



# COUNCIL REPLY

Pursuant to section 42A of the Resource  
Management Act 1991

## Introduction

1. This Council Reply Report is a continuation of the section 42A report prepared before the hearing on Plan Change 1 to the Hurunui and Waiau River Regional Plan (**HWRRP** or **Plan**), which took place on 21 - 22 October 2019. It responds to issues raised in submissions and evidence, and questions from the Hearing Commissioners
2. The questions are addressed in Section 1 of this Report.
3. In Minute 5 of the Hearing Commissioners dated 4 November 2019, the Hearing Commissioners sought comment from the Council on alternative provisions provided by the Rural Advocacy Network. The Council's response to the alternative framework proposed by the Rural Advocacy network is included in Section 2 of this Report.

## Section 1: Response to questions from the Panel

### Question 1: What is the status of the Emu Plains Irrigation application for resource consent? What bearing does this have on Plan Change 1?

4. The application for resource consent lodged by Emu Plains Irrigation Incorporated (**Emu Plains**) is currently on hold, at Emu Plains' request.
5. The Emu Plains application has no bearing on Plan Change 1 and is an irrelevant consideration for the purposes of considering Plan Change 1.
6. In any event, the Emu Plains application would need to comply with, and be assessed against, both the operative Hurunui and Waiau River Regional Plan, and proposed Plan Change 1.

### Question 2: What is the sensitivity of the receiving environment in the Hurunui, Waiau Uwha and Jed Rivers, on a scale of high, moderate, to low?

7. Several factors that influence the sensitivity of rivers to nutrients are described in Table 1 below. Overall the Jed is most sensitive (High), the Waiau Uwha is the least sensitive (Low-Moderate) and the Hurunui in between (Moderate-High sensitivity).

Table 1: Relative sensitivity of the Hurunui, Waiau Uwha and Jed rivers to nutrients.

	Factors that influence sensitivity of rivers to nutrients				Overall sensitivity to nutrient effects
	Flow regime (frequency of freshes that flush away nuisance periphyton)	Flow regime (river size)	Extent of shading of river channel by riparian vegetation, which can reduce nuisance periphyton growth	Risk of deoxygenation effects on invertebrates and fish if large nuisance blooms occur	
Hurunui	The Hurunui is lake-fed which tends to dampen floods, but it still receives significant floods from the South Branch and other tributaries (Moderate to High sensitivity)	Medium-sized river (Moderate sensitivity)	Wide braided river means only side braids with vegetation are shaded (High sensitivity)	Medium-sized, swift, well aerated river (Low sensitivity)	Moderate-high

Waiau Uwha	The Waiau Uwha is mountain fed and receives frequent floods (Low sensitivity)	Large river (Low-Moderate sensitivity)	Wide braided river means only side braids with vegetation are shaded (High sensitivity)	Large, swift, well aerated river (Low sensitivity)	Low-Moderate
Jed	The Jed receives infrequent floods during summer (High sensitivity)	Very small stream (High sensitivity)	Narrow stream means there is high potential to reduce nuisance periphyton by shading (Lower sensitivity where riparian shading exists)	Very small, with some slow flowing pools (High sensitivity)	High

**Question 3: Could amendments be made to Schedule 6 in respect of requiring farmers to keep Farm Plans for a set period of time and make those Farm Plans available to the Council on request?**

8. Schedule 6 already requires farmers to record the management practices undertaken on farm in the past year. Part B of Schedule 6 could be amended to require Management Plans to record the management practices undertaken on farm over a longer time period.

9. Part B of Schedule 6 sets out the minimum requirements for a Management Plan. The requirements include:

*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 [...]*

10. In order to achieve the record of management practices put in place over time and enable better outcomes, Part B of Schedule 6 could be amended as follows:<sup>1</sup>

*4. A description of:*

*a. the on-farm actions, including applicable good management practices, that have been undertaken each year (01 July – 30 June), from [12 months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA], in the previous 01 July to 30 June period to implement the applicable practices described in the table below. For clarity, the Management Plan will include a continuous record of on-farm actions, including applicable good management practices from [the operative date of the Plan] for a period of up to 10 years; and [...]*

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<sup>1</sup> Submission # 23.15

11. The North Canterbury Fish & Game Council (**Fish & Game**) submission provides the necessary scope to make this change. In paragraph 9 of the Fish & Game submission (summarised as point 23.15), the submitter states:

*“Fish and Game would therefore strongly request that any inclusion of the management plan provision affords ECan the ability to carry out random checks of management plan accuracy and implementation on-farm... [this is intended to] ensure a process of continuous improvement is achieved...”*

The suggested amendment would provide partial relief to the submitters’ request, in that it will ensure on-farm implementation of Management Plans is recorded and can be checked to ensure continuous improvement.

12. With regard to s32AA of the Resource Management Act 1991 (**RMA**), it is not anticipated that the suggested amendment to Part B of Schedule 6 will result in significant additional costs (economic, social, cultural or environmental). It is likely that the suggested amendment will be more effective in achieving the relevant Objectives of the HWRRP, and the purpose of Plan Change 1 because it will ensure that Management Plans are updated annually (as activities on-farm change) and provide a mechanism by which annual compliance with Rule 10.1A can be verified even if a compliance check is not conducted annually.
13. On the basis of the further analysis summarised above, I recommend Schedule 6, Part B (4)(a) is amended as set out at paragraph 10 above.

**Question 4: Is it appropriate to include an Advice Note to Rule 10.1A in respect to the information requirements of the Farm Portal.**

14. There is scope within submissions for an amendment to Plan Change 1 to include an advice note related to Rule 10.1A that sets out the farm portal information requirements. Amuri Irrigation Company Limited’s submission sought this information be included within Rule 10.1A itself, and that request was summarised as submission point 19.21.
15. In the section 42A report, Council Officers did not recommend the amendment because it was considered to add unnecessary complexity to Rule 10.1A. The suggested addition of an advice note would not necessarily resolve that issue as an advice note would be read in conjunction with the Rule. In addition, the detail included in such an advice note would not be in keeping with the overall structure of the Plan. Where advice notes do occur in the Plan, they are generally there for the avoidance of doubt, rather than to set out additional requirements.
16. Accordingly, the Council Officers do not consider that the addition of an advice note is appropriate.

**Question 5: Is the use of the term “property” problematic, given it has not been defined in the Hurunui and Waiau River Regional Plan?**

17. The term “property” is not defined in the HWRRP. The term was not introduced to the Plan by Plan Change 1 and appears throughout the HWRRP. The term is not defined in relevant higher-order documents.
18. Implementation teams within the Council have confirmed that a lack of definition of the term “property” has not caused any implementation issues, or inconsistencies in implementation.

19. The Council Officers consider that introducing a definition of “property” is likely to be problematic and could result in expanding the scope of Plan Change 1 beyond what is intended. Because the term is used in provisions that are not subject to Plan Change 1, there is a risk that defining the term could have the effect of changing the effect of a provision that was not intended to be captured within Plan Change 1. Such a change would require a separate Schedule 1 process and would likely need to be recommended as a variation to Plan Change 1.
20. The Council Officers do not recommend the inclusion of a definition for the term “property”.

**Question 6: What is the difference in effects (from nutrient losses) associated with winter grazing as defined by Plan Change 1, as opposed to supplementary feed distributed through feeding out?**

21. At the hearing, Dan Hodgen for Federated Farmers stated:

*“It is common to feed supplementary feed both on the same area as a fodder crop and off the fodder crop area...to feed baleage at the same density as a kale crop (9tDM/ha), you would need to feed 360 bales of medium square baleage per hectare which is incredibly unlikely and so the impact of the baleage is likely to be far lower than feeding kale. Compared to fodder beet that yields 20tDM/ha, and you would need 800 bales of baleage for the same impact...”<sup>2</sup>*

22. Lauren Philips of Beef+Lamb New Zealand stated:

*“When you have a crop, you have a lot of bare ground around the plants before you even graze them, so you already have a risk factor in terms of sediment loss and of Nitrogen going straight through the soil ... as opposed to pasture. When you are feeding out supplements, this can happen in a number of different ways, for example, and this is very common...you might take out your trailer with some feed on the back and run it through the paddock and the animals come and eat in the trail you have left behind and then they go back to eating the pasture in the paddock.”<sup>3</sup>*

Ms. Philips went on to say

*“[including supplementary feed in the definition of winter grazing] could have wider implications across the Region which are not intended, and we could end up with regulation where it’s not worth ECan’s time or farmers money to be dealing with regulating that particular practice.”<sup>4</sup>*

23. Feeding out of supplementary feed in a dryland system is generally a much lower run-off risk than winter grazing. Winter grazing of fodder crops is problematic because it de-nudes the area grazed as animals will generally eat the entire plant, including roots and so there is no growing plant remaining to take up nutrients (such as nitrogen in animal urine for example). Where supplementary feeding occurs on

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<sup>2</sup> This statement has been transcribed from the audio recording with some paraphrasing for readability from the Day 1 hearing audio recording #3 from 1:13:00

<sup>3</sup> From the Day 1 hearing audio recording #4 from 00:50

<sup>4</sup> From the Day 1 hearing audio recording #4 from 05:00

pasture, the run-off and N loss risk is mitigated by the presence of the pasture which grows and can thereby take up some of the nutrients.

24. Where supplementary feed occurs within the same area as the fodder crop area, it can cause the same effects as the fodder crop; i.e., it brings animals and their excreta to denuded ground which has no growing plants to take up the excreted nutrients. However, in the context of the proposed rule framework in Plan Change 1 it is unlikely to trigger additional requirements because the total area where intensive feeding occurs will remain the same. Including supplementary feeding in the definition of winter grazing could lead to limiting the area over which lower risk supplementary feeding can occur. For example if a farmer is already operating with the maximum permitted area of fodder crops this could incentivise supplementary feeding being undertaken in the already denuded fodder crop area, when it might otherwise be better undertaken on pasture. Overall, Council Officers consider the exclusion of supplementary feed from the definition of Winter Grazing is appropriate in the HWRRP context.

**Question 7: Provide clarification as to the use of the term “hard-stand area” and whether “an area” would be appropriate, instead of specifically referring to hard-stand areas in the definition of Low Intensity Dryland Farming?**

25. Clause d) of the definition of “Low Intensity Dryland Farming” is intended to exclude intensive feedlot farming from the definition. Referring to hard stand areas in this context helps to distinguish the high intensity activity from a lower intensity farm type. Feed lot farm systems commonly use hard stand areas to prevent excessive pugging of areas where stock are concentrated for feeding. Referring simply to “an area” could inadvertently capture low intensity activities within this clause, for example calf rearing or winter grazing. Referring to hard stand areas more clearly ties the clause to more intensive feed-lot farming systems.

**Question 8: What does the term “critical source area” mean, and is critical commonly understood in the farming community as a concept? Can this be clarified in the drafting?**

26. The term “critical source area” refers to areas where phosphorous loss risk is high or increased by farming activity. For example, a critical source area could be a winter grazing paddock, a particularly puggy and wet bit of ground or an erosion prone hillside that is in pasture. The term excludes areas that are high risk due to natural processes that are not accelerated by farming practices, such as an area where a river is eroding land.
27. The term is well understood by the farming community and the inclusion of the term was expressly sought by both Federated Farmers and the Hurunui District Landcare Group. This was supported by Dan Hodgen who appeared for Federated Farmers at the hearing, who stated, in response to a question from the Hearing Commissioners about how well the term is understood, that:

*“[the panel] might be underestimating farmers... most farmers would understand that term better than a lot of farm advisors and planners...”<sup>5</sup>.*
28. Council Officers consider it is appropriate to use the term “critical source areas for phosphorus loss” in relation to Management Plan content requirements.

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<sup>5</sup> From the Day 1 hearing audio recording # 3 from 1:24:55

**Question 9: Are farm plans commensurate with the risk associated with Dryland farming? Are they a step too far for a permitted activity rule status? Is there another approach that will have the desired outcome? What does the permitted activity rule framework in wider Canterbury and in other regions require?**

29. The requirement to prepare and implement a Management Plan in accordance with proposed Schedule 6, is considered to be commensurate with the risk associated with permitting Low Intensity Dryland Farming. The minimum requirements of a Management Plan set out in Part B of Schedule 6 have been refined for the Hurunui Waiau context and are focused solely on identifying run-off risk and methods for managing that risk to water quality.
30. Management Plans are the only method in Plan Change 1 identified for managing phosphorus and contaminant run-off risk. The operative framework manages this risk by limiting permitted increases in phosphorus loss to 10% above 2013 loss rates and by requiring dryland farmers to be members of collectives who are in turn required to implement Environmental Management Strategies that will result in audited farm environment plans.
31. Removing the Management Plan requirement will likely result in an increase in Phosphorus and contaminant run-off from dryland farming activities, when compared to the status quo. It is unlikely that water quality could be maintained or improved without an appropriate method for identifying and managing run-off risk.
32. Management Plans (or Farm Environment Plans) are required throughout Canterbury, under the Canterbury Land and Water Regional Plan and are used in the permitted activity framework, including irrigated and non-irrigated farming activities. The requirement proposed by Plan Change 1 is consistent with the approach throughout Canterbury.
33. In developing Plan Change 1, the minimum standard approach taken by Environment Southland was given thorough consideration as an alternative to requiring Management Plans. Environment Southland set minimum requirements for particular farming activities. For example, permitted activity rules require winter grazing occurs from the top of a slope to the bottom, and also requires a 5m vegetated buffer strip between winter grazing and any water body. The minimum requirement approach was not preferred because it was considered less likely to drive farmers to consider the best mitigation options for their individual circumstance (i.e.: a 15m buffer strip might be more appropriate in some instances, or not using a particular paddock at all for winter grazing might be a more appropriate mitigation). It is noted that alongside the minimum standard approach, Environment Southland also require farm environment plans for all farms greater than 20ha in size.
34. Rural Advocacy Network indicated the Taranaki Regional Council approach to Management Plans was their preferred approach because it is voluntary and as a result has better up-take by farmers. The Taranaki Regional Plan was developed in 2001, 10 years prior to the National Policy Statement for Freshwater Management 2011. The Taranaki Regional Plan does not contain provisions to manage the cumulative effects of land use on water quality. Taranaki Regional Council has had a long-term voluntary programme in place where the Council works with farmers to develop riparian management plans. This is an excellent programme and is similar to programmes applied by Environment Canterbury in the past and currently (landcare, immediate steps, land management advice). Programmes such as this are effective, particularly over the long term and where they are well resourced.

35. However, Plan Change 1 is predicated on an existing plan framework and is required to give effect to the National Policy Statement for Freshwater Management 2014 (as amended in 2017) (**NPS-FM**). The Canterbury Regional Council had not budgeted for additional resources in the Hurunui Waiiau Zone to implement Plan Change 1 or begin new programmes, other than Management Plans (existing programmes including land management advice, earthquake recovery programmes, mahinga kai guidance etc are budgeted for and will continue to support Plan Change 1). Management Plans are an efficient method for managing the runoff risk associated with Low Intensity Dryland Farming. Overall, the requirement to prepare and implement a Management Plan is considered to be commensurate with the risk associated with permitting Low Intensity Dryland Farming and appropriate in the context of Plan Change 1.
36. The technical assessments of effects of the PC1 approach on water quality, and in particular the assessment of effects on water quality in the Jed River<sup>6</sup>, relied heavily on the assumption that Farm Management Plans would be prepared and well implemented (see summary conclusions of the Norton 2013 memo). Without the same assurance that Farm Management Plans will be prepared and implemented under PC1, as they are in the current HWRRP, it would not be possible to draw those conclusions regarding the risk of phosphorus and nitrogen losses being the same or similar (respectively) under the two approaches.

**Question 10: What approach was taken in Plan Change 3 to the Waitaki Catchment Water Allocation Regional Plan in respect of providing certainty as to the changes proposed by the change?**

37. The Independent Commissioners<sup>7</sup> appointed to hear submissions and make recommendations on Plan Change 3 to the Waitaki Catchment Water Allocation Regional Plan dealt with a similar situation, in respect of existing consent holders initiating changes to their consents, in order to implement the required flows proposed to be introduced by the Plan Change, as follows:

*[79] Counsel and witnesses for Meridian and the irrigators advised us that the changes proposed by Plan Change 3 are a package and, though it differs from the current consented regime, the consent holders would initiate changes to their consents to implement the required flows.*

*[80] No undertaking had been given and we were uncertain as to the extent of the voluntary agreements. As an example, Mr Page, the Environmental Strategy Manager for Meridian, had this to say:*

*Meridian has never agreed that the required flows for the lower Waitaki River within the WAP represent the best ways to achieve the WAP's objectives. However Meridian agrees with the position adopted by the Waitaki Catchment Water Allocation Board and ultimately reflected in footnote 23A in Rule 6, Table 5 of the WAP (and by Environment Canterbury subsequently), that the existing regime cannot be fully implemented before re consenting of the Waitaki Power Scheme unless Meridian agrees. This is because the operative WAP regime effectively requires a transfer of entitlement to use water from Meridian to other users. Assuming the outcome of the change 3 process is*

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<sup>6</sup> Memorandum by Ned Norton dated 13 March 2019: *Assessment of effects of the proposed approach to "fix the 10% rule" on water quality in the Jed River.*

<sup>7</sup> Being retired High Court Judge Gordon Whiting, Edward Ellison and Andrew Fenemor.

acceptable, Meridian has indicated it will initiate a change to its Waitaki Dam water permit to implement the required flows for the lower Waitaki River that would result from change 3.

*The flow regime proposed by Meridian varies from that notified in change 3 primarily in order to better provide for Ngāi Tahu values and aspirations. In proposing this regime, Meridian is explicitly accepting that it will be subject to higher required flows below Waitaki Dam, with the consequent negative effect on electricity generation. This effect is described more fully in the evidence of Mr Waipara. It is doing so in the pursuit of providing certainty of acceptable resource management outcome. I understand this flow regime is supported by Ngāi Tahu and in principle by the Waitaki Irrigators Collective.*

(Emphasis Ours)

*[81] We were concerned as to the extent, and weight that we should give to this indication of intent. Our concern was presaged on the fact that the implementation of the proposed changes would be given immediate effect, thus ensuring both reliability and certainty of environmental outcomes. In response to our concern, Mr Christensen, counsel for Meridian, had this to say:*

*The hearing commissioners have raised the question as to the extent to which those assurances of implementation can be relied upon in this process. My instructions are that Meridian has every intention of honouring the commitment it is making in its evidence in relation to this matter and I submit that this is something that you are entitled to put such weight upon as you think is appropriate.*

*While I would not assert that the commitment given by Meridian amounts to an enforceable obligation, I do submit that it amounts to a statement of corporate intent from a major, highly reputable, and transparent company whose reputation is in part bound up with its ability to deliver on its stated commitments. I do not put the matter on a higher footing than that. In my submission you can put considerable weight on the commitment given.*

*[82] This did not alleviate our concern that the commitment given was not binding. Further, a similar commitment given by the Waitaki Irrigators' Collective was not, in our view, binding. As no undertakings were given, and we were uncertain as to the scope of any such intentions, we accordingly, after discussion with counsel, directed that written undertakings be given by Meridian and the Waitaki Irrigators' Collective.*

*[83] These undertakings were given and are attached as Appendices 2A and 2B. We are of the view that their relevance only becomes pertinent in the event that the proposed Plan Change provisions first meet the relevant directions of the statutory instruments. The provisions must first pass the threshold of satisfying the statutory tests, including Part 2, the objectives and policies of the Allocation Plan and the effects on the environment.*

38. The undertakings referred to above are appended to this Reply Report (Appendix 2).

## Section 2: Response to alternative framework proposed by the Rural Advocacy Network

### Introduction

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39. During the hearing on Plan Change 1 to the HWRRP, the Hearing Commissioners requested that the Rural Advocacy Network provide alternative wording for proposed Rule 10.1A.
40. That alternative wording was circulated on 4 November 2019 along with Minute 5 of the Hearing Commissioners. In Minute 5, the Hearing Commissioners emphasised that any further written comments must be restricted to matters relating to the Rural Advocacy Network's suggested alternative wording to proposed Rule 10.1A (and any consequential changes) only.
41. The alternative wording put forward by the Rural Advocacy Network goes beyond Rule 10.1A and any consequential changes, and instead seeks to introduce a new Policy 5.5, a new Rule 10.1B that permits "Low Intensity Irrigated Farming", and a new definition of "Low Intensity Irrigated Farming".
42. These changes are either beyond the scope of the Rural Advocacy Network's submission, or Plan Change 1.
43. Out of an abundance of caution, the Council has addressed all aspects of the alternative wording put forward by the Rural Advocacy Network. However, given that many of the changes are not simply consequential and are out of scope, it would be unlawful for the Hearing Commissioners to accept that alternative wording further.

### General comment

44. Rural Advocacy Network has drafted an alternative framework for Plan Change 1. Components of the alternative framework were assessed during the Plan Change 1 development phase and an overview of that assessment is provided in the Section 32 report. That assessment concluded that proposed Plan Change 1 is likely to be the most effective and efficient way to achieve the Plan Objectives while also achieving the Objective of Plan Change 1 and giving effect to the NPS-FM and other higher order documents.
45. The Council Officers consider that the analysis of the alternative options is still relevant. Evidence submitted through the hearing has not provided additional context that has shown an alternative path to be more efficient and effective than what was proposed.
46. The Council Officers do not support the framework proposed by Rural Advocacy Network.

### Insertion of a new Policy 5.5

47. Rural Advocacy Network recommend inserting a new policy to the HWRRP that states:

*Policy 5.5: To recognise and support the initiatives being undertaken by landholders individually or as part of catchment or primary sector industry groups to undertake activities that maintain, restore or enhance the ecological, mahinga kai, or amenity values of land or waterbodies within the Hurunui, Waiau or Jed catchments or their*

*tributaries, and to encourage and support further initiatives as an effective way to maintain or enhance environmental values in the catchments.*

48. The Council Officers do not support the insertion of the suggested policy for the following reasons:
- a. The suggested policy is not within the scope of the Rural Advocacy Network's original submission.
  - b. It is not clear what actions the Council or land owners would need to undertake in order to implement the suggested policy. The alternative framework suggested by Rural Advocacy Network does not include methods for implementing the policy.
  - c. The Council works with Zone Committees under the Canterbury Water Management Strategy to develop and implement on-the-ground work programmes as described in the suggested policy. The work programmes are developed with public input and priorities are documented through Zone Implementation Programmes. Inserting the suggested policy into the regulatory framework could have the effect of undermining the ability of the Zone Committee to identify priorities for the work programme and make recommendations that those priorities are resourced appropriately.
  - d. It is not clear what would need to be done to "recognise and support initiatives". It is unclear if the Council would be required to fund or resource initiatives, and to what extent. It is also unclear what would be considered to be an "initiative" for the purpose of the suggested policy. It is unclear what "future initiatives" the Council would need to encourage and support.
49. Overall, the Council Officers do not consider the suggested policy would add clarity to the Plan or effectively or efficiently achieve the Objectives of the Plan or of Plan Change 1. The suggested policy also does not assist in setting up the proposed rule framework proposed by Rural Advocacy Network.

### **Replacement of Rule 10.1A and new definition of "dryland farming"**

50. Rural Advocacy Network proposed a new Rule 10.1A which states:
- Rule 10.1A: The use of land for dryland farming that results in a discharge of N or P which may enter water in the Nutrient Management Area shown on Map 4 is a permitted activity.*
51. Rural Advocacy Network also proposed a new definition for "dryland farming" which states:
- Dryland farming means the use of land for a farming activity without the application of irrigation water at any stage in any 12 month period and*
- a. 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*
  - b. the farming activity does not include a component where livestock are confined within a hardstand area for the purpose of intensive controlled feeding with the purpose of encouraging high weight gain.*
52. The Council Officers do not consider there is sufficient evidence to conclude that water quality could be improved or maintained throughout the Nutrient Management

Area if winter grazing is not limited. While it is reasonable to assume winter grazing will not increase beyond the established “plausible worst case” at the catchment scale, without a 10% area limit, it is plausible that one or two farms within a catchment could increase their winter grazing area to an extent that could result in significant localised adverse effects on water quality.

53. It is unlikely the Council would be able to give effect to the NPS-FM requirements regarding catchment accounting if there is no requirement for farmers to report winter grazing areas. Alternative options for catchment accounting were considered in the development of Plan Change 1. This was detailed in two Zone Committee papers<sup>8</sup>. In the March 2018 Zone Committee paper, alternatives for catchment accounting were described. In the July 2018 Zone Committee paper, an analysis of the relative costs of alternative catchment accounting methods was undertaken. The conclusion was that the cost of requiring farmers to report annual winter grazing areas through the Farm Portal is around 10 minutes labour per farm per year. The cost to Canterbury ratepayers for catchment accounting for dryland farms within the Hurunui, Waiau and Jed catchments would be between \$50 000 and \$100 000 per year, depending on the method used. Noting that all farmers throughout the entire Canterbury Region (excluding the Hurunui and Waiau zone under the operative framework) are required to register their permitted farming activities in the Farm Portal to assist with catchment accounting, the cost to ratepayers of an alternative method of catchment accounting for dryland farmers in three catchments is not justifiable.
54. Removing the requirement for a Management Plan is not supported by the Council. It is unlikely that water quality effects from run-off contaminants, including phosphorus, could be effectively or efficiently managed without some regulatory requirement to implement good farm practices. Without efficient and effective management of those effects, it is unlikely water quality could be maintained or improved, or the Objectives and limits in Plan Change 1 could be achieved. This matter has been addressed in the Section 32 report, the Section 42A report and again in Section 1 of the Section 42A reply report.
55. The basis upon which the effects of Plan Change 1 were assessed included the assumption that, through Management Plans, Low Intensity Dryland Farming activities would be sufficiently encouraged to identify and implement good practices for managing run-off risk and phosphorus loss. With this requirement removed from Plan Change 1, the basis for concluding that water quality could be maintained or improved is less certain. Considering the maintenance of water quality in relation to the existing Plan framework, that effectively requires dryland farms to have audited Farm Environment Plans, it is difficult to justify a move completely away from Management Plans where there is no other method suggested for the management of phosphorus and run-off contamination of water.

### **Providing for Low Intensity Irrigated Farming with a new rule and definition**

56. Rural Advocacy Network has included some additional relief in its response to the Hearing Commissioners request to provide alternative wording for Rule 10.1A. This additional relief includes allowing some irrigated land use as a permitted activity with the catchment accounting and farm plan requirements that Plan Change 1 applies to Low Intensity Dryland Farming. As stated in response to the Aotearoa Fine Wine Estates submission in the section 42A report, amending provisions relating to

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<sup>8</sup> 05 Collectives and Catchment Accounting. Jenkins, L. March 2018.; and 09 Collectives and accounting recommendations. Jenkins, L. July 2018

irrigated farming is outside the scope of Plan Change 1. It is likely that such a change would result in Plan limits being exceeded and water quality not being maintained. For these reasons the Council opposes the proposal to provide for low intensity irrigated farming in this Plan Change process.

### **Closing statements**

57. A complete set of the Council Officer's recommendations are provided in Appendix 1 to this Reply Report.
58. We welcome any further questions from the Hearing Commissioners.

## Appendix 1: Recommendations

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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,~~<sup>9</sup> 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 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 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~~<sup>10</sup> in accordance with Schedule 6 ~~has been prepared and is implemented~~<sup>11</sup> 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.

4. **Amend** Rule 10.2 as follows (amendments from the notified version shown in red text):

Rule 10.2

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<sup>9</sup> Submission # 14.9.

<sup>10</sup> Submission # 9.23 and 9.20.

<sup>11</sup> Submission # 9.20.

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*<sup>12</sup> 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<sup>13</sup> the nutrient management database accessed at [www.farmportal.ecan.govt.nz](http://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](http://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**<sup>14</sup>
  
    - 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.

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<sup>12</sup> Submission # 11.5.

<sup>13</sup> Submission # 16.11.

<sup>14</sup> Submission # 11.10, 16.2, 26.9.

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**<sup>15</sup> source areas for phosphorus loss
4. A description of:
  - a. the on-farm actions, including applicable good management practices, that have been undertaken each year (01 July – 30 June), from [12 months after the plan change becomes operative in accordance with clause 20 of Schedule 1 of the RMA], in the previous 01 July to 30 June period to implement the applicable practices described in the table below. For clarity, the Management Plan will include a continuous record of on-farm actions, including applicable good management practices from [the operative date of the Plan] for a period of up to 10 years<sup>16</sup>; and [...]

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<sup>15</sup> Submission # 16.15, 26.12.

<sup>16</sup> Submission # 23.15

**Appendix 2: Example Deeds of Undertaking provided in relation to Plan Change 3 to the Waitaki Catchment Water Allocation Regional Plan**

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## **Appendix 2A**

Meridian Undertaking

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Proposed Plan Change 3 to the Waitaki Catchment  
Water Allocation Regional Plan

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**UNDERTAKING ON BEHALF OF MERIDIAN ENERGY LIMITED**

**12 August 2015**

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**ANDERSON LLOYD**  
LAWYERS  
DUNEDIN

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## **Preamble**

Environment Canterbury undertook a collaborative plan development process, including via the Lower Waitaki Canterbury Water Management Strategy Zone Committee, in order to develop Plan Change 3. Meridian Energy Limited participated in that process and joined the multi-lateral Zone Committee agreement on a suitable package of provisions to amend the Waitaki Catchment Water Allocation Regional Plan as part of Plan Change 3. This package has both costs and benefits for the operation of the Waitaki Power Scheme. Meridian is committed to the implementation of this collaborative package and accordingly provides the undertaking below.

Meridian Energy Limited notes that from its perspective the collaborative package as publically notified includes flow requirements at the Waitaki Dam (due to Rule 7 and the expectation of the implementation of this rule) that result in electricity generation costs. Subsequent to public notification of Plan Change 3, in order to better provide for mahika kai flow values of Ngāi Tahu, Meridian agreed to be subject to additional minimum flows at the Waitaki Dam, increasing the electricity generation costs. Finally, to support agreement being reached as part of the flow caucusing (3 July 2015), Meridian again agreed to be subject to further increased minimum flows at the Waitaki Dam.

Meridian has consistently sought through its action and evidence to support the achievement of the multilateral collaborative package.

## **Undertaking**

Meridian Energy Limited records and undertakes to allow to the extent necessary the derogation from its existing consent to use water for the purposes of Power Generation at the Waitaki Dam (CRC905361.3) to implement the Meridian agreed provisions relating to:

- 1 Required flows into the Lower Waitaki River at the Waitaki Dam;
- 2 24-hour averaging measurement; and
- 3 Calculated natural inflow.

These provisions are as agreed by Meridian in caucusing with Environment Canterbury, Ngāi Tahu and Waitaki Irrigators Collective, and as set out in the attached revised Waitaki Catchment Water Allocation Regional Plan Proposed Plan Change 3 as presented to the Hearing Panel by Environment Canterbury on 11 August 2015 (the '11 August 2015 provisions').

This undertaking is reliant upon:

- 1 The Lower Waitaki River flow and allocation provisions forming part of Plan Change 3 being adopted by Environment Canterbury and made operative as set out in the 11 August 2015 provisions. Meridian will still be bound by this undertaking if there are any minor changes to the wording of the relevant policies and rules which do not alter the intent of the 11 August 2015 provisions, provided they do not alter any of the obligations imposed upon, or flexibilities provided for, the operator of the Waitaki Dam to provide flows into the Lower Waitaki River.
- 2 The proposed changes forming part of Plan Change 3 relating to the ability to apply for resource consent in relation the lowering of the level of Lake Pukaki to 515 metres a.m.s.l as set out in the 11 August 2015 provisions being adopted and made operative.
- 3 Inclusion of a new operative rule (currently proposed Rule 15A) relating to the re consenting of the existing hydro electricity infrastructure in the catchment. In the event that the High Court<sup>1</sup> determines that controlled activity status is lawful for water permits, then rule 15A making the activity a controlled activity in the form contained in Meridian's submission, or as otherwise agreed by Meridian as a result of any directions from this Hearing Panel. If the High Court determines that controlled activity status for water permits is unlawful then rule 15A making the activity a restricted discretionary activity in the form as publicly notified as part of Plan Change 3 by Environment Canterbury, or as otherwise agreed by Meridian as a result of any directions from this Hearing Panel.

**DATED** this 12th day of August 2015



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S W Christensen  
Counsel for Meridian Energy Limited

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<sup>1</sup> A decision of the High Court on the lawfulness of controlled activity status for water permits is pending on appeals on the Proposed Canterbury Land and Water Regional Plan by Trustpower Limited (CIV-2014-409-61), Genesis Energy Limited (CIV-2014-409-76) and Rangitata Diversion Race Management Limited (CIV-2014-409-62)

## **Appendix 2B**

WIC Undertaking

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**UNDER** the Resource Management Act  
1991

**IN THE MATTER** of the hearing of submissions on  
proposed Plan Change 3 to the  
Waitaki Catchment Water  
Allocation Regional Plan

**BY** **WAITAKI IRRIGATORS  
COLLECTIVE LIMITED**

**WAITAKI INDEPENDENT  
IRRIGATORS INCORPORATED**

**NORTH OTAGO IRRIGATION  
COMPANY LIMITED**

**Submitters**

**AND** **CANTERBURY REGIONAL  
COUNCIL**

**Local Authority**

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**UNDERTAKING ON BEHALF OF WAITAKI IRRIGATORS  
COLLECTIVE LIMITED**

**13 AUGUST 2015**

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GALLAWAY COOK ALLAN  
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DUNEDIN

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**MAY IT PLEASE THE COMMISSIONERS:**

Further to the discussions had between the Commissioners and Counsel at the reconvened hearing on 11 August 2015 Waitaki Irrigators Collective Limited agreed to provide an undertaking to the Commissioners in respect of the steps that will required to implement PC3 should it become operative.

As outlined by Counsel for Meridian Energy Limited in its undertaking dated 12 August 2015, PC3 is the outcome of a comprehensive process of collaboration between stakeholders in the Waitaki Catchment to develop an allocation regime that best serves the interests of all parties. The process has involved a high degree of good will and a process of giving and taking in order to develop a workable framework. That culminated in the caucusing statement on flow allocation dated 3 July the outcome of which has now been incorporated into PC3.

Waitaki Irrigators Collective Limited (“WIC”) have also considered the changes that have been made to PC3 in response to questions from the Commissioners and the discussions that took place during the reconvened hearing of 11 August 2015.

WIC is a representative company formed by the majority of the irrigators that lake water from Lake Waitaki and the Lower Waitaki River. The shareholders are:

- a. Kurow-Duntroon Irrigation Company Limited;
- b. North Otago Irrigation Company Limited;
- c. Morven, Glenavy, Ikawai Irrigation Company Limited;
- d. Lower Waitaki Irrigation Company Limited;
- e. Maerewhenua District Water Resource Co. Limited; and
- f. Waitaki Independent Irrigators Incorporated.

The giving of this undertaking has been authorised by the companies listed above. Individual authorisation from the members of the Waitaki Independent Irrigators Society has not been obtained. However, WIC is instructed by the Society to manage PC3 matters on its behalf. It is anticipated that WIC will continue to manage matters related to PC3,

including any future consent reviews on behalf of the Society members.

For completeness there some further resource consents to take water from the Lower Waitaki River that are held by individuals and organisations that are not represented by WIC, including Hunter Downs Irrigation Limited.

## **UNDERTAKING**

Waitaki Irrigators Collective Limited gives the undertaking below in relation to any review by Environment Canterbury under section 128(1)(b) of the conditions of the resource consents held by its constituent shareholders for the purpose of implementing the lower Waitaki River flow and allocation regime as agreed by Waitaki Irrigators Collective Limited, Meridian Energy Limited, Environment Canterbury and Ngai Tahu, and as set out in a clarified form in the revised Waitaki Catchment Water Allocation Regional Plan Proposed Plan Change 3 as presented to the Commissioners by Environment Canterbury on 11 August 2015 (“the revised PC3”).

Where Environment Canterbury seek to review consents held by Waitaki Irrigators Collective Limited’s members in accordance with section 128(1)(b) to implement the minimum flow and cessation flows in the revised PC3, Waitaki Irrigators Collective Limited **undertakes** not to raise any legal objection to implementing the minimum flow and cessation flows for the reason that it would derogate from the rights provided for by the existing resource consents. For the avoidance of doubt, this undertaking does not restrict the ability of those consent holders to raise other matters relevant to the consent authority’s consideration under section 131(1)(a) of the Act.

That undertaking is **conditional** upon the revised PC3 recommended by the Commissioners and being adopted and made operative by the Canterbury Regional Council including the following:

- g. The lower Waitaki River flow and allocation regime as set out in the revised PC3; and
- h. The annual allocation as specified in Table 5(v) - downstream of Waitaki Dam but upstream of Black Point being 200 million m<sup>3</sup>/ year for agricultural and horticultural activities as specified

in the revised PC3; and

- i. The definition of "Allocation limits" as set out in the revised PC3 and;
- j. Rules 6 and 7 as set out in the revised PC3.

The Waitaki Irrigators Collective Limited is still bound by this undertaking where the Commissioners recommend minor changes to the provisions of the revised PC3 that do not alter the effect of the revised PC3 on the Waitaki Irrigators Collective Limited and the reliability of supply of irrigation water provided by the revised PC3.

These undertakings are **further conditional** upon Meridian Energy Limited consenting to the review (or variation) process of their resource consent CRC905361.3 for the Waitaki Dam for the purpose of implementing the lower Waitaki River flow and allocation regime and consistent with Rule 7 of the revised PC3.



Signed:.....

Date: 13 August 2015