as intended when the HWRRP was developed.

Nitrogen load offset in Hurunui

43. Early in the development of Plan Change 1, it was recognised that Low Intensity Dryland Farming could increase the nitrogen losses to the Hurunui River by 18 tonnes of nitrogen per year (tN/year) (as load in the river) which corresponds to an increase of 38 tN/year load lost from the source (beyond the root zone), resulting in an over-allocation of 38 tN/year load lost from the source.9 10 30 tN/year of that over-allocation is anticipated under the operative HWRRP framework. This existing over-allocation occurred because the decision makers who granted resource consents, to Hurunui Water Project and Ngāi Tahu Farming Limited did so on the basis that they did not consider dryland farms would increase losses by up to 10% (as permitted by Rules 10.1 and 10.2 of the HWRRP). An additional 8 tN/year load lost from source is anticipated from low intensity dryland farming as a result of Plan Change 1, in the Hurunui catchment.

44. The solution proposed to address the existing over-allocation and create headroom for increased losses anticipated from dryland farming as a result of Plan Change 1 is an offset provided out of consented loads. Amuri Irrigation has agreed to surrender the required nitrogen load reduction totalling 38 tN/year from two of its consents to provide this offset. The agreement Amuri Irrigation has entered into is attached to this report as Appendix 2.

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7 Likely trends of dryland farming as a permitted activity in the Hurunui and Waiau Zone (In the context of water quality discussions). Brown, J. 2018.
8 Estimating the ‘plausible worst case’ increase in nitrogen load from a new way of permitting ‘normal dryland farming’, that would need to be offset by decreases elsewhere in order to stay within the Hurunui Waiau River Regional Plan (HWRRP) nitrogen load limit. Norton, N. 2018.
9 Nitrogen allocation in the Hurunui catchment and its relevance for dryland farming and a draft plan change to “fix the 10% rule”. Norton, N. 2018.
10 Summary of process to estimate the nitrogen load increase that would need to be offset in the Hurunui catchment as part of fixing the dryland farming 10% rule issue. Norton, N. 12 April 2018
Winter grazing limits and “plausible worst case”

45. Plan Change 1 permits Low Intensity Dryland Farming activities to use up to 10% or a maximum of 100 ha of their property for winter grazing. In assessing the environmental effects of this, the CRC has not assumed that the maximum 10% of the total dryland area will be used for winter grazing. This is because dryland farm systems are limited by a number of factors including climate, soil type and landscape and it is unlikely that the total permitted winter grazing area would be in use at any given time. During the development of the Plan Change, estimates of the likely winter grazing area (for Low Intensity Dryland Farming) were made based on trends and limiting factors. A precautionary approach was applied by adding 20% to the peak winter grazing area seen in the Hurunui and Waiau Zone under conditions with no winter grazing limits and high economic drive for winter grazing. The result is a “plausible worst-case scenario” for the winter grazing area. This worst case is the basis for estimating the potential 14% increase in dryland nitrogen losses described above in paragraphs 13 and 14. It is also the basis for then estimating the 38 tonne N load (at source) offset requirement described in paragraph 15.

Winter Grazing Monitoring

46. Plan Change 1 proposes provisions that will require Low Intensity Dryland Farming activities to report their winter grazing areas. This will enable the CRC to meet its obligation under the NPS-FM to account for nutrient losses at the catchment level. This will also ensure CRC can monitor how the “plausible worst-case scenario” plays out and will allow adjustments to be made to the nutrient management framework if necessary, in the future.

Management Plans

47. Plan Change 1 proposes to require Low Intensity Dryland Farming activities to prepare and implement Management Plans. The purpose of a Management Plan is to identify opportunities for applying good management practices to mitigate adverse effects on the environment. Management Plans are particularly important to Plan Change 1 because they are the key tool for managing phosphorus and other contaminant losses from dryland farms.

Plan Change Development

Zone Committee – ZIPA

48. Over 300 farmers protested about the perceived unfairness of the HWRRP “10% rule” at the September 2014 HWZC meeting. The implementation challenge in relation to the provisions that manage land uses that may result in the discharge of nutrients to

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11 Estimating the ‘plausible worst case’ increase in nitrogen load from a new way of permitting ‘normal dryland farming’, that would need to be offset by decreases elsewhere in order to stay within the Hurunui Waiau River Regional Plan (HWRRP) nitrogen load limit. Norton, N. 2018.
water and the application of those provisions to dryland farming activities is colloquially known as the “10% rule issue”.

49. A Hurunui Nutrient Working Group was established and met ten times between October 2014 and March 2015. Sixty or more people from a wide range of interests attended each meeting. There was no agreement on how to address the 10% rule issue. The HWZC considers a change to the HWRRP is needed to provide greater certainty that existing Low Intensity Dryland Farming can continue as a permitted activity.

50. Following extensive further collaboration, to address the 10% Rule, the HWZC made recommendations to the CRC. At the 19 March 2018 meeting, the Hurunui Waiau Zone Committee made the following recommendations:

   1. The Hurunui Waiau Zone Committee recommends that the Canterbury Regional Council pursues a targeted change to the Hurunui Waiau Rivers Regional Plan, to be notified in 2018. The plan change will:
      a. Permit normal dryland farming where:
         i. Normal dryland farming will be determined to be farming that:
            • The property is not irrigated
            • Winter grazing (of cattle on root or brassica crops) will not occur over more than 10% of the property area, or over 100ha where a property is more than 1000ha in size.
      b. Include an approach developed with the Zone Committee that addresses the current requirements for dryland farmers to be a part of a nutrient management collective and report nutrient losses.

   2. The Hurunui Waiau Zone Committee recommends the Canterbury Regional Council works with irrigators to identify and lock in voluntary N loss reductions so that permitting normal dryland farming does not breach the N load limit for the Hurunui River.

51. At the 16 July 2018 meeting, the Hurunui Waiau Zone Committee made the following recommendation:

   The Hurunui Waiau Zone Committee recommends that the Canterbury Regional Council pursues a targeted change to the Hurunui Waiau Rivers Regional Plan, to be notified in 2018. In addition to permitting dryland farming within previously specified limits, the plan change will address the current requirements for dryland farmers to be a part of a nutrient management collective and report nutrient losses by requiring that farmers undertaking a “normal dryland farming activity” to:
      a. Hold and implement a Farm Management Plan and provide that farm management plan to Environment Canterbury on request

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12 See recommendations made by the Zone Committee on 19 March 2018
b. Report the area of their farm used for winter grazing of cattle on root vegetable or brassica crop, either:
   i. through the Farm Portal; or
   ii. through a dryland farmers collective group that has the purpose of reporting the winter grazing area of their members in aggregate.

Collaborative approach

52. Plan Change 1 was developed using a collaborative approach, under the CWMS model. Key stakeholders have been engaged throughout the process, either in ongoing discussions or at milestone points. The technical work that has informed the development of the Plan Change was developed with input from a Science Stakeholder Group.\textsuperscript{13}

53. Plan Change 1 seeks to implement an addendum to the Zone Implementation Programme made by the HWZC in August 2018.

Regulatory framework\textsuperscript{14}

Contents and preparation of regional plans under the RMA

54. Regional councils must prepare and change any regional plans in accordance with its functions under section 30 of the RMA.\textsuperscript{15} The preparation of, or changes to regional plans must be developed in accordance with:

- Schedule 1 of the RMA.\textsuperscript{16}
- The provisions in Part 2 of the RMA.\textsuperscript{17}
- National policy statements, the New Zealand coastal policy statement, a national planning standard, and any regulations.\textsuperscript{18}
- Its obligation to have prepare and have particular regard to an evaluation report prepared in accordance with section 32 of the RMA.\textsuperscript{19}

55. When preparing or changing any regional plan, a regional council:

- Shall have regard to strategies and management plans prepared under other Acts that have a bearing on the resource management issues of the region.\textsuperscript{20}

\textsuperscript{13} Refer to the section 32 report for more information on the collaborative process undertaken.
\textsuperscript{14} This part has been prepared by Philip Maw and Imogen Edwards.
\textsuperscript{15} RMA, s66(1)(a).
\textsuperscript{16} RMA, s65(5).
\textsuperscript{17} RMA, s66(1)(b).
\textsuperscript{18} RMA, ss66(1)(ea) & (f).
\textsuperscript{19} RMA, s66 (1)(e).
\textsuperscript{20} RMA, s66(2)(c)(i).
• Shall have regard for the extent that consistency is required with the regional policy statements and regional plans, or proposed regional policy statements and proposed plans of adjacent regional councils.  

• Must take into account any relevant planning document recognised by an iwi authority (if lodged with the council) that has a bearing on the resource management issues of the region.

• Must not have regard to trade competition.

56. The contents of regional plans must:

• State the objectives for the region, the policies to implement the objectives, and the rules (if any) to implement the policies.

• Give effect to any national policy statement, New Zealand coastal policy statement, national planning standard, and any regional policy statement.

• Not be inconsistent with a water conservation order or any other regional plan for the region.

• Record how a natural resource has been allocated under section 30(1)(fa) or (fb) and (4), if the council has done so.

57. The contents of regional plans may state:

• The issues, methods, and principal reasons for adopting the policies and methods in the plan.

• Anticipated environmental results, efficiency and effectiveness monitoring procedures, and processes for dealing with issues.

• Information to be included with resource consent applications.

• Any other information required for fulfilling the regional council’s functions, powers and duties under the RMA.

58. The policy statements of particular relevance to Plan Change 1 are:

• New Zealand Coastal Policy Statement 2010.
Regional rules

59. A regional council may include rules in a regional plan, for the purposes of carrying out its functions under the RMA (other than those described under section 30(1)(a) and (b)) and achieving the objectives and policies of the plan.\textsuperscript{29} When making a rule, a council shall have regard to the actual or potential effect of activities on the environment, including, in particular, any adverse effect.\textsuperscript{30}

60. A rule may:\textsuperscript{31}

\begin{itemize}
\item Apply throughout the region or part of the region;
\item Make different provision for different parts of the region, or different classes of effects arising from an activity;
\item Apply all the time, or for stated periods or seasons;
\item Be specific or general in its application; and
\item Require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.
\end{itemize}

61. Where a regional plan includes a rule relating to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality (relevantly), the plan may state:\textsuperscript{32}

\begin{itemize}
\item (a) Whether the rule shall affect, under section 130, the exercise of existing resource consents for activities which contravene the rule; and
\item (b) That the holders of resource consents may comply with the terms of the rule, or rules, in stages or over specified periods.
\end{itemize}

62. A regional council may use rules to manage water quality for the purposes described in the classes specified in Schedule 3 of the RMA.\textsuperscript{33} Rules used for these purposes must require the observance of the standards specified in Schedule 3 in respect of the appropriate class or classes, unless the council believes that those standards are not adequate or appropriate for the particular water quality, in which case the rules may state standards that are more stringent or specific.\textsuperscript{34}

\begin{flushright}
\textsuperscript{29} RMA, s68(1).
\textsuperscript{30} RMA, s68(3).
\textsuperscript{31} RMA, s68(5).
\textsuperscript{32} RMA, s68(7).
\textsuperscript{33} RMA, s69(1).
\textsuperscript{34} RMA, s69(1).
\end{flushright}
63. Regional councils shall not, however, set standards in a plan which result, or may result, in a reduction of the quality of water unless it is consistent with the purpose of the RMA.\textsuperscript{35} Plan Change 1 and the HWRRP do not use the Schedule 3 approach.

64. Before a regional council includes a permitted activity rule in a regional plan for a discharge of a contaminant or water into water, or a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water, it shall be satisfied that:

- None of the following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar, or other contaminants):\textsuperscript{36}
  
  (a) The production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

  (b) Any conspicuous change in the colour or visual clarity:

  (c) Any emission of objectionable odour:

  (d) The rendering of fresh water unsuitable for consumption by farm animals:

  (e) Any significant adverse effects on aquatic life.

65. Before a regional council includes a rule in a regional plan requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant, the regional council shall be satisfied that, having regard to:

  (a) The nature of the discharge and the receiving environment; and

  (b) Other alternatives, including a rule requiring the observance of minimum standards of quality of the environment

the inclusion of that rule in the plan is the most efficient and effective means of preventing or minimising those adverse effects on the environment.\textsuperscript{37}

\textbf{Sections 9 and 13 to 15 of the RMA}

66. Section 9 of the RMA contains restrictions on the use of land that contravenes a national environmental standard, a regional rule or a district rule unless expressly authorised by applicable provisions in the RMA (sections 10, 10A or 20A) or by a resource consent.

\textsuperscript{35} RMA, s69(3) – subject to the need to allow for reasonable mixing of a discharged contaminant or water.

\textsuperscript{36} RMA, s70(1)(c)-(g).

\textsuperscript{37} RMA, s70(2).
67. Section 13 of the RMA contains restrictions on certain uses of beds of lakes and rivers unless expressly allowed by a regional rule or a resource consent. Section 13 does not apply to any use of land in the coastal marine area.

68. Section 14 contains similar restrictions in relation to the taking, use, damming or diverting of water such that no person may take, use, dam, or divert water unless the taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent, or is otherwise allowed in accordance with section 14(3).

69. Section 15 restricts activities relating to the discharge of contaminants or water into water, contaminants onto or into land in circumstances which may result in the contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water, contaminants or into air (including those from industrial and trade premises). "Contaminant" is defined in the RMA as:

\[
\text{...includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy or heat—}
\]

a) When discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or

b) When discharged onto or into land or into air, changes or is likely to change the physical, chemical or biological condition of the land or air onto or into which it is discharged.

**National Environmental Standards**

70. Section 43B of the RMA addresses the relationship between national environmental standards and rules and resource consents. Section 43B provides that:

\[
\text{A rule or resource consent that is more stringent than a national environmental standard prevails over the standard, if the standard expressly says that a rule or consent may be more stringent than it.}
\]

\[
\text{A rule or resource consent that is more lenient than a national environmental standard prevails over the standard if the standard expressly says that a rule or consent may be more lenient than it.}
\]

71. The national environmental standard of particular relevance to Plan Change 1 is the Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007. The NES requires regional councils to consider the effects of activities on community drinking water sources when including or amending permitted activity rules in a regional plan, or assessing an application for a resource consent.
72. A council cannot include or amend a rule in a regional plan to allow a permitted activity (under sections 9, 13, 14, or 15 of the RMA) upstream of an abstraction point of a registered drinking water supply (defined as supplying 501 or more people with drinking water for 60 days per year or more), unless the Council is satisfied that the activity is not likely to result in the water supply becoming unsafe for human consumption or increase the concentration of health related contaminants by more than a minor amount.\textsuperscript{38}

The role of Part 2 of the RMA in the assessment of planning documents

73. The following part of the report addresses matters arising from the application of the statutory framework. As set out above, a regional plan must be prepared in accordance with a council's functions under section 30, Part 2 and its obligation to prepare an evaluation report under section 32, any further evaluation required by section 32AA, and to have particular regard to the evaluation reports and any regulations.\textsuperscript{39}

General requirements

74. Part 2 of the RMA sets out the purpose and principles of general application in giving effect to the Act. As set out below, the application of Part 2 when giving effect to higher order directions has been the subject of the Supreme Court's decision in Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited.\textsuperscript{40}

75. For the reasons described more fully below, it is considered that the previously accepted "overall judgment" approach and Part 2 still has validity in considering how a Council promulgated change to a regional plan should give effect to the NZPCS, national policy statement (NPS) and CRPS provisions and also a regional council's duties under section 32, where those higher order documents do not "cover the field", or where there is uncertainty as to the meaning of particular policies.

The Supreme Court decision in King Salmon

76. The role of Part 2 in the assessment of planning documents (particularly the requirement to give effect to higher order planning documents under section 67) has been subject to recent judicial comment following the Supreme Court's decision in Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited.

77. The Supreme Court's decision cast doubt on the previously accepted approach of applying an "overall broad judgment" under Part 2 when assessing a planning

\textsuperscript{38} Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007, regulations 9 and 10.

\textsuperscript{39} RMA, s66.

\textsuperscript{40} Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38.
document and whether it gives effect to higher order documents and also when assessing objectives and policies that compete or "pull in different directions".41

78. The Court found that there was no basis to refer back to section 5 or to undertake an overall judgment when assessing whether specific, directive, policies in the NZCPS had been given effect to by the provisions of a proposed plan change.42 In particular, the Supreme Court found by majority that:

a) The requirement for the regional plan to "give effect to" the NZCPS was a strong direction;43

b) There was no basis to refer back to section 5 or an overall judgment when addressing whether the NZCPS has been given effect to as it is the "mechanism by which Part 2 is given effect to in relation to the coastal environment".44

c) The use of the word "avoid" in policies 13 and 15 of the NZCPS, has its ordinary meaning of "not allow" or "prevent the occurrence of", and while a policy in the NZCPS "cannot be a 'rule' within the special definition in the RMA, it may nevertheless have the effect of what in ordinary speech would be a rule."45

79. In the particular case, which involved a site specific private plan change, the Court found that because of the Board of Inquiry did not give effect to policies 13 and 15 in allowing the plan change it had failed to "give effect to" the NZCPS as required under the RMA, and the plan change should not have been granted.

80. The Supreme Court was quite clear that there will still be situations where it is necessary to "go back to" Part 2, including:

a) if the policies in question do not "cover the field and a decision-maker will have to consider whether Part 2 provides assistance in dealing with the matter(s) not covered"; or

b) where there is any uncertainty as to the meaning of particular policies (of the NZCPS); or

c) where there is an allegation on invalidity in the higher order document/s.46

81. The Supreme Court’s decision in King Salmon has been addressed in the context of a council promulgated plan change following a decision of the High Court in Turners &

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41 Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38 at [127]-[131].
42 Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38 at [152].
43 Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38 at [77].
44 Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38 at [83] to [86].
45 Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38 at [96] and [116].
46 Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited [2014] NZSC 38, at [88] and [90].
Growers Horticulture Limited v Far North District Council.\textsuperscript{47} In that case, the High Court found that Part 2 of the RMA remained relevant to plan-making decisions under the RMA, given the nature of the obligation on councils to prepare a plan change in accordance with the matters set out in sections 66(1)(a)-(f) and 74(1)(a)-(f) of the RMA (for regional councils and territorial authorities respectively). Both provisions contain reference to Part 2.

82. The High Court distinguished the Turners & Growers case from King Salmon, noting that the circumstances were “far removed from those in …King Salmon” as there was “no relevant constraint in a higher order planning document to which the Council is required to give effect” and found that “the Supreme Court did not suggest that Part 2 would be an irrelevant consideration in a case such as the present where decision-makers have choice.”\textsuperscript{48} Further:\textsuperscript{49}

The issue in …King Salmon concerned the nature of that obligation in the particular circumstances of that case where a higher order planning document, the … (NZCPS), required a lower order decision-maker, a Board of Inquiry, to avoid adverse effects of activities on areas of outstanding natural character such as those the subject of the private plan change application it was tasked to consider. The Court concluded that this was a mandatory requirement that had to be given effect to, as required by the Act, when considering the plan change. Consequently the Board of Inquiry was wrong to disregard this requirement by resorting to Part 2 of the Act and treating it as no more than a relevant consideration.

83. Further, as the High Court noted in Turners & Growers, “the Supreme Court did not suggest that Part 2 would be an irrelevant consideration in a case such as the present where decision-makers have choice” (due to the less directive policies, in comparison to those considered by the Supreme Court in King Salmon).\textsuperscript{50}

84. The CRC agrees that resort should not be had to Part 2 in interpreting objectives and policies in higher order directions unless they fall within one of the categories recognised by the Supreme Court. However, the CRC considers that the decision in King Salmon did not "do away" with Part 2 considerations being relevant to the overall assessment of a variation or plan change in reaching a recommendation on Plan Change 1, bearing in mind the statutory considerations set out in sections 32, 66, 67 and 68 of the RMA.

85. Rather, the implication of the Supreme Court decision is that in assessing Plan Change 1, an overall judgment approach cannot be relied on to justify a departure from directive policies, particularly in the NZCPS (or by analogy from setting limits and targets as required under the NPS-FM 2014 (as amended in 2017)).

86. In terms of whether the NPS-FM 2014 (as amended in 2017) "covers the field", unlike the NZCPS (which includes a range of enabling policies, for example Policy 6) the NPS-FM 2014 (as amended in 2017) is not concerned with enabling activities that require water. This is left to other policy statements (notably the National Policy Statement for Renewable Electricity Generation 2010), and other superior documents such as the CRPS. In this case, it is submitted that the NPS-FM 2014 (as amended in 2017) does not "cover the field".

87. It is also relevant that in the case of Plan Change 1, and for any catchment-wide regional plan, (as opposed to a site specific private plan change application) the CRC is required to give effect to the NZCPS, National Policy Statement and CRPS provisions across a wide geographical spectrum. These provisions sometimes compete or pull in different directions depending on the geographical location and cannot be reconciled to ensure strict compliance with all statutory directions in all locations within the catchment.

88. For example, the CRPS directs the maintenance and enhancement of natural and physical resources contributing to Canterbury's overall rural productive economy in areas which are valued for existing or foreseeable future primary production by ensuring that rural land use intensification does not contribute to significant cumulative adverse effects on water quality and quantity (Policy 5.3.12(3)). The explanation to the policy confirms that "The rural productive base of Canterbury is essential to the economic, cultural and social well-being of its people and communities. Enabling the use of natural and physical resources to maintain the rural productive base is a foreseeable need of future generations."

89. The CRPS also contains a range of objectives and policies relating to water quality. For example, it directs that changes in land use are controlled to ensure water quality standards are maintained or improved (Policy 7.3.7(2)) and that where the effects on freshwater bodies, singularly or cumulatively, are unknown or uncertain, take a precautionary approach to the intensification of land uses or discharge of contaminants (Policy 7.3.12).

Summary

90. Where submitters are seeking recourse to Part 2 of the RMA, the Hearing Panel will need to carefully consider whether one of the three circumstances outlined in King Salmon applies (and as set out in Turners & Growers), as discussed above.51

Functions

91. The CRC's functions under section 30 of the RMA as they relate to Plan Change 1 are:

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a. Establishing, implementing and reviewing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region (section 30(1)(a)).

b. Preparing objectives and policies in relation to any actual or potential effects of the use, development or protection of land which are of regional significance (section 30(1)(b)).

c. The control of the use of land for the purpose of:
   i. the maintenance and enhancement of the quality of water in water bodies (section 30(1)(c)(ii);
   ii. the maintenance and enhancement of the quantity of water in water bodies (section 30(1)(c)(iii); and
   iii. the maintenance and enhancement of ecosystems in water bodies (section 30(1)(c)(iii)).

d. The control of discharges of contaminants into or onto land, air, or water and discharges of water into water (section 30(1)(f)).

e. If appropriate, the establishment of rules in a regional plan to allocate the capacity of water to assimilate a discharge of a contaminant (section 30(1)(fa)(iv)).

f. The establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity (section 30(1)(ga)).

92. It is a mandatory function of every regional council to control the use of land to maintain and enhance the quality of water in water bodies, and to control the discharges of contaminants into water. Plan Change 1 continues the approach introduced in the HWRRP by using land use rules (under section 9) to control the cumulative effects of land use on water quality.

93. This approach is supported by section 30(1)(c)(ii) which expressly enables a regional council to control the use of land for the purpose of the maintenance and enhancement of the quality of water in a water body. This approach has been used in other catchments in New Zealand and it is also supported by Objective A1 of the NPS-FM 2014 (as amended in 2017).

Section 32

94. Section 32 applies to Plan Change 1 as an amending proposal to a plan. The objectives in the HWRRP are unaltered by Plan Change 1. Accordingly, Plan Change 1 must be assessed in the following terms. The evaluation must:

a. Examine the extent to which the purpose of Plan Change 1 is the most appropriate way to achieve the purpose of the RMA.

b. Examine whether the provisions (the policies, rules or other methods to implement the objectives) are the most appropriate way to achieve the objectives by:

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52 Ngati Kahungunu Iwi Inc v The Hawke’s Bay Regional Council [2015] NZEnvC 50 at [29].
53 RMA, s32(a).
54 RMA, s32(1)(b).
i. identifying other reasonably practicable options for achieving the objectives;

ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives (the efficiency and effectiveness assessment); and

iii. summarising the reasons for deciding on the provisions;

c. Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of Plan Change 1.55

95. The efficiency and effectiveness assessment must:56

a. Identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth (that are anticipated to be provided or reduced); and employment (that are anticipated to be provided or reduced); and

b. If practicable, quantify the benefits and costs; and

c. Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

96. Under section 32(3) where the proposal amends an existing plan (as is the case here) the examination of whether the provisions in Plan Change 1 are the most appropriate way to achieve the objectives must relate to:

a. The provisions and objectives (being the purpose of the proposal) of Plan Change 1; and

b. The relevant and continuing objectives of the HWRRP.57

97. Section 32(6) defines objectives, proposal and provisions as follows:

"Objectives means-
(a) for a proposal that contains or states objectives, those objectives;
(b) for all other proposals, the purpose of the proposal

Proposal means-
a proposed standard, statement, national planning standard, regulation, plan or change for which an evaluation report must be prepared under this Act

Provisions means-
(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change;
(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal"

55 RMA, s32(1)(c).
56 RMA, s32(2).
57 RMA, s32(3).
98. Whilst Plan Change 1 does not itself contain objectives, the appropriateness of the policies and rules to be introduced by Plan Change 1 have been assessed against achieving the objectives of the HWRRP and the purpose of Plan Change 1. Plan Change 1 seeks to implement the HWRRP objectives in relation to the nutrient management of dry land farming in the Hurunui catchment.

99. Under Schedule 1 of the RMA, particular regard must be had to the section 32 report when the decision is made as to whether or not to notify Plan Change 1. The section 32 report for Plan Change 1 was made available at the time of notification.

100. Section 32A(1) provides that a challenge to an objective, policy, rule or other method on the ground that the section 32 report has not been prepared or regarded, or the requirements of section 32 have not been complied with, may only be made in a submission (rather than, for example, judicial review proceedings).

101. Section 32A(2) makes it clear that in considering Plan Change 1, the Hearing Commissioners may have regard to the matters stated in section 32 and, as set out below, in reaching a decision on a plan change, whether a further evaluation is required.

102. Section 32 requires a value judgment as to what, on balance, is the most appropriate option when measured against the relevant objectives. In Rational Transport Society Incorporated v New Zealand Transport Agency, the High Court rejected the submission that in order to be the “most appropriate”, a plan change must be the superior method; the Court found that “appropriate” meant suitable, and there was no need to place any gloss upon that word by incorporating that it be superior.58

103. Further, the Court did not agree that section 32(3)(b) mandated that each individual objective had to be “the most appropriate” way to achieve the RMA’s purpose. Each object was required to be examined in the process of evaluation. Objectives could not be looked at in isolation because the extent of each objective’s relationship in achieving the purpose of the Act may depend on inter relationships.59

104. In Art Deco Society (Auckland) Incorporated v Auckland Council the Environment Court held that, an “holistic” approach should be taken in that case rather than a more focused, vertical or “silo” approach to objectives, policies and methods.60

Section 32AA

105. Section 32AA provides for an additional requirement for undertaking and publishing further evaluations for any changes that have been made to, or are proposed for, Plan Change 1 since the evaluation report for Plan Change 1 was completed under section 32.

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106. Under section 32AA the same evaluation of the changes must be undertaken in accordance with sections 32(1) to (4) at a level of detail that corresponds to the scale and significance of the changes. It also must either:

a. be published in an evaluation report that is made available at the same time the decision on Plan Change 1 is notified; or
b. be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken.

107. It is anticipated that any changes that CRC officers recommend be made to Plan Change 1 (in the CRC’s reply) will be accompanied by a further section 32 evaluation of those changes for the purposes of section 32AA.

Iwi Management Plans

108. Section 66(2A)(a) of the RMA requires the CRC to take into account any relevant planning document that is recognised by an iwi authority and that is lodged with the CRC. The relevant iwi management plans for Plan Change 1 that have been lodged with the CRC are:

- Te Rūnanga o Ngāi Tahu Freshwater Policy Statement (1999)
- Mahaanui Iwi Management Plan 2013 (February 2013)
- Te Pohu o Tohu Raumati: Te Rūnanga o Kaikōura Environmental Management Plan 2007

109. In preparing Plan Change 1, the CRC has taken these documents into account.

Water conservation orders

110. Plan Change 1 must not be inconsistent with a water conservation order.61 There are no water conservation orders that apply in the Hurunui, Waiau Uwha or Jed catchments.

Ngāi Tahu Claims Settlement Act 1998

111. The Te Rūnanga o Ngāi Tahu Act 1996 and the Ngāi Tahu Claims Settlement Act 1998 recognise Ngāi Tahu Whānui as tāngata whenua for Canterbury. This is particularly relevant in applying sections 6(e), 7(a) and 8 of the RMA.

112. The Hurunui River is an area of statutory acknowledgement to Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. The CRPS also identifies issues of importance to Ngāi Tahu and describes processes for enhancing the relationship of Ngāi Tahu and the CRC (Chapters 2 and 4). Therefore, compliance with those Acts is also relevant to giving effect to the CRPS.

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61 RMA, s67(4).
Government’s proposed freshwater reforms

113. The Government has recently released its proposed freshwater management reforms, which include a draft National Policy Statement for Freshwater Management and a proposed National Environmental Standard for Freshwater. These draft/proposed documents currently do not have legal effect and no weight should be given to the proposed reforms in the Hearing Panel’s recommendations on Plan Change 1.

114. Counsel will update the Hearing Panel, if this position changes before the Hearing Panel has made its recommendations on Plan Change 1.
Response to submissions

Scope

115. Before recommending any amendments to Plan Change 1, the Hearing Panel must consider whether there is scope to make such amendments. In doing so, the Hearing Panel must consider whether:
   a. Submissions received are “on” Plan Change 1; and
   b. Any amendments are within the scope of a submission such that the Hearing Panel has jurisdiction to recommend the amendments.

Submissions “on” Plan Change 1

116. Clause 6(1) of Schedule 1 to the RMA provides that when a plan change is publicly notified under clause 5 of Schedule 1, the Council and any person may make a submission “on” the plan change.

117. Submissions on a plan change must be in the prescribed form. The form requires a submitter to give details of the specific provisions of the plan change that the submission relates to, and to give precise details of the decision which the submitter seeks from the local authority.

118. Submissions must be “on” Plan Change 1, and if a submission is not “on” Plan Change 1, then the Hearing Panel does not have jurisdiction to consider it.

119. The Courts have endorsed a bipartite approach when considering whether a submission is “on” a plan change. First, the submission must reasonably fall within the ambit of the plan change by addressing a change to the status quo advanced by the proposed plan change. Secondly, the Hearing Panel should consider whether there is a real risk that persons potentially affected by the changes sought in a submission have been denied an effective opportunity to participate in the plan change process.

120. If a management regime in a plan for a particular resource is unaltered by the plan change, a submission seeking a new or different management regime for that resource is unlikely to be “on” the plan change (unless the change is incidental or consequential, as discussed below).

121. If the effect of regarding a submission as being “on” a plan change would be to permit a planning instrument to be appreciably amended without real opportunity for

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62 This part has been prepared by Philip Maw and Imogen Edwards.
64 Resource Management Act 1991, Sch 1, cl 6(1).
65 Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290 at [90], endorsing the approach of William Young J in Clearwater Resort Ltd v Christchurch City Council HC Christchurch AP34/02, 14 March 2003.
participation by those potentially affected, that will be a “powerful consideration” against finding that the submission was truly “on” the plan change.\

Amendments within scope of a submission

122. Further, when considering whether to recommend any amendments to Plan Change 1, the Hearing Panel must be satisfied that any such amendments are within the scope of submissions.

123. Case law has established that for an amendment to be considered within the scope of a submission, the amendment must be fairly and reasonably within the general scope of:  
   a) An original submission; or  
   b) The plan change as notified; or  
   c) Somewhere in between.

124. The question of whether an amendment goes beyond what is reasonably and fairly raised in submissions will usually be a question of degree, to be judged by the terms of the plan change and the content of submissions. This should be approached in a realistic workable fashion rather than from the perspective of legal nicety, with consideration of the whole relief package detailed in submissions.\

125. Further, the courts have recognised that councils need scope to deal with the realities of the situation and a legalistic interpretation that a council can only accept or reject relief sought in any given submission is unreal. Approaching such amendments in a precautionary manner, to ensure that people are not denied an opportunity to effectively respond to additional changes in the plan change process, has also been endorsed by the courts.

Incidental or consequential amendments

126. Changes that are considered to be incidental to, consequential upon, or directly connected to the plan change are also considered to be within scope.

127. An amendment can be anywhere on the line between the plan change and the submission. Consequential changes can flow downwards from whatever point on the first line is chosen, as a submission may only be on an objective or policy, but there may be methods or rules which are then incompatible with the new objective or policy.
in the proposed plan change as revised.\(^{72}\) Consequential changes may also flow ‘upwards’ as a result of accepting a submission point (e.g. changes to the policies may be required as a result of amending the activity status of a rule).\(^{73}\)

128. Further, amendments required for clarity and refinement of detail are allowed on the basis that such amendments are considered to be minor and un-prejudicial.\(^{74}\)

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**Potential jurisdictional issues raised in submissions received in relation to Plan Change 1**

129. Several submissions on Plan Change 1 appear to be invalid as they are not on Plan Change 1. For example, some submissions seek amendments to the catchment-wide nutrient management regime (beyond Low Intensity Dryland Farming in the HWRRP).

130. Other submissions seek to capture additional land uses within the proposed rule framework for low intensity dryland farming. Plan Change 1 does not seek to alter the nutrient management regime for these activities.

131. Any change of this nature would have significant effects, and would require a detailed section 32 analysis, which has not been carried out. Further, given the limited nature of Plan Change 1, there is a real risk that persons potentially affected by the relief requested in submissions would have been denied an effective opportunity to respond to the changes sought. Arguably, such submissions are not “on” Plan Change 1.

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**General submissions on Plan Change 1 as a whole**

132. Having addressed the regulatory framework within which Plan Change 1 was developed and will be heard, this part of the report addresses the submissions received on Plan Change 1.

133. There are a number of themes in submissions that relate to Plan Change 1 generally, rather than to specific plan provisions.

134. Several submitters expressed general support for Plan Change 1, or at least the intent of Plan Change 1. These submitters were: RAN, Ravensdown, Ngāi Tahu, NC Federated Farmers, ANZ Fine Wine Estates and HDC\(^{75}\).

135. The provisions that manage land uses that may result in the discharge of nutrients to water is colloquially known as the “10% rule”.

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\(^{72}\) *Campbell v Christchurch City Council* [2002] NZRMA 332 (EnvC) at [20].

\(^{73}\) *Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166 at [40]-[48]; *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [96], [113]-[118] and [135].

\(^{74}\) *Oyster Bay Developments Limited v Marlborough District Council* EnvC C081/2009, 22 September 2009 at [42].

\(^{75}\) Submission # 7.1, 11.1, 14.1 (in so far as it goes to maintain current water quality), 16.1, 17.1, 3.1.
136. RAN seek the deletion of the entire suite of provisions referred to as the “10% rule”\textsuperscript{76}. Deleting the entire suite of provisions would remove the key methods by which the water quality limits, as set in Plan Change 1, can be achieved.

137. Amuri Irrigation seek clarification that Plan Change 1 will proceed only on the basis that the agreement between Amuri Irrigation and CRC can be implemented\textsuperscript{77}. Amuri Irrigation also seeks that Plan Change 1 is amended to acknowledge that Plan Change 1 is only possible as a result of the voluntary surrender of tN/year load lost from the source load by Amuri Irrigation\textsuperscript{78}. Proposed Plan Change 1 is reliant on the voluntary surrender of 38tN/year load lost from source by Amuri Irrigation. This is made clear in the section 32 report and is discussed earlier in the body of this report. However, it would not be appropriate to include additional commentary in Plan Change 1 that states a voluntary surrender of tN/year load lost from the source has occurred as this sits outside the plan change process.

138. NC Fish & Game and Forest & Bird express concern with regard to the collaborative process that led to the development of Plan Change 1. Specifically, the submitters seek clarification in the section 32 analysis that both submitters withdrew from the HWZC process\textsuperscript{79}. The submitters did withdraw from the HWZC process in mid-2018. However, consultation on Plan Change 1 continued and both submitters were encouraged to continue to engage. Both submitters provided feedback at the Plan Change 1 pre-notification consultation stage.

139. NC Fish & Game and Forest & Bird also seek clarification regarding the 38tN/year load lost from source to be surrendered by Amuri Irrigation and the perceived delays in the implementation of the minimum flows stipulated in the HWRRP. The HWZC is currently (at the time of writing) engaged in conversation regarding timing of implementation of HWRRP minimum flows\textsuperscript{80}. The implementation of minimum flows in the HWRRP is not the subject of, and is beyond the scope of, Plan Change 1. Further, the Deed of Undertaking between Amuri Irrigation and the CRC is not conditional on the outcome of HWZC discussions on minimum flows.\textsuperscript{81}

140. NC Federated Farmers seek amendments to Plan Change 1 to provide for a small area of irrigation or, in the alternative, provide for irrigation that was lawfully established prior to the notification of the HWRRP\textsuperscript{82}. Providing an area of irrigation was an option that was dismissed early in the Plan Change 1 development process. Additional irrigation, particularly within the Hurunui catchment, would result in over-allocation of nutrient limits, unless existing irrigated farms were compelled to reduce nutrient discharges to compensate. While this would be possible, it would require a much larger community discussion and a change that is beyond the scope of that currently proposed in Plan Change 1.

\textsuperscript{76} Submission # 7.2.
\textsuperscript{77} Submission # 9.17 & 9.19.
\textsuperscript{78} Submission # 9.18.
\textsuperscript{79} Submission # 23.24 & 15.10.
\textsuperscript{80} Submission # 23.24 & 15.10.
\textsuperscript{81} See Appendix 2.
\textsuperscript{82} Submission # 16.19, 16.20.
141. Expanding the scope of Plan Change 1 to provide for irrigated farms under a less onerous rule framework is also a theme of the ANZ Fine Wine Estates submission. The submitter seeks that Policy 5.3C and Rule 10.1A apply to “low intensity farming activities” and that “low intensity farming” should include up to 50ha of irrigation. It is unlikely this could occur within existing nutrient limits, particularly in the Hurunui catchment, without a further reduction of tN/year load lost from the source beyond that being voluntarily surrendered by Amuri Irrigation. Providing for irrigation as a component of “Low Intensity Dryland Farming” is beyond the scope of Plan Change 1.

142. The Planetary Healing Foundation has sought withdrawal of Plan Change 1 in its entirety due to concerns Plan Change 1 will result in water quality degradation. The submitter would prefer to see focus on moving all farms to biodynamic systems and the cessation of chemical fertiliser use. The submitter also seeks setbacks from riparian strips on all flowing waterways. Requests to change farming systems and apply riparian setbacks are beyond the scope of Plan Change 1. Water quality will be maintained or improved as a result of Plan Change 1 and it is therefore recommended that Plan Change 1 proceed through the hearing.

**Recommendations**

143. No amendments to Plan Change 1 are recommended as a result of general submissions.

**Submissions on section 32 evaluation**

144. As discussed earlier in this report, section 32A(1) of the RMA provides that a challenge to an objective, policy, rule, or other method on the grounds that an evaluation report has not been prepared or regarded, may be made only in a submission.

145. Emu Plains Irrigation have challenged the s32 in their submission, but have not sought specific relief in relation to the s32 report.

146. RAN seek additional section 32 analysis on Rule 10.1A and clarification of how lifestyle blocks (less than 30ha) are managed. Lifestyle blocks (less than 30ha), with irrigation or that have more than 10% of their area in winter grazing, will continue to be managed as they currently are under Rule 10.1 and 10.2. Where a lifestyle block meets the definition of “Low Intensity Dryland Farming” it would be managed under Rule 10.1A.

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83 Submission #17.2 and 17.4.
84 Submission # 20.1.
85 Submission # 20.2.
86 Submission # 20.3.
88 Submission of Emu Plains Irrigation Incorporated
89 Submission # 7.10.
90 Submission # 7.9.
147. NC Fish & Game and Forest & Bird seek clarification within the section 32 report that some stakeholders prefer an alternative method for estimating the tN/year load lost from source for Low Intensity Dryland Farming activities in the Hurunui catchment. As a result, NC Fish & Game and Forest & Bird seek a more precautionary approach to Plan Change 1, with an N load offset of at least 50t/N/year in the Hurunui catchment. The reasons for choosing the methodology used to calculate Nitrogen source load (and the necessary offset) in the Hurunui catchment is set out in the technical supporting material. Specifically, Mr. Norton’s 2018 memo sets out the reasons for adopting the CRC’s preferred method (referred to as “method 2”) as follows:

“… Method 2 is based on in-river load estimates and the HWRRP Schedule 1 in-river load limit, converted to an equivalent source load by calculating the equivalent proportion of Amuri Irrigation Company’s (AIC) allocated N load, and is thus then directly relevant and relatable to the nutrient management system used by AIC. Discussions occurring at the time (e.g., at the Sub-group meeting on 12 March 2018) suggested that AIC, possibly in cooperation with the other irrigation schemes, was the most likely source of relinquished nitrogen load to meet the required offset. It therefore made sense to define the offset load requirement in terms that were relatable to AIC’s allocation and nutrient management system. This still makes sense now.”

148. NC Fish & Game and Forest & Bird seek clarification within the section 32 that winter grazing is not the only major variable affecting “off-farm losses.” The section 32 report states:

Normal year to year variations on dryland farms can lead to changes in loss rates greater than 10% in any given year. Because the base loss rate is so low, small normal changes to a dryland farm, made as part of yearly rotations or in response to variations in climate and market conditions (such as a change in stock numbers or stock type ratios, or an increase in winter feed), can change loss rates by more than 10%.

149. NC Fish & Game and Forest & Bird also seek further analysis of the long-term average Phosphorus load trend. It is not clear, from the submission, what information further analysis could provide to inform Plan Change 1, given Plan Change 1 will not cause farming activities to change such that Phosphorus loss rates would increase. The requirement for the use of Management Plans that specifically require identifying actions for phosphorus loss risk management will prevent increases in manageable phosphorus loss.
Recommendations

150. No amendments to Plan Change 1 are recommended as a result of submissions relating to the section 32 report.

Proposed Policy 5.3C

151. Having addressed the general submissions received, and submissions received in respect of the section 32 report, we now address submissions received on specific provisions of Plan Change 1.

152. Proposed Policy 5.3C states:

To protect existing values, uses and the mauri of the Hurunui and Waiau Uwha Rivers and their tributaries, while recognising the comparatively small contribution of dryland farming to in-river nutrient concentrations by allowing for the continued operation of low intensity dryland farms without resource consent.

153. Beef+Lamb, Ravensdown and NC Federated Farmers generally support the inclusion of proposed Policy 5.3C.

154. Ngāi Tahu support the proposed Policy 5.3C, so long as its application will result in the maintenance (at a minimum) of water quality in the Jed, Hurunui and Waiau Uwha catchments. Proposed Policy 5.3C does not refer to the Jed catchment. The rules that relate to proposed Policy 5.3C (specifically proposed Rule 10.1A) apply in the Jed catchment and it is appropriate that the policy should refer to the Jed River and its tributaries. As such, an amendment to proposed Policy 5.3C, to incorporate the Jed River catchment and its tributaries, is recommended.

155. NC Fish & Game and Forest & Bird seek amendments to proposed Policy 5.3C to clarify that values, uses and the mauri of the Hurunui and Waiau Uwha Rivers and their tributaries are protected, specifically from nutrient and water over-allocation. The submitters also seek the word "small" is replaced with "lesser" in relation to the comparative contribution of dryland farming to in-river nutrient concentrations.

156. With regard to the request to amend proposed Policy 5.3C to apply specifically to nutrient and water over-allocation, it is recommended that the amendment is not made. Proposed Policy 5.3C implements objectives concerned with managing the cumulative effects of land use on water quality. It is not intended that the policy be limited to nutrient losses. Proposed Policy 5.3C and the relevant rules in the HWRRP also relate to managing contaminant run-off and other adverse effects that occur cumulatively from land use. Proposed Policy 5.3C is not intended to relate to water quantity. Policies relating to the allocation of water quantity are included in sections 2.1, 2.2, 2.3, 2.4, 2.6, 2.7 and 2.8 of the HWRRP. Applying proposed Policy 5.3C to

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98 Submission # 24.1, 11.2 & 16.2.
99 Submission # 14.9.
100 Submission # 15.12 & 23.26.
water quantity over-allocation will expand the scope of Plan Change 1 beyond its targeted purpose.

157. With regard to the request to replace the word “small” with “lesser”, it is not recommended the amendment is made. The words “small” and “lesser” are synonyms and it is unclear what will be achieved by changing the words. However, it is my opinion that the proposed Policy 5.3C reads more clearly with the word “small”.

158. ANZ Fine Wine Estates seek to replace proposed Policy 5.3C in its entirety\(^\text{101}\) with a new policy that states:

\[
\text{To maintain the mauri and in-stream values of the Hurunui and Waiau Uwha Rivers and their tributaries and enable people and communities to provide for their economic and social wellbeing, by enabling low intensity farming activities as permitted activities.}
\]

159. The suggested replacement policy extends the scope of proposed Policy 5.3C beyond Low Intensity Dryland Farming to enable “low intensity farming activities”. Enabling “low intensity farming activities” goes beyond the targeted purpose of Plan Change 1, which is to provide a more equitable framework for Low Intensity Dryland Farming specifically. Further, the submitter’s suggested replacement policy seeks “maintenance” rather than “protection” of mauri and in-stream values in the Hurunui and Waiau Uwha Rivers, which significantly weakens the policy and could lead to a consequential weakening of the rules which currently include conditions aimed at the protection of mauri, uses and values in the Hurunui and Waiau Uwha Rivers. The suggested replacement policy sought by the submitter emphasises economic and social wellbeing over environmental and cultural wellbeing. It is not the intent of Plan Change 1 to elevate economic or social wellbeing in relation to environmental and cultural wellbeing. Overall, for the reasons set out here and above at paragraphs 140 and 141 above, it is my opinion that the suggested replacement policy does not represent a better way to achieve the Plan or plan change objectives than the proposed Policy 5.3C and therefore, no changes are recommended in response to this submission point.

160. Fonterra seek to amend proposed Policy 5.3C so that it reads as follows (amendments sought shown as underlined and strike through)\(^\text{102}\):

\[
\text{To protect existing values, uses and the mauri of the Hurunui and Waiau Uwha Rivers and their tributaries, while providing for a degree of flexibility for dryland farming provided that flexibility is limited to the extent necessary to ensure there will be no breach of the nutrient load limits set in schedule 1, while recognising the comparatively small contribution of dryland farming to in-river nutrient concentrations by allowing for the continued operation of low intensity dryland farms without resource consent.}
\]

\(^{101}\) Submission # 17.2.

\(^{102}\) Submission # 25.1.
161. Fonterra seek the amendment to proposed Policy 5.3C to provide “clear boundaries to use and intensification that offer a high level of surety that in-stream nutrient limits are not exceeded”\textsuperscript{103}. The voluntary surrender of 38tN/year load lost from source by Amuri Irrigation will ensure the Catchment Nutrient Load Limits in Schedule 1 for the Hurunui Catchment are not exceeded, and that current over-allocation is resolved. The degree to which Low Intensity Dryland Farming activities can “intensify” is limited by Rule 10.1A and the definition of “Low Intensity Dryland Farming” which excludes irrigation development and limits winter grazing opportunity. Proposed Policy 5.3C does not need to state these requirements, rather it should state how the objectives will be achieved. In the authors’ opinion, proposed Policy 5.3C better explains how the objectives are to be implemented, than that suggested by Fonterra. No amendments to proposed Policy 5.3C are recommended in response to this submission.

**Recommendations**

It is recommended proposed Policy 5.3C is amended as follows (amendments from the notified version shown in bold):

To protect existing values, uses and the mauri of the Jed,\textsuperscript{104} Hurunui and Waiau Uwha Rivers and their tributaries, while recognising the comparatively small contribution of dryland farming to in-river nutrient concentrations by allowing for the continued operation of low intensity dryland farms without resource consent.

**General submissions on rules**

162. Emu Plains Irrigation have sought re-assessment of the effects that Plan Change 1 and other planned development, including development currently under consideration in consent processes, will have on water quality in the Waiau Uwha River. If the cumulative effects of Plan Change 1 and other planned development will likely result in worsening of water quality (including periphyton growth) in the Waiau Uwha River, the submitter has sought withdrawal of Plan Change 1\textsuperscript{105}.

163. Emu Plains Irrigation have an application for resource consent currently in process. It is unknown what the likely effect of that resource consent will be, or even if that consent will be granted (at the time of writing). As such, it is impossible to determine the cumulative effect of the resource consent application and Plan Change 1. As set out at paragraph 42 of this report, Plan Change 1 is unlikely to result in increased losses from dryland farming. Rather, Plan Change 1 seeks to enable pre-HWRRP farming systems (including Low Intensity Dryland Farming) to continue to operate with a more realistic nutrient loss variance. Further, Plan is designed to enable existing land uses to continue as permitted activities and manage land use change through resource consent processes. Further, under the existing rule framework in the

\textsuperscript{103} Fonterra submission (reference submission # 25): comments in relation to submission point 25.1.
\textsuperscript{104} Submission # 14.9.
\textsuperscript{105} Submission # 27.2, 27.3, 27.4, 27.1.
HWRPP (Rule 10.2 in particular), land uses within the Waiau Uwha catchment are able to intensify as a permitted activity where intensification will not cause an exceedance of Plan limits or drinking water standards.

Proposed Rule 10.1A

164. Beef+Lamb, Ravensdown, and Ngāi Tahu generally support the proposed changes to proposed Rule 10.1A and seek its retention.¹⁰⁶

165. HDC and Hurunui Landcare Group support the permitted activity pathway for Low Intensity Dryland Farming activities provided by proposed Rule 10.1A, and specifically support the choices available for compliance with catchment accounting requirements via the Farm Portal or a Dryland Farmer Collective Agreement. Hurunui Landcare Group also support condition (b) of proposed Rule 10.1A, as it clarifies CRC will not retain copies of Management Plans. Beef+Lamb, Ngāi Tahu and Ravensdown generally support proposed Rule 10.1A.¹⁰⁹

166. NC Fish & Game and Forest & Bird seek amendments to proposed Rule 10.1A to improve enforceability and implementation of good management practices through Management Plans. Specifically, the submitters seek that proposed Rule 10.1A be amended to ensure the CRC can carry out random checks of Management Plans and ensure the Management Plans are accurate and are being implemented. Proposed Rule 10.1A makes it very clear that CRC retains the right to view Management Plans as a part of compliance checks, which could occur at any time. Proposed Rule 10.1A specifies (by reference to Schedule 6) the minimum content of a Management Plan. Proposed Rule 10.1A also requires Low Intensity Dryland Farming activities to implement Management Plans. This approach is used elsewhere in the Canterbury region for permitted farming activities.¹¹¹

167. RAN oppose the conditions of proposed Rule 10.1A, requiring reporting of winter grazing area and mandatory Management Plans. RAN seek further justification for requirement for Management Plans and seek deletion of proposed Rule 10.1A in its entirety. Reporting of winter grazing areas is necessary for monitoring the effectiveness of Plan Change 1 and for meeting the catchment accounting requirements of the NPS-FM 2014 (as amended in 2017). Reporting of winter grazing areas will also enable more informed limit setting when the HWRPP is next reviewed.

168. Management Plans are necessary to ensure practices are identified and implemented to manage the risk of run-off contamination of water (phosphorus,

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¹⁰⁶ Submission # 24.3, 11.4, 14.2 (to the extent that water quality can be maintained).
¹⁰⁷ Submission # 3.3, 26.2.
¹⁰⁸ Submission # 26.3.
¹⁰⁹ Submission # 24.3, 14.2 (to the extent that water quality can be maintained), 11.4.
¹¹⁰ Submission # 23.15, 23.21, 23.28, 15.6, 15.7, 15.14.
¹¹¹ Canterbury Land and Water Regional Plan. Rules 5.44, 5.54 and 5.57A and Schedule 7A.
¹¹² Submission # 7.5, 7.6, 7.7 & 7.11.
¹¹³ Section CC, NPS-FM.
microbial and sediment run-off). Management Plans are a tool that the CRC can use to have conversations about good management practices with farmers. Management Plans were widely supported during the collaborative Zone Committee process. Management Plans are becoming industry standard, and they are a useful tool for identifying environmental risk and methods for managing those risks. It would be unlikely Plan Change 1 could be the most appropriate way of achieving the Objectives of the HWRRP or as giving effect to the Objectives and Policies the NPS-FM if winter grazing is provided for as a permitted activity with no requirement to actively manage the risk of run-off contamination of water.

169. Amuri Irrigation generally support proposed Rule 10.1A, but seeks amendments to its conditions. Specifically, Amuri Irrigation seeks amendment to condition (a)(i) so that it states the specific information that will be required when registering with the Farm Portal. Amuri Irrigation also seeks amendment to condition (b) to clarify that one Management Plan per property is required114.

170. Information required to register with the Farm Portal will vary slightly for each farm. The Portal requires basic information about the farm type, stocking rates and areas in pasture or crop. Listing the information required by the Farm Portal within the rule would add unnecessary complexity to the rule and as such is not recommended.

171. Clarification that one Management Plan per property is required would improve the rule clarity and as such it is recommended that an amendment, similar to that suggested by Amuri Irrigation, be made.

172. NC Federated Farmers and Hurunui Landcare Group support proposed Rule 10.1A and the clarification that Management Plans will be viewed only115. However, NC Federated Farmers seek amendment to ensure information that is contained within Management Plans and can be linked to specific properties, will not be retained by the CRC. It is clear in condition (b) of proposed Rule 10.1A that Management Plans will not be retained by the CRC. The CRC may be required to hold some information regarding Management Plans in instances where there is a compliance proceeding (e.g. proposed enforcement action), or for the purposes of keeping track of monitoring. It is unlikely that specific Management Plan information (linked to specific properties) would be retained unless it is related to a compliance proceeding.

173. NC Federated Farmers also seek confirmation that the CRC will provide support to farmers who may have trouble preparing a Management Plan or registering in the Farm Portal116. The CRC has an extensive work programme and resourcing, including a dedicated zone team, in place to assist farmers to comply with Management Plan and Farm Portal requirements. This will form part of the implementation of Plan Change 1 and, sits outside the provisions of Plan Change 1.

115 Submission # 16.5, 26.3.
174. ANZ Fine Wine Estates seek amendment to proposed Rule 10.1A so that it applies to low intensity irrigated farmers as well as Low Intensity Dryland Farming activities. For reasons set out at paragraphs 140 and 141, in relation to providing for limited irrigation, it is not recommended that such amendments are made.

**Recommendations**

175. It is recommended that proposed Rule 10.1A is amended as follows (amendments to the notified version shown in bold):

Rule 10.1A

The use of land for Low Intensity Dryland Farming that results in a discharge of nitrogen or phosphorus, which may enter water, in the Nutrient Management Area shown on Map 4, is a permitted activity provided that:

- either:
  - the property is registered in the Farm Portal by [12 months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA] and information about the farming activity and the property is reviewed and updated by the property owner or their agent every 36 months thereafter, or whenever any boundary of the property is changed; or
  - the property is subject to a Dryland Farmer Collective Agreement on or before [12 months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA]; and

- a Management Plan *is prepared for and implemented on the property* in accordance with Schedule 6 *has been prepared and is implemented* by [12 months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA] and is supplied to the Canterbury Regional Council, on request, to be viewed only. The Canterbury Regional Council will not retain copies of the Management Plan.

**Proposed consequential amendments to rules**

**Rule 10.1**

176. Beef+Lamb, Ravensdown, and NC Federated Farmers generally support the proposed changes to Rule 10.1 and seek its retention. RAN support the exclusion...
of Low Intensity Dryland Farming activities from the OVERSEER requirements of Rule 10.1.\textsuperscript{121}

177. ANZ Fine Wine Estates seek to apply the exclusion of Low Intensity Dryland Farming activities from Rule 10.1 further. The submitter seeks an amendment to allow low intensity irrigated farms to operate under provision of proposed Rule 10.1A\textsuperscript{122}. Hurunui Landcare Group also seek provision within Rule 10.1 for farmers with up to 50ha of irrigation to be able to operate under proposed Rule 10.1A\textsuperscript{123}. For reasons set out at paragraphs 140 and 141, in relation to providing for limited irrigation, it is not recommended that such amendments are made.

178. Forest & Bird and NC Fish & Game seek inclusion of a new condition to Rule 10.1 that would prevent Low Intensity Dryland Farming activities from operating under proposed Rule 10.1A until the 38tN/year load lost from source in the Hurunui catchment has been surrendered by Amuri Irrigation. Within this submission, an increase of the surrendered tN/year load lost from source to 50tN/year is also sought\textsuperscript{124}. The Deed of Undertaking\textsuperscript{125} ensures the 38tN/year load lost from source will be surrendered as soon as Plan Change 1 is beyond challenge. This will ensure that the Plan Change 1 provisions do not result in any over-allocation (noting that farmers must comply with the HWRRP and Plan Change 1 until this point in time). Technical work does not support increasing the tN/year load from source to 50tN/year in the Hurunui catchment\textsuperscript{126}.

**Rule 10.2**

179. Beef+Lamb, Amuri Irrigation, NC Federated Farmers and Hurunui Landcare Group generally support the proposed changes to Rule 10.2\textsuperscript{127}.

180. Ravensdown seek some minor corrections to Rule 10.2 (i.e. capitalise the term “Low Intensity Dryland Farming”)\textsuperscript{128}. It is recommended the minor corrections are made.

181. Ngāi Tahu seek deletion of Clause (a)(ii) from Rule 10.2 or an amendment to Rule 10.2 to clarify how the rule and its conditions apply alongside other rules\textsuperscript{129}. Ravensdown also seek an amendment to condition (a)(ii) to remove the need for land use changing from Low Intensity Dryland Farming to comply with condition (b) of proposed Rule 10.1A (i.e. the Management Plan requirement)\textsuperscript{130}.

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\textsuperscript{121} Submission # 7.3.
\textsuperscript{122} Submission # 17.3.
\textsuperscript{123} Submission # 26.1.
\textsuperscript{124} Submission # 15.13, 23.27.
\textsuperscript{125} See Appendix 2.
\textsuperscript{126} Summary of process to estimate the nitrogen load increase that would need to be offset in the Hurunui catchment as part of fixing the dryland farming 10% rule issue. Norton, N. 2018.
\textsuperscript{127} Submission # 24.4, 9.25, 16.7, 26.4.
\textsuperscript{128} Submission # 11.5.
\textsuperscript{129} Submission # 14.3, 14.4.
\textsuperscript{130} Submission # 11.5.
182. Applying the requirement for compliance with proposed Rule 10.1A conditions as a condition of permitted land use change ensures the extent of land use change can be understood. The conditions of permitted land use are designed to ensure the nutrient and contaminant losses coming from that land use are known (i.e. reporting nutrient losses or winter grazing area and being part of a collective who has implemented an Environmental Management Strategy or implementation of a Management Plan). If those conditions have not been met, it is impossible to know if a land use has changed (i.e. for land uses other than Low Intensity Dryland Farming, nutrient losses have increased by more than 10%), or what impact a change in land use could have. The operative Rule 10.2 requires non-irrigated land uses to have been subject to a "collective agreement" prior to a permitted land use change. Condition 10.2(a)(ii) provides an alternative pathway for Low Intensity Dryland Farming activities that have operated under proposed Rule 10.1A to comply with the requirement to demonstrate application of good management practices, which in turn identify the scale of impact of the existing land use. As such, it is not recommended that the amendments sought by Ngāi Tahu or Ravensdown are made.

183. Fonterra seek to limit the application of proposed Rule 10.2 to a situation where a change in land use for Low Intensity Dryland Farming activities is only permitted if that change in land use will not result in an exceedance of nutrient limits\(^\text{132}\). Rule 10.2, condition (a)(i) refers back to, and requires compliance with, limits specified in Rule 10.1 conditions (c) and (d), for land use change to be a permitted activity. Condition (b) of Rule 10.2 also requires demonstration that a land use change will not result in the Catchment Nutrient Load Limits in Schedule 1 being exceeded. Rule 10.2 already limits permitted land use change to occur only where limits are met and as such the amendment sought would not add any additional requirement to the rule. As such it is not recommended that the amendment sought is made.

**Rule 11.1**

184. Amuri Irrigation and Ravensdown generally support the proposed changes to Rule 11.1\(^\text{133}\). However, Amuri Irrigation and NC Federated Farmers seek an amendment to the rule to clarify it is for a restricted discretionary status activity\(^\text{134}\). While there is a clear error in the Plan, Rule 11.1 itself states clearly the matters to which the CRC will restrict its discretion. The amendment sought is outside the scope of Plan Change 1. No amendments are recommended in relation to these submissions.

185. Ngāi Tahu seek a new matter (Ngāi Tahu values) to which the CRC restricts its discretion to be included in Rule 11.1\(^\text{135}\). The amendments to Rule 11.1 that have been made are strictly consequential to the insertion of proposed Rule 10.1A, and are limited in scope accordingly. Plan Change 1 does not seek to change the matters to which discretion is limited by Rule 11.1 and no section 32 evaluation has been

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\(^{131}\) Industry Certification System, Catchment Agreement, Irrigation Scheme Management Plan, or Lifestyle Block Management Plan.

\(^{132}\) Submission # 25.2.

\(^{133}\) Submission # 9.26, 16.8.

\(^{134}\) Submission # 9.27, 11.6.

\(^{135}\) Submission # 14.6.
undertaken to understand the benefits or costs of making such a change, and affected parties may not have had sufficient opportunity to provide feedback or submit on the Ngāi Tahu proposal. The amendment sought is out of scope and could only lawfully (i.e. in accordance with the provisions of Schedule 1 of the RMA) be made by way of a variation to Plan Change 1. The amendment sought does not serve the purpose of the targeted plan change and as such it is not recommended that the amendment sought is made. For completeness, the section 32 report sets out the purpose of Plan Change 1 as:

*to reduce the regulatory burden on low impact dryland farming while:*

- Achieving a regulatory framework for dryland farming that is commensurate with established low environmental impact from dryland farming
- Giving effect to NPS-FM requirements to maintain or improve water quality
- Giving effect to NPS-FM requirements to account for nutrient losses at a Freshwater Management Unit (catchment) level; and
- Encouraging the implementation of farm management practices, particularly for the management of phosphorus and sediment loss

**Recommendations**

Amend Rule 10.2 as follows (amendments from the notified version shown in bold):

Any change in land use (refer Part 5 - Definitions), in the Nutrient Management Area shown on Map 4, is a permitted activity, provided that:

a. Either:

   i. conditions (b), (c) and (d) of Rule 10.1 are met; or

   ii. if land use is changing from low intensity dryland farming Low Intensity Dryland Farming to another land use, conditions (c) and (d) of Rule 10.1 and conditions (a) and (b) of Rule 10.1A are met; and …

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136 See paragraphs 115 – 131 of this report
137 Submission # 11.5.
Proposed definitions

Change of land use

186. Amuri Irrigation, Ravensdown, NC Federated Farmers and Beef+Lamb support the definition of “change of land use” in general and Hurunui Landcare Group specifically support the inclusion of Clause (b) to the definition138.

187. ANZ Fine Wine Estates seek amendment to the definition of “change of land use” to refer (in clause (b)) to “low intensity farming” rather than “Low Intensity Dryland Farming” (which would allow for irrigated land use as part of that activity)139. For reasons set out at paragraphs 140 and 141 of this report, in relation to providing for limited irrigation, it is not recommended that such amendments are made.

Dryland Farmer Collective Agreement

188. Ravensdown, NC Federated Farmers, Beef+Lamb and Hurunui Landcare Group support the definition of “Dryland Farmer Collective Agreement” generally140.

189. ANZ Fine Wine Estates seek amendment to the definition of “Dryland Farmer Collective Agreement” to refer to “low intensity farming” rather than “Low Intensity Dryland Farming”141. For reasons set out at paragraphs 140 and 141 of this report, in relation to providing for limited irrigation, it is not recommended that such amendments are made.

190. Fonterra seek amendment to the definition of “Dryland Farmer Collective Agreement” to clarify that information gathered by the collective will be shared with CRC for compliance monitoring for proposed Rule 10.1A142. Proposed Rule 10.1A and Schedule 2A set out the information sharing requirements for monitoring purposes. It is not considered appropriate or necessary to specify rule requirements within the definition.

Farm Portal

191. Ravensdown, NC Federated Farmers and Hurunui Landcare Group support the definition of “Farm Portal” generally143. However, NC Federated Farmers seek a small grammatical correction144. The correction sought is consistent with the style of the Plan and as such, it is recommended the correction is made. See recommendations at paragraph 207 below

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138  Submission # 9.28, 11.7, 16.9, 24.6, 26.5.
139  Submission # 17.5.
140  Submission # 11.8, 16.10, 24.7, 26.6.
141  Submission # 17.6.
142  Submission # 25.4.
143  Submission # 11.9, 16.11, 26.7.
144  Submission # 16.11.
Low Intensity Dryland Farming

192. Amuri Irrigation and Beef+Lamb generally support the definition of “Low Intensity Dryland Farming”\(^\text{145}\).

193. Ngāi Tahu seek clarification of how the definition of “Low Intensity Dryland Farming” relates to the rules\(^\text{146}\). Any land use that meets the definition of “Low Intensity Dryland Farming” must comply with the conditions of proposed Rule 10.1A. If a land use activity that meets the definition of “Low Intensity Dryland Farming” is changed (in accordance with the definition of “Change of land use”), Rule 10.2 applies, or if the conditions of Rule 10.2 are not met, Rules 11.1 or 11.1A apply. If a land use does not meet the definition of “Low Intensity Dryland Farming”, Rules 10.1, 10.2, 11.1 and 11.1A apply as they would have under the operative rule framework.

194. Ravensdown, NC Federated Farmers and Hurunui Landcare Group seek amendments to the definition of “Low Intensity Dryland Farming” so that it specifies that properties under 100ha are able to use up to 10ha for winter grazing while remaining within the definition\(^\text{147}\). This is consistent with the Canterbury Land and Water Regional Plan provisions for farming activities in “Red Nutrient Allocation Zones” (i.e. zones where water quality outcomes are not met). It appears unlikely that extensive winter grazing would be carried out on lifestyle blocks of 10ha or less. However, it is not clear if there are an abundance of smaller blocks used for this purpose within the Hurunui Waiau Zone. Regardless, it is assumed that the plausible-worst case increase for winter grazing would still apply at the catchment wide level because it is assumed that non-irrigated smaller blocks are subject to the same natural and economic limits as larger dryland blocks.

195. It is recommended that the definition of “Low Intensity Dryland Farming” is amended in accordance with these submissions. See paragraph 208 for specific recommendations.

196. Ravensdown also seek amendment to clause (d) of the definition of “Low Intensity Dryland Farming”, to remove the words “for the purpose of intensive controlled feeding with the purpose of encouraging weight gain”\(^\text{148}\). The purpose of clause (d) of the definition is to exclude intensive feedlot farm systems from the definition of “Low Intensity Dryland Farming”. Intensive feedlot farm systems were not intended to be provided for by Plan Change 1, and will continue to be managed via Rules 10.1, 10.2, 11.1 and 11.1A. Including feedlot systems would expand the scope of Plan Change 1 beyond what has been considered in technical work (and would have implications for the required nitrogen loss offset), or subject to Schedule 1 consultation. Including this farm type would expand the scope of Plan Change 1 to an extent that could only be lawfully\(^\text{149}\) achieved via a variation to Plan Change 1. The amendment sought does not serve the purpose of the targeted plan change (which is to reduce the regulatory

\(^{145}\) Submission # 9.29, 24.9.
\(^{146}\) Submission # 14.5.
\(^{147}\) Submission # 11.10, 16.2, 26.9.
\(^{148}\) Submission # 11.10.
\(^{149}\) See paragraphs 115 – 131 above
burden on low impact dryland farming). Additionally, the amendment sought would remove qualifiers that identify the difference between extensive dryland farming operations and intensive feed-lot systems. The amendment sought would result in the exclusion of any farming activity where stock are held in stockyards from the definition of “Low Intensity Dryland Farming”. This is because clause d) would read: “the farming activity does not include a component where livestock are confined within a hardstand area”. The amendment sought is not recommended.

197. NC Federated Farmers seek deletion of clause (c) of the definition of “Low Intensity Dryland Farming”, so that pork and poultry farming is not excluded from the definition. Pork and poultry farm systems were not intended to be provided for by Plan Change 1, and will continue to be managed via Rules 10.1, 10.2, 11.1 and 11.1A. Including pork and poultry systems would expand the scope of Plan Change 1 beyond what has been considered in technical work (and would have implications for the required nitrogen loss offset), or subject to Schedule 1 consultation. Including these farm types could only be lawfully achieved via a variation to Plan Change 1. The amendment sought does not serve the purpose of the targeted plan change (which is to reduce the regulatory burden on low impact dryland farming) and as such it is not recommended that the amendment sought is made.

198. ANZ Fine Wine Estates seek an amendment to the definition to refer to “low intensity farming” and include provision for up to 50ha of irrigation. Hurunui Landcare Group also seek provision for farms with up to 50ha of irrigation to fit within the definition. As alternate relief, ANZ Fine Wine Estates seek provision for up to 50ha of irrigation with no provision for winter grazing. For reasons set out at paragraphs 140 and 141 of this report, in relation to providing for limited irrigation, it is not recommended that such amendments are made.

199. Fonterra seek an amendment to clause (d) to specify that a “Low Intensity Dryland Farming” activity should not include a component where livestock are confined on an area without pasture or vegetative cover for intensive controlled feeding. This amendment would effectively exclude winter grazing from “Low Intensity Dryland Farming” because it is common for winter grazing to result in areas where cattle are confined being stripped of vegetative cover. This is why winter grazing is a nutrient and contaminant loss risk and why it is necessary to limit the permitted winter grazing area.

200. Fonterra also seek to limit “Low Intensity Dryland Farming” to activities where no more than 20% of animal feed consumed on the property is imported. This could unnecessarily limit the ability for Low Intensity Dryland Farming activities to retain stock in very dry years where it may be necessary to import hay or baleage to keep stock going over dry months. It is not clear what advantage would be gained from

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150 Submission #16.12.
151 See paragraphs 115 – 131 of this report
152 Submission # 17.7.
153 Submission # 26.8.
154 Submission # 17.8.
155 Submission # 25.3.
limiting imported feed for Low Intensity Dryland Farming activities where imported feed is used as a means to keep stock on during a feed shortage, rather than as a supplement to increase productivity.

201. Emu Plains Irrigation have sought re-assessment on what the effects of Plan Change 1 and other planned development, including development currently under consideration in consent processes, will have on water quality in the Waiau Uwha River. If the cumulative effects of Plan Change 1 and other planned development will likely result in worsening of water quality in the Waiau Uwha River, the submitter has sought withdrawal of Plan Change 156.

202. Emu Plains Irrigation has an application for resource consent currently in process. It is unknown what the likely effect of that resource consent will be, or even if that consent will be granted (at the time of writing). As such, it is impossible to determine the cumulative effect of the resource consent application and Plan Change 1. Going back to the point made at paragraph 42 of this report, Plan Change 1 is not intended to enable more losses from dryland farming activities. Rather, Plan Change 1 seeks to enable pre-HWRRP farming systems to continue to operate with a more realistic nutrient loss variance. Plan Change 1 is also designed to enable existing land uses to continue as permitted activities and to manage land use change through resource consent processes. I also note, that under the existing rule framework (Rule 10.2 in particular), land uses within the Waiau Uwha catchment are able to intensify as a permitted activity where that intensification will not cause an exceedance of plan limits or drinking water standards.

Winter Grazing

203. Amuri Irrigation, Ravensdown, Beef+Lamb, and Hurunui Landcare Group, support the definition of “Winter Grazing” in general157.

204. NC Federated Farmers seek amendment to the definition to align with the definition used in the Canterbury Land and Water Regional Plan. The change sought is as follows:

Winter Grazing means the grazing of cattle within the period of 1 May to 30 September, where the cattle are contained for break-feeding of in-situ brassica and root vegetable forage crops or for consuming supplementary feed that has been brought onto the property.

205. There is benefit to using the same definitions across the various regional plans in force in Canterbury. Consistent terminology ensures consistency in implementation and is easier for plan users. However, in the context of Plan Change 1, limiting the area over which imported feeds such as hay and baleage can be fed out, cannot be justified. Plan Change 1 requires Low Intensity Dryland Farming activities to report on the area of land used for winter grazing. It is common practice for Low Intensity Dryland Farming activities to feed out supplementary feed such as hay or baleage

156 Submission # 27.5, 27.6.
over winter months. It is good practice for this feeding to occur in different locations to
avoid damage to pasture. Reporting on this area would not necessarily provide an
accurate picture of the type of “high risk” winter grazing the CRC considers is
important for the purpose of accounting for nutrient losses at the catchment scale. On
balance, the proposed definition more efficiently achieves the HWRRP objectives.

Dryland Farmer Collective Agreement

206. Fonterra seek amendment to the definition of “Dryland Farmer Collective Agreement”
to clarify that the information gathered by the collective (winter grazing area) will be
shared with the CRC\textsuperscript{158}. Rule 10.1A and Schedule 2A clarify this requirement. The
purpose of the definition is not to state the requirements of the collective.

Recommendations

207. Amend the definition of “Farm Portal” as follows (amendments from the notified
version shown in bold):

\textbf{means Means}\textsuperscript{159} the nutrient management database accessed at
www.farmportal.ecan.govt.nz. For the purpose of Rule 10.1A, Farm Portal refers to
the “N. Check” tool which can be accessed at www.farmportal.ecan.govt.nz

208. Amend the definition of “Low Intensity Dryland Farming” as follows (amendments
from the notified version shown in bold):

\textbf{means the use of land for a farming activity, where:}

a. no part of the property is irrigated; and

b. the area of the property used for Winter Grazing is less than:

i. 10 hectares, for any property less than 100 hectares in area; or\textsuperscript{160}

ii. 10\% of the area of the property, for any property between 100
hectares and 1000 hectares in area; or

iii. 100 hectares, for any property greater than 1000 hectares in area; and

c. the farming activity does not include the farming of more than 25 weaned pigs
or more than 6 sows, or the farming of poultry fowl at a stocking rate of more
than 10 birds per hectare, up to a maximum of 1000 birds; and

d. the farming activity does not include a component where livestock are
confined within a hard-stand area for the purpose of intensive controlled
feeding with the purpose of encouraging high weight gain.

\textsuperscript{158} Submission \# 25.4.
\textsuperscript{159} Submission \# 16.11.
\textsuperscript{160} Submission \# 11.10, 16.2, 26.9.
209. Retain all other definitions as notified in Plan Change 1.

**Proposed Schedule 2A**

210. Ravensdown, Beef+Lamb and Hurunui Landcare Group generally support Schedule 2A\(^{161}\).

211. Fonterra seeks an amendment to include the proportion of the feed budget that comprises imported feed as a matter for members to report annually to the collective\(^ {162}\). For reasons set out at paragraph 200 of this report, it is not considered necessary to seek this information from Low Intensity Dryland Farming activities.

**Recommendations**

It is recommended that Schedule 2A is retained as notified in Plan Change 1.

**Proposed Schedule 6**

212. Ravensdown generally supports Schedule 6\(^ {163}\), and NC Federated Farmers specifically supports the ninth box in the table (Part B) that refers to “Critical phosphorus source areas”\(^ {164}\).

213. ANZ Fine Wine Estates seek an amendment to Part A of Schedule 6 to enable Demeter Biodynamic Accreditation management plans to be considered compliant with the requirements of Schedule 6\(^ {165}\). A copy of the Demeter Biodynamic Accreditation management plan template is provided in Appendix 3. The Demeter Biodynamic Accreditation management plan covers most of the requirements set out in Schedule 6. The Demeter Biodynamic Accreditation management plan does not include provision for the identification and protection of mahinga kai values. However, it is likely that the nature of biodynamic farming practices would result in protection of mahinga kai values. Schedule 6 provides for industry prepared Management Plans and requires that the Management Plan be certified, as equivalent, by the Chief Executive of CRC. The submitter will be able to seek approval of the Demeter Biodynamic Accreditation management plan under the provisions as notified. It is not considered any amendment is needed to provide the relief sought by the submitter.

214. NC Federated Farmers and Hurunui Landcare Group seek deletion of item 2(e) (requirement to identify the location on waterways where stock access or crossing occurs) from Part B of Schedule 6\(^ {166}\). Stock access to waterways is a high risk for contaminants entering waterways, either directly or as a result of river bank destabilisation. Identifying areas where stock can access waterways so that the risk

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\(^{161}\) Submission # 11.12, 24.11, 26.11.

\(^{162}\) Submission # 25.5.

\(^{163}\) Submission # 11.13.

\(^{164}\) Submission # 16.18.

\(^{165}\) Submission # 17.9.

\(^{166}\) Submission # 16.14, 26.12.
of contaminant runoff can be assessed and managed is an important function of a Management Plan. It is recommended item 2(e) is retained as proposed.

215. NC Federated Farmers and Hurunui Landcare Group also seek amendment to item 3 of Part B to refer to “critical” source areas for phosphorus. The amendment requested is consistent with management plan requirements under the Canterbury Land and Water Regional Plan. It is recommended the amendment is made.

216. RAN, NC Federated Farmers and Hurunui Landcare Group seek deletion of the “mahinga kai values” practice from the table in Part B of Schedule 6.

217. Section 6(e) of the RMA identifies “the relationship of Māori and their culture and traditions with their ancestral lands, water, wāhi tapu, and other taonga” as a matter of national importance to be recognised and provided for. Management Plans are a requirement of proposed Rule 10.1A because they are a method by which potential adverse effects on water quality can be identified and avoided or mitigated. Because water quality can impact on mahinga kai values, it is important for Low Intensity Dryland Farming activities to identify and protect those values so that the relationship of Māori with their culture and traditions can be provided for.

218. Removing the “mahinga kai” practice from the table will reduce the effectiveness with which the Plan Change 1 provisions give effect to the Plan objectives, specifically Objective 5.1 which states:

Concentrations of nutrients entering the mainstems of the Hurunui, Waiau and Jed rivers are managed to:

a. protect the mauri of the waterbodies;

b. protect natural biota including riverbed nesting birds, native fish, trout, and their associated feed supplies and habitat;

c. control periphyton growth that would adversely affect recreational, cultural and amenity values;

d. ensure aquatic species are protected from chronic nitrate toxicity effects; and,

e. ensure concentrations of nitrogen do not result in water being unsuitable for human consumption.

219. Identifying and protecting mahinga kai values on individual farm properties will assist in protecting the mauri of waterbodies that flow through those properties and will also assist in the protection of natural biota and habitat.

220. Ngāi Tahu seek an amendment to the Table in Part B of Schedule 6 to include “fertiliser” in the following practice description:

Vegetated riparian margins of sufficient width are maintained to minimise nutrient, sediment and microbial pathogen losses to waterbodies.

168 Submission # 7.8, 16.16, 26.13.
169 Submission # 14.7.
NC Federated Farmers seek the deletion of this item from the table\textsuperscript{170}.

Neither of the amendments sought to the practice descriptor are recommended. In relation to the Ngāi Tahu submission, the term "nutrient" would encapsulate fertiliser. In relation to the NC Federated farmers submission, the practice is a key practice for minimising contaminant run-off entering water and there are no other practices identified that would achieve the same protection of water quality from general farm run-off.

\textit{Recommendations}

Amend Schedule 6 Part B as follows (amendments to notified version shown in tracking):

\textbf{Part B - Management Plan Default Content}

The Management Plan shall contain as a minimum:

1. Property details
   a. Physical address
   b. Description of the ownership and name of a contact person
   c. Legal description of the land and farm identifier

2. A map(s) or aerial photograph at a scale that clearly shows:
   a. The boundaries of the property.
   b. The boundaries of the main land management units on the property.
   c. The location of permanent or intermittent rivers, streams, lakes, drains, ponds or wetlands.
   d. The location of riparian vegetation and fences adjacent to water bodies.
   e. The location on all waterways where stock access or crossing occurs.

3. The location of any \textit{critical}\textsuperscript{171} source areas for phosphorus loss

4. A description of:
   a. the on-farm actions, including applicable good management practices, that have been undertaken in the previous 01 July to 30 June period to implement the applicable practices described in the table below; and

\textsuperscript{170} Submission #16.17.

\textsuperscript{171} Submission # 16.15, 26.12.
b. the on-farm actions, including good management practices, that will be 
undertaken over the next 01 July to 30 June period to implement the 
applicable practices described in the table below.

5. A copy of the Management Plan shall be retained by the landowner and updated at 
least once every 12 months as necessary, and provided to the Canterbury Regional 
Council, for viewing, on request. The Canterbury Regional Council will not retain 
copies of the Management Plan.
Appendix 1: Recommendations

The following recommendations are made in response to submissions

1. **Amend** proposed Policy 5.3C as follows (amendments from the notified version shown in red text):

   **Policy 5.3C**

   To protect existing values, uses and the mauri of the Jed,\(^{172}\) Hurunui and Waiau Uwha Rivers and their tributaries, while recognising the comparatively small contribution of dryland farming to in-river nutrient concentrations by allowing for the continued operation of low intensity dryland farms without resource consent.

2. **Retain** Rule 10.1 as amended by Plan Change 1.

3. **Amend** Proposed Rule 10.1A as follows (amendments to the notified version shown in red text):

   **Rule 10.1A**

   The use of land for Low Intensity Dryland Farming that results in a discharge of nitrogen or phosphorus, which may enter water, in the Nutrient Management Area shown on Map 4, is a permitted activity provided that:

   a. either:
      
      i. the property is registered in the Farm Portal by \([12\text{ months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA}]\) and information about the farming activity and the property is reviewed and updated by the property owner or their agent every 36 months thereafter, or whenever any boundary of the property is changed; or

      ii. the property is subject to a Dryland Farmer Collective Agreement on or before \([12\text{ months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA}]\); and

   b. a Management Plan is prepared for and implemented on the property\(^{173}\) in accordance with Schedule 6 has been prepared and is implemented\(^{174}\) by [12 months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA] and is supplied to the Canterbury Regional Council, on request, to be viewed only. The Canterbury Regional Council will not retain copies of the Management Plan.

\(^{172}\) Submission # 14.9.

\(^{173}\) Submission # 9.23 and 9.20.

\(^{174}\) Submission # 9.20.
4. **Amend** Rule 10.2 as follows (amendments from the notified version shown in red text):

   **Rule 10.2**

   Any change in land use (refer Part 5 - Definitions), in the Nutrient Management Area shown on Map 4, is a permitted activity, provided that:

   a. **Either:**
      
      i. conditions (b), (c) and (d) of Rule 10.1 are met; or
      
      ii. if land use is changing from *low-intensity dryland farming* *Low Intensity Dryland Farming*\(^{175}\) to another land use, conditions (c) and (d) of Rule 10.1 and conditions (a) and (b) of Rule 10.1A are met; and …

5. **Retain** Rule 11.1 as amended by Plan Change 1

6. **Retain** the definition of “Change of land use” as amended by Plan Change 1

7. **Retain** the definition of “Dryland Farmer Collective Agreement” as amended by Plan Change 1

8. **Amend** the definition of “Farm Portal” as follows (amendments from the notified version shown in red text):

   **means** *Means*\(^{176}\) the nutrient management database accessed at www.farmportal.ecan.govt.nz. For the purpose of Rule 10.1A, Farm Portal refers to the "N. Check" tool which can be accessed at www.farmportal.ecan.govt.nz

9. **Amend** the definition of “Low Intensity Dryland Farming” as follows (amendments from the notified version shown red text):

   **means** the use of land for a farming activity, where:

   a) no part of the property is irrigated; and

   b) the area of the property used for Winter Grazing is less than:
      
      i. 10 hectares, for any property less than 100 hectares in area; or\(^{177}\)
      
      ii. 10% of the area of the property, for any property between 100 hectares and 1000 hectares in area; or
      
      iii. 100 hectares, for any property greater than 1000 hectares in area; and

\(^{175}\) Submission # 11.5.

\(^{176}\) Submission # 16.11.

\(^{177}\) Submission # 11.10, 16.2, 26.9.
c) the farming activity does not include the farming of more than 25 weaned pigs or more than 6 sows, or the farming of poultry fowl at a stocking rate of more than 10 birds per hectare, up to a maximum of 1000 birds; and

d) the farming activity does not include a component where livestock are confined within a hard-stand area for the purpose of intensive controlled feeding with the purpose of encouraging high weight gain.

10. Retain the definition of “Winter Grazing” as proposed by Plan Change 1

11. Retain Schedule 2A as proposed by Plan Change 1.

12. Retain Schedule 6 Part A as proposed by Plan Change 1.

13. Amend Schedule 6 Part B as follows (amendments to notified version shown in red text):

Part B - Management Plan Default Content

The Management Plan shall contain as a minimum:

1. Property details
   a. Physical address
   b. Description of the ownership and name of a contact person
   c. Legal description of the land and farm identifier

2. A map(s) or aerial photograph at a scale that clearly shows:
   a. The boundaries of the property.
   b. The boundaries of the main land management units on the property.
   c. The location of permanent or intermittent rivers, streams, lakes, drains, ponds or wetlands.
   d. The location of riparian vegetation and fences adjacent to water bodies.
   e. The location on all waterways where stock access or crossing occurs.

3. The location of any critical\textsuperscript{178} source areas for phosphorus loss

4. A description of:

\textsuperscript{178} Submission # 16.15, 26.12.
Appendix 2. Deed of Undertaking
Deed of Undertaking

relating to Plan Change 1 to the Hurunui and Waiau River Regional Plan and the nitrogen load reduction under CRC153154 and CRC172780

between

Amuri Irrigation Company Limited
AIC

and

Hurunui Water Project Limited
HWP

and

Canterbury Regional Council
Environment Canterbury
Deed of Undertaking

Dated the 30th day of May 2019

Parties

Amuri Irrigation Company Limited (company number 446906) (AIC).

Hurunui Water Project Limited (company number 2145909) (HWP).

Canterbury Regional Council, a Regional Council pursuant to the Local Government Act 2002 (Environment Canterbury).

Introduction

1. The Hurunui and Waiau River Regional Plan (HWRRP) manages freshwater resources in the Hurunui, Waiau, and Jed River catchments, and includes objectives, policies and rules on water allocation and the effects of land use on water quality in those catchments.

2. Since the HWRRP was made operative in December 2013, there have been a number of implementation challenges in relation to the provisions that manage land uses that may result in the discharge of nutrients to water and the application of those provisions to dryland farming activities. This issue is colloquially known as “the 10% rule issue”.

3. The Hurunui Waiau Zone Committee has made recommendations on how to address the 10% rule issue in its Zone Implementation Programme Addendum dated 20 August 2018 (ZIP Addendum), in the section entitled “Fixing the 10%-rule issue”.¹

4. In relation to fixing the issue with the 10% rule, the recommendations in the ZIP Addendum are (in summary) for Environment Canterbury to:
   (a) notify a targeted plan change to the HWRRP to permit “low intensity dryland farming” subject to a number of conditions; and
   (b) work with irrigators to identify and lock in voluntary nitrogen loss reductions so that permitting normal dryland farming does not breach the nitrogen load limit for the Hurunui River.

5. The purpose of these changes is to provide for the aspirations of dryland farmers by enabling small scale intensification of farming activities on a dryland basis in limited circumstances.

6. Environment Canterbury is therefore proposing to amend the HWRRP to introduce a revised permitted activity rule framework for low intensity dryland farming, subject to a number of conditions, and to manage nutrient loss and contaminant run-off through the use of Farm Management Plans.

7. This targeted plan change is due to be publicly notified on 4 May 2019 and will be Plan Change 1 to the HWRRP.

8. Modelling, using a plausible worst-case increase, indicates that permitting low intensity dryland farming could increase the nitrogen losses to the Hurunui River by 18 tonnes of nitrogen per year (tN/year) (as load in the river), which corresponds to an increase of 38 tN/year load lost from

¹ Hurunui Waiau Zone Committee, Zone Implementation Programme Addendum dated 20 August 2018 at 1.1 to 1.7.
source (i.e., beyond the root zone) as determined using a method that is directly relatable to the source load allocations defined in consents held by two irrigation schemes (AIC and HWP).

9. To ensure that permitting dryland farming is a “zero-sum” game, with respect to the Hurunui River catchment nitrogen load, a reduction in nitrogen load is required. One potential source of this nitrogen load reduction (of 38 tN/year) is from consented irrigated farming activities in the Hurunui River catchment.

10. AIC and HWP hold resource consents to use land for farming activities which include conditions that provide the maximum annual amount of nitrate-nitrogen that is leached below the root zone (in tN/year) from farming activities within the consented areas in the Hurunui River catchment, as follows:

(a) CRC153154 – Amuri Irrigation Company Limited – to use land for farming activities and permit to use water:

Condition 5 is the relevant condition, and provides:

*Using the method specified in Annexure CRC153154 which forms part of this consent, the maximum annual amount of nitrate-nitrogen that is leached below the root zone from farming activities within Plan CRC153154 shall not exceed the lesser of:*

- i. 956 tonnes per year; OR
- ii. the sum of the estimated annual nitrate-nitrogen leached below the root zone from the properties identified on Schedule CRC153154.

(b) CRC172780 – Hurunui Water Project Limited – to use land for farming:

Condition 2 is the relevant condition, and provides:

*The maximum annual amount of nitrate-nitrogen that is leached below the root zone from farming activities in the command area within the Hurunui catchment above State Highway 1 for this irrigation scheme shall not exceed a modelled dissolved inorganic nitrogen load of 1270 tonnes per year.*

Advice Note: The soil nitrogen leaching loss of 1270 tonnes per year has been calculated based on the estimated total soil leaching loss below the root zone and an 16% increase in the 2005 – 2011 average annual nitrogen load in the Hurunui River at State Highway 1 in accordance with the Technical Note attached as Annexure 2 of CRC172780 which forms part of this consent. This figure was derived by defining the soil leaching loss from the HWP command area within the Hurunui catchment as at 20 December 2013 and then increasing that number by 16% of the total modelled root zone loss to reflect the same percentage increase in the Hurunui River at State Highway 1. In order to track the change in leaching as land use change occurs the land use and irrigation database will be updated to reflect the changes. Updated nitrate nitrogen leaching numbers will be assigned to properties where land use change has occurred and the leaching numbers from all properties in the area defined in condition 2 will be summed to check compliance with the limit of 1270 tonnes.

AIC and HWP have discussed the required nitrogen load reduction with Environment Canterbury.

11. AIC and HWP have agreed that they will conditionally partially surrender CRC153154 and CRC172780, referred to above, in order to achieve the required nitrogen load reduction (of 38 tN/year, being 19 tN/year from each consent). Further, AIC and HWP have agreed that they will not exercise the 38 tN/year authorised by their resource consents, being 19 tN/year from each of resource consents CRC153154 and CRC172780, until such time as the partial surrender of their
resource consents takes effect. In agreeing to the surrender of the nitrogen load reduction AIC and HWP are enabling Plan Change 1 to the HWRRP to proceed without the total nutrient load limit for the Hurunui catchment being exceeded. AIC and HWP note that other irrigators in the Hurunui catchment have not made any contribution to the required nitrogen load reduction to enable Plan Change 1 to the HWRRP.

13. AIC and HWP are committed to the implementation of the package of recommendations as set out in the ZIP Addendum to fix the 10% rule, and as set out in Plan Change 1 to the HWRRP, and accordingly agree to provide the undertakings set out in this deed.

Agreed Terms

1. Interpretation

1.1 Definitions

The following definitions apply in this deed:

**AMINZ** means the Arbitrators' and Mediators' Institute of New Zealand Inc., an incorporated society in New Zealand with registered number 379524.

**Business Day** means any day (other than a Saturday, Sunday or public holiday, as defined in section 5(1) of the Holidays Act 2003) on which registered banks are open for general banking business in Christchurch, New Zealand.

**Dispute** means any dispute arising under or relating to this deed.

1.2 Interpretation

The following rules of interpretation apply in this deed:

(a) References to the parties include their respective administrators, successors and permitted assigns.

(b) **Headings and subheadings** have been inserted for convenience only and will not affect the interpretation of this deed.

(c) References to this deed mean this deed as amended and/or replaced from time to time.

(d) The introduction to this deed forms part of this deed and has the same force and effect as if expressly set out in the body of this deed, and any references to this deed will include the introduction.

(e) References to the words including, include or similar words do not imply any limitation and are deemed to have the words without limitation following them.

(f) A gender includes each other gender and the singular includes the plural and vice versa.

(g) No rule of construction (including the contra proferentem rule) applies to the disadvantage of a party because that party (or its relevant advisor) was responsible for the preparation of this deed or any part of it.

2. Undertaking

2.1 Terms of AIC's undertaking

AIC records and irrevocably undertakes to Environment Canterbury to apply to Environment Canterbury for a partial surrender of CRC153154 for the purpose of implementing Plan Change 1 to the Hurunui Waiau River Regional Plan, on the following basis:

(a) AIC will apply to Environment Canterbury to partially surrender 19 tN/year from resource consent CRC153154 (the **AIC Application**), pursuant to section 138 of the Resource
Management Act 1991. AIC must lodge the AIC Application substantially in the form and on the terms set out in Appendix A to this deed, subject to any necessary amendments to reflect the nitrogen load reduction required under Plan Change 1 to the Hurunui Waiau River Regional Plan, in accordance with clause 2.1(c).

(b) Subject to 2.1(c), AIC will make the AIC Application immediately following receipt of written notice from Environment Canterbury that the rules in Plan Change 1 to the Hurunui Waiau River Regional Plan are beyond challenge.

(c) AIC's agreement to make the AIC Application is conditional on the final form of Plan Change 1 to the Hurunui Waiau River Regional Plan at the point when it is beyond challenge requiring a nitrogen load reduction, less than or equal to, 38 tN/year. In the event the required nitrogen load reduction is less than 38 tN/year, the AIC Application will be reduced from 19 tN/year to 50% of the required nitrogen load reduction.

(d) AIC will not exercise 19 tN/year from resource consent CRC153154 in the Hurunui River catchment from the date on which Plan Change 1 to the Hurunui Waiau River Regional Plan is publicly notified, until the date on which the AIC Application takes effect. The obligation in this subclause shall cease if the final form of the Plan Change 1 to the Hurunui Waiau River Regional Plan at the point when it is beyond challenge, requires a nitrogen load reduction, greater than 38 tN/year.

2.2 Terms of HWP's undertaking

HWP records and irrevocably undertakes to Environment Canterbury to apply to Environment Canterbury for a partial surrender of CRC172780 for the purpose of implementing Plan Change 1 to the Hurunui Waiau River Regional Plan, on the following basis:

(a) HWP will apply to Environment Canterbury to partially surrender 19 tN/year from resource consent CRC172780 (the HWP Application), pursuant to section 138 of the Resource Management Act 1991. HWP must lodge the HWP Application substantially in the form and on the terms set out in Appendix B to this deed, subject to any necessary amendments to reflect the nitrogen load reduction required under Plan Change 1 to the Hurunui Waiau River Regional Plan, in accordance with clause 2.2(c).

(b) Subject to 2.2(c), HWP will make the HWP Application immediately following receipt of written notice from Environment Canterbury that the rules in Plan Change 1 to the Hurunui Waiau River Regional Plan are beyond challenge.

(c) HWP's agreement to make the HWP Application is conditional on the final form of Plan Change 1 to the Hurunui Waiau River Regional Plan at the point when it is beyond challenge, requiring a nitrogen load reduction, less than or equal to, 38 tN/year. In the event the required nitrogen load reduction is less than 38 tN/year, the HWP Application will be reduced from 19 tN/year to 50% of the required nitrogen load reduction.

(d) HWP will not exercise 19 tN/year from resource consent CRC172780 in the Hurunui River catchment from the date on which Plan Change 1 is publicly notified, until the date on which the HWP Application takes effect. The obligation in this subclause shall cease if the final form of Plan Change 1 to the Hurunui Waiau River Regional Plan at the point when it is beyond challenge, requires a nitrogen load reduction, greater than 38 tN/year.

3. Dispute Resolution

3.1 Negotiation

The parties must use reasonable endeavours to resolve any and all Disputes by negotiation. If a Dispute is settled following negotiations under this clause 3.1, such settlement shall be recorded in writing and be signed by the parties, whereupon it shall be final and binding on the parties.
3.2 **Mediation**

If the parties cannot resolve their Dispute by negotiations under clause 3.1 within five Business Days, a party may, by notice to the other, require that the Dispute be dealt with by mediation under the following terms:

(a) The mediation shall be conducted in accordance with the Mediation Protocol of AMINZ then in force (or any protocol or mediation agreement which replaces it).

(b) The mediation shall be conducted by a mediator and at a fee agreed in writing by the parties. Failing agreement between the parties within two Business Days of the giving of the notice requiring mediation, the mediator will be selected and his or her fee determined by the chairperson for the time being of AMINZ (or his or her nominee).

(c) The mediation shall take place in Christchurch, New Zealand at such address as determined by the mediator.

(d) If the Dispute is settled at or following mediation under this clause 3.2, such settlement shall be recorded in writing and be signed by the parties, whereupon it shall be final and binding on the parties.

(e) The costs of the mediation, excluding the parties' own legal and preparation costs, will be shared equally by the parties.

(f) If the parties cannot resolve their Dispute by mediation under this clause 3.2 within 10 Business Days of the giving of the notice requiring mediation, a party may initiate or commence court proceedings relating to the Dispute under clause 3.3.

3.3 **Court proceedings**

No party may initiate or commence court proceedings relating to a Dispute unless it has complied with the procedure set out in this clause 3, provided that application may still be made to the courts:

(a) for interlocutory relief; or

(b) to enforce a settlement agreed to by the parties under clause 3.1 or 3.2.

4. **Notices**

4.1 **Written notice**

All notices and other communications to be given under this agreement must be in writing and be addressed to the party to whom it is to be sent at the physical address or email address from time to time designated by that party in writing to the other party for such purpose.

4.2 **Designated addresses**

Until any other designation is given under clause 4.1, the physical address and email address of each party is as follows:

**Amuri Irrigation Company Limited**

Attention: Andrew Barton  
Address: 50 Mountainview Road, PO Box 194, Culverden 7345  
Email: andrew@amuriirrigation.co.nz

**Hurunui Water Project Limited**

Attention: Andrew Barton
Address: 50 Mountainview Road, PO Box 194, Culverden 7345
Email: andrew@amuriirrigation.co.nz

Environment Canterbury
Attention: Lisa Jenkins
Address: 200 Tuam Street, Christchurch 8011
Email: lisa.jenkins@ecan.govt.nz

4.3 Deemed delivery
Any notice or communication given under this agreement shall be deemed to have been received:
(a) at the time of delivery, if delivered by hand;
(b) three Business Days after the date of mailing, if sent by post within New Zealand;
(c) if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

4.4 Delivery after hours and on non-Business Days
Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

5. General Provisions

5.1 Entire agreement
This deed constitutes the entire agreement and understanding of the parties relating to the matters dealt with in this deed and supersedes and extinguishes any previous agreement (whether oral or written) between the parties in relation to such matters.

5.2 Capacity
AIC warrants and represents to Environment Canterbury that:
(a) power and authority: it has full power and authority to enter into this deed;
(b) consents: all consents, authorisations and approvals that are necessary or required for AIC in connection with the signing of this deed, and the assumption of rights and obligations under it, have been obtained or effected; and
(c) no breach: the signing, delivery and performance of this deed does not constitute a breach of any law or obligation by which AIC is bound and which would prevent it from entering into or performing its obligations under this deed.

5.3 Further assurances
Each party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this deed.

5.4 No waiver
No party will be deemed to have waived any right under this deed unless the waiver is in writing and signed by that party.
5.5 **Amendments**
This deed may not be amended or varied in any way unless such amendment or variation is made by deed and signed by each party.

5.6 **Severability**
If any provision of this deed is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from this deed and the remaining provisions of this deed will continue in full force and effect.

5.7 **Counterparts**
This deed may be executed and delivered in any number of counterparts, including by way of electronic transmission where a party signs a counterpart and sends it as a PDF to the other party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date of this deed.

5.8 **Governing law and jurisdiction**
This deed, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this deed or its subject matter or formation or the relationships established by it (including non-contractual claims).
Signatures

Signed and delivered as a deed.

Signed for and on behalf of
Amuri Irrigation Company Limited

Director's signature
KENNETH JAMES McONE
Director's name

Signed for and on behalf of
Hurunui Water Project Limited

Director's signature
Christopher-Stephen Laurie
Director's name

Signed for and on behalf of Canterbury
Regional Council

Witness name
Ashleigh Nicole Gabbitas
Witness address
Christchurch 8083
Witness occupation
Executive Assistant

Signature of Authorised Person
William Edward Bayfield
Name of Authorised Person
Appendix A – Application to partially surrender 19 tN/year from resource consent CRC153154 pursuant to section 138 of the Resource Management Act 1991
CON551: PARTIAL SURRENDER OF RESOURCE CONSENT

SECTION 138 RESOURCE MANAGEMENT ACT 1991

If you need help in filling out this form please contact our Customer Services staff on (03) 353-9007 or toll free 0800 EC INFO (0800 324 636).

TO: Environment Canterbury
    P O Box 345
    CHRISTCHURCH 8140
    Fax: (03) 365 3194

CHARGES

Your application for a partial surrender must be accompanied with the deposit charge specified in the “Resource Management Act Charges Fact Sheet” or at www.ecan.govt.nz. When your application has been processed, if the actual and reasonable costs incurred by Environment Canterbury exceed the deposit charge, you will be invoiced for the balance. If the cost of processing an application for a partial surrender is less than the deposit charge paid, the balance will be refunded. You can request an estimate of the charge for processing your application. If an application is declined all charges must still be paid.

All accounts are payable by the 20th day of the month following the date of invoice. If the account is not paid within 30 days after the due date, our debt collection agent may charge you a fee equal to 25% of the unpaid portion of the account, but no less than $25.00. Where the total debt collection costs, legal and other costs arising from the collection of any amount owing exceeds the debt collection fee charged, our debt collection agent is also entitled to recover such additional costs. All Environment Canterbury charges must be met by the applicant. This may include time spent discussing issues with the applicant and any other parties involved in the process.

Note: If your resource consent has conditions specifically requiring a water meter to be installed, partially surrendering the rate of take will not remove the requirement of a water meter.

I/We, Consent holder

Surname: .................................................. All first names (in full): .................................................. Mr/Mrs/Ms/Miss

Surname: .................................................. All first names (in full): .................................................. Mr/Mrs/Ms/Miss

Company name: Amuri Irrigation Company Limited

Current postal address: PO Box 194, Culverden 7345

Daytime Telephone number: (03) 315 8984

Email: andrew@amuriirrigation.co.nz

Wish to surrender part of resource consent number CRC153154

Authorising the following activity Land use for farming activities and permit to use water.

Please clearly describe which part of the consent or bore/SWAP you wish to surrender:

This application is for the surrender of part only of the allocated maximum annual amount of nitrate-nitrogen that is leached below the root zone from farming activities within Plan CRC153154, within the Hurunui River catchment. The consent holder wishes to surrender 19 t N/year from the allocated maximum annual amount of nitrate-nitrogen that is leached below the root zone within the Hurunui River catchment, by reducing the maximum annual amount of nitrate-nitrogen allocated in condition 5.a.i of CRC153154 from 956 tonnes per year to 937 tonnes per year.
Because (state why you wish to part surrender this consent/bore/SWAP): The purpose of the partial surrender is to assist Environment Canterbury with its implementation of Plan Change 1 to the Hurunui and Waiau River Regional Plan.
IF YOUR CONSENT IS TO TAKE GROUND OR SURFACE WATER, COMPLETE THIS SECTION.

The location of the bore(s)/surface water abstraction point(s) for which this application is made is as follows:

- Site address:
- Locality:
- Legal description:
- Bore/surface water abstraction point number(s):
- Map reference(s):

How much water is to be surrendered? (Please complete the table below)

<table>
<thead>
<tr>
<th>Proposed water to be surrendered:</th>
<th>Proposed water to be retained:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bore:</td>
<td>Bore:</td>
</tr>
</tbody>
</table>

- Maximum pumping rate (l/s)
- Hours per day pumping at maximum rate
- Daily volume (m³) (rate x hours x 3.6)
- Length of irrigation return period (days)
- Volume (m³) each return period
- Annual volume

If you are partially surrendering or retaining water from more than two bores, please attach an additional table.

ALL TO COMPLETE


I understand that the surrendered authorised activity of this consent must cease with immediate effect; if I wish to restart this activity I will need to submit a new application. I confirm there are no reasons known to me why I am in no lawful position to surrender this consent. I.e.

- Liquidation
- Receivership
- Property sale

If you have sold your property, you may wish to apply for a transfer of consent. CON 540 forms are available from Customer Services or on our website – www.ecan.govt.nz.

Date: / / 

Signature/s of all consent holders or duly authorised agent on behalf of consent holder/s

Print Name/s

Checklist

- I have included the specified deposit of $270.00 as set out in the resource consent charges fact sheet
- All consent holders have signed the Partial Surrender form
- Photographic evidence that the bore/surface water allocation point (SWAP) is inactive/capped
(only applicable for applications to remove a bore/SWAP from a consent)
Appendix B – Application to partially surrender 19 tN/year from resource consent CRC172760 pursuant to section 138 of the Resource Management Act 1991
CON551: PARTIAL SURRENDER OF RESOURCE CONSENT

SECTION 138 RESOURCE MANAGEMENT ACT 1991

If you need help in filling out this form please contact our Customer Services staff on (03) 353-9007 or toll free 0800 EC INFO (0800 324 636).

TO: Environment Canterbury
P O Box 345
CHRISTCHURCH 8140
Fax: (03) 365 3194

CHARGES

Your application for a partial surrender must be accompanied with the deposit charge specified in the “Resource Management Act Charges Fact Sheet” or at www.ecan.govt.nz. When your application has been processed, if the actual and reasonable costs incurred by Environment Canterbury exceed the deposit charge, you will be invoiced for the balance. If the cost of processing an application for a partial surrender is less than the deposit charge paid, the balance will be refunded. You can request an estimate of the charge for processing your application. If an application is declined all charges must still be paid.

All accounts are payable by the 20th day of the month following the date of invoice. If the account is not paid within 30 days after the due date, our debt collection agent may charge you a fee equal to 25% of the unpaid portion of the account, but no less than $25.00. Where the total debt collection costs, legal and other costs arising from the collection of any amount owing exceeds the debt collection fee charged, our debt collection agent is also entitled to recover such additional costs. All Environment Canterbury charges must be met by the applicant. This may include time spent discussing issues with the applicant and any other parties involved in the process.

Note: If your resource consent has conditions specifically requiring a water meter to be installed, partially surrendering the rate of take will not remove the requirement of a water meter.

I/We, Consent holder

Surname: .......................................................... All first names (in full): .......................................................... Mr/Mrs/Ms/Miss
Surname: .......................................................... All first names (in full): ..........................................................

Mr/Mrs/Ms/Miss Company name: Hurunui Water Project Limited
Current postal address: PO Box 194, Culverden 7345
Daytime Telephone number: (03) 315 8984
Email: andrew@amuriirrigation.co.nz

Wish to surrender part of resource consent number CRC172780

Authorising the following activity To use land for farming.

Please clearly describe which part of the consent or bore/SWAP you wish to surrender: This application is for the surrender of part only of the allocated maximum annual amount of nitrate-nitrogen that is leached below the root zone from farming activities in the command area within the Hurunui Catchment above State Highway 1 as shown on Plan CRC172780. The consent holder wishes to surrender 19 t N/year from the allocated maximum annual amount of nitrate-nitrogen that is leached below the root zone, by reducing the modelled dissolved inorganic nitrogen load allocated in condition 2 of the consent from 1270 tonnes per year to 1251 tonnes per year.
Because (state why you wish to part surrender this consent/bore/SWAP): The purpose of the partial surrender is to assist Environment Canterbury with its implementation of Plan Change 1 to the Hurunui and Waiau River Regional Plan.
IF YOUR CONSENT IS TO TAKE GROUND OR SURFACE WATER, COMPLETE THIS SECTION.

The location of the bore(s)/surface water abstraction point(s) for which this application is made is as follows:

- Site address:
- Locality:
- Legal description:
- Bore/surface water abstraction point number(s):
- Map reference(s):

How much water is to be surrendered? (Please complete the table below)

<table>
<thead>
<tr>
<th>Proposed water to be surrendered:</th>
<th>Proposed water to be retained:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bore:</td>
<td>Bore:</td>
</tr>
<tr>
<td>Bore:</td>
<td>Bore:</td>
</tr>
</tbody>
</table>

- Maximum pumping rate (l/s)
- Hours per day pumping at maximum rate
- Daily volume (m³) (rate x hours x 3.6)
- Length of irrigation return period (days)
- Volume (m³) each return period
- Annual volume

If you are partially surrendering or retaining water from more than two bores, please attach an additional table.

ALL TO COMPLETE


I understand that the surrendered authorised activity of this consent must cease with immediate effect; if I wish to restart this activity I will need to submit a new application. I confirm there are no reasons known to me why I am in no lawful position to surrender this consent. i.e.

- Liquidation
- Receivership
- Property sale

If you have sold your property, you may wish to apply for a transfer of consent. CON 540 forms are available from Customer Services or on our website — www.ecan.govt.nz.

Signature/s of all consent holders or duly authorised agent on behalf of consent holder/s

Print Name/s

Checklist

- I have included the specified deposit of $270.00 as set out in the resource consent charges fact sheet
- All consent holders have signed the Partial Surrender form
- Photographic evidence that the bore/ surface water allocation point (SWAP) is inactive/capped
(only applicable for applications to remove a bore/SWAP from a consent)
Appendix 3: Demeter Biodynamic Certification
Management Plan Plan Template

Management Plan

for

Date

1 BACKGROUND

1.1 Aims and objectives

State your aims and objectives. Include:

• Current business and personal objectives for the property (e.g. establish a stud flock, planned programme to convert the whole property to biodynamic management by a certain date, plan to supply local fresh vegetable market, future wish to establish own pack house etc).

• List any developments underway (e.g. new plantings, fencing subdivision, building plans, start of new farm enterprises etc.)

• Your farm’s mission statement, if you have one.

1.2 Other interests

Identify any other interests that might affect or conflict with Demeter certification. Include:

• Land you currently own, lease, or lease out

• Positions you or your staff or family hold

• Services you or your staff or family provide (e.g. animal health products, agricultural contracting, non-organic farming, marketing/promotion of conventional or other certified produce (give details of status), farm or farm related company directorships, consultancies, marketing/storage of prohibited materials, etc.)

• A list of ALL the sectors your business is involved in, from primary production through to processing and marketing of produce, including any consulting, contracting etc. undertaken by you, your family or any of your staff.

• How you manage any conflicts between the above and your biodynamic farming

• Changes planned possible or necessary
1.3 Management and staffing

Give details of your current management structure and staffing. Include:

- Names of all individuals with day-to-day management responsibility.
- Clear statements of who is responsible for what.
- Details of the number of staff you employ, including casuals.
- Flow charts or procedure summaries if available.
- Changes planned possible or necessary

1.4 Advice

Give your sources of advice. Include:

- Paid and unpaid consultants and advisers
- Mentors, including unpaid ones.
- Changes planned possible or necessary

1.5 Staff training and awareness

Describe staff training in relation to biodynamic farming. Include;

- Training you provide for your manager(s) and other staff, in relation to biodynamic production and product integrity.
- Programmes of education (including self education) in the background to biodynamics
- Details of arrangements to be followed when the licensee(s) is absent
- List of any regular, planned or known absences.

1.6 Contracts and other constraints

Outline any legal constraints on your freedom to farm. Include:

- Contracts and covenants
- Family trusts or interests of other family members
- Leases including grazing leases
- Outwork
- Share milking agreements
• Supply agreements etc.
• Other organic certifications (attach copies of certificates)
• Changes planned possible or necessary

2 GENERAL MANAGEMENT POLICIES

2.1 Production Sectors

Describe all the different farm enterprises. Include:
• A list of farm production sectors (e.g. egg production, sheep, fresh vegetables)
• Hobby and kitchen garden enterprises (e.g. ponies; peonies)
• On farm processing – see checklist in annual report
• Marketing – where, how and to whom produce sold and how presented/packaged
• Changes planned possible or necessary

2.2 Rotations

Describe current crop rotation policies except those for pasture (these are included with animal production.) Include:
• Cultivation
• Crop succession
• Orchard sward management
• Fallows, temporary leys if not grazed and similar.
• Changes planned possible or necessary

2.3 Soil management

Outline your soil management policies. Include:
• How you maintain and enhance your soils.
• Cultivation policies
• Measures to avoid compaction and erosion (include retirement policies)
• Crop rotation as it relates to soil health
• Use of composts and green manures
• Drainage development.
• Measures to maintain or improve soil fertility, including monitoring strategies, planned fertiliser use, liming and use of trace elements, mulches etc.
• Changes planned possible or necessary

2.4 Pest and weed control

Describe main weed, pest and disease problems (other than in livestock) and your current ways of dealing with them. Include:

• Noxious weeds or pests, especially if of official interest (e.g. regional council monitored compulsory control measures for nasella tussock, possums etc).
• Specific management techniques such as crop rotations, orchard mowing
• Specific sprays or pesticides
• Why any pesticide etc. used is considered by you to be:
  □ Necessary □ Acceptable in terms of standards □ Preferable to other materials
• Changes planned possible or necessary

2.5 Brought-in materials (farm inputs)

What brought-in materials do you use, and how do you minimize the risk of contamination, including GE contamination? Include:

• Seeds – include details of how any treated seeds are managed
• Plant materials, such as seedlings, cuttings and nursery stock
• Biological control materials
• Mulching materials
• Ready made composts
• Composting materials (includes all non-mulch plant and animal wastes)
• Mineral fertilisers
• Trace element supplements
• Other soil amendments
• Stored items: state what materials such as insecticides, herbicides, fungicides, animal remedies, etc. you will keep in store, where you will keep them and why you have them. Be sure to state both the product name and the name of the active ingredients.
• Changes planned possible or necessary
2.6 Restricted inputs

What inputs not freely permitted by the standards do you use (other than for livestock)? Include:

- List of any restricted materials
- For every restricted material – how you are reducing your reliance on it.
- For every restricted material – when you intend to phase out use and how you will achieve this through changed management
- Details of and explanation for use of any prohibited material
- Changes planned possible or necessary

2.7 Machinery

What machinery do you use? Include:

- List of main implements.
- List of other machinery including stationary machinery.
- Cleaning of any machinery or implements shared with non Demeter work.
- Cleaning procedures and materials for hygiene (e.g. milking machinery).
- Precautions for machinery with soil damaging potential e.g. rotary hoes, heavy machinery, dust creating cultivators, etc.
- Changes planned possible or necessary

2.8 Contractors

Outline your current reliance on outside contractors. Include:

- Details of any protocols or documentation which govern their activities.
- Managing risk of contractors, such as:
  - Cultivation & harvesting contractors
  - Pruners
  - Packers
  - Relief milkers
  - Hay and silage contractors
2.9 Harvesting, storage and packing

Give details of how you harvest, store and prepare your produce for despatch. Include:

- Harvesting machinery and equipment
- Storage systems and buildings
- Cleaning of stores and packing areas
- Description of packing areas
- Finishing materials e.g. fruit waxes
- Packaging materials used (include type e.g. high density polyethylene, HDPE)
- How produce is packaged. (e.g. bins, paper bags, frozen etc)
- Handling and transportation (including livestock and milk)
- Gate sales arrangements, including customer information systems for 10 below
- Details of any brought-in produce packed with your own or sold at the gate
- Separate details of any off-property packaging (e.g. in packhouses)
- Separate details of any outwork (e.g. produce sent out for cleaning)
- Details of labelling and product information sheets – attach samples or copies
- Details of any buyer you supply Demeter labels to and how you control their use, and any problems you have experienced and how they were solved.
- How you record volumes of produce sold, including whom to and when sold
- Details of any parallel production, storage, packing or marketing
- Changes planned possible or necessary

3 SUSTAINABLE LAND, RESOURCE AND ENVIRONMENTAL MANAGEMENT

3.1 Natural areas

Outline how you protect or enhance natural areas, especially unfarmed areas. Include:

- References to your map where appropriate.
• Changes planned possible or necessary

3.2 Minimising waste

Outline how waste other than water and energy is minimised. Include:

• Recycling (e.g. silage wrap)

• Purchasing policies designed to reduce waste (e.g. bulk buying to avoid packaging, local sourcing of inputs etc.)

• Changes planned possible or necessary

3.3 Energy conservation

Outline how any measures to promote the efficient utilisation of power, fuels and lubricants. Include:

• Any process that uses energy during the production, processing and distribution of your products.

3.4 Water conservation

Outline how you minimise water usage on the farm. Include:

• Dairy washdown

• Vegetable washing

• Processing

• Irrigation policies, systems and practices.

• Changes planned possible or necessary

3.5 Pollution prevention

How do you minimise any risk from pollution sources on the property? Refer to section 3.1 of the Demeter Standards. Include:

• Contamination of soil – including from tanalised timber

• Contamination of air (e.g. during RPR application)

• Contamination of water (e.g. through dairy effluent)

• Contamination of yourself and your staff

• Contamination of your crops, products and livestock

• Contamination of other farms or properties.
3.6 Neighbours

Outline how you minimise the risks of contamination by neighbouring activities. Include:

- Assessment of risk from each neighbouring activity (refer to Farm Profile, 2.7)
- How you minimise risks (e.g. neighbour notification/agreement, notification to local authority responsible for road verge, signage, periodic sampling for stream water quality, catchment area monitoring, planting of buffer zones etc.)
- Changes planned possible or necessary

3.7 Diversity and integration of farm enterprises

Outline your policies for the diversity of the whole farming operation, its biodiversity and general environmental enhancement. Include:

- How you minimise weather-, pest-, and disease-stresses in livestock and crops.
- How you integrate the various farm activities one with another (e.g. grazing of the orchard, composting manure for cropping land, growing fodder crops, introducing poultry to keep pests at bay, etc.)
- Changes planned possible or necessary

4 BIODYNAMIC PRACTICES.

4.1 Spray preparations

Outline your policies for use of the spray preparations. Include:

- Water source
- Water heating
- Stirring method
- Application method
- Frequency of field spray applications (horn manure and horn silica).
- Changes planned possible or necessary

4.2 Preparation storage

Outline your storage methods for the biodynamic preparations.
Describe any planned, possible or necessary changes and give reasons.

**4.3 Compost preparations**

Outline use of the compost preparations. Include:

- How you achieve coverage of the entire property with their activity.
- Changes planned possible or necessary

**4.4 Preparation making**

Outline any matters relating to making the preparations on the property, where not reported in the preparation record forms.

Describe any planned, possible or necessary changes and give reasons.

**4.5 Other biodynamic practices**

Outline any other BD practices. Include:

- Cow pat pit
- Liquid manures
- Equisetum
- Peppering
- Calendar usage.
- Changes planned possible or necessary

**5 LIVESTOCK MANAGEMENT PLAN**

Please answer the questions in this section for all types of livestock on the farm.

**5.1 General**

Detail what livestock you keep. Include:

- Average intended numbers for each breed.
- Production intentions (e.g. Send lambs off at 15 kg for Christmas market)
- Your usual responses to climatic and other extremes. (e.g. send cows to another district during droughts.)
- Changes planned possible or necessary
5.2 Feeding policy

Give details of your feeding policies. Include:

- Grazing practices with reasons for all types of livestock.
- Management of pasture growth and weeds, etc.
- Use of conserved feeds in feeding regime
- How and what conserved feeds made on farm
- Brought-in feed stuffs and how you minimise contamination, including GE
- Grazing off.
- How you intend to become less reliant on brought-in feed stuffs and on grazing off. Refer to section 3.4.1 and 3.4.2.4 of the Demeter Standards.
- Changes planned possible or necessary

5.3 Animal welfare.

(Every applicant must answer explicitly)

Outline your policies to promote animal welfare. Include:

- All horses and working dogs
- Stock handling
- Disease management and prevention
- Housing, shade and shelter
- Birthing
- Surgical practices – nose ringing, docking etc.
- Transport
- Administration of trace elements and medicines.
- Changes planned possible or necessary

5.4 Stock replacement

Outline your stock replacement policies. Include:

- Breeding methods
- Methods for raising young stock.
• Changes planned possible or necessary including changes in species or breed ratios

5.5 Restricted and prohibited materials

What inputs not freely permitted by the standards do you use for livestock? Include:

• List of any restricted materials

• For every restricted material – how you are reducing your reliance on it.

• For every restricted material – when you intend to phase out use and how you will achieve this through changed management

• Details of and explanation for use of any prohibited material

• How you permanently identify treated stock

Changes planned possible or necessary including changes to your quarantine system.

6 OTHER

6.1 Provide further details of anything else you currently do which may be of relevance to your Demeter certification or which you wish us to know. Also document any proposed changes.
Appendix 4: Expert Witness Code of Conduct

7 Expert witnesses

7.1 Code of Conduct

(a) A party who engages an expert witness must either give the expert witness a copy of this Code of Conduct, or be satisfied that the expert witness has seen the Code of Conduct and is familiar with it.

(b) An expert witness must comply with the Code of Conduct in preparing any affidavit or brief of evidence, or in giving any oral evidence in the Court.

(c) The evidence of any expert witness who has not read, or does not agree to comply with, the Code of Conduct may be adduced only with leave of the Court.

7.2 Duty to the Court

(a) An expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise.

(b) An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.

(c) Every expert witness is expected to treat the evidence of experts called by other parties with the respect due to the opinions of a professional colleague, even if there is fundamental disagreement between the views each expresses. Any criticism should be moderate in tone and directed to the evidence, and not to the person.

7.3 Evidence of an expert witness

(a) In any evidence given by an expert witness, that person must, in the witness's statement or affidavit (if the evidence is in writing) or orally (if the evidence is being given orally)

i) acknowledge that he or she has read this Code of Conduct and agrees to comply with it;

ii) state the witness's qualifications as an expert;

iii) describe the ambit of the evidence given and state either that the evidence is within her or his area of expertise, or that the witness is relying on some other (identified) evidence;

iv) identify the data, information, facts, and assumptions considered in forming the witness's opinions;
v) state the reasons for the opinions expressed;

vi) state that he or she has not omitted to consider material facts known to the witness that might alter or detract from the opinions expressed;

vii) specify any literature or other material used or relied upon in support of the opinions expressed;

viii) describe any examinations, tests, or other investigations on which she or he has relied, and identify, and give details of, the qualifications of any person who carried them out; and

ix) if quoting from statutory instruments (including policy statements and plans), do so sparingly. A schedule of relevant quotations may be attached to the statement of evidence, or a folder containing relevant excerpts may be produced. If the statutory instrument is included in a common bundle of documents, a cross reference to the bundle will suffice.

(b) If an expert witness believes that his or her evidence, or any part of it, may be incomplete or inaccurate without some qualification, that qualification must be stated in the evidence.

(c) If an expert witness believes that her or his opinions are not firm or concluded because of insufficient research or data, or for any other reason, that must be stated in the evidence.

(d) If after the exchange of a brief of evidence has occurred, an expert witness changes any of his or her opinions or conclusions, that must be communicated without delay to all parties to the proceeding.