

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Environment Canterbury (Temporary
Commissioners and Improved Water Management) Act 2010

AND

IN THE MATTER of proposed Plan Change 5 to the
Canterbury Land and Water Regional Plan

**REPORT AND RECOMMENDATIONS
OF THE
HEARING COMMISSIONERS**

Hearing Commissioners:

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Table of Contents

Chapter One Introduction.....	5
<i>Plan Change 5.....</i>	5
<i>Submissions on Plan Change 5</i>	5
<i>Appointment of Hearing Commissioners</i>	5
<i>Hearing of submissions.....</i>	6
<i>This report</i>	6
Chapter Two The Resource Management Act	9
<i>Introduction</i>	9
<i>The purpose and principles of the RMA.....</i>	9
<i>Functions of regional councils.....</i>	10
<i>Contents of regional plans.....</i>	11
<i>Procedure for changing regional plans.....</i>	12
<i>Evaluation Report</i>	13
<i>Classes of activity</i>	14
Chapter Three Environment Canterbury Legislation.....	15
<i>Continuing application of the 2010 Act.....</i>	15
<i>Canterbury Water Management Strategy.....</i>	15
Chapter Four Ngāi Tahu Values and Interests.....	17
<i>RMA ss6(e), 7(a) and 8</i>	17
<i>Te Rūnanga o Ngāi Tahu Act (1996) and the Ngāi Tahu Claims Settlement Act (1998).....</i>	17
<i>Cultural traditions and heritage in relation to natural and physical resources.....</i>	17
<i>Relevant ancestral land, water and sites in the region.....</i>	17
<i>Customary mahinga kai resources.....</i>	18
<i>Ngāi Tahu Freshwater Policy 1999.....</i>	18
<i>Significant concerns of contemporary Māori for cultural heritage resources</i>	18
Chapter Five High Order and other Relevant Instruments.....	19
<i>Applicable statutory regulations.....</i>	19
<i>National Policy Statement.....</i>	20
<i>Canterbury Regional Policy Statement.....</i>	24
<i>Regional Plans</i>	25
<i>Water Conservation Orders.....</i>	27
<i>Invi authority approved plans.....</i>	27
<i>Management plans under other Acts.....</i>	28
<i>Instruments of adjacent regional councils</i>	28
<i>Canterbury Water Management Strategy.....</i>	28
<i>Progressive Implementation Programme.....</i>	29
Chapter Six Regulation and Voluntary Action.....	31
<i>Introduction</i>	31
<i>The Issue</i>	31
<i>The applicable law</i>	32
<i>Consideration of the issue</i>	34
Chapter Seven Scope for Amending Plan Change	37

<i>Introduction</i>	37
<i>The Law</i>	37
<i>Specific amendments in question for being beyond scope</i>	40
Chapter Eight Other Legal Issues	49
<i>Does section 70 RMA apply to permitted activity land use rules?</i>	49
<i>Does the NPSFM cover the field?</i>	51
<i>What is the true interpretation of ‘overall’ in Objective A2 of the NPSFM?</i>	51
<i>Is the Council empowered to classify as prohibited activities those that would be so classified by Plan Change 5?</i>	52
<i>Are the requirements for obtaining consent, OVERSEER® and Farm Portal legally justified?</i>	55
<i>Would Policy 4.38AB be lawful in respect of the existing baseline and unimplemented consents?</i>	57
Chapter Nine Farm Portal	61
<i>Submissions that seek a deferral of the process</i>	61
<i>Submissions that challenge the frequency at which information on permitted farming activities is to be updated in the Farm Portal</i>	62
<i>Submissions on the appropriateness of the modelling proxies in Schedule 28 and the Farm Portal</i>	62
<i>Submissions that sought an alternative to the Farm Portal for estimating Baseline GMP Loss Rates and Good Management Practice Loss Rates</i>	67
Chapter Ten A ‘Sinking Lid’	71
Chapter Eleven Capped Flexibility for Permitted Activities	75
Chapter Twelve Irrigation Schemes	77
Chapter Thirteen Farm Enterprises & Nutrient User Groups	79
<i>Part B – Waitaki Amendments</i>	79
<i>Part A – Region Wide</i>	79
Chapter Fourteen Embedding the GMP Loss Rate in the FEP	83
Chapter Fifteen Reduction to 90 percent of GMP Loss Rate	85
Chapter Sixteen WIC’s Alternative Policy and Rule Framework	89
Chapter Seventeen Prohibited activities in former Green and Orange Nutrient Allocation Zones	97
Chapter Eighteen Further amalgamation of provisions – simplifying and streamlining	103
Chapter Nineteen Summary of Section 42A Report recommendations adopted	105
Chapter Twenty Giving Effect to Superior Instruments	109
<i>Content of Chapter 21</i>	109
<i>National Policy Statement for Freshwater Management 2014</i>	109
<i>New Zealand Coastal Policy Statement 2010</i>	111
<i>Canterbury Regional Policy Statement (CRPS)</i>	112
Chapter Twenty-one Evaluation and Recommendations	115
Appendices	119

Chapter One

Introduction

Plan Change 5

- [1] On 4 February 2016, the Canterbury Regional Council ('the Council', 'CRC' or 'Environment Canterbury'), acting under section 65 of the Resource Management Act 1991 ('the RMA') and clause 5 of Schedule 1 of the RMA, resolved to publicly notify a proposed change (identified as 'Plan Change 5') to its Land and Water Regional Plan ('the LWRP' or 'the Plan') which was then partly operative. The plan change was publicly notified on 13 February 2016. The Council prescribed that the closing date for the period for lodging submissions on the plan change would be 11 March 2016. It also prescribed that the closing date of the period for lodging further submissions would be 13 May 2016.
- [2] Plan Change 5 would amend the LWRP which is the Council's plan for the integrated management of land and water resources in the Canterbury Region. The Plan was made fully operative on 1 October 2016.
- [3] The LWRP applies at two levels. It contains objectives, policies and rules that apply throughout the region; and it also contains sections that apply to specific sub-regions, with separate policies and rules that are specific to each sub-region to achieve the general objectives of the Plan.
- [4] Plan Change 5 is in two parts. Part A would make amendments to provisions of the Plan applicable throughout the region for managing nutrients in the environment. Part B would amend Section 15 of the Plan, which applies specifically to the Waitaki and part of the South Coastal Canterbury sub-region. The plan change would divide Section 15 into Section 15A applying to South Coastal Canterbury; and Section 15B applying in the Waitaki. The contents of Section 15A result from Plan Change 3 to the Plan, and are not a subject of this report. Part B of the Plan Change would insert contents into Section 15B, including definitions, policies and rules applicable to various parts of the Waitaki. They identify four freshwater management units (FMUs), state cultural values, and summarise a Zone Committee 'solutions package' which provided guidance about local values for developing the contents of Section 15B, relating separately to Upper and Lower Waitaki Zones.

Submissions on Plan Change 5

- [5] Following public notice of Plan Change 5 being given, the Council received within the prescribed period 129 submissions on its contents.
- [6] The Council publicly notified a summary of the decisions requested in those submissions. During the period prescribed, it received 35 further submissions.

Appointment of Hearing Commissioners

- [7] On 17 March 2016 the Council, acting under section 34A of the RMA, appointed us the undersigned, as hearing commissioners to hear, consider and make recommendations to it on the submissions on Plan Change 5. For that purpose the Council also delegated to us all its functions, powers and duties to hear and consider submissions on the plan change, including requiring and receiving reports as enabled

by section 42A of the RMA, and exercising powers conferred by sections 41B and 41C of it.

- [8] For the avoidance of doubt, we affirm that prior to our appointments we had no involvement in the preparation of the plan change; and that throughout our performance of our duties we have been entirely independent of the Council, and objective, in considering and making recommendations on the submissions.

Hearing of submissions

- [9] We, the appointed hearing commissioners, have required and received reports under section 42A of the RMA on the plan change and the submissions on it. We have conducted public hearings of the reports and of evidence and submissions of the submitters who wished to be heard. Those hearings were conducted at Lincoln on 22 to 26 August 2016, and on 20 September 2016; at Oamaru on 6 to 8 September 2016; at Omarama on 4 and 5 October 2016; and at Waihao Marae on 6 October 2016. On 12 December 2016 we reconvened at Lincoln for the authors of the initial Section 42A Report to publicly deliver their reply to the matters presented by the submitters, and to answer our questions on it.
- [10] During the hearings we asked questions of submitters to enhance our understanding of the nature of their requests, the grounds for them, and their responses to requests made by other submitters and advice given in Section 42A Reports. We endeavoured to conduct the hearings with a minimum of formality to an extent that allowed for fairness to all submitters. An audio recording of the proceedings was made and published on the Council's website. In total the public hearings occupied 13 days.
- [11] Following the completion of the public hearings, we then proceeded to deliberate on the matters raised by the submissions, and to form our recommendations on the decisions requested by them.
- [12] Most of the submissions on the plan change requested amendments to it, and gave reasons for making those amendments. Many also constructively proposed specific improvements to the plan change, developed by themselves or their advisers. In addition, the authors of the initial Section 42A Report made successive detailed reports, including in their Section 42A Reply Report.
- [13] Although submitters questioned numerous aspects of the content of the plan change, issue was not taken with the style and layout of it. We consider that the format of the change is generally suitable for its purpose, and can be adapted for incorporating various substantive amendments that we are recommending.
- [14] We are grateful for all the requests and suggestions by submitters and their witnesses; and by the reporting officers. We acknowledge that the requested and suggested amendments, including those we do not recommend, and the evidence relating to them, have substantially assisted us in our deliberations and in reaching the recommendations to the Council that we make by this report. The submissions and reports have all contributed to an effective and fair process for which Part 1 of Schedule 1 of the RMA provides.

This report

- [15] In the main body of this report we state in narrative form our findings about the law applicable to the process; about the character of Ngāi Tahu values and interests, and expected outcome; about issues

raised by submitters on regulation and voluntary action; and about the scope of the Council's potential action by decisions on the submissions. We also address in detail issues about a 'Farm Portal' and an 'alternative path'; on reducing the extent of allowed release of nutrients to the environment; on capped flexibility for such release; on application to irrigation schemes of nutrient management provisions; and on certain provisions of Part B for the Waitaki.

- [16] Further, we consider the extent to which the plan change, amended as we recommend, would give effect to relevant directions of applicable higher order instruments, and in relation to other relevant instruments. As directed by section 32AA of the RMA, we also express our evaluation of the amendments to the plan change that we recommend.
- [17] The decisions we recommend on the points raised in the submissions are set out in detail in Appendix A to this report. In Appendix B we show the content of the plan change incorporating our recommended amendments to it. Appendix C is a list of the reports and other documents that we have referred to in addition to the submissions and evidence presented by the submitters.
- [18] To avoid unnecessary duplication and repetition we affirm that, except to the extent that we expressly address the contents in this report, we adopt the advice and reasoning in the Section 42A Reports, and in the answers and replies given to us by its authors. We refer to this again in Chapter 19.

Chapter Two

The Resource Management Act

Introduction

- [19] In this chapter, we state our understanding of the provisions of the RMA that are relevant to the plan change and to the making, hearing and decision of submissions on it.

The purpose and principles of the RMA

- [20] The basis for actions under the RMA is Part 2, which states its purpose and principles. The overall objective of the Act,¹ and the keystone of Part 2, is section 5(1), which states the purpose of the Act as being “to promote the sustainable management of natural and physical resources.” The meaning of an Act is to be found from its text in the light of its purpose.²

- [21] Section 5(2) describes the meaning to be given to the term ‘sustainable management’ in applying the purpose stated in section 5(1):

In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, and at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- [22] Section 5 contemplates environmental preservation and protection as an element of sustainable management of natural and physical resources;³ and protecting the environment from adverse effects of use and development is an aspect (though not the only one) of sustainable management.⁴

- [23] Although section 5 is not itself an operative provision, where applicable the other sections of Part 2 (sections 6, 7 and 8) are operative at the level of general principles, directing those administering the RMA, and elaborating how section 5 is to be applied in the circumstances described in them.⁵

- [24] Section 6 of the RMA identifies matters of national importance, and directs everyone exercising functions and powers under the Act to recognise and provide for them. Of the matters listed, these may be relevant to Plan Change 5 and the submissions on it:

- The preservation of the natural character of wetlands, lakes and rivers and their margins, and the protection of them from inappropriate use and development.⁶

¹ *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38 [151]

² Interpretation Act 1999, s 5(1)

³ *Environmental Defence Society v NZ King Salmon*, cited above, [146]

⁴ *Environmental Defence Society v NZ King Salmon*, cited above, [148]

⁵ *Environmental Defence Society v NZ King Salmon*, cited above, [8], [149]

⁶ RMA, s6(a)

- The protection of outstanding natural features from inappropriate use and development.⁷
- The protection of areas of indigenous vegetation and significant habitats of indigenous fauna.⁸
- The maintenance and enhancement of public access to and along lakes and rivers.⁹
- The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.¹⁰
- The protection of protected customary rights.¹¹

- [25] The word ‘inappropriate’ in section 6(a) and (b) should be interpreted “against the backdrop of what is sought to be protected or preserved.”¹²
- [26] Section 7 directs that, in achieving the purpose of the Act, all persons exercising functions and powers under it are to have particular regard to some 11 listed matters, many of which could be relevant to Plan Change 5 and the submissions on it.
- [27] Section 8, the final section in Part 2 of the Act, directs persons exercising functions and powers under it to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
- [28] We understand that this direction does not extend to principles that are not consistent with the scheme of the RMA, nor does it provide for allocating resources to Māori.¹³ It does not impose a duty on functionaries to take into account past wrongs, or to be open to ways to restore imbalance.¹⁴
- [29] Although Part 2 states the purpose of the Act and principles in elaboration of the purpose, where specific, unqualified prescriptions of a superior instrument by which Part 2 is given effect (the lawfulness and the meaning of which are not in dispute, and which “cover the field”), a decision-maker is not free to “refer back” to Part 2 to diminish the effect given to such a prescription.¹⁵

Functions of regional councils

- [30] Section 30 of the RMA lists functions of regional councils for the purpose of giving effect to the Act in their regions. The following of those functions may be relevant to Plan Change 5 and submissions on it:
- Establishing and implementing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region:¹⁶
 - 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:¹⁷
 - Control of the use of land for the purpose of soil conservation, maintenance and enhancement of the quality of water in water bodies, maintenance of the quantity of water in water bodies;

⁷ RMA, s6(b)

⁸ RMA, s6(c)

⁹ RMA, s6(d)

¹⁰ RMA, s6(e)

¹¹ RMA, s6(g)

¹² *Environmental Defence Society v NZ King Salmon*, cited above, [105]

¹³ *Minbinnick v Minister of Corrections* EnvC A043/2004 [323]-346]

¹⁴ *Waikanae Christian Camp v Kapiti Coast District Council* (HC Wellington 27/10/2004, Mackenzie J)

¹⁵ *Environmental Defence Society v NZ King Salmon*, cited above, [80], [88]

¹⁶ RMA, s30(1)(a)

¹⁷ RMA, s30(1)(b)

maintenance and enhancement of ecosystems in water bodies; avoidance or mitigation of natural hazards:¹⁸

- Investigation of land for identifying and monitoring contaminated land:¹⁹
- Control of the taking, use, damming, and diversion of water, and control of the quantity, level and flow of water in any water body, including setting any maximum or minimum levels or flows of water and control of the range, or rate of change, of levels or flows of water:²⁰
- Control of discharges of contaminants into or onto land, air or water and discharges of water into water:²¹
- If appropriate, establishment of rules in a regional plan to allocate the taking or use of water:²²
- In relation to any bed of any water body, the control of the planting of any plant in, on, or under that land for the purpose of soil conservation, maintenance and enhancement of the quality of water in that water body; maintenance of the quantity of water in that water body; and avoidance or mitigation of natural hazards:²³
- Establishment, and implementation, of objectives, policies and methods for maintaining indigenous biological diversity:²⁴
- Strategic integration of infrastructure with land use through objectives, policies and methods.²⁵

[31] Section 30(4) contains directions about allocation of natural resources in regional plans under section 30(1)(fa) or (fb). The directions restrict allocating amounts of resources that have already been allocated;²⁶ regulate allocating a resource in anticipation of expiry of existing consents;²⁷ authorise allocating a resource among competing types of activities;²⁸ and limiting allocating water if the allocation does not affect activities authorised by section 14(3)(b) to (e).²⁹

Contents of regional plans

[32] Section 63(1) of the RMA states the purpose of a regional plan as being “to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act.”

[33] Section 65(1) enables a regional council to prepare a regional plan for any function specified in certain listed paragraphs of section 30(1);³⁰ and section 65(3) directs that a regional plan is to be prepared in accordance with Schedule 1.

[34] Section 66(1) directs that a regional council is to prepare a regional plan in accordance with its functions under section 30, the provisions of Part 2, its duty under section 32, and any regulations. Section 66(2) stipulates that, when preparing a regional plan, a regional council is to have regard to management plans and strategies prepared under other Acts, to the extent to which their content has a bearing on resource

¹⁸ RMA, s30(1)(c)

¹⁹ RMA, s30(1)(ca)

²⁰ RMA, s30(1)(e)

²¹ RMA, s30(1)(f)

²² RMA, s30(1)(fa)(i)

²³ RMA, s30(1)(g)

²⁴ RMA, s30(1)(ga)

²⁵ RMA, s30(1)(gb)

²⁶ RMA, s30(4)(a) and (b)

²⁷ RMA, s30(4)(c) and (d)

²⁸ RMA, s30(4)(e)

²⁹ RMA, s30(4)(f)

³⁰ The functions listed in s65(1) are those in paragraphs (c), (ca), (e), (f), (fa), (fb), (g) and (ga) of s 30(1)

management issues of the region,³¹ and to which it needs to be consistent with regional policy statements and plans of adjacent regional councils.³² Section 66(2A) directs that when preparing a regional plan, a regional council is to take into account any relevant planning document recognised by an iwi authority, if lodged with the council, to the extent that its content has a bearing on the resource management issues of the region.

- [35] Section 67(1) of the RMA stipulates that a regional plan is to state the objectives for the region; the policies to implement the objectives; and the rules (if any) to implement the policies. Section 67(2) lists other matters that may be stated in a regional plan. Section 67(3) directs that a regional plan is to give effect to any national policy statement, any New Zealand coastal policy statement; and any regional policy statement. Section 67(4) stipulates that a regional plan is not to be inconsistent with a water conservation order, or any other regional plan for the region. Section 67(5) adds that if a council has allocated a natural resource under certain provisions of section 30, the regional plan is to record how it has done so.³³
- [36] Section 68 of the RMA enables regional councils to make rules in a regional plan for carrying out certain of their functions, and for achieving the objectives and policies of the plan; and prescribes that in making a rule, a regional council is to have regard to the actual or potential effect (particularly an adverse effect) on the environment of activities; and, relevantly, contains specific prescriptions for rules relating to levels or flows or rates of use of water, and minimum standards of water quality.
- [37] Section 69 directs contents for regional plan provisions on water quality, including prohibiting standards that may result in a reduction of the quality of water unless it is consistent with the purpose of the Act to do so.
- [38] Section 70 applies to regional rules about discharges. Section 70(1) applies to rules that allow discharges as a permitted activity; and section 70(2) applies to rules that require adoption of the best practicable option.
- [39] We consider the application of those sections in addressing submissions on Plan Change 5 on subject-matter to which those sections apply.

Procedure for changing regional plans

- [40] The procedure for changing a regional plan is that prescribed in Schedule 1 of the RMA,³⁴ of which the provisions of Part 1 are applicable.
- [41] Clause 5(1) of Schedule 1 directs that a local authority which has prepared a proposed plan (a term that includes a change to a plan³⁵) is to prepare an evaluation report in accordance with section 32, and have particular regard to that report when deciding whether to proceed with the plan.
- [42] Clause 6 provides for making submissions on a proposed plan; clause 7 directs that the local authority is to give public notice of the availability of a summary of decisions requested by submitters; and of the opportunity to make further submissions; clause 8 provides for certain persons to make further

³¹ RMA, s66(2)(c)(i)

³² RMA, s66(2)(d)

³³ The provisions of section 30 referred to in s67(5) are s30(1)(fa) or (fb), and s30(4)

³⁴ RMA, s65(5)

³⁵ RMA, s43AAC(1)(a)

submissions;³⁶ and clause 8B directs that the local authority is to hold a hearing into submissions.

- [43] Clause 10 gives directions on giving a decision on the provisions and matters raised in submissions,³⁷ with reasons for accepting or rejecting them.³⁸ Subclause 10(2) provides for a local authority's decision on submissions to make necessary consequential alterations arising from the submissions and any other relevant matter arising from them. Subclause 10(4) stipulates that the local authority's decision is to include a further evaluation in accordance with section 32AA;³⁹ and is to have particular regard to the further evaluation when making its decision.⁴⁰
- [44] Clause 16(2) enables a local authority to make amendments to a plan change that "alter any information where the alteration is of minor effect" and to "correct any minor errors."
- [45] Although a local authority has to give its decisions on the matters raised in the submissions, subclause 10(3) prescribes that it is not required to give a decision that addresses each submission individually. So in the main text of this report we address the major issues arising from the submissions; and in Appendix A we group the submissions according to the specific provisions of the plan change which they asked to be altered, and identify what alterations (if any) we recommend be made by the Council. In those ways the report contains our recommended responses to all submissions.
- [46] Although not expressly stated in the Act, we understand that the consideration and decision of submissions is to proceed on the basis that there is no presumption in favour of the provisions of the plan change as proposed by the local authority; nor any onus on submitters to show that the contents of the plan change are inappropriate.⁴¹ Rather, the local authority's duty is to consider the submissions and evidence, and find what are the most appropriate and suitable provisions of the plan change in accordance with law.

Evaluation Report

- [47] Section 32 of the RMA prescribes requirements for preparing and publishing evaluation reports, including an 'amending proposal' that would amend a plan or change. In particular as applicable to Plan Change 5, section 32 directs that an evaluation report is to examine whether its provisions are the most appropriate way to achieve the relevant objectives by identifying other reasonably practicable options for doing so; assessing the efficiency and effectiveness of the provisions in doing so; and summarising the reasons for deciding on the provisions.⁴² The report is to 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 the proposal.⁴³
- [48] In assessing the efficiency and effectiveness of provisions, the assessment has to identify and assess the anticipated benefits and costs of the environmental, economic, social, and cultural effects that are

³⁶ Clause 8 provides that a further submission may be made by a person representing a relevant aspect of the public interest, or by a person who has an interest in the proposed plan greater than the general public has, or by the local authority itself. A further submission is limited to support of or opposition to a submission under clause 6

³⁷ RMA, Sched 1, cl 10(1)

³⁸ RMA, Sched 1, cl 10(2)

³⁹ RMA, Sched 1, cl 10(2)(ab)

⁴⁰ RMA, Sched 1, cl 10(4)(aaa)

⁴¹ *Wellington Club v Carson* [1972] NZLR 698 (SC); applied to the RMA in *Leith v Auckland City Council* [1995] NZRMA 400

⁴² RMA, s32(1)(b)

⁴³ RMA, s32(1)(c)

anticipated from the implementation of the provisions, including the opportunities for economic growth and employment anticipated to be provided or reduced; the assessment has also, if practicable, to quantify the benefits and costs; and if there is uncertainty or insufficient information about the subject-matter of the provisions, has to assess the risk of acting or not acting.

- [49] As Plan Change 5 would amend an operative plan (the LWRP), but does not itself contain objectives, the examination of whether the provisions are the most appropriate is directed to achieving the purpose of the plan change;⁴⁴ and to relevant objectives already stated in the Plan.⁴⁵
- [50] By section 32AA, a further evaluation is required for any change proposed since the original evaluation report was completed. Such a further evaluation does not have to be published as a separate report if it is referred to in the decision-making record in sufficient detail to demonstrate that it was undertaken in compliance with that section.⁴⁶

Classes of activity

- [51] We also refer to section 77A of the RMA, which empowers local authorities to categorise activities as belonging to one of six classes of activity, and make rules for each class of activity that apply to each activity within the class for the purpose of the plan. The classes listed include a prohibited activity. The attributes of each of those classes of activity are described in section 87A.

⁴⁴ RMA, s32(6)

⁴⁵ RMA, s32(3)

⁴⁶ RMA, s32AA(1)(d)(ii)

Chapter Three

Environment Canterbury Legislation

Continuing application of the 2010 Act

- [52] In addition to the general provisions of the RMA summarised in Chapter 2, we note the application in the Canterbury region of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 ('the 2010 Act'), and the Environment Canterbury (Transitional Governance Arrangements) Act 2016 ('the 2016 Act').
- [53] Relevantly the 2010 Act empowers the Canterbury Regional Council to address issues relevant to the efficient, effective and sustainable management of fresh water in Canterbury. Section 63 directs that in considering any proposed plan, the Council is to have particular regard to the vision and principles of the Canterbury Water Management Strategy ('the CWMS') as set out in Part 1 of Schedule 1 of that Act, in addition to the matters relevant under the RMA to its decisions made under clause 10(1) of Schedule 1 of the RMA. Section 4(2) declares that the inclusion of the vision and principles of the CWMS does not accord to the CWMS or its vision and principles any status in law other than as provided in that Act.
- [54] In general, the 2016 Act repealed the 2010 Act. It prescribes a transition day (the day after the official date of announcement of the results of the Environment Canterbury general election in 2016). However the transitional provisions in Schedule 1 of the 2016 Act direct that in respect of any proposed regional plan notified before the transition day, certain provisions of the 2010 Act continue as if they had not been repealed for the purpose of completing any decision relating to the proposed plan that had not been completed before the transition day.⁴⁷
- [55] We find that Plan Change 5 was publicly notified before the transition day; that decisions on the submissions on the plan change had not been completed before the transition day; so that the provisions of the 2010 Act directing having particular regard to the vision and principles of the CWMS continue to apply to the Council's decisions on those submissions.

Canterbury Water Management Strategy

- [56] The vision and principles of the Canterbury Water Management Strategy ('CWMS') referred to in section 63 of the 2010 Act are reproduced in Schedule 1 of that Act.⁴⁸
- [57] The text of the CWMS vision and principles reproduced in Schedule 1 of the 2010 Act includes a statement of the vision, and also states fundamental principles, including primary principles and supporting principles.
- [58] The vision 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.

⁴⁷ Environment Canterbury (Transitional Governance Arrangements) Act 2016, Schedule 1, clause 7

⁴⁸ Environment Canterbury (Transitional Governance Arrangements) Act 2016, s21

[59] There are three primary principles: sustainable management, regional approach, and kaitiakitanga:

1 Sustainable management

Water is a public resource which must be managed in accordance with sustainability principles and be consistent with the Resource Management and Local Government Act.

2 Regional approach

The planning of natural water use is guided by the following:

- first order priority considerations: the environment, customary uses, community supplies and stock water:
- second order priority considerations: irrigation, renewable electricity generation, recreation, tourism and amenity.

A consistent regulatory approach to water is applied throughout the Canterbury region, recognising these principles.

Both surface and groundwater are given equal importance.

Further development of scientific knowledge of the region's water resources and the impacts of climate change are given priority.

The actual or potential cumulative effects the taking and using water can have on waterways are recognised and managed within defined standards.

A cautious approach is taken when information is uncertain, unreliable, or inadequate. There is strong emphasis on the integration of water and land management including protection of indigenous biodiversity and enhancement of water quality. Current and potential effects of land use intensification is an integral part of decision-making on water takes. This may mean amending regional and district plans.

3 Kaitiakitanga

The exercise of kaitiakitanga by Ngāi Tahu applies to all water and lakes, rivers, hāpua, waterways and wetlands, and shall be carried out in accordance with tikanga Māori.

[60] The supporting principles include natural character, indigenous biodiversity, access, quality drinking water, recreational and amenity opportunities, and community and commercial use.

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Chapter Four

Ngāi Tahu Values and Interests

RMA ss6(e), 7(a) and 8

- [61] Part 2 of the RMA includes the following important directions in respect of Māori values and interests.
- [62] Section 6(e) directs that all persons exercising functions and powers under the Act are to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
- [63] Section 7(a) directs that all persons exercising functions and powers under the RMA are to have particular regard to kaitiakitanga.
- [64] Section 8 directs all people exercising functions and powers under the Act are to take into account the principles of the Treaty of Waitangi.

Te Rūnanga o Ngāi Tahu Act (1996) and the Ngāi Tahu Claims Settlement Act (1998)

- [65] These two Acts recognise Ngāi Tahu Whānui as tāngata whenua for the Canterbury region. They are relevant when applying sections 6(e), 7(a) and 8 of the RMA, and in giving effect to the relevant sections in the RPS and LWRP.

Cultural traditions and heritage in relation to natural and physical resources

- [66] Chapter 2 of the Canterbury Regional Policy Statement (CRPS) describes the traditional relationship and responsibility that Ngāi Tahu hold toward and with the natural resources of the Canterbury region.

Relevant ancestral land, water and sites in the region

- [67] There are a number of iwi management plans within the Canterbury region that collectively provide comprehensive information on the ancestral land, water and sites in the region.⁴⁹
- [68] In addition, the Ngāi Tahu Claims Settlement Act 1998 provides for the following in the Canterbury region:
- Statutory Acknowledgments over a number of lakes, rivers and wetlands, each of which includes a statement describing the Ngāi Tahu relationship and association with each waterway and catchment; and
 - Nohoanga or temporary campsites located adjacent to various waterways in the Canterbury region, chosen for their suitability to practice mahinga kai activity in the vicinity of traditional mahinga kai locations.

⁴⁹ Te Whakatau Kauapapa 1990, Iwi Management Plan of Kati Huirapa 1992, Kai Tahu ki Otago Natural Resources Management Plan 1995, Te Poha o Tohu Raumati 2009, Mahaanui Iwi Management Plan 2013

- [69] We recognise that the Statutory Acknowledgements and Nohoanga are statutory tools and do not reflect the full extent of the values and interests that Ngāi Tahu have for their ancestral land, water and sites in the Canterbury region. Rather they provide information on the cultural association with particular waterways.

Customary mahinga kai resources

- [70] The CRPS (section 2.2.7 Mahinga kai) describes the importance to Ngāi Tahu of maintaining the diversity, quality and quantity of resources, especially those valued for mahinga kai. The CRPS states, “mahinga kai was, and is central to the Ngāi Tahu way of life” and that “mahinga kai refers to the whole resource chain, from mountain top to the ocean floor”.
- [71] The iwi resource management plans that are applicable to the Canterbury region provide additional specificity, including the importance of water quality and quantity to ensuring healthy and abundant customary mahinga kai resources.

Ngāi Tahu Freshwater Policy 1999

- [72] The Ngāi Tahu Freshwater Policy is applicable to the entire Ngāi Tahu takiwā, which is therefore applicable to the region of Canterbury. The Ngāi Tahu Freshwater Policy contains relevant objectives and policy on wāhi tapu, mauri, mahinga kai and kaitiakitanga.

Significant concerns of contemporary Māori for cultural heritage resources

- [73] The CRPS, at Table 2.1, “Summary of issues of significance to Ngāi Tahu relevant to the CRPS”, provides a comprehensive list of natural resource and environmental management issues and desired outcomes as identified by the tāngata whenua of the Canterbury region. While the list is not exhaustive, it provides expansive coverage and is relevant to Plan Change 5.
- [74] We have been cognisant of the above matters when considering the submissions on Plan Change 5, particularly the submission lodged by Ngā Rūnanga (Te Rūnanga o Kaikōura, Te Ngāi Tūāhuriri Rūnanga, Te Hapū o Ngāti Wheke, Te Rūnanga o Koukourārata, Ōnuku Rūnanga, Wairewa Rūnanga, Te Taumutu Rūnanga, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao And Te Rūnanga o Moeraki), Ngāi Tahu Farming Limited, and Te Rūnanga o Ngāi Tahu (Te Rūnanga). We note that the evidence provided by Ngā Rūnanga witnesses drew on and expanded on many of the matters outlined above. We are grateful for that assistance.

Chapter Five

High Order and other Relevant Instruments

Applicable statutory regulations

- [75] The only statutory regulations brought to our attention or of which we are aware that apply to the consideration and disposition of submissions on the plan change have been made under the RMA.

Resource Management (Forms, Fees and Procedures) Regulations

- [76] The Resource Management (Forms, Fees and Procedures) Regulations 2003 prescribe forms and procedures for (among other things) plan changes. Regulation 6 prescribes that a submission on a publicly notified proposal for a plan change is to be in Form 5. Regulation 4 prescribes that use of a form is not invalid only because it contains minor differences from a prescribed form, as long as the form that is used has the same effect as the prescribed form and is not misleading.

- [77] Form 5 provides that a submission is to—

- (a) give details of the specific provisions of the proposal that the submission relates to:
- (b) state whether the submitter supports or opposes the specific provisions or wishes to have them amended, and reasons for the submitter's views:
- (c) give precise details of the decision sought from the local authority.

National Environmental Standards for Sources of Human Drinking Water Regulations

- [78] The Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 regulate granting of water permits and discharge permits upstream of abstraction points. Relevantly to Plan Change 5, regulation 10 imposes restrictions on regional plan rules allowing permitted activities upstream of drinking-water abstraction points in certain stated conditions.
- [79] Regulation 13(a) enables rules in a regional plan that are more stringent than required by the regulations.
- [80] We adopt the content of the Section 32 Report⁵⁰ and the initial Section 42A Report⁵¹ on Plan Change 5 in respect of these regulations, and find that its proposed alterations of the LWRP would not result in the Plan failing to conform with them.

Measurement and Reporting of Water Takes Regulations

- [81] The Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 require the keeping of records of fresh water taken under a water permit, and providing to the regional council annually of the records and (if required) evidence of verification of their accuracy. The regulations do not stipulate matters to be contained in regional plans, and are not directly relevant to Plan Change 5.

⁵⁰ Section 32 Evaluation Report Pg 2-9

⁵¹ Section 42A Report, Appendix B, paras 1.119 to 1.125

National Environmental Standards on Contaminants in Soil Regulations

- [82] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011⁵² apply to activities affecting fuel storage systems. Important as they are, these regulations concern functions of territorial activities, and are not directly applicable to the LWRP or Plan Change 5.

National Policy Statement

- [83] As we mentioned in Chapter 2, a regional plan is required to give effect to any national policy statement, and to any New Zealand coastal policy statement.⁵³
- [84] The national policy statements that are relevant to Plan Change 5 are those relating to renewable electricity generation and to freshwater management.

National Policy Statement for Renewable Electricity Generation 2011

- [85] The National Policy Statement for Renewable Electricity Generation 2011 contains an objective and policies to enable the sustainable management of renewable electricity generation under the RMA.

- [86] The objective is—

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable electricity sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

- [87] Relevantly, Policy E2 is that regional plans are to include objectives, policies and methods (including rules in plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region.

National Policy Statement for Freshwater Management 2014

- [88] The preamble to the National Policy Statement for Freshwater Management 2014 ('the NPSFM') identifies the importance of fresh water to economic, cultural and social well-being, and the need for national direction for management of the freshwater resource. Relevantly, it recognises catchment-level variation between different freshwater bodies, and different demands on the resource across regions, including managing land use and development activities that affect fresh water with a lower environmental footprint. The preamble also describes accounting for all freshwater takes and sources of relevant contaminants as vital.

- [89] A part on Te Mana o te Wai notes that a range of community and tangata whenua values may collectively recognise the national significance of fresh water and Te Mana o te Wai as a whole; and the aggregation of community and tangata whenua values and the ability of freshwater to provide for them over time recognises the national significance of fresh water and Te Mana o te Wai.

- [90] The NPSFM sets objectives for water quality (Objectives A1 and A2) and for water quantity (B1 to B4),

⁵² SR 2011/361

⁵³ RMA, s55(2B), and s67(3)

with several policies for achieving them.

- [91] Objective A1 is safeguarding the life-supporting capacity of freshwater and the health of people and communities in sustainably managing the use and development of land and discharges of contaminants. Objective A2 is maintaining or improving the overall quality of fresh water while protecting significant values of outstanding freshwater bodies, and improving the quality in waterbodies degraded to over-allocation.
- [92] Policy A1 directs regional councils to make or change regional plans to the extent necessary to ensure that the plans establish objectives and set limits to give effect to the NPSFM objectives having regard to impacts of climate change, connections between waterbodies, and with coastal water; and establish methods to avoid over-allocation.
- [93] Policy A2 applies where freshwater management units do not meet the freshwater objective of Policy A1. It directs regional councils to specify targets and implement methods considering recorded sources of contaminants, for improvement of water quality to meet the targets in a defined time.
- [94] Policy A3 directs that where permissible, regional councils make rules requiring 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 into fresh water or onto or into land that may result in the contaminant entering fresh water.
- [95] Objective B1 is to safeguard the life-supporting capacity of freshwater in sustainably managing the taking, using damming and diverting of fresh water. Objective B2 is avoiding any further over-allocation of fresh water and phasing out existing over-allocation. Objective B3 is improving and maximising the efficient allocation and efficient use of fresh water. Objective B4 is protecting significant values of wetlands and of outstanding freshwater bodies.
- [96] The policies for achieving those objectives address the use, allocation and value of fresh water. Policy B1 directs regional councils to have their plans establish freshwater objectives in accordance with Policies CA1-CA4, and set environmental flows and/or levels for all freshwater units to give effect to the NPSFM objectives having regard to impacts of climate change, connections between waterbodies, and with coastal water. Policy B2 directs regional councils to provide for efficient allocation of fresh water to give effect to Policy B1.
- [97] Policy B3 directs that regional plans state criteria by which transfers of water permits are decided. Policy B4 directs that plans identify methods to encourage efficient use of water. Policy B5 is that no decision will result in future over-allocation; and Policy B6 is that every regional council sets a defined timeframe and methods for phasing out over-allocation.
- [98] Objective C1 is improving integrated management of fresh water and use and development of land in whole catchments, including interactions between fresh water, land, associated ecosystems, and the coastal environment.
- [99] To achieve that objective, Policy C1 directs regional councils to manage fresh water, land use and development in an integrated and sustainable way so as to avoid remedy or mitigate adverse effects, including cumulative effects.
- [100] Objective CA1 is a nationally consistent approach to establishing freshwater objectives for national values that recognise regional and local circumstances. To that end, Policies CA1 to CA4 prescribe a

detailed process for a national objectives framework. Policy CA1 is that all regional councils are to identify freshwater management units for all freshwater bodies in every region.

- [101] Policy CA2 is that all national values and how they apply to circumstances are to be considered; values for each freshwater management unit are to be identified, including certain compulsory values and others appropriate in local and regional circumstances; identifying attributes from those listed in Appendix 2 or otherwise appropriate for those values; assigning attribute states at or above the minimum acceptable for each; formulating freshwater objectives in numeric terms with reference to the attribute state specified in that appendix or where practicable, and otherwise in narrative terms; and where an attribute applies to more than one value, adopting the most stringent.
- [102] Policy CA3 is that all regional councils are to ensure that freshwater objectives for the compulsory values are set at or above the national bottom lines for all freshwater management units, unless the existing freshwater quality is already below that line and because that is caused by naturally occurring processes or is contributed to by existing infrastructure the council considers it appropriate to set the objective below the line.
- [103] Policy CA4 provides for setting a freshwater objective below a national bottom line on a transitional basis in certain conditions specified in Appendix 4. Currently that appendix does not specify any conditions in which that may be done.
- [104] Part CB of the NPSFM relates to monitoring progress towards and achievement of freshwater objectives. Part CC directs all regional councils to establish and operate systems for accounting for quality and quantity of fresh water and publishing the information gathered.
- [105] Part D of the NPSFM relates to tangata whenua roles and interests. It states Objective D1 of providing for the involvement of iwi and hapū, ensuring that tangata whenua values and interests are identified and reflected in the management of fresh water and associated ecosystems and decision-making regarding freshwater planning.
- [106] Policy D1 is for local authorities to take reasonable steps to involve iwi and hapū in management of fresh water and ecosystems, to work with them to identify values and interests, and reflect them in management and decision-making.
- [107] Policy E1 of the NPSFM prescribes that a regional council's implementation of its policies is to be fully completed by 31 December 2015, and provides that if compliance by that date would be impracticable, the time may be extended to 31 December 2030 by a programme of defined time-limited stages adopted by 31 December 2015 and publicly notified; with progress reported annually.

New Zealand Coastal Policy Statement

- [108] The New Zealand Coastal Policy Statement 2010 ('the NZCPS') states seven objectives, of which Objectives 1 and 6 are particularly relevant to Plan Change 5.
- [109] Objective 1 is safeguarding the integrity, form, functioning, and resilience of the coastal environment, and sustaining its ecosystems, including in estuaries and on land. It specifically refers to maintaining and enhancing natural biological and physical processes in the coastal environment, recognising their dynamic, complex and interdependent nature; and protecting representative or significant natural ecosystems and maintaining the diversity of indigenous coastal flora and fauna.

[110] Objective 6 is enabling people and communities to provide for their social, economic and cultural wellbeing and their health and safety through use and development. Relevantly, this objective includes recognising that protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits. It also includes recognising that protection of habitats of living marine organisms contributes to the social, economic and cultural wellbeing of people and communities.

[111] The NZCPS also states policies for achieving the purpose of the RMA in the coastal environment.⁵⁴ It acknowledges that the extent and characteristics of the coastal environment vary from locality to locality, and identifies that it includes (among other things):

- areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and their margins;⁵⁵
- coastal vegetation and the habitat of coastal species including migratory birds;⁵⁶
- elements and features that contribute to the natural character, landscape, visual qualities or amenity values;⁵⁷
- items of cultural or historic heritage on the coast.⁵⁸

[112] Many of the policies of the NZCPS are relevant to the content of the LWRP and of Plan Change 5. In selecting the following as particularly relevant, we do not overlook that others may also be relevant, and that this instrument deserves to be read as a whole. We have done that.

[113] Policy 2, on the place of tangata whenua in relation to the coastal environment, includes:

- recognising that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment;⁵⁹
- involving tangata whenua in preparation of regional plans by effective consultation in accordance with tikanga Māori;⁶⁰
- incorporating mātaurangi Māori in regional plans;⁶¹
- taking into account any relevant iwi resource management plan and other recognised and relevant document;⁶²
- providing opportunities for tangata whenua to exercise kaitiakitanga over waters, lands and fisheries in the coastal environment;⁶³
- recognising the importance of Māori cultural and heritage values.⁶⁴

[114] Policy 3 is adopting a precautionary approach to activities whose effects on the coastal environment are uncertain, unknown, or little understood but potentially significantly adverse. This policy directs

⁵⁴ RMA, s56

⁵⁵ NZCPS, Policy 1(2)(c)

⁵⁶ NZCPS, Policy 1(2)(e)

⁵⁷ NZCPS, Policy 1(2)(f)

⁵⁸ NZCPS, Policy 1(2)(g)

⁵⁹ NZCPS, Policy 2(a)

⁶⁰ NZCPS, Policy 2(b)

⁶¹ NZCPS, Policy 2(c)

⁶² NZCPS, Policy 2(e)

⁶³ NZCPS, Policy 2(f)

⁶⁴ NZCPS, Policy 2(g)

particular use of that approach to resources potentially vulnerable to effects from climate change.⁶⁵

- [115] Policy 4 is also relevant to Plan Change 5. It is providing for integrated management of natural and physical resources in the coastal environment and activities that affect it. The policy directs co-ordinated management of activities in the coastal environment, including, relevantly, land-use activities that are likely to affect water quality in the coastal environment, and significant adverse cumulative effects.⁶⁶
- [116] Policy 7(2) is identifying in regional plans coastal processes, resources and values that are under threat or at significant risk from adverse cumulative effects, and including provisions to manage those effects, including setting thresholds or acceptable limits to change.
- [117] Policy 11 is to protect indigenous biodiversity in the coastal environment. This policy includes avoiding adverse effects of activities on various classes of vulnerable taxa and species; and avoiding significant adverse effects on certain other classes.
- [118] Policies 13 and 14 relate to preservation and restoration of the natural character of the coastal environment, including regional plan provisions for them.⁶⁷
- [119] Policy 15 includes protecting natural features and natural landscapes from inappropriate use, and also involves regional plan provisions.⁶⁸
- [120] Policy 21 is directed to discharging of contaminants to water in the coastal environment. Relevantly, it calls for particular regard to the sensitivity of the receiving environment; the nature of the contaminants discharged; the risks to the environment if limits on concentrations are exceeded; the capacity of the receiving environment to assimilate the contaminants; and minimising adverse effects on the life-supporting capacity of the water.

Canterbury Regional Policy Statement

- [121] The Canterbury Regional Policy Statement 2013 ('the CRPS') contains several objectives that specifically relate to the management of fresh water, and ecosystems and biodiversity; and numerous policies for achieving them. We summarise those that are more directly applicable, without overlooking others that may also be relevant. We consider the instrument as a whole.
- [122] Objective 7.2.1 is for sustainably managing freshwater resources to enable people and communities to provide for their economic and social wellbeing through abstracting and using water for irrigation, hydro-electricity generation and other economic activities, recreational and amenity values provided the life-supporting capacity, ecosystem processes, indigenous species, and mauri is safeguarded, natural character preserved and requirements for community and stock-water supplies and customary use provided for.
- [123] Objective 7.2.2 is for further abstraction of water occurring in parallel with improvements in efficiency in allocation for abstraction, in the way it is abstracted and conveyed, and its application and use; maintenance of water quality and improvement where degraded; and restoration or enhancement of

⁶⁵ NZCPS, Policy 3(2)

⁶⁶ NZCPS, Policy 4(a)

⁶⁷ NZCPS, Policy 13(1)(d); Policy 14(b)

⁶⁸ NZCPS, Policy 15(d)

degraded water bodies and surroundings.

- [124] Objective 7.2.3 is for maintaining or improving the overall quality of freshwater; and safeguarding the life-supporting capacity, ecosystem processes, and indigenous species and associated ecosystems.
- [125] Objective 7.2.4 is for sustainably managing fresh water in an integrated way across catchments, between activities, and between agencies and people with interests in water management in the community, considering the Ngāi Tahu ethic of Ki Uta ki Tai, interconnectivity of surface water and groundwater, effects of land uses and intensification on demand and water quality; kaitiakitanga and stewardship; and any net benefits of using water and infrastructure and their significance for the region.
- [126] Objectives in respect of ecosystems and biodiversity include halting decline of ecosystems and indigenous biodiversity (Objective 9.2.1); restoring and enhancing ecosystems and indigenous biodiversity (Objective 9.2.2); protecting significant indigenous vegetation and habitats (Objective 9.2.3).
- [127] Those objectives are to be implemented by numerous policies particularly on these topics:
- natural character values (Policy 7.3.1), and environmental protection, restoration and enhancement (Policy 7.3.3);
 - management of abstraction of water by sustainable flow and allocation regimes, phasing out and avoiding further over-allocation (Policy 7.3.4);
 - managing effects on water quality and quantity (Policies 7.3.5-7.3.7);
 - efficient allocation and use of fresh water (Policy 7.3.8);
 - integrated solutions for water management, storage and harvest, and existing activities (Policies 7.3.9-7.3.11);
 - taking a precautionary approach when information is uncertain (Policy 7.3.12);
 - stewardship and kaitiakitanga (Policy 7.3.13); and
 - protecting significant natural areas (Policy 9.3.1).

Regional Plans

- [128] In considering the submissions on Plan Change 5 and the recommendations we make on them, we bear in mind that the plan change is not to be inconsistent with any other regional plan for the region.⁶⁹ The most relevant, which the plan change would amend, is the LWRP itself (incorporating Plan Changes 1, 2, 3, 4 and 6). Other regional plans that may have some relevance are the Waitaki Catchment Water Allocation Regional Plan; the Canterbury Regional Coastal Environment Plan; the Hurunui and Waiau River Regional Plan; the Opihi River Regional Plan; the Pareora Catchment Environmental Flow and Water Allocation Regional Plan; the Waimakariri River Regional Plan; and the Waipara Catchment Environmental Flow and Water Allocation Plan.
- [129] The proposed Canterbury Air Regional Plan does not apply to the management of land and water resources of the region, so it is not considered further in this report.

Canterbury Land and Water Regional Plan

- [130] The LWRP sets objectives which state comprehensive outcomes for the use and development of land

⁶⁹ RMA, s67(4)

and water resources of the region. It also contains strategic and other policies for achieving those objectives; and rules for implementing the policies. The provisions include general policies for nutrient management and for abstraction of water.

- [131] The objectives and strategic policies form freshwater objectives for the whole region, including outcomes (both numeric and narrative) and limits for the region generally. The scheme of the LWRP is that specific freshwater outcomes and limits applicable to various catchments are included in sub-region sections of the plan. The relationship between the general policies and those specific to a particular sub-region is described in section 4, which prescribes that where the plan contains policies on the same subject-matter both in section 4 and in a sub-region section, in general those in the sub-region section are to prevail in that sub-region. The exceptions are that strategic policies (Policies 4.2 to 4.10) take precedence; and Policy 4.1 is to take precedence unless catchment-specific outcomes are specified in a sub-region section.
- [132] Part A of Plan Change 5 contains proposed amendments to the general (region-wide) provisions of the LWRP, specifically sections 2, 4, 5 and 16 of it, also inserting new Schedules 7A and 28, and amending maps to define a new High-Runoff Risk Phosphorus Zone.
- [133] Part B of Plan Change 5 is an example of specifying catchment-specific outcomes in a sub-region section. It would amend section 15 of the LWRP, which applies to the Waitaki and South Coastal Canterbury part of the region. Provisions for South Coastal Canterbury were introduced by Plan Change 3, and are not a subject of Plan Change 5, which would introduce provisions (including policies, rules, freshwater outcomes, water quality limits, nitrogen load limits) applying to and in the Waitaki.
- [134] So Part A is not inconsistent with the LWRP, in that it deliberately describes amendments to it; and Part B is not inconsistent with it in that, in accordance with its scheme, it introduces in a sub-region section, catchment-specific provisions to be applicable in the Waitaki.

Waitaki Catchment Water Allocation Regional Plan

- [135] The Waitaki Catchment Water Allocation Regional Plan is the regional plan for the allocation of water in the part of the Waitaki Catchment that is in the Canterbury Region.⁷⁰ Any objective, policy or rule on the same subject-matter in that plan prevails over contents of the LWRP, and any inconsistency between the plans is to be interpreted in favour of the Allocation Plan.
- [136] Plan Change 5 does not apply to allocation of water in the Waitaki Catchment, so it is not inconsistent with that Plan. We note that Plan Change 5 sets allocation limits for Whitneys Creek, a small, spring-fed waterway located within the Northern Fan FMU outside of the area controlled by the Allocation Plan.

Canterbury Regional Coastal Environment Plan

- [137] The Canterbury Regional Coastal Environment Plan applies in the coastal environment, including the coastal marine area. The LWRP does not apply to the coastal marine area, and Plan Change 5 does not propose any alteration to that. To the extent that the LWRP applies in the remainder of the coastal environment that is not in the coastal marine area, Plan Change 5 proposes no alteration to that either.
- [138] The Regional Coastal Environment Plan has objectives, policies and rules to manage the natural and

⁷⁰ Resource Management (Waitaki Catchment) Amendment Act 2004, s14

physical resources of the coastal environment, including on protection and enhancement of the coast; water quality; controls on activities and structures; and coastal hazards.

- [139] Having reviewed the Regional Coastal Environment Plan, we find that because of the difference of subject-matter, Plan Change 5 would not be inconsistent with that plan.

Regional Plans for specific catchments

- [140] We have considered the other regional plans listed in paragraph [128]. Each of them applies to a specific catchment. Except for the Styx River catchment, the specific plan prevails over the LWRP. The regional rules of the LWRP apply in the Styx River catchment.
- [141] Plan Change 5 would not alter those arrangements, and we find that it would not be inconsistent with any of those regional plans.

Water Conservation Orders

- [142] Four water conservation orders apply to waterbodies within the Canterbury region. They are listed in the initial Section 42A Report, which describes the general effects of those orders.⁷¹
- [143] In particular the National Water Conservation (Ahuriri River) Order 1990 applies to part of the Waitaki sub-region which is affected by Part B of Plan Change 5. The general effect of that Order is described in the initial Section 42A Report.⁷²

Iwi authority approved plans

- [144] Several planning documents are recognised by iwi authorities in the Canterbury region and may be relevant to the Council's consideration of Plan Change 5 and the submissions on it. They are listed in the initial Section 42A Report.⁷³
- [145] These documents state Ngāi Tahu cultural values; seek integration of tangata whenua values and cultural objectives into the planning provisions of the LWRP; and assert the right of Ngāi Tahu to participate in the management of natural resources and advocate for continuous improvement in the quantity and quality of natural resources.
- [146] The CRPS also identifies issues of importance to Ngāi Tahu, acknowledges Ngāi Tahu as tangata whenua of the Region, and acknowledges them as Treaty partner (Chapter 2). It also provides for the relationship with resources by setting out tools and processes that the Council uses to engage with tangata whenua in management of natural and physical resources (Chapter 4).
- [147] All those matters are generally addressed in Section 1.3.1 of the LWRP, and are responded to in specific measures of that Plan. Plan Change 5 would not amend those provisions.
- [148] Even so, we understand that in considering the submissions on Plan Change 5, and reaching our

⁷¹ Section 42A Report, Appendix B, paras 1.133-1.135

⁷² Section 42A Report, Appendix B, para 1.135

⁷³ Section 42A Report, Appendix B, para 1.129

recommendations on them, the Council is to take them into account.

[149] Accordingly they are addressed in Chapter 4 of this report, and in our consideration of the submissions of Nga Rūnanga. Further, we keep them in mind throughout our consideration of all other submissions where they are directly or indirectly relevant.

Management plans under other Acts

[150] On the Council's duty to have regard to management plans under other Acts, we have regard to the following Fish and Game Management Plans under the Conservation Act applying in the Canterbury Region:

- The North Canterbury Fish and Game Management Plan 2010-2020
- The Central South Island Sports Fish and Game Management Plan 2012-2022.

[151] The Section 32 and 42A reports on Plan Change 5 identify that these plans were considered in preparation of Plan Change 5.⁷⁴ We have regard to them in considering the submissions on the plan change, and our recommendations on them.

Instruments of adjacent regional councils

[152] By section 66(2)(d) of the RMA, when changing a regional plan, regional councils are to have regard to the extent to which a plan needs to be consistent with planning instruments of adjacent regional councils.

[153] Although the Canterbury region is adjacent to regions of other regional councils, none of them made a submission on Plan Change 5; nor did any submitter claim that the plan change should be amended to address any inconsistency with a planning instrument of an adjacent regional council. We are not aware of any need for Plan Change 5 to do so.

Canterbury Water Management Strategy

[154] In Chapter 3 of this report, we address the vision and principles of the CWMS to which the Council is directed to have particular regard in considering any proposed fresh water plan.⁷⁵

[155] That direction does not accord the strategy, or its vision and principles, any other status in law.⁷⁶

[156] Following recognition that a shift was needed from effects-based management of individual resource consents to integrated management based on water management zones and management of cumulative effects of both water abstraction and land-use intensification, the CWMS was prepared under supervision by a multi-stakeholder steering group and the overall leadership of the Canterbury Mayoral Forum.

[157] Collaborative zone committees were set up to facilitate community engagement and (by consensus where possible) to identify community-informed outcomes giving effect to the CWMS, and developed

⁷⁴ Section 32 Evaluation Report, para 2.4.6; Section 42A Report, Appendix B, para 1.131

⁷⁵ Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s63

⁷⁶ Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s4(2)

into implementation programmes for each zone ('ZIP'). The Council then uses the implementation programme as a basis for making policy and developing a work programme. That can lead to zone committees formulating addenda to their ZIPs stating solution packages from which (among other things) variations or changes to the LWRP can be developed.

Progressive Implementation Programme

[158] In paragraph [107] of this chapter, we referred to Policy E1 of the NPSFM by which implementation of particular policies of that instrument may be extended beyond the prescribed completion date of 31 December 2015, according to a programme of defined time-limited stages.

[159] The Canterbury Regional Council found it would be impracticable for it to fully complete implementation of the policies of that instrument in respect of all of the region by that date. In respect of water quality in the Waitaki, it adopted a programme of staged implementation by which a plan change to give effect to the NPSFM policies (including setting freshwater management units and freshwater objectives in accordance with the National Objectives Framework) would be notified no later than 2016. Part B of Plan Change 5 is intended to do that.

[160] Part A of Plan Change 5 contains general amendments to the LWRP applicable throughout the region, so that the overall quality of water is maintained or improved to achieve Objective A2 of the NPSFM. Those amendments are not designed to implement the National Objectives Framework of the NPSFM.

Chapter Six

Regulation and Voluntary Action

Introduction

- [161] Some submitters raised a general question on whether the quality of freshwater resources should be managed by regulatory prescription or by voluntary action. In this chapter we consider that as a general issue. We address elsewhere in this report requests for specific amendments to the plan change in relation to that question.

The Issue

What Plan Change 5 provides

- [162] The general amendments to the LWRP proposed in Part A of Plan Change 5 include policies and rules on management of nutrients reaching fresh water by requiring farming activities on more than 10 hectares to implement a Management Plan prepared in accordance with Schedule 7A of the Plan, and register with the Environment Canterbury Online Farm Portal ('the Portal'); and farming activities that require resource consent to meet good management practice nutrient loss rates. The amendments also address problems that have arisen in use of the OVERSEER[®] nutrient budget model, and provisions on auditing farm environment plans etc. They require all farming activities to be carried out in accordance with good management practice ('GMP') by implementing farm environment plans (FEPs); requiring that FEPs are audited to ensure that farming activities achieve GMP; requiring use of the Portal; and specifying (in Schedule 7A) contents of farm management plans ('FMPs').
- [163] In brief, the specific amendments proposed in Part B of Plan Change 5 would deliver on recommendations developed in a collaborative process led by zone committees in the Waitaki catchment. Part B would set freshwater quality outcomes and limits; introduce new policies and rules for managing use of land and water resources to those limits, so the outcomes are achieved. It would also manage the effects of land use and discharges from activities such as aquaculture on fresh water.

Responses by submitters

- [164] Some submitters⁷⁷ sought that various prescriptive provisions proposed by the plan change be omitted, and some also suggested replacement provisions. Relevantly, they argued to the effect that prescriptive provisions would be overly bureaucratic and unnecessary regulation, imposing pointless compliance costs. Instead, they proposed that those carrying on farming activities should be free from mandatory compliance requirements, so they could voluntarily use their own actions and plans, having flexibility to change their farming practices according to sustainable principles responding to variations in climatic and market conditions etc.
- [165] Submitters on the general provisions in Part A of the plan change commended what they referred to as the 'catchment board model' by which, instead of mandatory regulation, landowners would voluntarily engage and work with council officials in a collaborative way to seek sustainable environmental

⁷⁷ Eg Beef + Lamb; JKW Hoban; Hurunui SNA Group; Kokoama Farms; Morven Glenavy Ikawai Irrigation Co; JG and LM Murchison

performance.

- [166] A somewhat different method was described by Morven Glenavy Ikawai Irrigation Co, which urged that farming co-operatives that are part of an irrigation scheme should be allowed to ‘self-regulate’ and ‘self-manage’ nutrient discharges, free of prescriptive rules or having to adhere to limits. The company’s submission explained that farm plans are given ‘teeth’ through the irrigation scheme’s water supply agreements. The company’s general manager, Mr C M Evans, explained in his evidence that in this way the collective could consider whether a discharge, after reasonable mixing, is acceptable when the effects on water quality are compared with the social and economic needs of the community.⁷⁸
- [167] Another witness, Mr M F Ross, gave his opinion that the protection and integrity of water quality outcomes would lie within on-farm management and practices.⁷⁹ In oral evidence, Mr Ross stated that the community is well-versed and committed, and just needs the opportunity.⁸⁰

Formulation of the issue

- [168] We now formulate the issue from the relevant content of the plan change, the submissions and the evidence. We understand it to be this: Whether, in general, the Council can, by its regional plan, perform its duties on management of the quality of fresh water by leaving management of farming activities to voluntary action by those carrying on those activities individually or collectively; or whether it should adopt policies and make rules that regulate those activities for the purpose.

The applicable law

- [169] The starting point for considering the issue is identifying the Council’s duties in this respect that are imposed by law: the RMA; the 2010 ECan Act; and higher order instruments.

Provisions of the RMA

- [170] In Chapter 2 of this report we summarise relevant functions of regional councils under the RMA. Most of them have some relevance in considering this issue. We refer particularly to section 30(1)(c), which describes a function of controlling the use of land for the purpose of the maintenance and enhancement of the quality of water bodies; and maintenance and enhancement of ecosystems in water bodies. We also note section 30(1)(f) on controlling discharges of contaminants into or onto land and water; and section 30(4)(f) on establishing and implementing objectives, policies and methods of maintaining indigenous biological diversity.
- [171] We note that a regional plan is to assist a regional council to carry out its functions to achieve the purpose of the Act;⁸¹ that a regional council is enabled to prepare a regional plan for various functions, including those described in section 30(1)(c) and section 30(1)(f) that we noted above;⁸² and that it is to prepare a regional plan in accordance with its functions under section 30 (which include those described in section 30(4) noted above).⁸³ A regional plan has to give effect to any national policy statement, and

⁷⁸ Statement of evidence of C M Evans, para 21

⁷⁹ Statement of evidence of M F Ross, para 15

⁸⁰ Supplementary evidence of M F Ross given orally on 7 September 2016

⁸¹ RMA, s63(1)

⁸² RMA, s 65(1)

⁸³ RMA, s66(2)

any regional policy statement.⁸⁴

[172] For the purpose of carrying out its functions under the RMA (other than those described in section 30(1)(a) and (b)), and for the purpose of achieving the objectives and policies of the plan, a regional council is empowered to include in a regional plan rules having the force and effect of a regulation.⁸⁵ Specifically, there are directions on rules about discharges of contaminants into water or onto or into land in circumstances that may result in the contaminant entering water.⁸⁶

[173] Also, we note that by section 35(2) of the RMA, every local authority has certain duties to monitor the environment of its region or district, including the efficiency and effectiveness of policies, rules and methods in its policy statement and its plan and the exercise of resource consents, and to take appropriate action when necessary. There are related duties about keeping and making available information from the monitoring.⁸⁷

[174] Further, we note that a regional council has a duty to enforce the observance of a regional plan that is operative.⁸⁸

National Policy Statement on Freshwater Management

[175] In that a regional plan has to give effect to any national policy statement, we refer to the NPSFM, which we summarise in Chapter 5 of this report.

[176] Policy A1 of the NPSFM specifically directs that regional councils are to make or change regional plans to the extent necessary to ensure that they set limits to give effect to the NPSFM objectives, of which Objective A1 is safeguarding the life-supporting capacity of fresh water in sustainably managing the use and development of land and discharge of contaminants.

[177] Policy A2 applies where freshwater management units do not meet the freshwater objectives made under Policy A1. It directs that every regional council is to specify targets and implement methods considering recorded sources of relevant contaminants to assist the improvement of water quality to meet those targets in a defined time.

[178] Policy B1 directs regional councils to have their plans establish freshwater objectives in accordance with Policies CA1-CA4, and set environmental flows for all freshwater units. Policy B2 directs regional councils to provide for efficient allocation of fresh water.

[179] Policies B2, B3 and B4 give specific directions about contents of regional plans; and Policy B6 directs that every regional council is to set a defined timeframe and method for phasing out over-allocation.

[180] Policy C1 directs regional councils to manage fresh water, land use and development in an integrated and sustainable way so as to avoid, remedy or mitigate adverse effects, including cumulative effects.

[181] Policy CA2 directs that regional councils are to identify certain values and attributes, assign certain attribute states, formulate freshwater objectives in numeric terms where specified or practicable, and otherwise in narrative terms. Policy CA3 stipulates that all regional councils are to ensure that freshwater

⁸⁴ RMA, s67(3)

⁸⁵ RMA, s70(1)

⁸⁶ RMA, s70(1)

⁸⁷ RMA, s35(2A) to (5))

⁸⁸ RMA, s84(1)

objectives for certain values are (with certain exceptions) set at or above certain bottom lines. Part CB of the NPSFM directs regional councils to establish and operate systems for accounting for quality and quantity of fresh water.

- [182] Objective D1 includes ensuring tangata whenua values and interests are identified and reflected in management of fresh water and associated ecosystems; and Policy D1 is for local authorities to take steps to identify and reflect iwi and hapū values in the management of fresh water and associated ecosystems.
- [183] Policy E1 prescribes that a regional council's implementation of its policies is to be completed by a specified date, or if that is impracticable, by a later date in accord with a programme of defined time-limited stages.

Canterbury Regional Policy Statement

- [184] In Chapter 5 of this report we also summarise relevant objectives and policies of the CRPS. The objectives are to be implemented by various policies cited in that chapter. The CRPS specifies methods for implementing those policies, including setting policies and methods in regional plans to give effect to them, or (in the case of Policy 7.3.9) requiring regional plans to include various contents and provisions.

Iwi authority approved plans

- [185] In Chapter 2 we note that in preparing a regional plan, a regional council is to take into account certain relevant planning documents recognised by an iwi authority. In Chapters 4 and 5 we refer to the applicable documents which it is the Council's duty to take into account in preparing the LWRP.

CWMS vision and principles

- [186] In Chapter 3 we note the Council's duty, in considering any proposed plan, to have particular regard to the vision and principles of the CWMS. The vision and all of the principles are important, especially the primary principles. For the present purpose we note especially the element in the second primary principle (which we read in its full context):

A consistent regulatory approach to water is applied throughout the Canterbury region.

Consideration of the issue

Catchment board model

- [187] In that some submitters stated their preference for a 'catchment board model', we address that first.
- [188] Catchment boards were established by the Soil Conservation and Rivers Control Act 1941 ('the 1941 Act'), which makes provision for conservation of soil resources, for prevention and mitigation of damage by soil erosion, and protection of property from damage by flooding, and utilisation of lands as will tend towards attainment of those objects.⁸⁹ We note that nothing in the 1941 Act is to derogate

⁸⁹ Soil Conservation and Rivers Control Act 1941, long title and s10

from the provisions of the RMA.⁹⁰

- [189] Catchment boards have general powers to minimise and prevent damage within their districts by floods and erosion.⁹¹ They are empowered to carry out works for controlling or regulating the flow of water into, in, and from watercourses; for preventing or lessening any likelihood of the overflow or breaking of banks, or resulting damage; for preventing or lessening erosion or its likelihood; and for promoting soil conservation.⁹²
- [190] Important as those functions are, their specific focus is on controlling rivers and conserving soil resources. Their functions are not as broad as those of regional councils under the RMA, and are not to derogate from them.
- [191] Catchment boards may well be able to carry out their particular functions under the 1941 Act in ways that differ from the measures that the CRC needs to include in its regional plans to carry out its broader functions to achieve the purpose of the RMA, and to give effect to the higher order instruments under it, and to respond to its duty to have particular regard to the vision and principles of the CWMS.
- [192] So although we note the advice that some submitters would prefer a ‘catchment board model’, we recognise that the material differences between the functions of catchment boards and those of the CRC call for the Canterbury Land and Water Regional Plan to adopt a completely different design.

General assumptions

- [193] From our review of the applicable law, we find that many of the policies in the NPSFM that we have cited impose duties on regional councils to include in regional plans various provisions that directly or indirectly regulate use and development of land and use of water.
- [194] The NPSFM duties regulate in a number of ways: by setting limits;⁹³ specifying targets and methods and defining timeframes;⁹⁴ establishing environmental flows;⁹⁵ providing for efficient allocation of water within limits;⁹⁶ requiring statement of criteria;⁹⁷ requiring identifying of methods for efficient use of water;⁹⁸ managing fresh water, land use and development to avoid adverse effects, including cumulative effects;⁹⁹ assigning attribute states and formulating in numeric or narrative terms freshwater objectives above bottom lines;¹⁰⁰ operating systems for accounting for fresh water;¹⁰¹ ensuring tangata whenua values and interests are reflected in management of water and ecosystems;¹⁰² and completing implementation of all the policies by specified dates.¹⁰³
- [195] For the Canterbury region in particular, there is also the Council’s statutory duty to have particular

⁹⁰ Soil Conservation and Rivers Control Act 1941, s10A

⁹¹ Soil Conservation and Rivers Control Act 1941, s126(1)

⁹² Soil Conservation and Rivers Control Act 1941, s126(2)

⁹³ NPSFM, Policy A1

⁹⁴ NPSFM, Policy A2

⁹⁵ NPSFM, Policy B1

⁹⁶ NPSFM, Policy B2

⁹⁷ NPSFM, Policy B3

⁹⁸ NPSFM, Policy B4

⁹⁹ NPSFM, Policy C1

¹⁰⁰ NPSFM, Policies CA2 and CA3

¹⁰¹ NPSFM, Part CB

¹⁰² NPSFM, Policy D1

¹⁰³ NPSFM, Policy E1

regard to the CWMS vision and principle of applying a consistent regulatory approach to water management throughout the region.¹⁰⁴

- [196] We also note the statutory duties of regional councils to monitor the environments of their regions; to take appropriate action where necessary;¹⁰⁵ and to enforce the observance of operative regional plans.¹⁰⁶
- [197] Although the general functions of regional councils stated in section 30 of the RMA may be permissive, the method contemplated by the Act for performing those functions is by objectives, policies and methods (including rules) in regional plans.¹⁰⁷
- [198] There are provisions for regional councils to transfer or delegate certain functions and duties.¹⁰⁸ However those provisions would not enable a council to leave the performance of its statutory duties to individuals or collectives carrying on farming activities or irrigation to serve such activities. Nor could such individuals or collectives sensibly be expected to manage cumulative adverse effects, or to perform a regional council's monitoring and information-collecting and enforcement duties.
- [199] We are grateful to these submitters for bringing to our attention their grounds for preferring that they be left to their own voluntary actions (or those of irrigation-service collectives on behalf of their members) to avoid harm to the environment from their farming activities, rather than have regulatory measures such as proposed in the plan change, with consequent compliance costs and relative inflexibility in changing farming methods.
- [200] Although we understand those attitudes from their viewpoints, we are not persuaded that all those carrying on farming activities could be relied on at all times and in all circumstances to do so without harm to the environment. In particular, we are not confident that a person carrying on a farming activity (or an irrigation collective) would make objective assessment of the social and economic need of the community for activities that would result in contamination of the environment.
- [201] We repeat that we consider later in this report the submitters' specific requests for amendments to the plan change. However in considering the general issue that we formulated from considering the submissions and evidence, we conclude that the Council cannot and should not, consistent with performing its statutory duties, leave management of farming activities to voluntary action by those carrying on those activities individually or collectively. Rather, we find that that the Council is obliged to adopt policies and methods (including rules) that would regulate those activities for the purpose of its regional plan.

¹⁰⁴ Para [154] above

¹⁰⁵ RMA, s35(2)

¹⁰⁶ RMA, s84(1)

¹⁰⁷ RMA, ss63-70

¹⁰⁸ RMA, ss33-34A

Chapter Seven

Scope for Amending Plan Change

Introduction

- [202] The core of the submission process provided in Schedule 1 of the RMA is that the local authority publishes its plan proposal; anyone may make a submission asking for amendment to it; a summary of those requested amendments is published; eligible persons can make further submissions opposing or supporting particular requested amendments; and the local authority (or its delegate) hears the submitters and comes to reasoned decisions on the requested amendments. The Schedule 1 process has two major benefits. It can lead to amendments that improve the effectiveness and efficiency of the plan proposal; and in fairness to those whose interests may be adversely affected, it allows for them to oppose requested amendments.
- [203] Issues arose over whether some submitters' requests for amendments to Plan Change 5 are within the scope of the Council's lawful authority to make by decisions on submissions. In this chapter we consider the law on this topic, and how it is applicable to the amendment requests in question.

The Law

Provisions of the RMA

- [204] We summarised the relevant provisions of the RMA in Chapter 2 of this report; and we now describe them in more detail.
- [205] Clause 5(1) of the First Schedule of the RMA directs that the local authority is to prepare an evaluation report under section 32, to have particular regard to it in deciding whether to proceed, and if it decides to do so, to publicly notify the proposed plan change. Where the local authority is a regional council, clause 5(1C) directs that notice of the plan change is to be sent to people who are likely to be directly affected by it. Clause 5(2) prescribes contents of the public notice, including where the plan change may be inspected, that anyone may make a submission, the process for public participation, the closing date for submissions, and the local authority's address.
- [206] Clause 6 provides that any person may make a submission, but a person who could gain an advantage in trade competition can only do so if directly affected by an effect of the plan change that adversely affects the environment and does not relate to trade competition or its effects. Relevantly, subclause 6(5) directs that a submission is to be in the prescribed form. That form is Form 5 prescribed in the Resource Management (Forms Fees and Procedure) Regulations 2003.¹⁰⁹ The form contains a direction that a submitter is to enter the decision sought from the local authority, and "give precise details." On the use of prescribed forms, Regulation 4 directs that use of a form is not invalid only because it contains minor differences from the form prescribed, as long as the form that is used has the same effect as the prescribed form and is not misleading.
- [207] Clause 7 relates to the next stage in the process, after the time for lodging submissions has ended. It refers to a summary of decisions requested by submitters. The local authority is directed to notify all submitters and give public notice that such a summary is available; where the summary and the

¹⁰⁹ SR 2003/153

submissions themselves can be inspected; that certain persons may make further submissions; the last day for doing that; and the limitations on the content and form of further submissions.

- [208] Clause 8(1) prescribes that further submissions may be made by anyone representing a relevant aspect of the public interest, and anyone who has an interest in the plan change greater than the interest that the general public has. Clause 8(2) directs that a further submission has to be limited to a matter in support of or in opposition to a relevant submission made under clause 6.
- [209] Clause 8B directs that the local authority is to hold a hearing into submissions on its plan change, and give notice of the dates, times and places of the hearings to submitters who requested to be heard.
- [210] Clause 10(1) directs that the local authority is to give a decision on the provisions and matters raised in submissions. By sub-clause 10(2) it has to include reasons for accepting or rejecting them; may address the submission points by grouping them according to related provisions or matters; it has to include a further evaluation in accordance with section 32AA; and it may include matters relating to any necessary consequential alterations and any other relevant matters arising from the submissions. Clause 10(3) makes clear that the local authority is not required to give a decision that addresses each submission individually.
- [211] In addition to sub-clause 10(2), as we mentioned in Chapter 2, clause 16(2) of Part 1 also enables a local authority to make amendments to a plan change that “alter any information of minor effect” and to “correct any minor errors.”

The case law

- [212] Since the RMA commenced, the provisions of Part 1 have been amended six times; and there have been many court decisions on questions of applying its provisions as in force from time to time.
- [213] It is our understanding that by the legal doctrine of *stare decisis*, the Council is obliged to apply the core reasoning (*ratio decidendi*) of the most recent judgment of the highest court in a case that is in point, as being an authoritative declaration of what the law is.
- [214] Where there is such an authority, subsequent decisions of lower courts that are in point may be considered, and if persuasive may be followed if they are consistent with the text and purpose of the Act and the core reasoning of the binding authority of the higher court.

Classes of questions on scope

- [215] We understand there are three classes of case in which questions of the local authority’s scope for decision-making may arise. The first is where the original submission does not indicate that a specific amendment to the plan change is being requested. The second is where an amendment being asked for by a submitter is not ‘on’ the plan change. The third is where an amendment being asked for is not within what was requested in an original submission. We now consider each of these classes.

Requested amendments to be specific

- [216] Some submissions are stated in such general terms that it is not evident whether a specific amendment to the plan change is being asked for at all.
- [217] Such a general submission can explain a submitter’s response to the plan change and a local authority’s

approach to its planning function; and in those respects can inform the local authority and provide a useful background to making decisions on other submissions that are directed to more specific amendments.

[218] Even so, a general submission that does not identify any specific amendment to the plan change falls outside the process provided by Part 1 of Schedule 1. It may not be able sensibly to be included in a summary of decisions requested as required by clause 7. People eligible under clause 8 to lodge further submissions reading that summary would not necessarily be able to identify whether their interest can be advanced by making a further submission supporting or opposing it. Without the submission being more specifically directed, the local authority may not be able to exercise its function of accepting or rejecting it, let alone giving coherent reasons for doing so, or making the requisite identifying reasonably practicable options, evaluating their relative efficiency and effectiveness, and judging which is the most appropriate.

[219] So by not conforming to the prescribed direction to give precise details of the decision requested, or using a different format to the same effect, such a general submission cannot lead to being included in the process the Act stipulates, or be a subject of a decision accepting it.

[220] The Section 42A Report authors addressed this, and gave their reasoning (referring to the provisions of Schedule 1 and citing High Court authority) for submitting that a submission which requests no decision is not a valid basis for amending the plan change.¹¹⁰

[221] We adopt that reasoning and consider that such a general submission would be outside the scope of the Council's authority to make a decision under clause 10 accepting it, and recommend that any amendment requested on the basis of it is rejected as being beyond the scope of the Council's authority.

Amendments to be 'on' the Plan Change

[222] The authors of the Section 42A Report also addressed the requirement that a local authority only amend a plan change on a submitter's request if the amendment is 'on' the plan change.¹¹¹

[223] That is well established law, on which there is High Court authority cited in the report.

[224] We accept the authors' advice for the reasons given, and consider that we should not recommend that the Council make any amendment to the plan change that is not 'on' the plan change.

Amendments to be within what was requested in submissions

[225] The third class, where an amendment being asked for is not within what was requested in an original submission, was also addressed by the Section 42A Report authors, citing authorities.¹¹²

[226] We concur with their advice and consider that it would not be lawful for the Council, by decision on a submission, to amend the plan change in a way that was not within what was requested in an original submission, and therefore we decline to recommend any such amendment.

¹¹⁰ Section 42A Report, pp 19-21; Section 42A Reply Report, pp 17-19

¹¹¹ Section 42A Report, pp 12,13, 21; Section 42A Reply Report, pp 13-16

¹¹² Section 42A Report, pp 12, 21; Section 42A Reply Report, pp 14,16-19

Specific amendments in question for being beyond scope

[227] We have applied that understanding of the law in considering whether an amendment asked for by a submitter is within or beyond the scope of the Council's authority to make to the plan change by decision on the submission. We consider on their merits and record in Appendix A to this report those amendments that we find are within that scope. In respect of those that we find to be beyond the scope of the Council's authority, we now identify them in the relevant class, and address relevant contents of reports and submissions. We decline to recommend to the Council any amendment that we find would be beyond its scope to make.

Where submission does not request specific amendment

[228] We have identified certain requests made by submitters for amendments that are not supported by a request in the submission for a specific amendment.

[229] The original submission lodged by Beef and Lamb addresses fully several topics. In some respects the submission conforms with the direction in the prescribed form for submissions by giving precise details of amendments to the plan change being requested. Examples are requested amendments to definitions of 'audit'; of 'certified farm environment auditor'; and of 'winter grazing'; amendments to Policies 4.34, 4.36, 4.37, and 4.41B; certain amendments to Rules 5.41A.b, 5.42A.b, 5.43A, 5.44A, 5.44B; and certain amendments to Schedule 7.

[230] However in respect of certain other topics, Beef and Lamb's submission asks for amendments without giving precise details of the amendments requested for.

[231] In respect of Rules 5.43A to 5.59A, the submitter asks that those rules are withdrawn and that the Council "develop a collaborative approach and adopt a natural capital approach to the allocation of nitrogen discharge limits."

[232] In its statement at our hearing of the submission, Beef and Lamb acknowledged that "the relief sought may not be able to meet the criteria, in particular that people affected by the submission have not had a reasonable opportunity to respond to those changes."

[233] We agree, and find that a potential further submitter could not have known from that general language what might result, and so would not have been able to make a sensible decision whether to make a further submission opposing or supporting it.

[234] In respect of Schedules 7 and 7A, Beef and Lamb ask that they are withdrawn and "new schedules are prepared in consultation with the industries that developed the GMPs..."

[235] In its statement at our hearing of the submission, Beef and Lamb continued to ask for provisions to replace Schedule 7A "which set out appropriate narrative thresholds to identify and prioritise properties which require farm plans."

[236] We find that members of the public (at least those who are not involved in the industries referred to) would not have been able to know what resulting schedules may contain; and would not have been able to exercise their statutory right to oppose by further submission. There is no amendment to the plan change that could have been understood as requested by that language.

[237] In respect of both of those requests in Beef and Lamb's submission, we do not understand how the

Council would be able to exercise its function of accepting or rejecting them, or state coherent reasons for doing so. Nor would it be able to carry out its duties under section 32AA by identifying reasonably practicable options, evaluating their relative efficiency and effectiveness, and judging which is the most appropriate.

- [238] On the basis of those findings on those requests, we conclude that the Council would not be able to decide to accept Beef and Lamb's requests for those amendments, and therefore we decline to consider them on their merits.
- [239] The original submission lodged by Ballance Agri-Nutrients also contained requests for certain amendments to the plan change of which precise details were given. We refer to requested amendments to Policy 4.37 and to various Rules.
- [240] In addition to those clearly compliant requests, on the provisions of the plan change on use of the farm portal the submission also asks for amendments that are stated only in general language.
- [241] Even so, the text of the submission describes an alternative rule framework for consenting farm systems that are not able to be assessed by the farm portal. We find that this could be reasonably be understood sufficiently that a potential further submitter would be able to exercise the right conferred by Schedule 1.
- [242] The submission of Bellfield Land Co details amendments to certain definitions in the plan change, and those requests are within the scope of the Council's authority to make them.
- [243] However the other requests in the 'relief sought' column of the submission do not identify any specific amendment to the plan change; or are so general in nature that a potential further submitter reading the submission would not be able to understand the effects of any resulting amendment. The Council would not be able to sensibly decide whether to accept or reject them in accordance with its duties. We find that those requests are beyond the scope of its authority.
- [244] Dairy NZ's original submission contains a comprehensive set of requests for decisions by the Council, many of which identify clearly what is asked for. Several are questionably within scope, but most of them, though marginal, are reasonably indicative of the content.
- [245] However one request relating to Method s28.3 describes an alternative as "an N surplus calculation will be tested and prepared for submission as technical evidence."¹¹³ The authors of the Section 42A Reply Report advised that this "is unlikely to meet the level of specificity required in a submission to provide scope for a change to the fertiliser proxy, nor does it adequately inform a reader of the submission of the amendments eventually sought."¹¹⁴
- [246] We have considered that advice, agree with it, and find that the requested amendment is not within the scope of the Council's authority to accept it.
- [247] Another request in that submission asks for replacing Policy 15B.4.12 "...with a policy which provides for an adaptive management approach, with a focus on good management practice and linking these practices with agreed environmental indicators."

¹¹³ Submission by Dairy NZ, pg 60

¹¹⁴ Section 42A Reply Report, pg 22, para 3.78

- [248] We asked the Section 42A Report authors if this is sufficiently specific; and they responded that it “does not request specific relief in line with the requirements of the RMA to found a decision to amend the plan change.”¹¹⁵
- [249] We have considered that advice, agree with it, and find that the requested amendment is not within the scope of the Council’s authority to accept it.
- [250] The original submission by Horticulture NZ asks for inclusion of a definition of the term ‘farm environment plan’ which would provide for such a plan to be based on an Industry Audited Self-Management Programme.¹¹⁶
- [251] The Section 42A Report authors advised that the lack of specificity or further information creates difficulties in assessing whether it is consequential on the changes proposed by the plan change; and that it is possible that potential submitters would not have received fair and adequate notice of the effects.¹¹⁷
- [252] We asked the authors whether or not this requested amendment is within scope, and they replied by advising that they considered it is not.¹¹⁸
- [253] Having considered that advice, we agree with it and find that the requested amendment is not sufficiently specific to fall within the scope of the Council’s authority to accept it.
- [254] Mackenzie Irrigation Co lodged an original submission that addressed a number of points. One related to Schedule 27 and made this request:
- Ensure the formula of Schedule 27 accurately reflects existing and consented land use, and those whom [sic] are still in appeal or not yet physically irrigating.¹¹⁹
- [255] The authors of the initial Section 42A Report advised that this does not give precise details of specific changes to the plan change being requested.¹²⁰
- [256] Having considered that advice, we agree with it and find that the requested amendment is not sufficiently specific to fall within the scope of the Council’s authority to amend the plan change by decision on the submission.

Where a requested amendment is not ‘on’ the plan change

- [257] We have identified certain requests made for amendments that are not ‘on’ the plan change.
- [258] We have already referred to the original submission of Beef and Lamb. In addition to the amendment requests already mentioned, we now refer to a requested amendment to Policy 4.34(a).
- [259] The authors of the initial Section 42A Report advised us that this is not ‘on’ the plan change, which did not propose “any change to Policy 4.34(a) to alter the status quo provided by the LWRP as it relates to

¹¹⁵ Responses to Questions of Hearing Commissioners, pg 27

¹¹⁶ Submission by Horticulture NZ, pg 15

¹¹⁷ Section 42A Report, pg 15, para 3.31

¹¹⁸ Responses to Questions of Hearing Commissioners, pg 3

¹¹⁹ Submission by Mackenzie Irrigation Co, 5th page

¹²⁰ Section 42A Report, pg 19, para 3.62

requirements of monitoring and record keeping provided by the policy.”¹²¹

- [260] Having considered that advice, we agree with it and find that the requested amendment to Policy 4.34(a) is not on the plan change and is beyond the scope of the Council’s authority to amend the plan change by accepting this submission point.
- [261] By its original submission, Benmore Station asserted that the planning maps do not correctly define the catchment boundaries of its property, and asked that the maps are corrected.
- [262] Insofar as the requested boundary correction would relate to the Wairepo Arm Lake Zone, the authors of the initial Section 42A Report advised that the plan change does not affect that zone, and accordingly the requested amendment is not ‘on’ the plan change.¹²²
- [263] We have reviewed the plan change as notified, and find (as advised) that it does not apply to the boundaries defining that zone. We accept the advice and conclude that the requested amendment is not ‘on’ the plan change, and is beyond the scope of the Council’s authority to amend by decision on Benmore Station’s submission. Therefore we do not recommend that the submission point is accepted in that respect.
- [264] Canterbury District Health Board lodged an original submission which, among other matters, asked for amendments to Policies 4.36(c) and 4.39.¹²³
- [265] On the requested amendment to Policy 4.36(c), the authors of the initial Section 42A Report advised that Plan Change 5 does not propose any change to clause (c), and an amendment to it is not ‘on’ the plan change unless merely incidental or consequential.¹²⁴
- [266] We have considered that advice. We find that no amendment to Policy 4.36(c) of the LWRP is proposed by Plan Change 5, so the requested amendment to that clause is not ‘on’ the plan change. We accept that even so, the Council would have authority, by decision on a submission, to include matters relating to necessary consequential alterations arising from the submission.¹²⁵ However we are not persuaded that the amendment requested (replacing ‘requiring’ for ‘encouraging’) is an amendment that is necessarily consequential on any alteration arising from the content of the submission that is within the scope of the Council’s authority.
- [267] So we consider the requested amendment to Policy 4.36(c) is beyond the scope of the Council’s authority in deciding submissions on Plan Change 5, and therefore decline to recommend that it be accepted.
- [268] On the requested amendment to Policy 4.39, the authors of the initial Section 42A Report advised that the plan change does not propose any change to that policy, and an amendment to it is not ‘on’ the plan change.¹²⁶
- [269] We find that the plan change does not propose any amendment to Policy 4.39, and having considered the reporters’ advice, we conclude that the Board’s requested amendment to that policy is not ‘on’ the plan change, and is beyond the scope of the Council’s authority in a decision on the submission.

¹²¹ Responses to Further Questions on Section 42A Report, pg 16

¹²² Section 42A Reply Report, pg 131, para 6.354

¹²³ Submission by Canterbury District Health Board, 2nd page

¹²⁴ Responses to Further Questions on Section 42A Report, pg 17

¹²⁵ RMA, Schedule 1, cl 10(2)(b)(i)

¹²⁶ Responses to Further Questions on Section 42A Report, pg 17

Accordingly we decline to recommend that it be accepted.

- [270] By its original submission on Plan Change 5, Federated Farmers also asked for amendments to Policies 4.36(c) and 4.39.¹²⁷
- [271] The authors of the initial Section 42A Report advised that those submission points are not on the plan change for the same reasons.¹²⁸
- [272] Counsel for Federated Farmers provided submissions on scope,¹²⁹ but they did not extend to the scope for these requested amendments.
- [273] Accepting the advice of the report authors, we consider that Federated Farmers' requested amendments to Policies 4.36(c) and 4.39 of the LWRP are not on the plan change, and are beyond the scope of the Council's authority to make by decision on the submission. So we decline to recommend that these submission points are accepted.
- [274] By their respective submissions, the Egg Producers Federation and the Poultry Producers Association, Maungatahi Farm, AR and K H Munro, J G and L M Murchison, and J K W Hoban and others requested that certain policies of the LWRP be deleted and replaced. In each case the request included Policies 4.36(c) and 4.39.¹³⁰
- [275] Insofar as those submissions asked for deletion and replacement of Policies 4.36(c) and 4.39, the authors of the initial Section 42A Report advised that these submission points are not on the plan change, as the notified version did not seek to make any change to those policies.¹³¹
- [276] As mentioned above, we find that the plan change does not propose any amendment to Policies 4.36(c) or to 4.39. So we hold that in respect of those policies, those submission points are not on the plan change, and that the Council does not have authority to accept them by decision on the submission. Therefore we do not consider those requests on their merits.

Where amendment is not within what was requested in an original submission

- [277] By their submission, Ngāi Tahu asked that a new Condition (g) be added to proposed Policy 4.41B that management plans and farm environment plans address the effects of farming activity on mahinga kai and include known sites or areas of wāhi tapu and wāhi taonga.¹³²
- [278] In their submission Ngāi Tahu also asked that Schedule 7, Part B(5), be amended by including a new Management Area for "mahinga kai values and other sites of importance to Ngāi Tahu" with two targets, the second of which would be "Managing the effects of farming activities to avoid adverse effects to [sic] mahinga kai, wāhi tapu or wāhi taonga."¹³³
- [279] That submission point was referred to in the initial Section 42A Report, where the authors advised that

¹²⁷ Submission by Federated Farmers, pp 6, 9

¹²⁸ Responses to Further Questions on Section 42A Report, pp 16,17

¹²⁹ Memorandum of counsel responding to questions raised at hearing, 17/10/2016

¹³⁰ Submission by Maungatahi Farm, para 3.3

¹³¹ Responses to Further Questions on Section 42A Report, pp 16,17

¹³² Submission of Ngā Rūnanga Appendix 3, Part A, 16th item

¹³³ Submission of Ngā Rūnanga Appendix 3, Part A, 31st item

¹³³ Section 42A Report, pg 157, para 8.194

it is unclear how the second target (managing effects of farming activity) is intended to be implemented and audited. They remarked that the submitter may review the target to see how it could be amended to better align with the protection of cultural values and sites, and address those at the hearing.¹³⁴

- [280] We asked the authors what scope the Council would have to incorporate any such amendments. The authors responded that the Council would have scope to include an amendment to the submission that is requested at the hearing only if it fairly and reasonably falls within the general scope of the original submission, or Plan Change 5 as notified, or somewhere in between.¹³⁵ They advised that if not, the Council would not have jurisdiction to consider amendments requested at the hearing, unless consequential or incidental to an amendment in a compliant submission.
- [281] At the hearing of their submission, evidence was given for Ngāi Tahu by Dr Gail Tipa and Ms Treena Davidson. Relevantly, Dr Tipa gave her opinion that the inclusion of reference to mahinga kai in farm environment plans in respect of Part B of the plan change for the Waitaki would be appropriate as a region-wide approach.¹³⁶ In her evidence, Ms Davidson gave her opinion that the location of any wāhi tapu or wāhi taonga sites should be included in Part B of clause 2, to “help inform the development of management mechanisms for these sites.”¹³⁷
- [282] Ms Davidson gave her support for providing for mahinga kai in Schedule 7 for all Canterbury zones, not just Part B, Waitaki. She gave her opinion that the wording for Part B for mahinga kai could apply to Part A also with some amendment, as this would provide greater clarity; and she proposed drafting for a new section of Schedule 7, Part A, ending with this phrase: “Managing the effects to [sic] mahinga kai, wāhi tapu, or wāhi taonga.”¹³⁸
- [283] The question whether the Council would have scope to add to Schedule 7 with region-wide effect was, at our request, addressed by counsel for Ngāi Tahu, Mr J G Winchester, in a subsequent memorandum.¹³⁹ He submitted that in relation to Part B of Plan Change 5, the Ngāi Tahu submission supported the inclusion of “Management Area: Mahinga Kai” in Schedule 7, but sought that it apply region-wide.¹⁴⁰
- [284] Counsel submitted that the submission clearly requested the addition of a new management area and objective to Schedule 7 for Part A, and supported the inclusion of “Management Area : Mahinga Kai” in Schedule 7, Part B. He contended that the amendment proposed in Ms Davidson’s evidence is a reasonable consequence of the relief requested in the submission; could reasonably be contemplated when considering the original submission, and could not result in prejudice to third parties.¹⁴¹
- [285] We accept that a person reading the Ngāi Tahu submission would realise from the requested amendment to Policy 4.41B (a region-wide policy) that the submission was directed to effects of farming activity on mahinga kai and known sites or areas of wāhi tapu and wāhi taonga throughout the region. We also accept that the submission supported the inclusion of “Management Area : Mahinga Kai” in Schedule 7, for Part B which lists default content for farm environment plans throughout the region.

¹³⁵ Responses to Questions of Hearing Commissioners, pp 19f, citing Environment Court decisions

¹³⁶ Statement of evidence of G Tipa, pg 17, para 6.10f

¹³⁷ Statement of evidence of T Davidson, pg 11, para 5.3

¹³⁸ Statement of evidence of T Davidson, pg 12, paras 5.6-5.8

¹³⁹ Memorandum of counsel on behalf of Ngāi Rūnanga, 20 October 2016,

¹⁴⁰ Memorandum cited above, para 10.3

¹⁴¹ Memorandum cited above, para 10.5

- [286] Following counsel's submission, we now consider whether extending its application throughout the region could reasonably have been contemplated from the original submission; whether amending the plan change to do that could result in prejudice to third parties; and whether it would be a consequential alteration necessary to the plan change arising from the submission.
- [287] We agree that a careful reader of the whole original submission, noticing the requested amendment to Policy 4.41B, may reasonably have understood that the submitter wanted the plans to address effects on mahinga kai, wāhi tapu and wāhi taonga. The reader may expect that the amended policy would be implemented by an appropriate method in the plan to give effect to it.
- [288] We do not think that extending application of the additional material in Schedule 7 to plans throughout the region would result in prejudice to third parties. Any eligible person had opportunity to lodge a further submission opposing the requested amendment to Policy 4.41B, and opposing the requested amendment to Part B(5) of Schedule 7.
- [289] Further, we consider that if Policy 4.41B is amended as requested by Ngāi Tahu, then extending application of the additional Schedule 7 material throughout the region would be a consequential alteration that would be necessary for implementation of the amended policy.
- [290] So for those reasons we find that the requested amendment applying the additional Schedule 7 material to plans throughout the whole region would be within the scope of the Council's authority in deciding this submission.
- [291] Even so, this does not address the point originally made in the initial Section 42A Report, about how the additional Schedule 7 provision about mahinga kai, wāhi tapu and wāhi taonga is intended to be implemented and audited. That is for us to address when considering the requested amendment on its merits.

Additional section 42A advice on specific scope questions

- [292] On receiving the Section 42A Reply Report, we enquired whether questions of scope arise from amendments requested by certain submitters. Counsel for the Council addressed that enquiry at the reply hearing on 12 December 2016, referring to an analysis of the amendments requested in the submissions of those submitters.¹⁴² He produced Appendix A to the note of the responses.
- [293] Appendix A contains a reproduction of the relief requested by each of those submitters, with an indication in respect of each point (a) whether the amendment requested is considered to be 'on' the plan change; (b) whether precise details of the requested amendment are provided; and (c) whether the amendment is considered to be fairly and reasonably within the general scope of the submission.
- [294] Counsel submitted that if in respect of a particular amendment request, it is considered not to be 'on' the plan change, then no consideration of questions (b) and (c) is needed, as there is no scope to consider the subject matter. We agree.
- [295] Counsel also submitted that if in respect of a particular amendment requested that is on the plan change, but precise details are not given, it may still be within scope if it is fairly and reasonably within the general scope of the submission. We accept that, too.

¹⁴² Responses to Questions of the Hearing Commissioners on the Section 42A Reply Report, pp 13f

[296] We have reviewed the analysis in counsel's 12 December 2016 Appendix A, and accept that in general the process followed is appropriate and the results helpful.

[297] Counsel's 12 December 2016 Appendix A does not extend to the following:

- (a) Other submissions that request amendments that may be questioned for scope; and
- (b) Amendments requested by submitters not in their original submission but at the hearing.

[298] We address any further question about the Council's scope to make a requested amendment in our general consideration of the amendment, as recorded in Appendix A.

Chapter Eight

Other Legal Issues

[299] In this chapter we address several other legal issues raised by submissions on the plan change and the responses to them.

Does section 70 RMA apply to permitted activity land use rules?

[300] By its submission on Plan Change 5, the Royal Forest and Bird Protection Society of New Zealand Incorporated (‘Forest & Bird’) contended that the changes that would be made to the permitted rules would mean that the associated permitted discharge rules would not comply with section 70 of the RMA and that, given the effect of the permitted land-use rules for farming activities is to permit the associated discharge, the new permitted rules need to be assessed with respect to that section.¹⁴³

[301] Although Forest & Bird’s submission requests numerous amendments to rules proposed by Plan Change 5, it does not specify, and it is not evident to us, what amendments are requested by the submitter in this regard.

[302] That submission point was not further developed by counsel for Forest & Bird in his submissions at the hearing.

[303] The Ngāi Tahu further submission did not directly address this point in Forest & Bird’s submission. However by their primary submission, Ngāi Tahu requested insertion of a new Rule 15B.5.3 classifying as permitted activities the discharge of contaminants from aquaculture in certain circumstances and conditions.

[304] In response to our question whether section 70 of the RMA would be relevant in considering that proposed rule, counsel for Ngāi Tahu (Mr Winchester) proposed a revised wording of the requested new rule that he submitted would satisfy the requirements of that section.¹⁴⁴ Counsel submitted that the revised rule would include recommended limits; and that the mechanism would be the use of a more onerous activity status where there is non-compliance with the permitted activity standards in the rule, for which discretionary activity status would be appropriate.¹⁴⁵

[305] Counsel reported Ms Davidson’s opinion that the revision of the requested new rule would not raise any scope issue, in that the substance of it was clearly identified in the Ngāi Tahu original submission.¹⁴⁶

[306] We asked the authors of the initial s42A Report whether section 70 applies to permitted activity land-use rules. They responded that in the RMA regime “there is a presumption that use of land is permitted unless controls are specified in a national environmental standard, regional rule or district rule;” and that “section 70 does not refer to permitted activity rules regulating the use of land; so there does not always need to be a decision to ‘permit’ land uses.” They also advised that section 70 does apply to the

¹⁴³ Forest & Bird submission, pg 3, para 9

¹⁴⁴ Memorandum of counsel for Nga Rūnanga dated 20 October 2016, paras 4.1-5.2

¹⁴⁵ Memorandum cited above, para 5.2

¹⁴⁶ Memorandum cited above, para 4.5

incidental discharge rule, and any other permitted activity discharge rule in Plan Change 5.¹⁴⁷

[307] The relevant provision of section 70 is subsection (1):

- (1) Before a regional council includes in a regional plan a rule that allows as a permitted activity—
- (a) a discharge of a contaminant or water into water; or
 - (b) 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,—
- the regional council 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):
- (c) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (d) any conspicuous change in the colour or visual clarity;
 - (e) any emission of objectionable odour;
 - (f) the rendering of fresh water unsuitable for consumption by farm animals;
 - (g) any significant adverse effects on aquatic life.

[308] That provision imposes a duty on a regional council to be performed before it makes a rule that allows certain discharges as a permitted activity. We hold that the duty does not apply to a rule that allows as a permitted activity only certain uses of land; but only to a rule that allows discharges to which paragraphs (a) and (b) apply.

[309] By Plan Change 5 as notified, the Council proposes a new Rule 15B.5.3 that would classify as a discretionary activity discharges of contaminants from aquaculture provided certain conditions are met. Of those conditions, Condition 4 is that the discharge, after reasonable mixing, does not cause the water quality standards in Schedule 5 to be exceeded.

[310] The water quality standards in Schedule 5 of the LWRP define mixing zones, and prescribe limits of a wide range of contaminants for rivers, artificial watercourses and lakes. It is evident that, even though section 70(1) would not apply to Rule 15B.5.3 because it creates a discretionary activity, not a permitted activity, by including Condition 4 the Council addressed, and was satisfied, that the results described in paragraphs (c) to (g) of section 70(1) would not be likely to arise.

[311] The replacement Rule 15B.5.3 requested in the Ngāi Tahu original submission would allow certain discharges from aquaculture and also from mahinga kai enhancement as permitted activities on certain conditions, including preparation of an aquaculture environment plan in accordance with Schedule 26. Having reviewed the limited range of contaminants to which that schedule applies, it is not evident to us that those conditions demonstrate that the Council could be satisfied of the matters stipulated in section 70(1).

[312] The rule proposed by Plan Change 5, and the rule requested by the Ngāi Tahu original submission, would both apply to the discharge of contaminants from aquaculture in circumstances where they would enter water. The version of the rule requested in the Ngāi Tahu original submission would extend to apply to contaminants from mahinga kai enhancement onto or into land.

¹⁴⁷ Responses to Questions of the Hearing Commissioners on the Section 42A Reply Report, 12 December 2016, pp 1f

- [313] However, the revised version of the rule presented by counsel would only apply to certain uses of land for mahinga kai activities. It would not apply at all to discharges of contaminants from aquaculture otherwise. Although not specifically stated, we infer that the revised version of the requested rule is not intended to replace the rule proposed by the plan change, but rather as an additional rule.
- [314] The revised version would leave to a resource consent process the environmental effects of the mahinga kai land use activities by reference to conditions on nitrogen leaching and loss of nutrients. It would not contain any other control on results of the other kinds described in paragraphs (c) to (g) of section 70(1). Therefore we hold that the revised version requested by Ngāi Tahu is not designed for the Council to comply with its duties under section 70(1) of the RMA.

Does the NPSFM cover the field?

- [315] In the initial Section 42A Report, the authors addressed the question whether the NPSFM ‘covers the field’ so as to preclude resorting to more general provisions in Part 2 of the RMA and making an overall judgement approach, rather than giving effect to directive policies in the NPSFM. The authors gave their reasons for concluding that the NPSFM does not ‘cover the field’.
- [316] Counsel for Fonterra, Mr Matheson, also submitted¹⁴⁸ that the NPSFM does not cover the field, citing a report by hearing commissioners on Variation 1 to the LWRP.¹⁴⁹
- [317] In the course of his submissions for Forest and Bird, Mr Anderson differed, and submitted that the NPSFM does ‘cover the field,’ so that a local authority would not be free to avoid or modify its giving effect to the directions in the NPSFM by resorting to more general provisions of Part 2 of the RMA.¹⁵⁰
- [318] In considering those contentions, we observe that the NPSFM provides for regulation by regional councils of the use of freshwater; but it does not itself regulate the use of freshwater resources as indicated in section 5 of the Act in a way, or at a rate, that enables people and communities to provide for their social, economic or cultural wellbeing, or for their health and safety; nor does it directly address matters identified in section 6 as matters of national importance. In respect of the Canterbury region, those matters are covered by the CRPS.
- [319] Consequently, in respect of the Canterbury region, it is another instrument in the hierarchy of higher order instruments, the CRPS, that covers the field. As it does, we hold that the Council is not free to avoid or modify its giving effect to the directions of the NPSFM and the CRPS by resorting to more general provisions of Part 2 of the RMA.

What is the true interpretation of ‘overall’ in Objective A2 of the NPSFM?

- [320] Objective A2 of the NPSFM is—

The overall quality of fresh water within a region is maintained or improved while:

- (a) protecting the significant values of outstanding freshwater bodies;
- (b) protecting the significant values of wetlands; and

¹⁴⁸ Submissions for Fonterra, pg 14, para 2.28(c)

¹⁴⁹ Report and Recommendations of the Hearing Commissioners on Variation 1 to the proposed Canterbury Land and Water Regional Plan, at [298]

¹⁵⁰ Submissions for Forest & Bird, para 16-22

- (c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

[321] The authors of the initial Section 42A Report addressed the meaning of the word ‘overall’ in the objective, quoting from the decision of the Environment Court in *Ngati Kahungunu Iwi v Hawkes Bay Regional Council*.¹⁵¹ The authors observed that the Court’s decision does not support an ‘unders and overs’ approach where water may deteriorate in one area so long as there is improvement elsewhere. They remarked that this approach would be inconsistent with the unqualified function of regional councils described in section 30(1)(c)(ii) to maintain and enhance water quality in waterbodies; and may also be incompatible with sections 69 and 107 of the RMA.

[322] No submitter questioned that advice.

[323] In the absence of any submissions to the contrary, for the purpose of forming our recommendations on the submissions on Plan Change 5 we adopt that advice and interpret Objective A2 so that the word ‘overall’ is given meaning that does not allow deterioration of water quality in one area due to improvement of water quality in another area.

Is the Council empowered to classify as prohibited activities those that would be so classified by Plan Change 5?

The issue

[324] In Part A, Plan Change 5 proposes rules¹⁵² that would classify as prohibited activities certain activities in the Red and Lake zones that do not comply with certain conditions of other rules about excess nitrogen loss.

[325] By their submissions, JG and LM Murchison, Ravensdown, Federated Farmers, and Dairy NZ asked that those non-compliant activities should instead be classified as non-complying activities; Dairy Holdings asked that Rule 5.48A be deleted or replaced by an alternative rule by which certain farming activities in the Red Zone that do not comply with conditions in other rules would be classified as a prohibited activity; and that Rule 5.52A be deleted; Barrhill Chertsey Irrigation supported Dairy NZ’s requested amendments; the Fertiliser Association asked that the non-compliant activities be classified as discretionary activities; and Fish & Game and Forest & Bird asked that the prohibited activity status stipulated by the proposed rules be retained.

[326] In Part B, Plan Change 5 proposes rules¹⁵³ that would classify as prohibited activities certain discharges of contaminants and nutrients, certain farming activities, and certain transfers of water permits that do not comply with conditions of other rules.

[327] By their submissions, Ravensdown asked that they be classified as discretionary activities (though it did not submit on Rule 15B.5.50); the Fertiliser Association submitted on Rules 15B.5.11, 15B.5.18, 15B.5.23, 15B.5.29, 15B.5.33, 15B.5.38, 15B.5.43, and 15B.5.48, and asked that the plan classify the activities as discretionary activities; Waitaki Irrigators Collective submitted on Rule 15B.5.9 asking that the plan classify the subject activities as non-complying activities instead; and asked for a replacement

¹⁵¹ [2015] NZEnvC 50

¹⁵² Notified Rules 5.48A and 5.52A

¹⁵³ Notified Rules 15B.5.5, 15B.5.9, 15B.5.11, 15B.5.13, 15B.5.18, 15B.5.23, 15B.5.29, 15B.5.33, 15B.5.38, 15B.5.43, 15B.5.48 and 15B.5.50

set of rules and policies which would not classify any activity as a prohibited activity; Federated Farmers asked for Rules 15B.5.18, 15B.5.23, 15B.5.29, 15B.5.33, 15B.5.38, 15B.5.43 and 15B.5.48 be changed to classify the activities as non-complying activities; by its further submission Ngāi Tahu supported a submission by Forest & Bird asking that the proposed Rule 15B.5.9 classifying activities as prohibited activities be retained; and opposed submissions by the Fertiliser Association asking that Rules 15B.5.11, 15B.5.18, 15B.5.23, 15B.5.29, 15B.5.33, and 15B.5.38 be changed to discretionary activity. Forest & Bird asked that the proposed rules be retained.

Submissions and evidence

- [328] Although Fonterra did not submit on the proposed rules classifying prohibited activities, in the context of arguing for an alternative consent pathway, counsel for Fonterra adopted reasoning in an Environment Court decision that prohibited activity status should not be imposed lightly or without detailed consideration.¹⁵⁴ Counsel submitted that this caution applies equally to provisions and definitions that in combination determine whether an activity is a prohibited activity or not.¹⁵⁵
- [329] In his planning evidence for Fonterra on Part A of the plan change Mr G M Willis gave his opinion about weaknesses of the Farm Portal, and that the Portal ought not to be used to generate a nitrogen loss limit that acts as a threshold for prohibited activity status.¹⁵⁶ In introducing his evidence about an alternative consenting pathway, the witness urged that it ought not to render nugatory the existing prohibited activity rule.¹⁵⁷
- [330] In his submissions, counsel for Federated Farmers, Mr K Reid, quoted the same passage from the Environment Court decision in a context of an application of proposed rules resulting in certain farming activities becoming prohibited activities.¹⁵⁸
- [331] In his planning evidence in support of Ravensdown's submission, Mr C A Hansen urged that caution should be used because of uncertainty with the Farm Portal, as the Council cannot have 'absolute certainty' that the activities being prohibited contribute significantly to the environmental effects being addressed and that the environmental benefits outweigh the economic and social costs associated with prohibiting the activity.¹⁵⁹
- [332] In her statement of evidence, Ms L M W Murchison described her opinions of deficiencies with the Farm Portal; that an individual would not be able to establish their Baseline GMP Loss Rate without using the Portal; and that there is no way that an individual reading the plan would know if their farming activity will be restricted discretionary or prohibited after 1 July 2020, or what their Baseline GMP Loss Rate will be until they have submitted their data into the Portal.¹⁶⁰ Later in her evidence, Ms Murchison stated concerns that the prohibited activity status does not allow for natural fluctuations in nitrogen loss that can occur without change of land use; that the short time over which the nitrogen baseline is calculated makes no allowance for people who (other than by converting to dairy farming) have changed use or developed land or otherwise increased their nitrogen losses during the nitrogen baseline period; she referred again to 'issues' with appropriateness of Baseline GMP Loss Rates calculated in the Portal; and also raised the case of a use of land that has very low nitrogen losses and has no land use options

¹⁵⁴ Submissions for Fonterra by B Matheson, para 2.9(a)

¹⁵⁵ Submissions cited above, para 2.9(b)

¹⁵⁶ Statement of evidence of G M Willis, para 7.14

¹⁵⁷ Statement cited above, para 9.4

¹⁵⁸ Submissions for Federated Farmers by K Reid, pg. 14 para 52

¹⁵⁹ Statement of evidence of C A Hansen, para 58

¹⁶⁰ Statement of evidence of L M W Murchison (revised version) para 32

available to make reasonable use of the land.¹⁶¹

[333] Counsel for the Waitaki Irrigators Collective, Ms B Irving, argued that essentially compliance with Plan Change 5 measures would model actual farms against modelled model farms, and contended that for the outcome of such a fickle process to be prohibited activity status is ‘a bridge too far’; and that non-complying consent would be more acceptable. Counsel added that changes to OVERSEER® during the life of Plan Change 5 cannot be anticipated, so prohibited status is inappropriate because it risks prohibiting activities when water quality is not being compromised, missing opportunities to more efficiently use land and creating considerable regulatory uncertainty.¹⁶²

[334] In planning evidence for the Waitaki Irrigators Collective, Ms L E R Taylor accepted that achieving the nitrogen loads within the Waitaki catchment is consistent with the NPSFM and the higher order regional documents and strategies, but she did not agree that prohibited status is appropriate. The witness deposed that there is limited potential for further intensification in the catchment, so the rules are likely to apply to existing activities rather than new consents. Referring to tools available under the RMA to manage adverse effects, she gave her opinion that prohibited activity status in this catchment would lack appropriate balance, and restrict carrying out improvements.¹⁶³

[335] In his evidence for the Fertiliser Association, Mr G P Sneath referred to a very significant cost that would arise due to some farms being prohibited activity due to large variance in Farm Portal outputs.¹⁶⁴

[336] Later in his evidence¹⁶⁵ Mr Sneath gave his opinion that—

the GMP N loss is not itself a value which will necessarily provide for the water quality targets, it is value which provides for understanding the catchment load under GMP, places an hold on further farm scale N loss and informs exploration of policy options to achieve water quality targets/limits.

These can be achieved without prohibited activity status applied to a mild exceedance of the Farm Portal N Loss value.

[337] This witness went on to argue for provision for exercise of discretion, to be applied on a case-by-case basis following clear guidelines.¹⁶⁶

[338] In his submissions, counsel for Forest & Bird (Mr P Anderson) confirmed that this submitter supports use of prohibited activity status for activities that would result in a breach of the available nitrogen headroom in certain freshwater management units and zones. Counsel acknowledged that there are significant uncertainties inherent in OVERSEER® because of which he urged that it is critical that the plan change uses prohibited activities to avoid cumulative effects that may arise from numerous small breaches of the headroom, and to ensure load limits set out in Table 15B(f) will not be breached.¹⁶⁷

[339] In the initial Section 42A Report, the authors explained the reasoning for rules classifying prohibited activities that are questioned by submitters: in general to prevent activity occurring which does not comply with conditions in other rules, often because non-complying activity status would not be assuredly effective, particularly against cumulative effects on the freshwater environment of multiple

¹⁶¹ Statement cited above, para 87

¹⁶² Submissions by B Irving for WIC, paras 42, 43

¹⁶³ Statement of evidence of LER Taylor, paras 3.17-3.19

¹⁶⁴ Statement of evidence of G P Sneath, para 38

¹⁶⁵ Statement cited above, paras 77, 78

¹⁶⁶ Statement cited above, para 87

¹⁶⁷ Submissions by P Anderson for Forest & Bird, paras 55, 56 and 67

consents decided on individual proposals.¹⁶⁸

[340] In their response to our question about this, the authors gave reasons why classifying activities as prohibited may be lawful (citing section 77A of the RMA), and referred to a judicial list of circumstances in which that classification may be appropriate.¹⁶⁹

[341] We accept the correctness of that advice, and find no basis in the submitters' cases for a question of law about the Council's authority to classify certain activities as prohibited activities. We acknowledge that whether a particular class of activity should be classified in that way is to be considered on the merits by reference to whether it is the most appropriate method of the options available.

Are the requirements for obtaining consent, OVERSEER® and Farm Portal legally justified?

Plan Change 5 requirements

[342] Rules proposed by Plan Change 5 would require that resource consent be obtained for certain activities; that OVERSEER® is used in certain circumstances, and that farming activities are registered with the Farm Portal in certain classes of case.

Submissions on those requirements

[343] Some submissions raised questions about whether those requirements are legally justified.

[344] In presenting the submission of, and giving evidence for the Hurunui SNA Group and Rural Advocacy Network, Ms F Perriam referred to landowners being subjected to regulatory/mandatory requirements such as the Farm Portal, management plan and winter grazing thresholds, and submitted that the PC5 requirements on landowners in these areas are not legally justified.¹⁷⁰ She cited Ministry for the Environment Guidelines, and argued that the NPSFM requires scientific analysis including sources and amounts of contaminants, of which they could find no evidence for the Hurunui district. Ms Perriam also argued that there needs to be a more thorough section 32 analysis of the economic and social cost of regulating farming activities as proposed by Plan Change 5, and an assessment of the cumulative impact of that regulation on landowners.¹⁷¹

[345] In legal submissions for Fonterra, its counsel (Mr B J Matheson) also referred to serious flaws in the modelling proxies of the Farm Portal; the inability of the OVERSEER® model to produce accurate reporting files for individual farms; the challenge of implementing successive versions of OVERSEER®; and the time and cost of generating reliable nutrient budgets using those models. Counsel contended that requiring established farming activities already operating good management practices to cease or scale back their operations because of a flawed nitrogen loss estimate would not be consistent with established jurisprudence associated with rules in general and prohibited activities in particular.¹⁷²

[346] The Federated Farmers submission does not appear to allege explicitly that the provisions it questions

¹⁶⁸ E.g. Section 42A Report, paras 21.32; 22.106

¹⁶⁹ Responses to Questions of the Hearing Commissioners on the Section 42A Reply Report, 12 December 2017, pp 3,4

¹⁷⁰ Evidence of Hurunui SNA Group & Rural Advocacy Network 22 July 2016, para 3.1

¹⁷¹ Evidence cited above, paras 3.3-3.5

¹⁷² Submissions by B J Matheson for Fonterra, para 2.9 citing *Thacker v Christchurch City Council* EnvC C029/2009

are not legally justified. However in his opening submissions counsel for Federated Farmers (Mr K Reid) fully developed their opposition to the plan change provisions by reference to certain court judgments and decisions, particularly in respect of uncertainty. Counsel concluded that sole reliance on the Farm Portal to determine activity status for particular activities is not justified against the purpose of the RMA and the objectives and policies of the Plan; and that there is still too great an uncertainty in the Portal results to justify use of prohibited activity status.¹⁷³

- [347] Other submitters challenged the reliability of the Farm Portal, and emphasised limitations inherent in the OVERSEER® model;¹⁷⁴ but did not contend that the requirements of Plan Change 5 using those tools would be unlawful.

Our consideration of the issue

- [348] To the extent that submissions assert deficiencies in the Farm Portal and OVERSEER® models, of course we pay attention to those points of substance in considering whether the proposed measures of the plan change using them are the most appropriate.

- [349] In the present context, we address the claims of the relevant contents of the plan change are legally justified, are inconsistent with established jurisprudence, or too uncertain to justify use of prohibited activity status. Do these raise questions of law on which we should state our opinion prior to considering the ‘merits’ question described in the previous paragraph?

- [350] In their reply to the submitters’ cases, the authors of the Section 42A Reply Report responded that they had tested the evidence relied on by submitters for their assertions or unreliability of the Farm Portal outputs. They advised that the differences between OVERSEER® files and Farm Portal outputs had been found to relate mainly to the way irrigation information had been entered, and fertiliser use.¹⁷⁵

- [351] In respect of assertions about inability of the Farm Portal to provide useful and reliable results for unusual properties and activities, and that outputs were ‘flawed’ and ‘uncertain’, this was a ground for requesting provision of an alternative consent path. Although we consider the language used to describe those outputs to be rhetorical hyperbole, in the event we recommend amending the plan change to make such a provision.

- [352] On Ms Perriam’s evidence based on the Ministry for the Environment Guide to the NPSFM, we have reviewed that document and have not found in it any support for her assertion that the plan change provisions are not legally justified. We find that in preparing the plan change the Council had considerable data collected and studied by scientific experts, and we refer to the list of materials in Appendix C to this report.

- [353] Where the submitters have in their submissions asked for specific amendments to the contents of the plan change, we address them on their merits in the context of the provisions in question. We have not found any question of law on which we need to state our opinion in respect of these provisions.

¹⁷³ Submissions by K Reid for Federated Farmers, para 53

¹⁷⁴ For example, Barrhill Chertsey Irrigation, and Dairy NZ

¹⁷⁵ Section 42A Reply Report, para 4.11

Would Policy 4.38AB be lawful in respect of the existing baseline and unimplemented consents?

Plan Change

[354] Proposed Policy 4.38AB would read:

When considering any application for resource consent for the use of land for a farming activity, the consent authority must not disregard any adverse effect of the proposed activity on water quality on the basis that this Plan permits an activity with that effect.

[355] By their submissions, Barrhill Chertsey Irrigation, Central Plains Water and Dairy Holdings asked that this policy be deleted, arguing that by removing the permitted baseline would effectively undermine the wider suite of policies that anticipate resource consent applications being made. By its submission Ravensdown also asked that the policy be deleted, because it is vague and lacks clear criteria, and is contrary to the permitted baseline principle, and matters to be considered when assessing the receiving environment.

[356] The authors of the initial Section 42A Report commented that the policy would indicate to an applicant for consent for farming activity how the permitted baseline is likely to be applied, leaving the Council able to consider each application on its own merits. They advised that the policy should be adopted to ensure cumulative effects of farming activities are properly managed.¹⁷⁶

Legal submissions and planning evidence

[357] In his legal submissions, counsel for Barrhill Chertsey Irrigation (Mr B G Williams) referred to section 104(2) of the RMA, as showing that Parliament regarded the permitted baseline as “important enough to enshrine it in the statute.” However he did not directly submit that Policy 4.38AB is ultra vires the Council’s authority.

[358] The planning witness for Ravensdown, Mr C A Hansen, addressed Policy 4.38AB in his evidence. He stated his understanding that effects that are associated with permitted activities are deemed to be appropriate, including any effects associated with permitted activities; and that only additional effects associated with an activity not permitted are to be considered.¹⁷⁷

[359] Although Fonterra does not appear to have submitted on Policy 4.38AB, its witnesses Ms S C Ruston and Mr G M Willis addressed it in their evidence. Mr Willis acknowledged that by section 104(2) of the RMA, a local authority has a discretion to determine, on a case-by-case basis, whether to disregard an adverse environmental effect if the plan permits an activity with that effect.¹⁷⁸ He did not assert that the policy would be ultra vires.

[360] Ms Ruston deposed that the effect of Policy 4.38AB would be that all effects of an activity will be considered on an application for the use of land for farming activity, even though that some of those effects are permitted as of right.¹⁷⁹ Mr Willis gave evidence to the same effect.¹⁸⁰

¹⁷⁶ Section 42A Report, paras 10.43-10.48

¹⁷⁷ Statement of evidence of C A Hansen para 98

¹⁷⁸ Statement of evidence of G M Willis, para 12.5

¹⁷⁹ Statement of evidence of S C Ruston, para 8.2

¹⁸⁰ Statement of evidence of G M Willis, para 12.4

[361] Ms Ruston also deposed that when an application is declined it is possible that the applicant will still undertake the activity to the extent that the permitted activity rule allows, so declining an application on the basis of the same effects achieves little.¹⁸¹ Again, Mr Willis gave evidence to similar effect.¹⁸²

[362] Mr Willis identified as other considerations the relative likelihood that the effects in question would result, and the nature of the conditions of the permitted activity, and whether they would address adverse effects, citing examples of offal pits, burying dead animals, and on-site refuse disposal.¹⁸³

Section 42A Reply

[363] In their Reply Report, the authors maintained that Policy 4.38AB would not be ultra vires section 104(2) of the RMA.

[364] They observed that the effect of the policy would be that a consent authority, in considering a resource consent application for use of land for a farming activity, should not apply the permitted baseline in respect of adverse effects related to water quality.¹⁸⁴

[365] They also remarked that it would be for the consent authority to decide, in the circumstances of the particular application, how much weight is to be given to the policy, so it does not conflict with the discretion in section 104(2).

Our consideration of the issue

[366] Having considered the cases of the submitters who asked that the policy be deleted, and the evidence of the witnesses for Fonterra, we find that none of them directly asserted that the policy would be ultra vires, nor in the event did any of them raise a question of law about it.

[367] We find no basis for concluding that the Policy 4.38AB would be ultra vires, or that the submitters raised any relevant question of law about it. We consider the question whether maintaining the policy or omitting it on the merits, including the points made in opposition to it, in the cases of the submitters.

Do conditions for providing farming information breach the Evidence Act?

[368] Referring to conditions in which farming would be a permitted activity (in Rules 5.44A, 5.54A, 5.57A and Schedule 7A), JG and LM Murchison, JKW Hoban, and other submitters referred to the requirement to provide information about the farming activity and the property, and asserted that “this may be a breach of s60 of the Evidence Act 2006.”

[369] In presenting their case at our hearing, those submitters did not explain how that provision may apply, nor how the requirement may contravene it.

[370] Section 60 of the Evidence Act applies where a person is required by a person exercising a statutory power or duty to provide specific information that is likely to incriminate the first person for an offence punished by a fine or imprisonment.

¹⁸¹ Statement of evidence of S C Ruston, para 8.3.

¹⁸² Statement of evidence of G M Willis, para 12.6.

¹⁸³ Statement of evidence of G M Willis, para 12.8.

¹⁸⁴ Section 42A Reply Report, para 3.23.

- [371] The conditions in question for review and updating of information about a farming activity and property are not requirements of general application. They are conditions in which a farming activity might qualify as a permitted activity. If the information is not reviewed and updated, the activity does not qualify as a permitted activity. The person carrying on the activity may instead obtain a resource consent for the activity.
- [372] The submitters did not demonstrate why they consider that the review and updating of information about a farming activity and the property, as a condition of eligibility as a permitted activity, would be likely to incriminate the person for an offence punishable by a fine or imprisonment.
- [373] It is not evident to us that section 60 would apply to the conditions in question, and we do not accept that this point is a valid ground for the submitters' requests for deleting the rules in question.

Chapter Nine

Farm Portal

[374] An integral part of Plan Change 5 as notified is the Farm Portal. The Farm Portal is an online spatial data portal¹⁸⁵ developed by the Council for two purposes; it enables the Council to fulfil its freshwater accounting obligations as required by the NPSFM^{186&187}, and it provides users with an estimate of nutrient leaching losses (in kgN/ha/yr) for farming activities if operated at Good Management Practice. The Farm Portal is incorporated into the plan change by direct reference through the definitions, policies, rules and schedules in the plan change, and indirectly through its relationship with proposed Schedule 28.

[375] Many submissions on Plan Change 5 addressed the proposal to provide for the Farm Portal. The submissions raised both points of law and whether providing for the Farm Portal would be the most appropriate measure. We address the questions of law in Chapter 8. In this chapter we address the other submission points about the Farm Portal.

[376] Submissions on the Farm Portal are generally in one or more of these classes:

- submissions that seek a deferral of the process;
- submissions that challenge the frequency at which information on permitted farming activities is to be updated in the Farm Portal;
- submissions on the appropriateness of the modelling proxies in Schedule 28 and the Farm Portal;
- submissions that seek an alternative to the Farm Portal for estimating Baseline GMP Loss Rates and Good Management Practice Loss Rates.

[377] Each of these classes is discussed below.

Submissions that seek a deferral of the process

[378] By its submission, Rangitata Diversion Race Management Limited (RDRML) sought a delay to the filing of further submissions on Plan Change 5 to allow time for an independent review of the modelling proxies in Schedule 28 and the Farm Portal, for the purposes of determining whether these accurately represent the narrative Good Management Practices in the *Industry-agreed Good Management Practices relating to water quality*.

[379] At our hearing of its submission, RDRML took up its request for delay. Mr D J Greaves, planning witness for RDRML, asked that we defer our deliberations for a ‘three to four month period’ and direct caucusing between parties on the irrigation and fertiliser proxies. Counsel for RDRML, Ms V J Hamm, also raised this point in her opening legal submissions. Ms Hamm¹⁸⁸ submitted that a short adjournment to proceedings would be both appropriate and within the broad powers available to the hearing commissioners.

¹⁸⁵ Section 32 Evaluation Report Supporting document - *The Farm Port system description and requirements 2016*

¹⁸⁶ Policy CC1

¹⁸⁷ Section 32 Evaluation Report pg 5-5

¹⁸⁸ Legal counsel for RDRML

[380] However, in a memorandum dated 30 September 2016, Ms Hamm acknowledged that if the reply hearing for Plan Change 5 was not to occur until December 2016 then that would provide time for the Council to test the OVERSEER® files of submitters such as RDRML through an adjusted version of the Farm Portal using the revised irrigation and fertiliser proxies sought through the submissions of Irrigation New Zealand Incorporated and Dairy NZ Limited. We note that this testing was carried out, and was detailed in the Section 42A Reply Report.

Submissions that challenge the frequency at which information on permitted farming activities is to be updated in the Farm Portal

[381] Condition 1 of Rules 5.44A, 5.57B, 15B.5.14 and 15B.5.24 would require that properties where permitted farming activities¹⁸⁹ are being carried out be registered in the Farm Portal at specified dates, and that information relating to the farming activity be updated, by the property owner or their agent, at least once every 24 months.

[382] By its submission Ballance Agri-nutrients Limited requested changes to notified Rules 5.44A, 5.57B, 15B.5.14 and 15B.5.24 to amend the frequency at which property owners would be required to update information in the Farm Portal. The submission sought to extend the time period between required updates of information to the Farm Portal from 24 months to 36 months, except where a ‘material change in the farm system occurs’. Fertiliser Association of New Zealand sought similar amendments in its submission, with the exception that changes to the farm system would need to be “significant” before the updates to information in the Farm Portal would be required.

[383] The authors of the Section 42A Reply Report¹⁹⁰ recommended amendments to notified Rules 5.44A, 5.54A, 5.57B, 15B.5.14 and 15B.5.24 to require information on permitted activities to be updated in the Farm Portal every 36 months, or ‘when a material change in the farm system occurs’. The report authors considered that the extended period between information updates would not be likely to result in any significant difference in the data collected.

[384] We agree with the report authors’ reasons and recommend changes¹⁹¹ to these rules accordingly.

Submissions on the appropriateness of the modelling proxies in Schedule 28 and the Farm Portal

[385] Plan Change 5 would insert a new Schedule 28 that lists the Good Management Practice¹⁹² modelled by the Farm Portal, and describes the methodologies, formulae and OVERSEER® settings (collectively referred to as the ‘modelling proxies’) to be applied to model each Good Management Practice. These modelling proxies are applied to OVERSEER® nutrient budgets uploaded to the Farm Portal, and a report would then be produced showing the Baseline GMP Loss Rate¹⁹³ and the Good Management

¹⁸⁹ Except for those properties <10ha in area

¹⁹⁰ Section 42A Reply Report, pg 39, para 4.88

¹⁹¹ In accordance with Clause 16(2) of Schedule 1 of the RMA

¹⁹² *Industry-agreed good management practices relating to water quality – September 2015*

¹⁹³ Defined in PC5 as notified as the *average nitrogen loss rate below the root zone, as estimated by the farm Portal, for the farming activity carried out during the nitrogen baseline period, if operated at good management practice and where a baseline GMP Loss Rate cannot be generated by the farm Portal it means the nitrogen baseline.*

Practice Loss Rate¹⁹⁴ for the farming activity. By Part A of Plan Change 5 compliance with the Baseline GMP Loss Rate (or in the case of notified Rule 5.58A Baseline GMP Loss Rate + 5kgN/ha/yr) would be an entry condition to notified Rules 5.44B, 5.45A, 5.46A, 5.50A, 5.54B, 5.55A, 5.56AA, 5.57C and 5.58B; and compliance with the Good Management Practice Loss Rate would be as a matter of control (notified Rules 5.44B, 5.54B, 5.57C), or discretion (notified Rules 5.45A, 5.50A, 5.55A, 5.58A). These nitrogen loss rates would be the method by which the Plan would cap or restrict increases in nitrogen loss from farming activities.

- [386] Submissions on the modelling proxies in Schedule 28 included those seeking deletion of Schedule 28 in its entirety,¹⁹⁵ those seeking a robust validation of the GMPs and, where necessary, amendments to the modelling proxies,¹⁹⁶ and submissions proposing alternatives to the Farm Portal.

Submissions requesting deletion of Schedule 28

- [387] By its submission Ellesmere Sustainable Agriculture Incorporated sought that Schedule 28 be deleted in its entirety.
- [388] We agree with the authors of the initial Section 42A Report¹⁹⁷ that Schedule 28 and the Farm Portal are integral and interrelated parts of Plan Change 5. The plan change makes direct reference to the Farm Portal in many policies and rules. We consider it is both appropriate and necessary to retain Schedule 28 in the plan change because it would provide transparency to users of the Farm Portal regarding the key methodologies and settings applied by the Farm Portal to OVERSEER® budgets. We consider it necessary to retain reference to the Farm Portal (and by its association, Schedule 28) as it is central to the plan change achieving one of its primary outcomes, namely the adoption of Good Management Practices in a consistent manner across the region. Further, without an alternative measure, removing reference to Schedule 28 and the Farm Portal would leave the Council without means to give effect to Objective A2, Policy A1 and Policy A2 of the NPSFM and undertake freshwater accounting on contaminant loads. For these reasons, we consider that Schedule 28 and the references to the Farm Portal should be retained in the plan change.

Submissions requesting robust validation of the modelling proxies

- [389] The Council received a range of submissions on Schedule 28 seeking ‘robust validation’¹⁹⁸ of the modelling proxies.
- [390] The ‘modelling proxies’ were developed in a cross-organisational collaboration, with expertise provided from both industry farming groups (DairyNZ, Deer Industry NZ, NZPork, Beef & Lamb NZ, Horticulture NZ and the Foundation for Arable Research), and Crown Research Institutes (AgResearch Ltd, Plant and Food Research Ltd and Landcare Research Ltd).¹⁹⁹ As part of that process nutrient losses estimated by the Farm Portal were tested and validated against real farms to determine the robustness of the modelling proxies.²⁰⁰ This process underwent several iterations, and while a consensus within the Matrix for Good Management project group was not reached on one of the modelling proxies, we are satisfied that the process to develop the proxies was both robust and valid. Further we

¹⁹⁴ Defined in PC5 as notified as the *average nitrogen loss rate below the root zone, as estimated by the Farm Portal, for the farming activity carried out over the most recent four ear period if operated at good management practice.*

¹⁹⁵ Ellesmere Sustainable Agriculture Inc, NZ Deer Farmers Association

¹⁹⁶ Ravensdown Limited, Kakahu Catchment Group, Keeling Dairies Ltd, Orari Water Users Group

¹⁹⁷ Pg 46 [para 6.114]

¹⁹⁸ Ravensdown Limited, Kakahu Catchment Group, DairyNZ, Orari Water Users Group

¹⁹⁹ Section 32 Evaluation Report pg 5-1

²⁰⁰ Matrix for Good Management Overview Report pg187

consider that the Council's decision to release the 'GMP tool'²⁰¹ after the close of submissions, but prior to the deadline for submitter evidence for the hearing, provided those submitters who expressed a concern with the modelling proxies in Schedule 28 a further opportunity to test the model and determine the effect that groups of GMPs have on nutrient loss rates.

Submissions in opposition of the modelling proxies

- [391] While a number of submitters challenged in broad terms the appropriateness of the modelling proxies, two proxies in particular received particular attention; those being the proxies that model the application of fertiliser ('the fertiliser proxy')²⁰² and irrigation water ('the irrigation proxy') under Good Management Practice.

The Fertiliser GMP Proxy

- [392] Proposed Schedule 28 sets out the key assumptions, methodologies and rules applied by the Farm Portal to model the application of fertiliser under Good Management Practice. For pastoral systems, the three key elements of the fertiliser proxy are: a restriction on the maximum rate at which nitrogen fertiliser is applied (limited to 50kg/ha/yr); restrictions on the timing of fertiliser application (no fertiliser to be applied during the months of May, June or July); and a calculation of nitrogen fertiliser requirements based on the methodology described in Method s28.3 of Schedule 28.

- [393] We understand²⁰³ the fertiliser proxy set out in Schedule 28 is based upon a nitrogen mass-balance model, by which nitrogen fertiliser requirements for pastoral farming systems may be determined by estimating nitrogen uptake of pasture, and then subtracting external nitrogen inputs (ie nitrogen added through effluent and irrigation inputs) and adding nitrogen losses (ie nitrogen added from gaseous forms and nitrogen leaching).

- [394] By its submission, DairyNZ opposed the fertiliser proxy in Schedule 28 and requested consideration of a nitrogen surplus model as the means for determining nitrogen input requirements for farms operating at Good Management Practice.²⁰⁴

- [395] The 'alternative fertiliser proxy' proposed by DairyNZ was further discussed in the evidence of Dr B S Thorrold and Dr S F Ledgard, agricultural scientists appearing for DairyNZ. In his evidence, Dr Thorrold asserted that the assumptions built into the fertiliser proxy were flawed; in particular the assumptions that non-fertiliser nitrogen inputs into a farm system are uniform, and that annual pasture yield occurs at a constant rate irrespective of irrigation, soil type and fertility. He considered the use of an alternative fertiliser proxy based on a nitrogen surplus model²⁰⁵ would be more appropriate, as that method would estimate the pool of nitrogen left in the soil system and available to be lost by drainage through the soil profile. Dr Thorrold helpfully included a formula for the 'alternative fertiliser proxy' in his evidence, which he stated could be placed directly into the Farm Portal in place of the current proxy.

²⁰¹ Section 42A Report pg 43 para 6.91. Also referred to by some submitters as the Portal API tool – it allowed users to upload an OVERSEER budget and apply groups of proxies to a nutrient budget to determine the impact of those GMPs on nutrient losses.

²⁰² Opposed by Fertiliser Association of New Zealand

²⁰³ Section 32 Evaluation Report, Appendix 22, pg 302

²⁰⁴ Dairy NZ submission, pg 28

²⁰⁵ Statement of evidence of B S Thorrold, pp 9, 10; paras [5.6] – [5.7]

[396] Dr Ledgard, in his evidence, outlined what he saw as the perceived strengths and weakness of the pastoral fertiliser proxy in Schedule 28. He reiterated Dr Thorrold's criticisms of the use of a model based on a nitrogen mass-balance approach, stating this is a major weakness in the proxy as it would result in nitrogen fertiliser requirements being determined based on estimates of pasture growth. He further advised²⁰⁶ in response to questions asked by us at hearing, that in his opinion, the fertiliser proxy in the plan change could disadvantage dairy farmers by estimating lower than required nitrogen inputs.

[397] To help us in our determination of the most appropriate fertiliser proxy, we asked the Council to carry out an analysis to determine the impact of the alternative proxies on nitrogen leaching loss rates. In their Section 42A Reply Report²⁰⁷ the authors advised us of the following observed impacts from the alternative fertiliser proxy advanced by Dairy NZ:

- (a) it appeared to reward those farming systems with historic 'poor performance' and historically high fertiliser application rates;
- (b) it resulted in small increases in modelled nitrogen losses for beef and sheep farms;
- (c) it resulted in a greater reduction in modelled nitrogen losses for cropping and dairy systems;
- (d) implementing the alternative proxy for some farming systems (e.g. cropping) would be challenging; and
- (e) it resulted in modest differences in the catchment-wide nitrogen losses.

[398] The Section 42A Reply Report authors recommended retention of the as-notified fertiliser proxy. Their reason for this recommendation was that their analysis indicated there are no convincing reasons for adopting the Dairy NZ alternative, which had not been subject to the same collaborative process as the notified version.

[399] Having considered the submissions and evidence above, we agree with the authors of the Reply Report that there are no compelling reasons for adopting Dairy NZ's alternative fertiliser proxy. Although some submitters consider the fertiliser modelling proxy in Plan Change 5 would be inaccurate for modelling some farm systems, we note that the alternative would also be problematic for modelling some farm systems (e.g. cropping systems). However, we acknowledge that in some limited circumstances the fertiliser proxy in the plan change as notified may not be appropriate. We have considered alternative means to accommodate the concerns of submitters; matters which are discussed later in this chapter. Generally, we find the fertiliser proxy in the plan change as notified to be appropriate, and for the reasons set out in the Reply Report and our reasons above we recommend that it is retained as notified.

The Irrigation GMP proxy

[400] Plan Change 5 as notified included Method s28.4 which sets out the methodology applied by the Farm Portal to model the application of irrigation water under Good Management Practice.

[401] By its submission, Irrigation New Zealand Incorporated (INZ) opposed the irrigation proxy, stating that it assumed 100% irrigation efficiency, and on the basis that it represented best management practice rather than good management practice for centre-pivot irrigation systems. By its submission, INZ sought an amendment to Schedule 28 to amend the proxy to require an irrigation efficiency of 80%.

²⁰⁶ Responses to further questions of the hearing commissioners in relation to the Statement of evidence of Dr S F Ledgard dated 22 July 2016

²⁰⁷ Pages 27-28, para 4.25

This, it was stated, would more closely reflect ‘good management practice’ as it would allow for up to 20% of the water applied to the soil to be lost through drainage.

- [402] We heard evidence from Mr McIndoe, appearing for INZ, that the irrigation proxy in Schedule 28 applied a ‘simple approach’ which failed to take into account factors that impact irrigation efficiency such as non-uniform soil characteristics, crop characteristics and water application. Further, he stated the proxy assumed 100% irrigation efficiency for all water applied to the soil surface, which represented an irrigation efficiency that was beyond best practice, rather than good management practice. Mr McIndoe suggested that the irrigation proxy could be improved to better reflect ‘good management practice’ by adjustments to the methodologies and values in Schedule 28. He presented two options, a ‘preferred relief’ and an ‘alternative relief’. The ‘preferred relief’ proposed an amendment to Method s28.4 of Schedule 28 to apply spray-line irrigation values to all soils with a Profile Available Water (PAW₆₀) of 60mm or greater, and centre-pivot values to all soils with a PAW₆₀ of less than 60mm. The ‘alternative relief’ would retain the use of system-specific irrigation application depths and target refill points (which would vary according to the PAW of the soil) but would instead amalgamate the centre-pivot irrigation, micro-irrigation and solid set irrigation systems into a single ‘irrigation system’ group, with separate and individual groups for linear irrigators and travelling irrigators.
- [403] To further assist us in our evaluation of the most appropriate irrigation proxy, we asked the Section 42A Report authors to assess the impact of the INZ ‘preferred’ and ‘alternative’ irrigation proxies on nitrogen loss reductions under GMP. They advised²⁰⁸ that in comparison to the irrigation proxy in Schedule 28, both proxies generally resulted in an increase in the irrigation applied and increase in the modelled nitrogen loss from the farm system²⁰⁹. An example given demonstrated the effect of the three irrigation proxies on nitrogen loss reductions for dairy platforms. That analysis indicated that for a dairy platform the ‘preferred relief’ would require a 16% reduction in nitrogen loss from current state to achieve GMP, as compared to a 29% reduction that would be required by the Schedule 28 irrigation proxy and a 28% reduction from the ‘alternative relief’.²¹⁰
- [404] The Reply Report authors also responded to concerns raised by Mr McIndoe in his evidence that the Schedule 28 proxy represented ‘best management practice’ rather than ‘good management practice’ for centre-pivot irrigation systems. They advised that this issue arises not as a result of any assumptions applied by the Schedule 28 proxy, but rather because the current version of OVERSEER® does not have an inbuilt irrigation efficiency for below-ground losses.²¹¹ As a consequence, they stated, the issue exists irrespective of the proxy used, and it is not possible to compensate for these assumptions by simply increasing the amount of irrigation applied. Further, they noted there would be challenges to implementing the ‘alternative relief’ proposed by INZ, given centre-pivot irrigation systems and linear irrigation systems are treated as a single category in OVERSEER®. For all of the reasons set out above the Reply Report authors recommended retention of the notified irrigation proxy in Schedule 28.
- [405] We note that the ‘Industry-agreed Good Management Practices relating to water quality’ booklet requires that for irrigation and water use, the amount and timing of irrigation inputs is to be managed so as to meet plant demands and minimise the risk of leaching. The term ‘minimise’ conveys a need to curtail the amount of nitrogen leached. The analysis carried out by the Reply Report authors indicates

²⁰⁸ Section 42A Reply Report - Memorandum by Melissa Robson – para 10

²⁰⁹ Section 42A Reply Report – Appendix E – Assessment of the irrigation Good management practice modelling proxies proposed by Irrigation New Zealand for the Matrix of Good Management – pg 41, section 9.1

²¹⁰ Section 42A Reply Report - Memorandum by Leo Fietje

²¹¹ Section 42A Reply Report – Appendix E – Assessment of the irrigation Good Management Practice modelling proxies proposed by Irrigation New Zealand for the Matrix of Good Management – pp 41 – 42

that nitrogen losses would be higher if the INZ ‘preferred relief’ were to be adopted; and we do not consider that this is commensurate with ensuring that nitrogen leaching is minimised. Further, we are not satisfied that if the ‘preferred alternative’ proxy were adopted, the catchment outcomes for the Waitaki sub-region would be achieved. With regard to INZ’s ‘alternative relief,’ we agree with the Reply Report authors that there are no compelling reasons for adopting this proxy in favour of that included in Schedule 28 as recommended to us by the Reply Report authors. We form this view after considering the analysis carried out to date, and the implementation challenges associated with the INZ option.

[406] However, in our questions to the Section 42A Reply Report authors we had noted that Appendix E (pages 21 and 31) of the Reply Report identified an anomaly within the plan change irrigation proxy by which high amounts of irrigation are applied between soil PAW 40 and 70 or 80 due to the exception made for travelling and spray-line irrigators. That in turn would result in high modelled nitrogen losses. The anomaly is apparent in Figures 19 and 20 of that Appendix. The Reply Report authors acknowledged that if the anomaly was to be removed, and the modelling proxy for these irrigators and soils were consistent with the rest of modelling proxy, then that would bring the proxy into closer alignment with the narrative industry-agreed GMPs. Nevertheless, they did not recommend removing the anomaly because if an irrigation system had significant limitations to the minimum application depth it could apply, then it would be unlikely to be able to meet GMP on very light soils, and another irrigation system capable of lower application rates might be required.²¹²

[407] Having considered this matter, we find that the anomaly outlined above should be rectified because doing so would result in a modelling proxy that is a more appropriate way to achieve the objectives of the LWRP, particularly Objective 3.24. The Section 42A Reply Report authors helpfully identified the amendments to the table in Method s28.4 of Schedule 28 that would be required to remove the anomaly. We recommend that those amendments be made.

[408] In conclusion, our overall broad judgement is that we are not persuaded on the merits that either of the irrigation proxies sought by INZ would better achieve the objectives of the LWRP. For the reasons set out above we recommended retention of the irrigation proxy that was notified, subject to the rectification of the anomaly discussed above.

Submissions that sought an alternative to the Farm Portal for estimating Baseline GMP Loss Rates and Good Management Practice Loss Rates

[409] A number of submitters²¹³ were concerned that the Farm Portal could not accurately model some farming systems. On that basis they sought an alternative to the Farm Portal for calculating a farming activity’s Baseline GMP Loss Rate and Good Management Practice Loss Rate. By its submission DairyNZ sought new definitions of the terms ‘Loss Rate Assessed as Baseline GMP’ and ‘Loss Rate Assessed as Good Management Practice,’ and amendments to policies and rules to implement the proposed definitions. Its package of requested provisions proposed an ‘alternative consenting path’ framework, by which loss rates equivalent to good management would be established on a case-by-case

²¹² Proposed Plan Change 5 Canterbury Land and Water Regional Plan (Nutrient Management & Waitaki); Responses to the Questions of the Hearing Commissioners on the Section 42A Reply Report - 12 December 2016; pages 14 and 15

²¹³ DairyNZ, Central Plains Water Limited, Ravensdown Limited, Hunter Downs Development Company Limited, Dairy Holdings Limited, Federated Farmers

basis and assessed as part of an application for resource consent. Variations on this theme were sought by other submitters, including Fonterra Co-operative Limited.

- [410] In response to these submissions the Reply Report authors proposed an alternative consent framework to provide, in limited circumstances, for the outcomes sought by the submitters. The elements of that framework would include a new policy and new rule which would allow an application for resource consent to be made, with the Baseline GMP Loss Rate and Good Management Practice Loss Rate being determined through the resource-consent process. The Reply Report authors recommended that the rule state tightly drawn entry criteria to ensure the availability of the provisions would be limited to only those ‘exceptional circumstances’ where the Farm Portal would produce an anomalous nitrogen loss-rate number. Such circumstances, they stated, would include farming systems where horticultural or arable crops are grown, as these are particularly problematic to model in OVERSEER® due to limited crop options able to be selected. Further, to avoid circumstances that may result in excessive nitrogen losses, they recommended an entry condition to the rule that would require that the nitrogen loss calculation not exceed the nitrogen baseline.
- [411] We note that the modelling proxies in Schedule 28 (and which are incorporated into the Farm Portal) were developed with input from six industry farming groups.²¹⁴ For that reason we are satisfied that in most circumstances the Farm Portal would produce estimates of nitrogen leaching under Good Management Practice that are reasonable and fit for purpose. Nevertheless, we recognise that there may be some circumstances where either the Farm Portal is not able to generate a Baseline GMP Loss Rate or Good Management Practice Loss Rate, or the number generated may be implausible. Such circumstances include some farming systems that are atypical or complex. We are, therefore, persuaded that it is both appropriate and reasonable to include an ‘alternative consent path’ framework in Plan Change 5, provided it is constrained to limited circumstances. We are grateful for the recommendations of the Reply Report authors and for their careful consideration of the matter and suggested alternative framework.
- [412] We have adopted the concepts of the alternative framework as recommended by the Reply Report authors but recommend some further amendments. Those amendments include new definitions of ‘Equivalent Baseline GMP Loss Rate’ and ‘Equivalent Good Management Practice Loss Rate’ in response to the submissions by DairyNZ and Fonterra Co-operative Limited. We recognise that modern farming systems are rarely homogenous, with a variety of different farming activities occurring on a property. Consequently there is a need to accommodate those circumstances where the farming activity comprises a mixture of farming activities, some of which are able to be modelled by OVERSEER® and some which are not.
- [413] In those circumstances we consider there is a need to strike a balance – one which provides an alternative to the Farm Portal, but which requires modelling proxies equivalent to those set out in Schedule 28 to be applied where it is practicable and appropriate to do so. We accommodate these elements into our recommended definitions of Equivalent Baseline GMP and Equivalent Good Management Practice Loss Rate. We note that discretionary rule (Rule 5.XX) recommended by the Section 42A Reply Report authors would include as an entry condition a requirement that the nitrogen loss calculation not exceed the nitrogen baseline in Lake and Red Nutrient Allocation Zones. We adopt this recommendation, but are also mindful of the Council’s obligations under Objective A1 and A2 of under the NPSFM. Those objectives require (among other things) the life-supporting capacity of freshwater to be safeguarded,

²¹⁴ DairyNZ, Deer Industry New Zealand, NZPork, Beef + Lamb New Zealand, Horticulture NZ and Foundation for Arable Research

and the overall freshwater quality within a region to be maintained or improved. For that reason we consider the same restriction should apply to farming activities within the Orange Nutrient Allocation Zone; and for the Green and Light Blue Zones, the nitrogen loss calculation should be limited to 5kgN/ha/yr above the nitrogen baseline. Where that criterion is not met the activity would be classified as prohibited.

- [414] We also consider that given the Equivalent Baseline GMP Loss Rate and Equivalent Good Management Practice Loss Rate require a level of subjective assessment, the nutrient budget and FEP should be prepared by a qualified person to ensure their efficacy. To that end we recommend as an entry condition to the new discretionary activity rule a requirement for these documents to be prepared by an Accredited Farm Consultant. Where this criterion is not met the application would be assessed as a non-complying activity.
- [415] For the reasons set out in the Reply Report, and those set out above, we consider the inclusion of an alternative consenting framework to be an appropriate, effective and efficient means for achieving the objectives of the LWRP and the NPSFM. We therefore recommend those amendments as set out in Appendix B accordingly.

Chapter Ten

A ‘Sinking Lid’

- [416] The issue of a “sinking lid” relates to the how the allowable nitrogen loss from a farming property might reduce over time. The issue was raised in different ways by two submitters, Fonterra Co-operative Group (Fonterra) and Ngā Rūnanga.²¹⁵
- [417] Fonterra’s issue was summarised in their opening legal submissions.²¹⁶ It was noted that Plan Change 5 contains a suite of provisions that limit a property’s allowable nitrogen loss to the Farm Portal generated GMP Loss Rate if that loss rate is less than the Baseline GMP Loss Rate. The Baseline GMP Loss Rate is a fixed value being the average nitrogen loss rate below the root zone, as estimated by the Farm Portal, for a farming activity carried out during the nitrogen baseline period, if operated at good management practice. The GMP Loss Rate is a variable value being the nitrogen loss estimated by the Farm Portal, for a farming activity carried out over the most recent four-year period, if operated at good management practice.
- [418] An example of the ‘offending provisions’ is Rule 5.44B matter of control (5). Policies 4.37, 4.38 and 4.38AA are also relevant. We note that in all cases the rule provisions of concern to Fonterra would be matters of control or discretion, not mandatory conditions.
- [419] Fonterra submitted that the “sinking lid” approach meant that over time a property’s nitrogen loss limit could go down, but it could never go up again to a previous level. Fonterra suggested that atypical factors²¹⁷ could result in the GMP Loss Rate being artificially lower than it would have been in the absence of those factors.²¹⁸
- [420] Fonterra asked that the ‘offending provisions’ be deleted or that alternatively a new policy be introduced so that the “sinking lid” could be applied by decision-makers with some flexibility, ensuring that the four-year period would be truly representative of the land use and farm system and short term fluctuations were discounted.
- [421] As noted above, the GMP Loss Rate is a variable value reflecting actual on-farm management practices. It is in effect a rolling four-year average. We accept that atypical factors could result in the GMP Loss Rate reducing below the Baseline GMP Loss Rate. The atypical GMP Loss Rate would then become the allowable level of nitrogen loss for the following year. That would factor into the calculation of subsequent GMP Loss Rates. We accept that it could constrain a return to ‘business as usual’ farming activity. In this regard we disagree with the Section 42A Reply Report authors who considered that the notified Plan Change 5 rules do not incorporate a “sinking lid” because the restrictions do not become greater over time.²¹⁹
- [422] We consider that a minor amendment to the relevant provisions would signal to decision-makers that any conditions they impose on farming activity resource consents should have regard to whether or not a GMP Loss Rate results from ‘atypical factors’. So we recommend that Rule 5.44B matter of control

²¹⁵ Ngā Rūnanga (Te Rūnanga O Kaikōura, Te Ngāi Tūāhuriri Rūnanga, Te Hapū O Ngāti Wheke, Te Rūnanga O Koukourārata, Ōnuku Rūnanga, Wairewa Rūnanga, Te Taumutu Rūnanga, Te Rūnanga O Arowhenua, Te Rūnanga O Waihao And Te Rūnanga O Moeraki), Ngāi Tahu Farming Limited, And Te Rūnanga O Ngāi Tahu (Te Rūnanga)

²¹⁶ Legal Submissions on behalf of Fonterra Co-operative Group Limited, 24 August 2016, paragraphs 3.2.and 3.3.

²¹⁷ Including droughts, disease, changes in markets, farmer’s ill-health or death

²¹⁸ Legal Submissions on behalf of Fonterra Co-operative Group Limited, 24 August 2016, paragraph 3.6

²¹⁹ Section 42A Reply Report, paragraph 4.33

(5)²²⁰ be amended to read:

Methods that require the farming activity to operate at or below the Good Management Practice Loss Rate, in any circumstance where that Good Management Practice Loss Rate has not been influenced by severe extraordinary events (including but not limited to droughts, floods or Biosecurity Act requirements) and is less than the Baseline GMP Loss Rate; and

[423] We have omitted any reference to changing market conditions in our recommended amendment, as we do not consider them to be atypical. Similarly, we have omitted references to farmer ill-health as in our view that would be too subjective. We do not consider that a new policy is required, because the amendment we recommend for the ‘offending provisions’, including the relevant clauses in Policies 4.37, 4.38 and 4.38AA, is clear on its face.

[424] Our finding on this matter is supported by the Section 42A Reply Report authors who considered that in situations identified by Mr Willis in his evidence, there would be a reasonable case for a landowner to seek either a resource consent or a variation of consent conditions to undertake a change in farming operations, such that the Baseline GMP Loss Rate continues to be met, but the GMP Loss Rate may be exceeded.²²¹

[425] Ngā Rūnanga’s description of a “sinking lid” is different from Fonterra’s. We understand that Ngā Rūnanga seek provisions that ensure an ongoing reduction in property-scale nitrogen losses below the Baseline GMP Loss Rate and GMP Loss Rate.²²² The evidence of Treena Davidson, Senior Environmental Advisor with Te Rūnanga o Ngāi Tahu, sought the insertion of an additional clause (c)(iii) for Policies 4.37 and 4.38 that would read:

“show how continued improvement in nitrogen to below Baseline GMP Loss Rate or the Good Management Practice Loss Rate (whichever is the lesser) will be achieved”

[426] We had some difficulty with Ngā Rūnanga’s request as Plan Change 5 as notified did not introduce a “sinking lid” of the type now sought by Ngā Rūnanga. Additionally, Ngā Rūnanga’s original submission on Policies 4.37 and 4.38 sought amendments to the effect that any requirement for nitrogen loss reductions would not cause a property’s nitrogen loss calculation to reduce below the nitrogen baseline. We understand that generally the nitrogen baseline would allow a greater level of nitrogen loss than either the Baseline GMP Loss Rate or the GMP Loss Rate.

[427] We heard from Ngā Rūnanga on 6 October 2016. Subsequently counsel for Ngā Rūnanga submitted a memorandum addressing questions we asked at the hearing. In that memorandum counsel acknowledged that the original submission had not expressly asked for a reduction over time to below GMP loss rates. Counsel then submitted that the rest of the submission clearly supported the concept and principle of a “sinking lid” as encapsulated by the relief sought by Ms Davidson.²²³ We are not persuaded that is the case. Our reading of the Ngā Rūnanga submission is that it sought a reduction in nitrogen losses from their current level to the GMP Loss Rate, and additionally that good management practices should evolve over time.

[428] Regardless of what Ngā Rūnanga actually sought in its submission, we do not find that the amendments

²²⁰ Other provisions would include Policies 4.37, 4.38 and 4.38AA and Rules 5.45A, 5.50A, 5.54B, 5.57C, 5.58A, 15B.4.20, 15B.4.24, 15B.4.25, 15B.5.15, 15B.5.16, 15B.5.19, 15B.5.20, 15B.5.34 and 15B.5.35 as finally recommended to us

²²¹ Section 42A Reply Report, paragraph 4.35

²²² Legal Submissions on behalf of Ngā Rūnanga, 6 October 2016, paragraph 1.13

²²³ Memorandum of Counsel on behalf of Ngā Rūnanga, 20 October 2016, paragraphs 2.1 and 2.2

to Policies 4.37 and 4.38 recommended by Ms Davidson are either reasonably practicable or necessary to achieve the objectives of the LWRP. The amendments sought would require farmers to operate at better than good management practice. Ngā Rūnanga did not adduce evidence showing what that would practically entail, or what effects that could have on economic growth and employment.

[429] The nitrogen loss reductions that would be occasioned by Ngā Rūnanga's requested amendments to Policies 4.37 and 4.38 would have no defined end-point. In other words, it is unclear how far below the Baseline GMP Loss Rate or GMP Loss Rate the eventual nitrogen loss level should be. One assumption would be that the nitrogen loss reductions required for all farming properties in Red, Orange and Lake Zones would continue until the nitrogen losses were 35 percent less than they were in 2016, as was sought in the Ngā Rūnanga submission. However, the amendments to Policies 4.37 and 4.38 now recommended by Ms Davidson do not address that matter. The absence of a defined end point for nitrogen loss reductions would create significant uncertainty in terms of implementing the LWRP and potentially lead to costly litigation for individual properties requiring consent to use land for a farming activity.

[430] Additionally, no evidence was provided by Ngā Rūnanga to demonstrate that there would be a risk of not meeting the LWRP receiving environment water quality limits if the requested amendments to Policies 4.37 and 4.38 were not adopted.

[431] Our overall broad judgement is that we are not persuaded on the merits that the provisions recommended to us by Ngā Rūnanga would better achieve the objectives of the LWRP than the provisions recommended to us by the Section 42A Reply Report authors. We therefore decline to recommend to the Council that Policies 4.37 and 4.38 be amended as sought in the evidence of Ms Davidson.

Chapter Eleven

Capped Flexibility for Permitted Activities

- [432] Prior to the notification of Plan Change 5, the LWRP used fixed nitrogen-loss limits (in units of kilograms of nitrogen per hectare per annum) as conditions (or thresholds) in the permitted activity rules governing the use of land for farming activities. For example, in the Red Nutrient Allocation Zone under Rule 5.43 the use of land for a farming activity would be a permitted activity if the nitrogen loss calculation does not exceed 20 kilograms of nitrogen per hectare per annum. Compliance with such thresholds was assessed using the OVERSEER[®] nutrient budget model.
- [433] OVERSEER[®] is being continually improved and refined, with updated versions released twice a year. The Council's experience is that updates to the model have resulted in estimates of nitrogen loss increasing, resulting in more farming activities exceeding the permitted activity thresholds and requiring resource consent. However, the actual nitrogen losses from those farms might not have changed: instead those losses were being modelled more accurately. Nevertheless, the uncertainty this might create led the Council to decide to abandon the use of fixed nitrogen-loss limits as thresholds in the permitted activity rules, and to use instead thresholds relating to areas of irrigation and areas of winter grazing.²²⁴
- [434] Several submitters sought a return to the use of fixed nitrogen-loss limits as thresholds in the permitted activity rules.
- [435] For example, the Ngā Rūnanga submission expressed concern over provisions that would lock in a farming activity's nitrogen loss based on current land-use, fearing that would reward 'high polluters' and provide little incentive to reduce nitrogen losses. Ngā Rūnanga sought provisions such that if nitrogen losses exceed fixed nitrogen-loss limits,²²⁵ then specified percentage reductions in nitrogen losses would be required over time, provided those reductions do not require the property's nitrogen-loss calculation to reduce below the nitrogen baseline. As properties would also be allowed to increase their nitrogen losses up to the fixed nitrogen loss limits, we term that approach "capped flexibility".
- [436] The evidence of Treena Davidson, Senior Environmental Advisor with Te Rūnanga o Ngāi Tahu, noted that the assessment in Appendix C of the initial Section 42A Report suggested that the approach sought by Ngā Rūnanga would result in a more permissive regime than the approach contained in Plan Change 5. On that basis Ms Davidson advised that the relief sought by Ngā Rūnanga regarding the reintroduction of permitted activity nitrogen-loss thresholds would be unnecessary.²²⁶ Consequently, Ngā Rūnanga did not pursue their original relief at the hearing.
- [437] Federated Farmers of New Zealand sought²²⁷ a system of capped flexibility for the Section 15B rule framework for low nitrogen dischargers. They considered that this would provide a limited degree of flexibility to adjust land use in response to physical conditions (such as climate) and markets, and to accommodate the cyclical nature of farming. Federated Farmers sought caps of 10 kgN/ha/year for the Upper Waitaki and 15 kgN/ha/year for the Lower Waitaki water management zones. They suggested this would also increase the proportion of farming activities having permitted activity status,

²²⁴ Section 32 Evaluation Report, section 4.3

²²⁵ 15 kg per hectare per annum in Red and Orange Nutrient Allocation Zones and 10 kg per hectare per annum in Lake Zones

²²⁶ Statement of evidence of T Davidson on behalf of Ngā Rūnanga, 22 July 2016, paragraphs 6.3 and 6.4, page 12

²²⁷ Submission of Federated Farmers of New Zealand, page 24

which they considered would benefit both the Council and land users.

- [438] We heard from Federated Farmers on 23 August 2016. We asked Dr Lionel Hume, a Senior Policy Advisor with Federated Farmers, what the effect of the reintroduction of the suggested permitted activity caps would be on water quality, and particularly the achievement of the Section 15B.6 water quality limits. Dr Hume did not know what that effect would be as Federated Farmers had not quantified it, although he thought it would be small. We find that we have insufficient information regarding the effect of the relief sought by Federated Farmers and therefore there is a risk that acting to grant that relief would lead to the objectives of the LWRP not being achieved.
- [439] Having said that, we acknowledge that Dr Hume also helpfully advised us at the hearing that he supported ‘narrative thresholds’ for permitted activities (such as the ones in the plan change relating to the areas of irrigation and areas of winter grazing) provided they do not cause too many properties to require resource consent.
- [440] Our overall broad judgement is that we are not persuaded on the merits that the reintroduction of fixed nitrogen loss limits (in units of kilograms per hectare per annum) as conditions (or thresholds) in the permitted activity rules governing the use of land for farming activities would better achieve the objectives of the LRWP than the provisions recommended to us by the authors of the Section 42A Reply Report. We therefore decline to recommend to the Council that fixed nitrogen loss limits be reintroduced for permitted activity rules.

Chapter Twelve

Irrigation Schemes

- [441] Consistent with the approach adopted in the Land and Water Regional Plan, irrigation schemes and principal water suppliers are provided for in both Parts A and B of Plan Change 5. There are two issues that we wish to address regarding those provisions.
- [442] First, we understand that the general regime imposed by the provisions is that provided the irrigation scheme or principal water supplier holds a resource consent that imposes limits on the discharge of nutrients onto or into land for the land supplied with irrigation water, and the scheme does not include any land that is part of a nutrient user group or a farming enterprise, then the individual farming activities do not need to gain consent for the discharge of those nutrients. We discuss nutrient user groups and farming enterprises in Chapter 13 of this report.
- [443] A number of submitters, including Central Plains Water Limited, Barrhill Chertsey Irrigation Scheme and Rangitata Diversion Race Management Limited, submitted that the Plan Change 5 provisions relating to the Farm Portal, and the associated requirement for individual farming activities to comply with the Baseline GMP Loss Rate and GMP Loss Rate, could undermine the general regime outlined above. For example, the submission from Central Plains Water stated:²²⁸
- "... the Farm Portal and the requirement to comply with it do not apply to individual properties where those properties are receiving water from an irrigation scheme and the irrigation scheme is required under resource consents held by it to account for nutrient losses on the understanding that irrigation schemes will continue to be considered and consented through (as a default Rules 5.60 to 5.62 with the support of proposed Rule 5.41A)."
- [444] The initial Section 42A Report authors confirmed that farming activities managed under a resource consent held by an irrigation scheme are provided for as a permitted activity under Rules 5.41A and 5.60, provided the resource consent contains a maximum rate or amount of nitrogen that can be leached or the maximum concentration of nitrogen in the drainage water leached from the subject land.²²⁹ The Section 42A Reply Report authors stated that while the overall position applies that irrigation schemes should be subject to good management practices, it is clear that individual farms within an irrigation scheme, if managed by the irrigation scheme, do not need individual resource consent. They considered that it was clear from the rules, and therefore implicit in the policy position, that the wider range of policies do not apply to individual farms operating under an irrigation scheme resource consent.
- [445] We agree with the Section 42A Reply Report authors in part, but we consider that the Plan could be improved by making it clearer that the policies applying to individual farming activities do not apply to farms within irrigation schemes where the nutrient losses are being managed by the scheme under an appropriate consent on a scheme-wide basis. We therefore recommend amendments to Policies 4.36, 4.41A and 4.41C in Part A of Plan Change 5, together with the insertion of a note below Policy 4.36 advising that Policies 4.37 to 4.38D only apply to individual farming activities, nutrient user groups and farming enterprises but not to irrigation schemes and principal water suppliers.
- [446] The second issue relates to Policy 4.11. That policy limits the duration of any resource consent granted under the region-wide rules to a period not exceeding five years past the expected notification date (as set out in the Council's Progressive Implementation Programme) of any plan change that would

²²⁸ Submission, Annexure 2: Specific Relief Sought, first page

²²⁹ Section 42A Report, paragraph 6.136

introduce water quality or water quantity provisions into Sections 6 – 15 of the Plan.

- [447] A number of submitters opposed Policy 4.11 insofar as it would apply to irrigation schemes and principal water suppliers. For example, Central Plains Water submitted that limiting the duration of resource consents was potentially problematic, especially in the case of irrigation infrastructure where the level of investment is such that finance will be difficult to obtain if consent durations are short with no certainty that consent will be renewed. We agree with those submissions, but only where the irrigation scheme holds a resource consent that includes consent conditions restricting nitrogen losses from the land supplied with irrigation water and consent conditions that enable a review of those restrictions. In that case, we find that decision-makers considering resource consents for irrigation schemes under the Plan's nutrient management rules should have available to them the option of imposing a consent duration longer than that provided for under Policy 4.11 as notified. We recommend an amendment to Policy 4.11 accordingly.
- [448] Proportionate to the scale and significance of the changes discussed above, for the purpose of section 32AA(1)(d) of the RMA we record that we have considered the options before us, being whether to make those changes or not; have identified that the changes are reasonably practicable; and have assessed that adopting them would more fully serve the provisions of the Act and superior instruments than not making them.

Chapter Thirteen

Farm Enterprises & Nutrient User Groups

Part B – Waitaki Amendments

[449] In Plan Change 5, Part B (Waitaki Amendments), provision for the establishment of Nutrient User Group collectives is proposed by incorporating a definition, policy and rules to give that effect.²³⁰ The provision applies only to the Upper Waitaki FMU, and requires that no property within the Nutrient User Group can also be part of a Farming Enterprise. We note Part B also makes provision for Aquaculture Nutrient User Groups in the Waitaki.²³¹

Part A – Region Wide

[450] There is no provision proposed for establishing Nutrient User Groups in the region wide Part A of Plan Change 5.

[451] Dairy Holdings Limited (DHL)²³² and Barrhill Chertsey Irrigation Company (BCI)²³³ submitted that provision for the establishment of Nutrient User Groups should be provided for in the region-wide Part A of Plan Change 5, to achieve consistency with the Waitaki Part B provisions.

[452] DHL and BCI submitted that Nutrient User Groups are a useful tool that would assist irrigation schemes and members within schemes (as well as those outside a scheme) to effectively manage nutrient controls. The submitters considered there was no reason for preventing those within a Farming Enterprise also being part of a Nutrient Management Group, and that Nutrient User Groups should be able to occur within and outside an irrigation scheme.

[453] In their submission DHL advised that they hold extensive farming interests in Canterbury, and that for their properties in the Selwyn-Te Waihora Zone (covered by LWRP PC1) they have an established “nutrient user group”, and are likely to apply for Nutrient User Groups in other parts of Canterbury.²³⁴

[454] Mr Colin Glass, Chief Executive of DHL, submitted that the Farming Enterprise tool is critical to DHL operation in the Selwyn-Te Waihora Zone, a key benefit being enabling management of nutrient losses at a group level.

[455] Mr Glass provided a copy of the DHL Selwyn-Te Waihora resource consent CRC143288,²³⁵ and submitted that although it is referred to as a ‘nutrient user group’ the consent is in effect “a farm enterprise consent”. The resource consent has a five-year duration, and the collective of DHL properties covered by the consent is termed the “Nutrient Management Group”.

[456] The use by DHL in their submissions and evidence of the terminology “Farming Enterprises” and “Nutrient Management Groups” or “Nutrient User Groups” interchangeably is somewhat confusing, if not seeking to prove a point on the issue of consistency. The DHL view was that a farming enterprise

²³⁰ Policy 15B.4.17, Rule 15B.5.10 & 15B.5.11

²³¹ Rule 15B.5.3, 15B.5.4 & 15B.5.5

²³² DHL PC5 LWRP-171, 191 & 200

²³³ BCI PC5 LWRP-392, 674 & 683

²³⁴ Dairy Holdings Limited submission, narrative at para 13.2

²³⁵ Statement of evidence of C Glass, CEO Dairy Holdings Limited 22 July, Annexure 1, CRC143288

and a nutrient management group are essentially the same concept.

- [457] DHL was concerned that defining nutrient user groups and confining that provision to Part B of Plan Change 5 would confuse or potentially limit the flexibility available to collectives to integrate the management of their nutrient loss footprint as appears to be their experience in the Selwyn-Te Waihora Zone.
- [458] The authors of the initial Section 42A Report,²³⁶ clarified the distinction between the LWRP definition of “Farming Enterprise” and “Nutrient User Group”. Effectively, they are separate and with key distinctions, a Farming Enterprise requires one single FEP, and a Nutrient User Group requires each individual property within the Nutrient User Group to have a FEP. They are not proposed to be interchangeable, or able to overlap in their function.
- [459] The initial Section 42A Report authors noted that irrigation schemes or principal water suppliers also undertake group management of nutrient losses in administering scheme load and compliance with FEPs. The s42A Report authors were concerned that adding Nutrient User Group provisions into the region-wide provisions would add complexity and cause potential overlap, such that confidence in the NPSFM objectives, the CRPS and LWRP objectives being met would be at risk.
- [460] In his legal submissions, counsel for DHL, Mr Ben Williams, ²³⁷ argued that DHL’s use of the terms *Nutrient User Groups* (principally) and *Farming Enterprises* in their original submission, was to ensure scope; and that DHL consider they are effectively the same concept, the core characteristic being a single (combined) nutrient allocation assigned to multiple properties.
- [461] Mr Williams submitted that the LWRP includes provisions for Farming Enterprises but that it does not mention Nutrient User Groups so that in effect the Farming Enterprise regime covers both concepts.²³⁸
- [462] Mr Williams considered that there is little difference in the definitions between Farm Enterprises as applied in the LWRP and Plan Changes 1 & 2,²³⁹ and the definition of Nutrient User Groups as applied in Plan Changes 3 & 5.²⁴⁰ Mr Williams submitted the only practical difference is the multiple FEPs required by the Nutrient User Group compared to the single FEP prepared for all properties under the Farming Enterprise.²⁴¹
- [463] Mr Williams stated that DHL agrees with the reporting officers’ concern about “*complexity and overlap*” if a definition of “*Nutrient User Group*” is introduced into Part A of Plan Change 5. However he remained concerned that Plan Changes 3 & 5 have introduced confusion or split the existing concept of Farming Enterprise, asserting that both concepts are fully captured by the existing Farming Enterprise regime as set out in the LWRP and Plan Changes 1 & 2.
- [464] Ms Susan Goodfellow,²⁴² General Manager of Central Plains Water (CPW), responded to the s42A Report authors’ concern that overlapping irrigation schemes and farm enterprises could make the distribution and sharing of nutrients “opaque”.²⁴³ Ms Goodfellow submitted that every resource

²³⁶ At page 122

²³⁷ Legal Submissions of Counsel for Dairy Holdings Limited, B Williams, 20 September, 2016, paragraph 17-18

²³⁸ Legal Submissions of Counsel for Dairy Holdings Limited, B Williams, 20 September, 2016, paragraph 19.1

²³⁹ Plan Change 1 – Selwyn-Te Waihora, Plan Change 2 – Hinds/Hekeao

²⁴⁰ Plan Change 3 – South Coastal Canterbury Zone, Plan Change 5 – Waitaki Sub-region Zone

²⁴¹ Legal Submissions of Counsel for Dairy Holdings Limited, B Williams, 20 September, 2016, paragraph 21

²⁴² Statement of evidence, S Goodfellow, General Manager Central Plains Water, 22 July, 2016, paragraphs 68-69

²⁴³ Section 42A Report, paragraph 7.301

consent that CPW is aware of has hard allocation limits and requirements that cannot be ‘cheated’ out of by way of ‘transfers’ within or between an Irrigation Scheme and Farm Enterprise properties.

[465] We note that in Plan Changes 3 and 5, the proposed nutrient user group regime has arisen via a comprehensive collaborative community process. A further distinction occurs in those Plan Changes²⁴⁴ where nutrient user groups are restricted in application to a specific FMU or “areas” within each Plan Change. In the South Coastal Canterbury Plan Change 3, this restriction on nutrient user group applicability was to ensure nitrogen losses in specific areas of that sub-region do not increase above their baseline or flexibility cap to ensure water quality outcomes are met. We note that both Plan Changes 3 and 5 were subject to numerous submissions concerned about the complex rule frameworks.

[466] In our consideration of the requested relief of the submitters, we consider the issue of plan provision complexity and the certainty of achieving the objectives of the superior instruments, including the NPSFM, RPS and LWRP important factors. Having carefully considered the submissions and evidence outlined above, we favour the Section 42A Report authors’ analysis of this matter.

[467] Our overall broad judgement is that we are not persuaded on the merits that the provisions recommended to us by Dairy Holdings and Central Plains Water would better achieve the objectives of the LWRP than the provisions recommended to us by the Section 42A Report authors. We therefore decline to recommend to the Council that provision for Nutrient User Groups be incorporated into the region-wide provisions of Part A, Plan Change 5.

²⁴⁴ South Coastal Canterbury PC3 and Waitaki Sub-region Part B, PC5

Chapter Fourteen

Embedding the GMP Loss Rate in the FEP

- [468] Ravensdown Limited supported the introduction of GMP and the use of the Farm Portal, but it considered that the fertiliser proxies used in the Farm Portal were flawed. Ravensdown considered that the GMP nitrogen loss rates from farms, both nitrogen baseline and ongoing, as an output of the Farm Portal, would therefore generally be inaccurate, and unlikely to be a good representation of nitrogen losses from a farm operating at GMP.²⁴⁵
- [469] Ravensdown suggested that one response to their concern would be to embed the GMP nitrogen loss rate within the Farm Environment Plan (FEP) process rather than using it as a basis for granting consent. That particular relief was not pursued by Ravensdown at the hearing. Chris Hansen, a consultant planner appearing for Ravensdown, advised that it had been incorporated into his discussion of an alternative consent path. We understand that involves a FEP prepared by an Accredited Farm Consultant demonstrating that all applicable good management practices are being adopted for a farming property seeking to utilise the ‘alternative consent path’.²⁴⁶
- [470] We consider that the specification of a farming property’s intended good management practices should be embedded in the FEP for that property, regardless of whether or not the ‘alternative consent path’ is utilised.
- [471] Mr Hansen then suggested that any resource consent issued under the ‘alternative consent path’ should require that the nitrogen baseline not be exceeded, or that in a Green Nutrient Allocation Zone, it not be exceeded by more than 5 kgN/ha/year.²⁴⁷ We find that amendment would not be sufficient. We consider that even if the farming property would not be able to have an accurate GMP loss rate determined by the Farm Portal, the anticipated nitrogen loss rate arising from the implementation of the good management practices embedded in the FEP for that property should be modelled, using OVERSEER® or some other model approved by the Council CEO.
- [472] In that regard, we understand that ‘unconventional’ farms that are not suited to assessment by the Farm Portal can still be modelled using OVERSEER®. We reach that understanding on the evidence of Eva Harris, a scientist appearing for Barrhill Chertsey Irrigation Limited, that experienced users of OVERSEER® are able to implement ‘workarounds’ and adjust feed and stock numbers in order for the OVERSEER® model to make a nitrogen loss calculation for such farms, albeit that the modelled nitrogen losses are, at best, an approximation of the farm system.²⁴⁸
- [473] The resultant GMP loss rate would therefore not be used ‘as a basis for granting consent’, but it would be included as a condition of consent for monitoring and reporting purposes. We note that condition 3 of Rule 5.XX as recommended to us in the Section 42A Reply Report would ensure the provision of the information required to impose such a condition. In making that finding, we note that in its submission Ravensdown supported the identification of GMP nitrogen loss values for a farm.²⁴⁹

²⁴⁵ Statement of evidence of C A Hansen on Behalf of Ravensdown Limited, 22 July 2016, paragraph 28

²⁴⁶ Ibid, paragraph 46(a), third bullet point

²⁴⁷ Ibid, paragraphs 50 and 51

²⁴⁸ Statement of evidence of E Harris, Barrhill Chertsey Irrigation Limited, 22 July 2016, paragraph 82

²⁴⁹ Page 5, seventh paragraph

Chapter Fifteen

Reduction to 90 percent of GMP Loss Rate

- [474] As notified, Plan Change 5 contained provisions²⁵⁰ that would generally require that from 1 July 2020 the allowable nitrogen loss (nitrogen loss calculation) for parts of a property situated within the Greater Waikāhahi Zone or Hakataramea River Zone that are being irrigated or used for winter grazing to be restricted to 90 percent of the Good Management Practice Loss Rate figure for that land.
- [475] The initial Section 42A Report stated that in the Hakataramea River Zone the provisions are necessary to reduce nutrient losses in the sensitive area adjacent to the Hakataramea River. In the Greater Waikāhahi Zone the provisions were designed to offset slight increases in nitrogen loss arising from permitted activities.²⁵¹ In the Section 42A Reply Report, the authors noted that the Lower Waitaki Zone Committee ZIPA had included a recommendation that reductions beyond the GMP Loss Rate should apply only to ‘high emitters’, rather than to all consented activities.²⁵²
- [476] The provisions were opposed by several submitters. For example, Dairy NZ considered that further land-use intensification in the Greater Waikāhahi Zone is restricted by the amount of water available for irrigation, and any headroom generated by the provisions would not be taken up. The Waikāhahi Farmers Group considered that sufficient headroom had been created by the conversion of border-dyke to spray irrigation, and that a reduction to 90 percent of GMP was not required. Federated Farmers submitted that land in the Hakataramea River Zone used for winter grazing or irrigation should be entitled to come up to the GMP Loss Rate figure instead of 90 percent of that figure. Ravensdown Limited opposed the provisions because the Farm Portal only reports one GMP nitrogen loss value for the whole property and does not specify a GMP Loss Rate for the areas of the property where irrigation or winter grazing occurs. They suggested that 90 percent of that value could not therefore be determined.²⁵³
- [477] Some submitters, including Ngā Rūnanga, supported the retention of the provisions.
- [478] The authors of the initial Section 42A Report recommended that the requirement to limit nitrogen losses to 90 percent of the GMP Loss Rate be amended to be a matter of control or discretion as opposed to a mandatory condition.²⁵⁴ In response to the matter raised by Ravensdown, the s42A Report authors also recommended that for plan implementation and practicality reasons, Policy 15B.4.24 should be amended so that in the Hakataramea River Zone the requirement to be at 90 percent of the GMP Loss Rate would apply to any part of a property located in that zone, and not just to areas that were irrigated or used for winter grazing.²⁵⁵
- [479] Regarding the Greater Waikāhahi Zone we found the evidence of Dr Glen Treweek, a soil scientist appearing for Dairy NZ, to be helpful. Dr Treweek calculated that dairy farms were responsible for approximately 80 percent of the Northern Fan FMU’s nitrogen load. The witness explained that by using Dairy NZ-supplied OVERSEER® files in the Farm Portal, he had calculated a reduction in nitrogen loss of 43 percent from the Greater Waikāhahi and 26 percent from the Whitney’s Creek sub-

²⁵⁰ Policies 15B.4.18, 15B.4.24, 15B.4.26 and Rules 15B.5.7, 15B.5.25, 15B.5.26, 15B.5.27, 15B.5.39, 15B.5.40 and 15B.5.41

²⁵¹ Section 42A Report, paragraph 13.5

²⁵² Section 42A Reply Report, paragraph 6.287

²⁵³ Statement of evidence of C A Hansen on Behalf of Ravensdown Limited, 22 July 2016, paragraph 137

²⁵⁴ Section 42A Report, paragraph 22.6, 22.130, 22.376

²⁵⁵ Ibid, paragraph 22.279

catchments, to give a total Northern Fan FMU nitrogen load reduction of 36 percent as a result of dairy farmers moving from current practice to GMP. He concluded that the reductions in nitrogen loss that would occur from all farmers implementing GMP would provide the necessary headroom for any slight increases in nitrogen loss arising from permitted activities.²⁵⁶

- [480] We note that the authors of the initial Section 42A Report had conceded that the required reduction in nitrogen losses occasioned by the move to GMP may provide sufficient headroom for the Greater Waikāhahi Zone permitted activities.²⁵⁷
- [481] Responding to Dr Treweek's evidence, the Section 42A Reply Report contained technical Appendix G.7 which contains an estimate that within the Greater Waikāhahi and Whitneys Creek sub-catchments the shift from current farm practices to GMP was likely to result in nitrogen losses reducing by between 19 percent and 23 percent respectively. We asked the Section 42A Report authors if that smaller scale of reduction in nitrogen losses would generate sufficient headroom for the recommended permitted activities in those areas.
- [482] The authors advised that under the new MGM²⁵⁸ calculations, the at-source load limits for the Greater Waikāhahi Zone and Whitneys Creek Zone were calculated to be 336 tonnes and 411 tonnes of nitrogen per year respectively.²⁵⁹ Reductions in nitrogen load of 19 percent and 23 percent respectively would result in reductions of 64 tonnes of nitrogen per year for the Greater Waikāhahi Zone and 95 tonnes of nitrogen per year for the Whitneys Creek Zone. The Plan Change 5 permitted activity rules in the Greater Waikāhahi Zone would result in an increase in nitrogen loss of 14 tonnes per year. In the Whitneys Creek Zone, the increases in nitrogen loss due to the recommended permitted activity rule are 3 tonnes of nitrogen per year. The result is that increased losses arising from permitted activities could easily be accommodated by a shift from current farm practices to GMP.
- [483] We find that in order to achieve the objectives of the LWRP it is not necessary to require parts of properties in the Greater Waikāhahi Zone being irrigated or used for winter grazing to be restricted to 90 percent of the GMP Loss Rate for that land. We recommend that the notified provisions requiring that outcome be omitted from the LWRP.
- [484] Regarding the Hakataramea River Zone, we note that the provisions as notified would have resulted in a nitrogen load reduction of 1 tonne, increasing to 3 tonnes for the amendments recommended in the initial Section 42A Report. We also note that these 'modest' reductions are not included in the Table 15B(f) nitrogen load limit for the Hakataramea FMU.²⁶⁰ The issue in the Hakataramea River Zone is therefore not one of allowable nitrogen load.
- [485] The Section 42A Report authors advised that the community involved in the collaborative limit-setting process had perceived the Hakataramea River Zone to be particularly sensitive, and considered intensive agriculture in this area to present a high risk to water quality. This had led to the requirement to reduce

²⁵⁶ Statement of evidence of Dr G A Treweek for Dairy NZ Limited, 22 July 2016, paragraphs 4.5, 6.4 and 7.2

²⁵⁷ Plan Change 5 to the Canterbury Land and Water Regional Plan, Responses to Questions of Hearing

Commissioners on Council s42A Report, 12 August 2016, page 50

²⁵⁸ Matrix for Good Management – A partnership project between the CRC, AgResearch, Plant & Food Research, Landcare Research, DairyNZ, Deer Industry New Zealand, NZPork, Beef + Lamb New Zealand, Horticulture NZ and the Foundation for Arable Research; the purpose of which was to quantify estimated nitrogen and phosphorus losses from farming systems operating at Good Management Practice

²⁵⁹ Section 42A Reply Report, Appendix G, page 24

²⁶⁰ Plan Change 5 to the Canterbury Land and Water Regional Plan, Responses to Questions of Hearing Commissioners on Council s42A Report, 12 August 2016, pages 31, 43 and 47

to 90 percent of the GMP Loss Rate in the Hakataramea River Zone.²⁶¹ In that regard we note that the ZIPA stated that maximum caps [limits on allowable nitrogen losses] were sought to manage the risks of intensive land-use adjacent to the river.²⁶² This provides the context of our assessment of the need for the Hakataramea River Zone provisions.

- [486] As part of our reading of the Plan Change 5 supporting documents, we were alerted to a technical memorandum.²⁶³ That document stated that in the entire Hakataramea River catchment the light soils meant that denitrification of emerging groundwater is unlikely to be significant. That in turn means that the risk of properties affecting periphyton growth in the river is similar regardless of their position in the catchment. Consequently, it would be difficult to justify a more restrictive cap on nitrogen losses in the “near river” (which we assume to mean the Hakataramea River Zone) area than applies in other areas.²⁶⁴ We find that the Council’s own technical reporting provides an evidential basis for not imposing a requirement to reduce to 90 percent of the GMP Loss Rate solely in the Hakataramea River Zone.
- [487] We are also not persuaded that the practical and technical difficulties identified by Ravensdown (which were helpfully discussed in the evidence of Chris Hansen,²⁶⁵ a consultant planner appearing for Ravensdown) would be overcome by the amendment recommended by the s42A Report authors.
- [488] We find that in order to achieve the objectives of the LWRP it is not necessary to require properties in the Hakataramea River Zone to be restricted to 90 percent of the Good Management Practice Loss Rate for that land. We recommend that the notified provisions requiring that outcome be omitted from Part B of Plan Change 5.

²⁶¹ Plan Change 5 to the Canterbury Land and Water Regional Plan (Nutrient Management & Waitaki), Responses to Further Questions of Hearing Commissioners on Council Section 42A Report (22 August 2016), page 7

²⁶² Lower Waitaki ZIP Addendum, July 2015, page 8

²⁶³ Memo, Subject: Ecological considerations regarding a nitrogen leaching maximum cap in the Hakataramea River catchment, Graeme Clarke, June 2015

²⁶⁴ Ibid, page 3 of 6

²⁶⁵ Statement of evidence of C A Hansen on Behalf of Ravensdown Limited, 22 July 2016, paragraphs 140 to 142

Chapter Sixteen

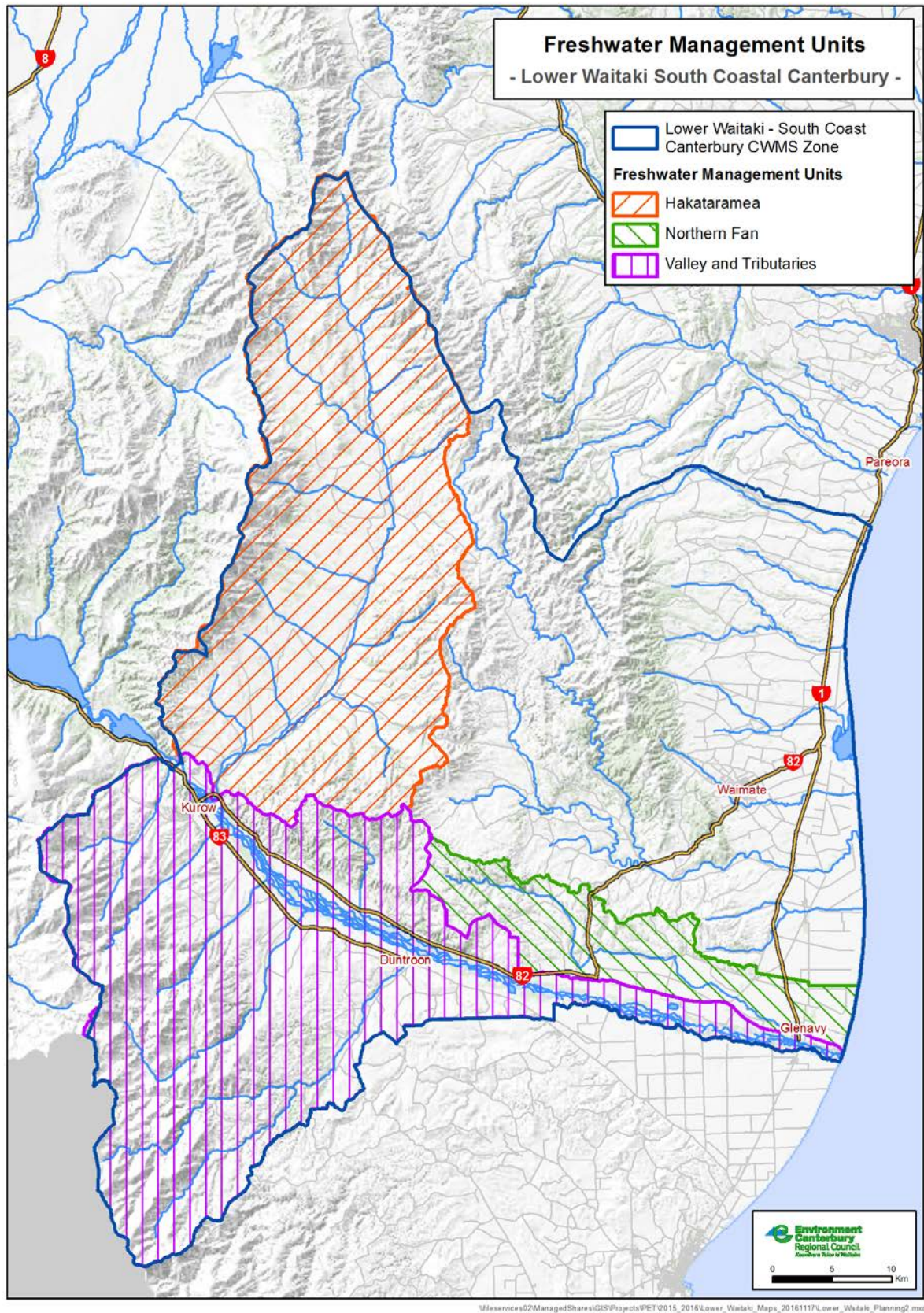
WIC's Alternative Policy and Rule Framework

- [489] The submission of the Waitaki Irrigators Collective (WIC) requested an alternative management regime for nutrient losses in the Lower Waitaki. To assist readers, we have included a map of the relevant FMUs overleaf.
- [490] Several other submitters supported the WIC submission. The alternative rule framework proposed by WIC was included as part of its original submission, and further discussed in the evidence of Louise Taylor, a planning consultant appearing for WIC. We heard the WIC submitters on Wednesday 7 September 2016 in Oamaru. On 16 September 2016 counsel for WIC submitted further legal submissions, primarily addressing matters of scope, including an updated copy of Appendix B to Ms Taylor's evidence. That Appendix set out the precise wording of the alternative provisions finally sought by WIC, including amendments discussed by Ms Taylor at the hearing in Oamaru.
- [491] The rationale for the alternative management regime was summarised by counsel for WIC, Ms B Irving. She explained WIC's view that a further resource-consent process is not necessary or appropriate within the Valley and Tributaries Zone, Hakataramea Flat Zone, and Whitneys Creek Zone, where water quality is good and land development largely complete. Ms Irving submitted that while some land development could still occur, it would easily fall within the catchment load limit for the relevant areas.²⁶⁶
- [492] We now examine the merits of the alternative management regime sought by WIC, and consider whether the WIC provisions are the most appropriate way to achieve the objectives of the LWRP. Section 3 of the LWRP contains 24 objectives, none of which would be amended by Plan Change 5. In her Appendix A, Ms Taylor set out what she considered to be the relevant LWRP objectives, namely Objectives 3.2, 3.5, 3.6, 3.8 and 3.24. The management of water quality in the Hakataramea, Valley and Tributaries and Northern Fan (Greater Waikākahi and Whitneys Creek Zones) FMUs was evaluated in the Section 32 Report.²⁶⁷ The relevant objectives identified in that report were LWRP Objectives 3.5, 3.7, 3.8, 3.11, 3.12 and 3.24. Having reviewed the LWRP objectives ourselves, we find that Objectives 3.1, 3.2, 3.5, 3.6, 3.8, 3.11 and 3.24 are the most relevant to the assessment that follows.²⁶⁸
- [493] WIC sought substantial amendments to the nutrient management provisions for the Lower Waitaki. They sought to amend Policies 15B.4.10, 15B.4.11, 15B.4.18, 15B.4.24, 15B.4.25 and delete Policies 15B.4.13 to 15B.4.15, 15B.4.26 and 15B.4.27. WIC also sought to amend Rules 15B.5.8 and 15B.5.9 and delete Rules 15B.5.24 to 15B.5.46, and replace them with eleven new rules.
- [494] We note that the initial Section 42A Report recommended the deletion of Rules 15B.5.30 to 15B.5.33 (Hakataramea Flat Zone), 15B.5.39 to 15B.5.43 (Northern Fan FMU) and 15B.5.44 to 15B.5.48 (Whitneys Creek Zone) and their merger with other provisions. The Section 42A Reply Report went further and recommended the deletion of Rule 15B.5.7 and Rules 15B.5.24 to 15B.5.29 relating to the Hakataramea River Zone and Hakataramea Hill Zone.

²⁶⁶ Legal Submissions of Counsel for Waitaki Irrigators Collective, B Irving, 15 September 2016, paragraph 24

²⁶⁷ Sections 13.4, 13.5 and 13.6 respectively

²⁶⁸ Objective 3.7 appears to relate primarily to water quantity matters and Objective 3.12 relates to setting the limits contained in Tables 15B(a) to 15B(h) which were not challenged by WIC



[495] Overall, the Section 42A Report authors finally recommended the deletion of twenty-one of the notified rules for the Hakataramea and Northern Fan FMUs. This would greatly simplify the notified provisions, but it also makes somewhat difficult a direct comparison of the alternative provisions recommended to

us by WIC with those finally proposed by the Section 42A Report authors. Consequently, rather than examining the alternative WIC provisions in a forensic clause-by-clause manner, we have instead endeavoured to identify substantive differences between what was finally recommended to us by the Section 42A Report authors compared with what was requested by WIC. We then consider if the WIC recommendations would be a better way of achieving the LWRP objectives than the provisions recommended by the Section 42A Report authors.

[496] The policies largely foreshadow the rules that follow and for the sake of efficacy we therefore focus on the rules.

[497] WIC requested grouping rules under four amalgams of water management zones:

- Valley and Tributaries FMU and Whitneys Creek Zone
- Hakataramea River Zone and Greater Waikākahi Zone
- Hakataramea Hill Zone
- Hakataramea Flat Zone

[498] The Section 42A Report authors finally recommended grouping rules under two amalgams of water management zones:

- Ahuriri Zone, Upper Waitaki Hill Zone, Hakataramea Freshwater Management Unit and Greater Waikākahi Zone (modified Red Zone rules)
- Valley and Tributaries Zone and Whitneys Creek Zone (modified Green Zone Rules)

[499] The regime recommended by the Section 42A Report authors is preferable as it is simpler. In our view that simplified rule structure would adequately address WIC's concerns that the notified provisions are overly complex, burdensome and unwieldy, generating difficulties in implementation and enforcement.²⁶⁹

[500] Under the final Section 42A Reply Report recommendations all properties greater than 10 hectares in area in the lower Waitaki would be required to register in the Farm Portal by 1 July 2018. Under the WIC request, only those properties located in the Valley and Tributaries Zone, Whitneys Creek Zone, Hakataramea Hill Zone and Hakataramea Flat Zone would be required to register in the Farm Portal, and then only if those properties have more than 25 percent of their total farm area irrigated or more than 10 percent of the total farm area in winter grazing. Properties located in the Hakataramea River Zone and Greater Waikākahi Zones would not be required to register in the Farm Portal.

[501] We consider that registration in the Farm Portal is necessary for NPSFM Part CC catchment accounting purposes. It is also fundamental to ensuring that good management practices are adopted in a consistent manner across the region. We are not persuaded that the WIC recommendations regarding the use of the Farm Portal are a better means of achieving the LWRP objectives, particularly Objective 3.24.

[502] Under the Section 42A Reply Report recommendation, all properties which are not permitted activities are required not to exceed the nitrogen baseline prior to June 2020 and the Baseline GMP Loss Rate (BGMPLR) thereafter. Properties may be required not to exceed the Good Management Practice Loss Rate (GMPLR) if that is less than the BGMPLR. The rules requested by WIC make no mention of the

²⁶⁹ Statement of evidence of LER Taylor, Dated 22 July 2016, paragraphs 3.1 and 3.2

need to comply with the nitrogen baseline, the BGMPLR or the GMPLR.

- [503] We note that under the LWRP the Hakataramea FMU is an Orange Zone, and the lower Greater Waikākahi Zone is a Red Zone. The WIC proposal appears to seek a significant ‘wind-back’ from the LWRP provisions that require that in Red Nutrient Allocation Zones the nitrogen loss calculation is restricted to a rate not exceeding the nitrogen baseline (otherwise a prohibited activity). In Orange zones the LWRP allows for a ‘one-off’ increase of 5kgN/ha/yr above the nitrogen baseline as a restricted discretionary activity, and an increase of more than 5kgN/ha/yr above the nitrogen baseline is a discretionary activity.
- [504] In our view, adherence to farm-scale nitrogen loss limits is a fundamental means of ensuring that good management practices are adopted in a consistent manner across the region, and losses of nitrogen arising from practices that are not reflective of good management (namely losses that exceed the nitrogen baseline or the BGMPLR) are to be avoided, thereby also achieving the desired outcomes for the catchment. We are not persuaded that the provisions proposed by WIC regarding the omission of any requirements relating to the nitrogen baseline, BGMPLR and GMPLR are a better means of achieving the LWRP objectives, particularly Objectives 3.8 and 3.24.
- [505] Under the Section 42A Reply Report recommendations, it is prohibited for properties in the Valley and Tributaries Zone and Whitneys Creek Zone to exceed the Schedule 27 limits. Schedule 27 establishes total nitrogen load limits for land-use intensification in the Valley and Tributaries Zone and the Whitneys Creek Zone. We understand that exceedance of these limits could result in degradation of surface-water quality. We note and agree with Ms Taylor’s evidence²⁷⁰ that “... achieving the nitrogen loads within the catchment is consistent with the Freshwater NPS and the higher order regional documents and strategies...” The rules recommended by WIC make no mention of the Schedule 27 nitrogen load limits. We are not persuaded that the WIC proposals regarding the application of Schedule 27 are a better way of achieving the LWRP objectives, particularly Objectives 3.6, 3.8 and 3.24.
- [506] As notified, Rule 15B.5.6 would provide that the use of land is a permitted activity if the nitrogen loss from the farming activity is being managed under a resource consent held by an irrigation scheme or principal water supplier and the permit contains conditions which limit the maximum rate or amount of nitrogen that may be leached from the subject land; or the land is subject to a water permit that authorises the use of water for irrigation and (amongst other things) the permit is subject to conditions that specify the maximum rate of nitrogen (kg/ha/yr) that may be leached from the land.
- [507] The WIC proposal in Ms Taylor’s Appendix A is silent on Rule 15B.5.6. However, she recommended that on properties in the Valley and Tributaries Zone, Whitneys Creek Zone and Hakataramea Flat Zone²⁷¹ the use of land be a permitted activity if the properties are managed under an individual resource consent or a resource consent, held by an irrigation scheme or principal water supplier, that includes conditions requiring the implementation of a plan to manage nutrients.²⁷² In response to Ms Taylor’s evidence the Section 42A Reply Report advised:

“I agree that the conditions attached to water permits granted between 1 November and 31 August 2010 (dates referred to in Rule 15B.5.7) are extensive, including requirements to implement good management practices (through an audited FEP) and to undertake nutrient loss modelling ...

I consider the water permits that were granted between 1 November 2009 and 31 August 2010 are subject to indirect

²⁷⁰ Ibid, paragraph 3.17

²⁷¹ Ms Taylor’s Rules 15B.5.B and 15B.5.H

²⁷² A FEP would also need to be prepared and the property would need to be registered in the Farm Portal

limits on the amount of intensification that can occur as a result of their farming activity. This is achieved through restrictions on the type of farming activity that can occur and requirements to determine practical on-farm changes to reduce nitrate leaching ...

I note that water permits granted prior to 1 November 2009 are subject to different conditions than those granted after that date, and as a general observation, the earlier consents do not impose the same degree of control for nutrient management purposes"²⁷³

- [508] This led the Reply Report author to recommend an addition to Rule 15B.5.6 (a new part (c)) which would authorise the use of land for a farming activity as a permitted activity in the Valley and Tributaries Zone, Hakataramea FMU and Great Waikāhahi Zone if the land is covered by a water permit granted between 1 November 2009 and 13 February 2016, the permit has commenced, and (amongst other things) the permit requires a plan that mitigates the effects of the loss of nutrients to water. If Rule 15B.5.6 is amended in that manner, then notified Policy 15B.4.14 and Rule 15B.5.7 can be omitted.²⁷⁴ While we find that approach to be less desirable than setting allowable nitrogen loss rates for individual farming properties, we accept it as a reasonably practicable compromise in the context of the lower Waitaki catchments, as was outlined by Ms Irving.
- [509] The Section 42A Reply Report author also recommended a new controlled activity rule (15B.5.6A) which would apply to land subject to a water permit granted prior to 18 February 2016 where that permit includes nitrogen loss rate controls (either as kgN/ha/year or kgN/year) and (amongst other things) a FEP has been prepared for the land. We also find that to be a reasonably practicable response to the request from WIC that properties that already hold such permits be provided for.
- [510] We are satisfied that the recommendations in the Reply Report for Rule 15B.5.6 and Rule 15B.5.6A would achieve the LWRP objectives, particularly Objectives 3.2, 3.6, 3.8 and 3.24, while imposing fewer costs on the farming activity properties in the lower Waitaki catchment.
- [511] We understand that WIC has questioned the need for properties to gain additional land use consents under PC5 given that many of the properties WIC represent are provided water by irrigation schemes which have existing consents.²⁷⁵ The simple answer to that is the existing irrigation scheme consents do not contain any limits on allowable nitrogen losses. This contrasts starkly with other irrigation-scheme consents in the region that do contain appropriate nitrogen loss limits, such as those held by Barrhill Chertsey Irrigation and Central Plains Water. Setting allowable nitrogen loss rates through consents at a scheme-wide level is an important means of ensuring that excessive losses of nitrogen are avoided and the receiving environment limits for nitrate-nitrogen (Table 15B(c) for surface water and Table 15(e) for groundwater) and ammoniacal nitrogen (Table 15B(c) for surface water) are not exceeded. We note that WIC did not oppose the limits in those tables. Absent the specification of controls on nitrogen loss, it is difficult to envisage how irrigation scheme consents could be granted in a manner that ensures receiving environment limits will not be exceeded.
- [512] However, as noted in the Section 42A Reply Report, some water permits granted to lower Waitaki irrigation schemes after 31 August 2010, including the Kurow-Duntroon Irrigation Company, do contain conditions similar to those discussed in [511] above, and the Reply Report authors considered those conditions have a similar effect to the specification of allowable nitrogen losses. The recommended amendment to Rule 15B.5.6(c) would also classify the land use associated with farming

²⁷³ Section 42A Reply Report, paragraphs 6.258, 2.262 and 2.265

²⁷⁴ Section 42A Reply Report, paragraph 6.276

²⁷⁵ Statement of evidence of LER Taylor, Dated 22 July 2016, paragraphs 2.2 first bullet and 3.4

activities in those more contemporary irrigation schemes as permitted.²⁷⁶ We find that to be appropriate, for the same reasons as set out in [508] above.

- [513] Under the Section 42A Reply Report recommendations, all properties that are not permitted activities would be required to prepare a Farm Environment Plan (FEP) in accordance with Part A of Schedule 7, otherwise they would be non-complying activities. This is appropriate as the need for FEPs is clearly signalled by Policies 4.40 and 4.41 of the LWRP. The WIC recommendations on FEPs are difficult to interpret. Only in the Hakataramea Hill Zone would all properties²⁷⁷ be required to prepare FEPs. In the Valley and Tributaries Zone, the Hakataramea Flat Zone and the Whitneys Creek Zone only properties having more than 25 percent of their total farm area irrigated or more than 10 percent of their total farm area in winter grazing would be required to prepare FEPs. In the Hakataramea River Zone and the Greater Waikākahi Zone there would be no obligation to prepare a FEP and the reporting of FEP audit results would merely be a matter of discretion.²⁷⁸
- [514] Where the WIC provisions refer to FEPs, they do so in the context of a permitted activity framework. We note the decisions on submissions on the LWRP, and Variation 1 (Selwyn-Te Waihora) and Variation 2 (Hinds Plains/Hekeao) only require the preparation and implementation of a FEP in relation to farming activities requiring resource consent. Those previous decisions reflected the fact that requiring a FEP to be prepared and implemented and then subjecting that FEP to a future ‘assessment’ by a third party (that being the FEP auditor) lacks the necessary certainty for a permitted activity rule. In the LWRP and Variations 1 and 2, permitted farming activities are instead required to implement Schedule 24 farming practices. Under Plan Change 5 permitted farming activities would be required to have a management plan prepared in accordance with new Schedule 7A and to supply that plan to the Council upon request.
- [515] The preparation of auditable FEPs is a primary means of ensuring that good management practices are adopted in a consistent manner across the region. As has been noted in earlier LWRP decisions, the FEP is strongly supported by primary industry representative bodies including Federated Farmers, Dairy NZ, Fonterra Co-operative Group, Horticulture NZ and the NZ Deer Farmers Association.²⁷⁹
- [516] We are not persuaded that the WIC recommendations regarding the preparation of FEPs are a better way of achieving the LWRP objectives, particularly Objective 3.24.
- [517] We note that, unlike the provisions recommended to us by the Section 42A Reply Report authors, the provisions recommended to us by WIC are silent on the potential adverse effects of farming activities on mahinga kai and on wāhi tapu or wāhi taonga identified in an iwi management plan. The WIC provisions would clearly not achieve LWRP Objectives 3.1 and 3.2. In respect of recognition of Māori values and interests, we are not persuaded that the amendments requested by WIC would be a better way of achieving the LWRP objectives, particularly Objectives 3.1 and 3.2.
- [518] We have not yet mentioned LWRP Objectives 3.5 and 3.11. We acknowledge that the provisions recommended by WIC may appear to better achieve Objective 3.5, only because they impose less restrictions on land use and land use change than the notified PC5 provisions. However, that does not outweigh the other less desirable aspects of the WIC regime as outlined above, and we note that the

²⁷⁶ Section 42A Reply Report, paragraph 2.269

²⁷⁷ Those greater than 10ha in area

²⁷⁸ Properties over 10 ha in area would need a restricted discretionary activity resource consent

²⁷⁹ Report and Recommendations of The Hearing Commissioners on The Proposed Canterbury Land and Water Regional Plan, November 2013, Paragraph [236]

amendments recommended by the Reply Report authors (particularly new Rule 15B.5.6(c) and new Rule 15B.5.6A) would greatly reduce the restrictions imposed by the notified provisions. We consider that there is no distinction between the alternative recommended provisions in terms of achieving of Objective 3.11.

[519] We have discussed some of the more significant elements of the lower Waitaki policy and rule framework, and we have referred to the Section 42A Reports. For the sake of completeness, we record that even if we have not directly referred to those recommendations and reasons, we agree with and adopt the recommendations and reasons²⁸⁰ contained in the Section 42A Reply Report in the section titled “Lower Waitaki Framework” (pages 101 to 115).

[520] In conclusion, our overall broad judgement is that we are not persuaded on the merits that the totality of the provisions recommended to us by WIC would better achieve the objectives of the LWRP than the amended provisions finally recommended to us by the Section 42A Reply Report authors. We therefore decline to recommend to the Council that the LWRP provisions for the lower Waitaki catchment be amended as sought by WIC, other than as discussed above, primarily in relation to Rule 15B.5.6(c), proposed new Rule 15B.5.6A and the amalgamation of rules within the lower Waitaki zones.

²⁸⁰ Including but not limited to those relating to the LWZC ZIPA, the use of prohibited activity rules, existing farming activities, irrigation scheme limits, lawful exceedances of the nitrogen baseline, and the distribution of nitrogen headroom in the Hakataramea FMU and Northern Fan Zone

Chapter Seventeen

Prohibited activities in former Green and Orange Nutrient Allocation Zones

[521] Part A of Plan Change 5 regulates the diffuse losses of nutrients from farming activities in accordance with the 'Nutrient Allocation Zone' (NAZ) within which the property resides. The NAZ concept is an established planning mechanism under the operative LWRP, used to both indicate the state of water quality in an area²⁸¹ and to regulate diffuse nutrient losses from farming activities accordingly. The LWRP includes five NAZ classifications as set out below:

- (a) Lake Zones represent those catchments surrounding small high country lakes that are sensitive to nutrient inputs as a result of long residence times and limited dilution;
- (b) Red Nutrient Allocation Zones (Red NAZs) represent areas where water quality outcomes in Table 1a of the LWRP are not being met;
- (c) Orange Nutrient Allocation Zones (Orange NAZs) represent areas where the water quality outcomes in Table 1a and 1b are at risk of not being met;
- (d) Green Nutrient Allocation Zones (Green NAZs) represent areas where water quality outcomes in Tables 1a and 1b are being met;
- (e) Light Blue Nutrient Allocation Zones' (Light Blue NAZs) represent areas where water quality is 'unclassified'.

[522] As part of the Section 32 analysis the Council officers evaluated the current state of water quality within the Waitaki catchment. This information formed a basis for determining how farming activities would be managed by Part B (Waitaki) of Plan Change 5 so as to achieve the freshwater objectives and limits for each FMU. The Section 32 Report records:

- (a) water quality in lakes within the Waitaki ranges from 'very good' for glacial fed lakes to 'moderate' for some smaller lakes with long residence times;²⁸²
- (b) water quality in rivers within the lower Waitaki is variable, with a number of waterbodies failing to meet the objectives of the LWRP;²⁸³
- (c) groundwater and surface water quality in the Waitaki River catchment is generally better than regional averages for Canterbury;²⁸⁴
- (d) in the Upper Waitaki FMU there is a risk that the trophic status of Lake Benmore may change from oligotrophic to mesotrophic if an appropriate water quality management regime is not put in place;²⁸⁵
- (e) in the Hakataramea FMU water quality in the catchment is sensitive to cyanobacteria blooms;²⁸⁶
- (f) in most areas in the Valley and Tributaries FMU the water quality objectives in the operative LWRP are being met; and²⁸⁷
- (g) in the Northern Fan FMU *E.coli* has been detected in groundwater in approximately half of wells tested, and nitrate-nitrogen concentrations in some wells exceed the New Zealand Drinking Water Standard.²⁸⁸

²⁸¹ Based on current water quality information available at the time of public notification of the operative LWRP

²⁸² Section 32 Evaluation Report, pg 9-1

²⁸³ Ibid

²⁸⁴ Ibid

²⁸⁵ Section 32 Evaluation Report, pg 10-3

²⁸⁶ Section 32 Evaluation Report, pg 10-4

²⁸⁷ Ibid

²⁸⁸ Ibid

- [523] Part B (Waitaki) of Plan Change 5 as notified adopted, where appropriate, the region-wide nutrient management rule framework in Part A of the plan change. Where freshwater objectives and limits for an FMU would be achieved by managing diffuse nutrient losses from farming activities in accordance with a Lake, Red, Orange, Green or Light Blue NAZ rule framework in Part A, it was adopted by Part B without modification.
- [524] However, where Waitaki FMU freshwater objectives and limits would not be achieved by the Part A rule framework, Part B applies one of two approaches to manage diffuse nutrient losses from farming activities. For Zones where the nutrient management rule framework that corresponds with the underlying NAZ for that Zone is generally appropriate to achieve the outcomes for that Zone, the Part A rule framework is applied with minor modifications (for example within the Ahuriri Zone (classified as a Red NAZ under the operative LWRP) the Red NAZ framework in Part A of the plan change is adopted with minor modifications). Alternatively, for Zones where a more restrictive nutrient management rule framework is required to achieve the outcomes for that Zone a more restrictive rule framework is proposed (for example in the Hakataramea FMU (classified as an Orange NAZ under the operative LWRP) Part B applies a nutrient management rule framework based on the Red NAZ provisions in Part A).
- [525] The effect is a more restrictive nutrient management rule framework for farming activities in the Upper Waitaki Hill Zone, Hakataramea FMU, and upper portion of the Greater Waikāhahi Zone than that in the operative LWRP. Under the operative LWRP farming activities in the Upper Waitaki Hill Zone and Hakataramea FMU (areas classified as Orange NAZs as shown in Figure 1 below) may apply for resource consent to increase their nitrogen loss calculation by up to 5kg/ha/yr above the nitrogen baseline as a restricted discretionary activity,²⁸⁹ with increases of more than 5kg/ha/yr above the nitrogen baseline classified as a discretionary activity.²⁹⁰ For the upper portion of the Greater Waikāhahi Zone (an area classified as a Green NAZ under the operative LWRP (as shown in Figure 1 below) farming activities may increase their nitrogen loss calculation above the nitrogen baseline by 5kg/ha/yr,²⁹¹ with increases of more than 5kg/ha/yr classified as a restricted discretionary activity.²⁹²

²⁸⁹ Rule 5.55

²⁹⁰ Rule 5.56

²⁹¹ Rule 5.57

²⁹² Rule 5.58

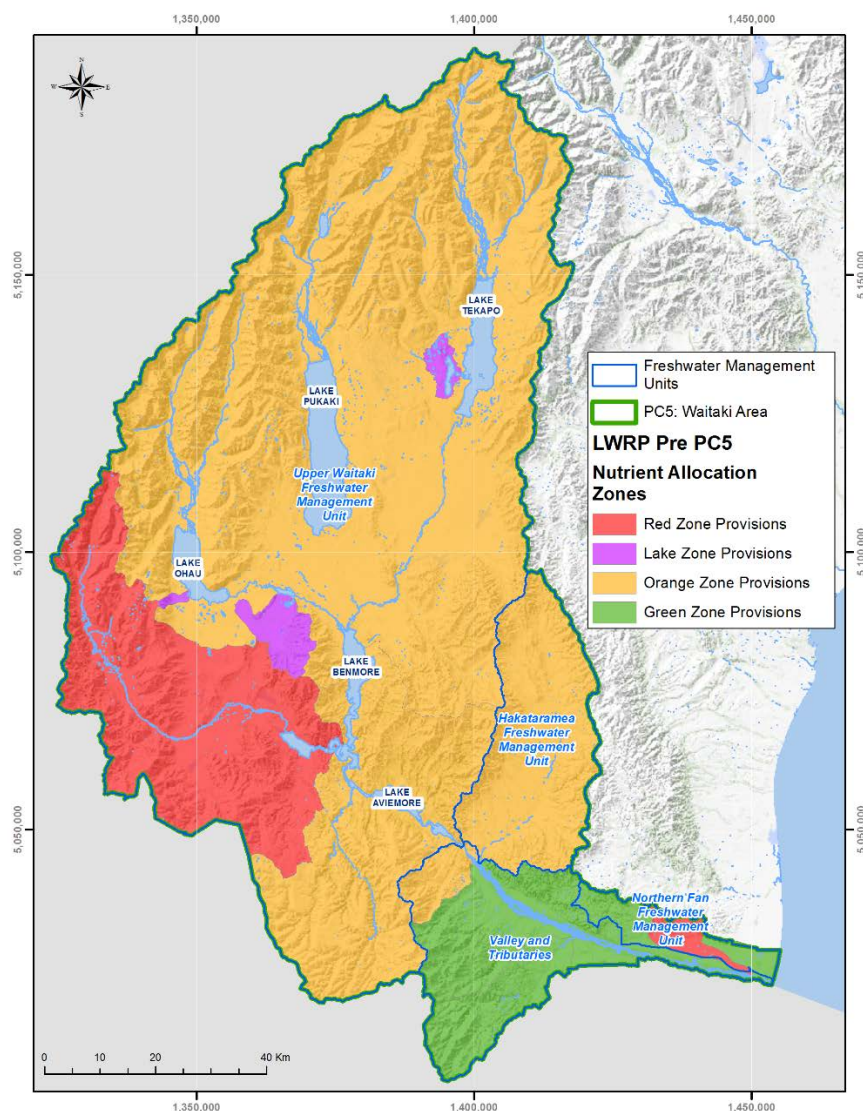


Figure 1 - Nutrient Allocation Zones in the operative LWRP

[526] Under the Plan Change 5 framework farming activities within the Upper Waitaki Hill Zone, Hakataramea FMU and Greater Waikākahī Zone would be managed in accordance with a rule framework modelled after the Red NAZ framework in Part A (as shown in Figure 2). That framework prohibits farming activities from having a nitrogen loss calculation that exceeds the nitrogen baseline, and from 1 July 2020 the Baseline GMP Loss Rate.²⁹³ The Section 32 Report stated that this framework was necessary to achieve the freshwater objectives and limits for these Zones.²⁹⁴

²⁹³ Exceptions exist for farming activities that meet the conditions of the permitted activity rules

²⁹⁴ Section 32 Evaluation Report pp, 13-15, pp 13-22, pp 13-33

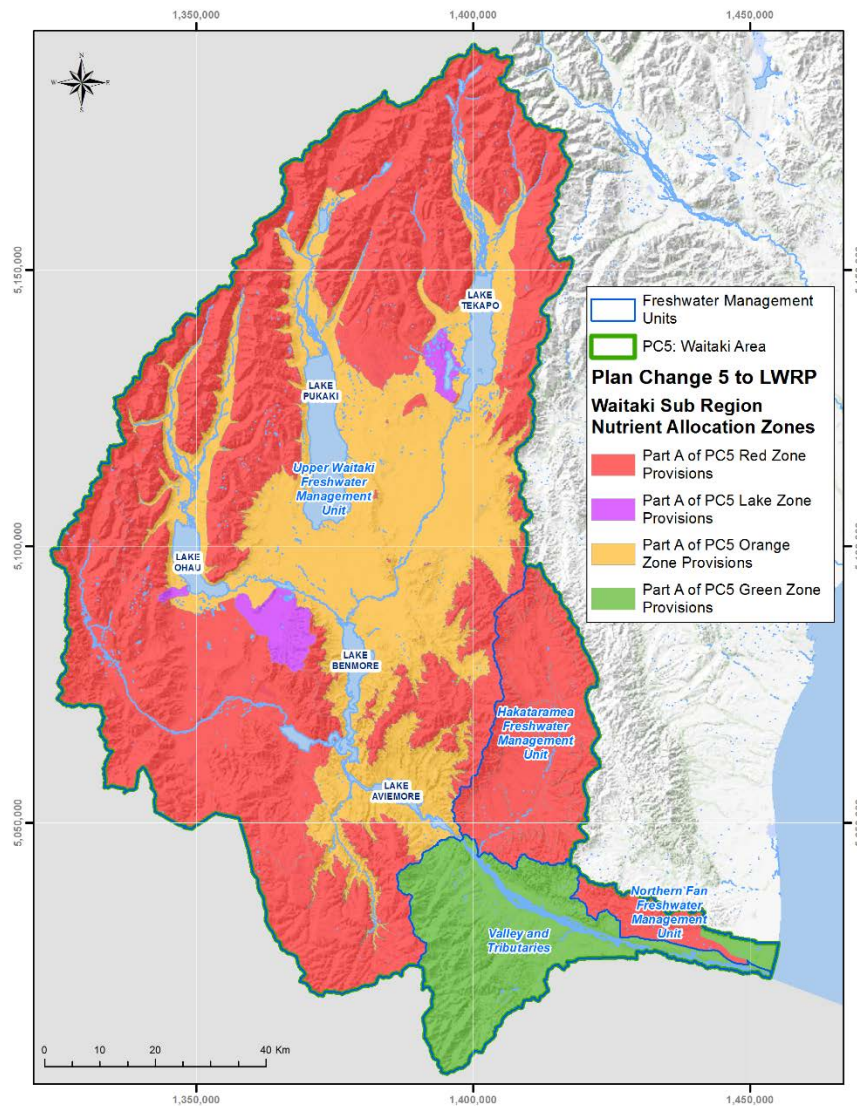


Figure 2 - Part A provisions used as the basis for the provisions in Part B (Waitaki)

- [527] Some submissions made on Part B of Plan Change 5 opposed the use of a prohibited activity status for Zones where the operative LWRP allowed an application for resource consent to be made to increase the nitrogen loss calculation above the nitrogen baseline.²⁹⁵ In general, those submissions reasoned that a more restrictive rule framework was not justified given the current state of water quality.²⁹⁶
- [528] At the hearing we heard evidence on this matter from Ms Johnston, appearing on behalf of WIC. Ms Johnston advised us that in her opinion limited potential existed for further development in the Hakataramea, due to the limited availability of water for abstraction.²⁹⁷ We also heard evidence from Ms Taylor, appearing on behalf of WIC, that the proposed rules imposed an unnecessary and unreasonable level of consenting on areas that currently meet water quality outcomes.²⁹⁸

²⁹⁵ Submissions by Federated Farmers, Hunter Downs Development Company Limited, Waihuna Dairies Limited, Waitaki Irrigators Collective Ltd

²⁹⁶ Ibid

²⁹⁷ Statement of evidence of K Johnston pg 9 para 39

²⁹⁸ Statement of evidence LER Taylor pg 4 para 3.3

- [529] We agree with the authors of the Section 42A Reply Report that constraints on the availability of water in the Waitaki catchment do not give sufficient certainty that further intensification and development within the catchment will not occur and increases in nitrogen loss would be avoided. Accordingly we are not persuaded that the deletion of rules that prohibit, within the Upper Waitaki Hill Zone, Hakataramea FMU and Greater Waikākahi Hill Zone, increases in the nitrogen loss calculation above the nitrogen baseline, or Baseline GMP Loss Rate would better achieve the objectives of the LWRP.
- [530] We also heard evidence from Mr Hellewell and Mr Hurst on behalf of the Waikākahi Farmers Group regarding environmental initiatives carried out within the Greater Waikākahi Zone by the Waikākahi Stream Group for the purpose of improving water quality. We were informed these initiatives included fencing of the Waikākahi Stream, riparian plantings and the installation of culverts and bridges for livestock and vehicle crossings.²⁹⁹
- [531] We acknowledge that environmental initiatives such as those described by Mr Hellewell and Mr Hurst may assist in reducing inputs of phosphorus and sediment into the Waikākahi Stream. However we do not consider these initiatives by themselves are likely to improve water quality to the extent needed to achieve the freshwater objectives and limits for the Northern Fan FMU. We note a trend for increasing concentrations of nitrate-nitrogen in shallow groundwater within the Greater Waikākahi Zone,³⁰⁰ and that modelling indicates that approximately 80% of the nitrogen load from the Elephant Hill catchment may travel into the headwaters of the Waikākahi Stream. For the Hakataramea FMU we note the catchment is sensitive to cyanobacteria blooms³⁰¹ and that there is a risk of the area becoming over-allocated unless a limit is imposed on diffuse nitrogen losses from farming activities. For the Upper Waitaki FMU we note³⁰² that most of the catchment (including the Upper Waitaki Hill Zone) drains into Lake Benmore and that to maintain the lake in its current oligotrophic state and achieve the freshwater objectives and limits for the Upper Waitaki FMU there is a need to limit further increases in nutrient inputs.³⁰³
- [532] Having evaluated the submissions and evidence before us we consider a prohibited activity rule framework is appropriate within the Upper Waitaki Hill Zone, Hakataramea FMU and Greater Waikākahi Zone. We reach this conclusion having considered the Section 32 Report, the initial Section 42A Report and the Section 42A Reply Report, particularly the current state of water quality and the level of intervention required to achieve the freshwater objectives and limits of Part B. We also consider that a framework which classifies activities as prohibited in circumstances where there is a risk of catchment limits being exceeded gives appropriate effect to the NPSFM. For these reasons we recommend to the Council retaining provisions in Part B of Plan Change 5 which prohibit (in certain circumstances) farming activities from exceeding the nitrogen baseline and Baseline GMP Loss Rate within these Zones.

²⁹⁹ Statement of evidence M Hellewell and M Hurst pg 3 para 8-9 of their evidence

³⁰⁰ Section 32 Evaluation Report - Supporting Document - Predicting consequence of future scenarios in the Waitaki Catchment: Lower Waitaki Groundwater Quality Report R15/60 pg 14 - 15

³⁰¹ Section 32 Evaluation Report pp 10-4

³⁰² Section 32 Evaluation Report pp 10-4

³⁰³ Section 32 Evaluation Report pp 13-22

Chapter Eighteen

Further amalgamation of provisions – simplifying and streamlining

Nutrient management provisions

- [533] Some submitters challenged the nutrient management framework in Part B of the plan change, submitting that it would be overly complex, burdensome, and unwieldy.³⁰⁴
- [534] A notable difference in Part B of the plan change (from that in Part A), is the establishment of ‘Freshwater Management Units’ (FMU) as the basis for the regulatory regime. Although both the policies and rules in Part A of the Plan use a ‘zone-based’ approach³⁰⁵ to regulate diffuse nutrient losses from farming activities (with the level of restriction applied to a farming activity varying according to the nutrient allocation status of the zone), Part B uses a mix of both FMU-based and area-based provisions (the areas are also called zones). The effect would be that for each Freshwater Management Unit the outcomes are articulated through separate FMU-based policies, while the specific restrictions that apply to each of the ‘area-based’ zones³⁰⁶ that comprise that FMU are set out within the body of each policy. These policies are then implemented through ‘area-based’ rules.
- [535] In response to submissions, the Section 42A Reply Report authors recommended³⁰⁷ a revised architecture for the nutrient management provisions in Part B of the plan change. A key difference from that in the notified plan change would be the abandonment of an FMU based policy approach, in favour of one which groups together policies according to similarities in restrictions or desired outcomes. This approach was carried through by the report authors into the Part B rules, with the architecture of the nutrient management rules significantly changed to include a mix of both FMU-based rules and ‘area-based’ rules. Further, the authors recommended changes that would combine rules that include common conditions, restrictions or requirements. The effect of these changes would be an amalgamation of the rule framework, with a single rule often applying to multiple zones within different FMUs.
- [536] We agree with submitters that the notified framework for Part B included a level of complexity that is neither desirable, efficient nor effective. We are grateful for the suggestions recommended to us by the Section 42A Report authors, however we consider it preferable to retain the policy architecture as notified in Part B of the plan change – that being one which groups policies together according to the Freshwater Management Unit. FMU-based policies allow for direct ‘line of sight’ between Policy A1 of the NPSFM (which requires the establishment of freshwater objectives and freshwater quality limits for all freshwater management units), the Freshwater Outcomes (Tables 15B(a) and 15B(b)), the Freshwater Limits (Tables 15B(c), 15B(d), 15B (e) and 15B(f)) and the policies in Part B. We also consider an FMU-based policy framework would enable easier navigation of Part B of the plan change. We therefore recommend amendments to the framework accordingly.

³⁰⁴ For example, the submission by Waitaki Irrigators Collective

³⁰⁵ Through the use of ‘Nutrient Allocation Zones’

³⁰⁶ Those being the Hakataramea Flat Zone, Hakataramea Hill Zone and Hakataramea River Zone which comprise the Hakataramea FMU; the Greater Waikāhaki Zone and Whitneys Zone which comprise the Northern Fan FMU; the Valley and Tributaries Zone which forms the entirety of the Valley and Tributaries FMU; and the Ahuriri Zone, Haldon Zone, Mid-Catchment Zone, Upper Waitaki Hill Zone, and Lake Zones within these zones which comprise the Upper Waitaki Freshwater Management Unit

³⁰⁷ Section 42A Reply Report

[537] However we consider that the rules require a different approach. We consider that for the nutrient management rules, an ‘area-based’ based approach would more effectively recognise and accommodate the different nutrient management regimes and more closely promote attainment of the environmental outcomes expressed in the policies. We adopt the Section 42A Report authors’ recommendation to group together into a simplified rule framework those Zones that have similar terms and conditions, even where this results in rules applying to zones in different FMUs. We do not however recommend the use of a combination of ‘FMU-based’ and ‘area-based’ rules as we consider this would be unduly complex.

Further regrouping of provisions

[538] From that assessment we have considered whether further improvements to the architecture of Part B could be made. Accordingly, we recommend a number of further changes to Part B which reflect the architecture in Part A. We recommend grouping together policies and rules under headings according to the activity to which they relate. This ‘activity-based’ approach is consistent with that used throughout the LWRP. We also recommend amendments to the policies relating to ‘Collectives’, uncoupling those parts of the policy that apply to aquaculture from those parts of the policy that relate to nutrient user groups, with consequential changes to the ordering and structuring of the respective rules — grouping together all rules relating to aquaculture under a single ‘Aquaculture’ heading. We note that these further amendments do not alter the content of the provisions, merely the order in which they appear in the plan change. Finally, we recommend amendments to Part B of the plan change to further clarify the rule framework that applies within the Waitaki. Part B of Plan Change 5 as notified includes ‘notes’ that indicate those region-wide rules that apply within the Waitaki Catchment. However, a ‘note’ does not have the effect of a rule. For that reason, and to assist navigation of the Part B provisions, we recommend deleting those notes and inserting into Part B the relevant region-wide rule that is referred to in the note. We note this amendment would also avoid an unintended consequence that could arise if this course of action was not taken; that being that when Plan Change 5 is made operative, amendments to the Planning Maps will result in the deletion of the Red, Orange, Green and Light Blue Zones Nutrient Allocation Zones and the insertion of Waitaki-specific nutrient management areas (Ahuriri Zone, Upper Waitaki Hill Zone, Hakataramea Flat Zone, Hakataramea Hill Zone, Hakataramea River Zone, Haldon Zone, Mid Catchment Zone, Valley and Tributaries Zone and Whitneys Creek Zone). In those circumstances it would not be appropriate to refer to a region-wide Nutrient Allocation Zone as having application within the Waitaki catchment. A similar issue also exists with respect to the recommendations in the Section 42A Reply report relating to the ‘alternate consent path’ rules. We note the report authors recommended the insertion of a note to indicate that Rule 5.XX and Rule 5.XY³⁰⁸ (the alternate consent path rules) apply within the Waitaki catchment. For the same reason as set out above we consider this inappropriate and recommend including in Part B a complementary suite of ‘alternative path’ rules³⁰⁹ rather than a note. Our recommended Rule 15B.5.9A includes, as a condition of applicability of the rule, property-based nitrogen limits that are appropriate for each of the Waitaki nutrient management areas.

³⁰⁸ Referred to as recommended rules 5.42B, 5.42C and 5.42D in Appendix B to this report.

³⁰⁹ Rules 15B.5.9A, 15B.5.9B and 15B.5.9C in Appendix B to this report

Chapter Nineteen

Summary of Section 42A Report recommendations adopted

[539] As mentioned in paragraph [18], in general we address in this report only those submission points on which we do not adopt the recommendations and reasons in the Section 42A Report (including any replies to questions asked by us through the course of the hearing). For the purpose of completeness we now summarise those significant recommendations of the Section 42A Report authors that we adopt.

Part A (region-wide provisions)

Permitted Activity thresholds

[540] We adopt the permitted activity thresholds for irrigation and winter grazing that were recommended to us in the Section 42A Reply Report. Those recommendations limit the area of a property that may be irrigated to 50 hectares, and impose an additional restriction on properties within a Red Nutrient Allocation Zone, that limits the area of irrigation to a maximum of 10 hectares above that which was irrigated as at 13 February 2016. We also adopt, for the reasons set out in the Section 42A Reply Report, the recommendation to amend the ‘winter grazing’ threshold in the permitted activity rules from a fixed number of 20 hectares per property, to a figure that varies according to the size of the property.

Dates at which permitted farming activities must register in the Farm Portal

[541] We adopt the recommendations in the Section 42A Reply Report to amend the dates by which permitted farming activities are to register their property with the Farm Portal. We agree with the Section 42A Reply Report, that it is appropriate to extend the dates referred to in these rules by one year, given that these rules would have legal effect only when the plan change is made operative. For these reasons we accordingly adopt the recommended changes to these rules as set out in the Section 42A Reply Report.

Irrigation Scheme Nitrogen Loss Limits

[542] We adopt the recommendations in the Section 42A Reply Report to amend Policy 4.41C to exempt, in limited circumstances, irrigation schemes and principal water suppliers from the nitrogen loss limits set out in clause (b) of this policy. We agree that an exemption is appropriate in circumstances where an irrigation scheme or principal water supplier has been granted a discharge permit or water permit, and that permit includes (as a condition of that permit) a nitrogen loss limit that provides for intensification of that land, and the intensification occurred prior to 13 February 2016. We recommend some further amendments to the policy to ensure that any discharge permit granted to these schemes in the future includes a nitrogen loss limit that is reflective of the aggregated Good Management Practice Loss Rate for the land.

Schedule 7 (Farm Environment Plans)

[543] We adopt the recommendations in the Section 42A Reply Report to align, as far as practicable, the objectives and targets in Schedule 7 with the good management practices described in the *Industry-agreed Good Management Practices relating to water quality booklet*. We also adopt the recommendations in the Reply Report to include an additional ‘Target’ in the ‘Waterbody Management’ section of the Schedule which directs that mahinga kai values are to be protected through measures taken to enhance water quality and stream health. For these reasons, we recommend the amendments to Schedule 7 accordingly.

Schedule 7A (Management Plans)

- [544] Schedule 7A of Plan Change 5 sets out the content to be included in a Management Plan for farming activities that meet the permitted activity rules for the use of land for a farming activity. We adopt the recommendations in the Section 42A Reply Report to align the Schedule, as far as practicable, with the good management practices described in the *Industry-agreed Good Management Practices relating to water quality booklet* and recommend amendments accordingly.

Schedule 28 (Good Management Practice Modelling Rules) and the Farm Portal

- [545] As discussed in Chapter 9, we adopt the recommendations in the Section 42A Reply Report to retain Schedule 28 (Good Management Practice Modelling Rules), and to retain the Farm Portal as the method for estimating a farming activity's Baseline GMP Loss Rate and Good Management Practice Loss Rate. We also adopt the recommendation to include an 'alternative consent path', to provide for those circumstances where the Farm Portal is unable to generate a Baseline GMP Loss Rate or Good Management Practice Loss Rate figure, or where the nitrogen loss rate generated is erroneous. Finally, we retain the fertiliser application and irrigation modelling proxies proposed in Schedule 28 as recommended to us in the Section 42 Reply Report, except for an amendment that we recommend to rectify an anomaly in the irrigation proxy that exists for certain soil types and irrigation systems.

Part B (Waitaki)

Permitted activity thresholds

- [546] As for Part A of Plan Change 5, some submitters opposed the winter grazing and irrigation thresholds in the permitted activity rules³¹⁰ in Part B of Plan Change 5 on the basis that the thresholds were too restrictive. Some submitters sought alternative thresholds for winter grazing and irrigation³¹¹ by which the percentage of a property permitted to be used for winter grazing or irrigation would vary according to the size of the property.

- [547] The Section 42A Reply Report authors recommended adopting, for some areas in the Waitaki, the 'percentage-based' thresholds recommended to us for Part A of Plan Change 5. However, for the Hakataramea Flat Zone, Hakataramea Hill Zone, Greater Waikākahī Zone and Valley and Tributaries Zone the authors recommended more restrictive thresholds to avoid the catchment loads for each of these zones being exceeded. We agree with the Section 42A Reply Report authors that it is appropriate to apply more restrictive winter grazing and irrigation thresholds within these Zones so as to avoid over-allocation and we adopt those recommendations accordingly.

Requirements for holders of a water permit to obtain a land use consent for the use of land for a farming activity.

- [548] The Section 42A Reply Report recommended changes to Rule 15B.5.6 to exempt, in limited circumstances, the requirement to obtain resource consent for the use of land for a farming activity within the lower Waitaki. The authors advised that in certain circumstances and for landowners within the lower Waitaki granted a water permit between 1 November 2009 and 2016, it would be appropriate to include an exemption to the requirement for a land use consent as these water permits included conditions that act as 'indirect limits on the amount of intensification that may occur as a result of the

³¹⁰ For the use of land for a farming activity

³¹¹ Craigmores Farming, Bellfield Land Company Limited, Killermont Station, J A Rietveld, Waitaki Irrigators Collective

farming activity'.³¹² We accept the reasons given by the Section 42A Reply Report authors that where these water permits include conditions that require the preparation and implementation of a plan to mitigate the effects of the loss of nutrients to water and auditing requirements, an exemption would be appropriate. We therefore adopt those recommended amendments to notified Rule 15B.5.6 accordingly.

Freshwater outcomes and limits

[549] The Section 42A Reply Report recommended changes to the Freshwater Outcome tables (15B(a) and 15B(b)) in Part B of Plan Change 5. The recommended changes to Table 15(a) establish a lower maximum temperature for all rivers within the Waitaki, a higher dissolved oxygen concentration for spring-fed plains rivers in the Waitaki³¹³ and a lower cyanobacteria mat coverage value³¹⁴ for all rivers within the Waitaki except those classified as 'Alpine-upland', 'Hill-fed upland' and 'Spring-fed upland'. The recommended changes to Table 15B(b) include the addition of a separate Trophic Level Indicator (TLI) value for Lake Ruataniwha of 1.7, and an amendment to the TLI values for Kellands Pond and Wairepo Arm.³¹⁵ We agree, for the reasons set out in the Section 42A Reply Report, that these amendments would be appropriate. We further consider these amendments would better give effect to the NPSFM and objectives of the LWRP and recommend changes accordingly.

Schedule 27

[550] Schedule 27 of Plan Change 5 sets out a methodology for calculating, within the Haldon Zone, the portion of the nitrogen load available for allocation to agricultural activities by way of resource consent. The Section 42A Reply Report recommends an amendment to the formula used to calculate 'P' (the unutilised portion of the agricultural nitrogen load) to account for nitrogen losses from farming activities granted a resource consent after December 2013 but prior to the rules in Part B of the plan change becoming operative. We agree, for the reasons set out in the Section 42A Reply Report, that it is both necessary and appropriate to amend the formula, so as to avoid over-allocation of nitrogen within the Haldon Zone. We therefore recommend those amendments accordingly.

³¹² Section 42A Reply Report, pg 106, para 6.262

³¹³ Recommended to be amended from 80 to 70

³¹⁴ Recommended to be amended from 50 to 20

³¹⁵ Recommended to be amended from 3.4 to 3.2

Chapter Twenty

Giving Effect to Superior Instruments

Content of Chapter 21

[551] In Chapter 5 of this report, we note that section 67(3) of the RMA stipulates that a regional plan has to give effect to national policy statements and regional policy statements; and we identify the following as applicable: the National Policy Statement for Freshwater Management 2014, the New Zealand Coastal Policy Statement 2010, and the Canterbury Regional Policy Statement 2013. We also identify contents of those instruments relevant to Plan Change 5.

[552] In this chapter, we consider the extent to which Plan Change 5, as we recommend it be amended, would give effect to those instruments.

National Policy Statement for Freshwater Management 2014

[553] In Chapter 5 we identify among the content of the NPSFM as relevant to Plan Change 5, and summarise, the Preamble, a section on Te Mana o te Wai, and sections A, B, C, CA, D and E. We now consider whether the plan change as it would be amended by our recommendations, would give effect to each of those sections of the NPSFM. Those recommendations are identified in the marked-up version of the plan change in Appendix B to this report.

Safeguarding life-supporting capacity and the health of people and communities (Objective A1)

[554] By recommended amendments to and insertion of Policies 4.36 to 4.38E and 4.41A to 4.41D in Part A, and of Policies 15B.4.4, 15B.4.7, 15B.4.8, 15B.4.11, 15B.4.12, 15B.4.15, 15B.4.16, 15B.4.20, 15B.4.21, 15B.4.22 and 15B.4.23 in Part B, Plan Change 5 would sustainably manage the use and development of land by enabling farming practices that implement good management practices, while encouraging or requiring time-staged reductions in discharges of microbial contaminants, nutrients and sediments to surface water and groundwater. The resulting improvements in water quality will assist with safeguarding the life-supporting capacity of those water bodies and the use of them for drinking water purposes, thereby contributing to the health of people and communities.

[555] Methods for implementing those policies include Rules 5.41A to 5.59A, the amended Schedule 7 and new Schedule 7A and Rules 15B.5.1, 15B.5.3, 15B.5.12 to 15B.5.31.

[556] We consider that Plan Change 5 would enable attainment of, and so give effect to Objective A1 of the NPSFM.

Improving the overall quality of fresh water (Objective A2)

[557] In combination with the Policies in Section 4 of the LWRP, the recommended amendments to and insertion of the policies forming part of Plan Change 5 Part A and the policies in Part B would contribute to the overall improvement of water quality, in both surface water and groundwater, which has been degraded by historical farming activities in the catchment by managing and imposing limits on contaminants (microbial contaminants, nutrients and sediments) reaching waterbodies.

[558] Methods for implementing those policies include the operative rules in the LWRP in combination with Rules 13.5.9, 13.5.9A, 13.5.10, 13.5.11, 13.5.12, 13.5.15, 13.5.15A, 13.5.17, 13.5.18, 13.5.19, 13.5.20, 13.5.22, 13.5.23, 13.5.25, 13.5.26, 13.5.35, 13.5.36 and 13.5.37.

[559] We consider that Plan Change 5 would enable attainment of, and so give effect to, Objective A2 of the NPSFM.

Establishing freshwater objectives, set limits, and establish over-allocation methods (Policy A1)

[560] Policy A1 of the NPSFM is for freshwater objectives in accordance with Policies CA1-CA4 of the NPSFM, and associated freshwater quality limits and methods to avoid over-allocation.

[561] Tables 15B(a) and 15B(b) of Plan Change 5 Part B establish, respectively, numerical “Freshwater Outcomes for Waitaki Rivers to be achieved by 2030” and “Freshwater Outcomes for Lakes in the Upper Waitaki Freshwater Management Unit to be achieved by 2030”. These “outcomes” are limits in terms of the NPSFM and provide guidance to decision-makers regarding the sustainable management of the sub-region’s surface waterbodies. As we have outlined previously, and as is set out in the various reports that support the notified plan change, Plan Change 5 Part B’s policies and rules are collectively designed to avoid further over-allocation with regard to water quality.

[562] We consider that Plan Change 5 would give effect to Policy A1 of the NPSFM to the extent applicable.

Specifying targets and implementing methods (Policy A2)

[563] The freshwater outcomes described in section 15B.6 and Tables 15B(a) and 15B(b) of Plan Change 5 Part B; the water quality limits described in sections 15B.7.1, 15B.7.2 and 15B.7.3, and Tables 15B(c), 15B(d) and 15B(e) of Plan Change 5; the insertion in Schedule 7; and Schedule 26 all specify limits and implement methods to assist the improvement of water quality.

[564] We consider that Plan Change 5 would give effect to Policy A2 of the NPSFM.

Best practicable option (Policy A3a)

[565] Policy A3a) of the NPSFM is not applicable to the preparation of regional plans or variations or changes to them.

[566] Although Plan Change 5 does not contain rules that require adoption of the best practicable option as directed by Policy A3b) of the NPSFM, it would amend Section 7 of the LWRP and insert Schedule 26 which have the same effect.

[567] We consider that Plan Change 5 would give effect to Policy A3 of the NPSFM, to the extent applicable.

Water quantity (Objectives B1, B2, B3, and B4; Policies B1, B2, B3, B4, B5 and B6)

[568] Water quantity in the Waitaki River Catchment is managed through the provisions of the operative Waitaki Catchment Water Allocation Regional Plan 2006. Nothing in Plan Change 5 proposes amendments to this operative plan and therefore we do not need to further consider Section B Water Quantity of the NPSFM.

Integrated management (Objective C1 and Policies C1 and C2)

[569] The LWRP contains policies and rules on water quality, water quantity and land use that would be integrated in that instrument. The provisions of Plan Change 5, together with our recommended amendments to them, enhance that integration.

[570] In respect of the Waitaki catchment (Plan Change 5 Part B) the provisions specifically integrate policies and rules on farming activities and, while not containing specific provisions to manage water quantity, are not inconsistent with the water quantity provisions contained in the Waitaki Catchment Water Allocation Regional Plan.

[571] We consider that Plan Change 5 would enable attainment of, and so give effect to Objective C1 of the NPSFM; and would enable giving effect to Policies C1 and C2 of the NPSFM.

Tangata whenua roles and interests (Objective D1 and Policy D1)

[572] Objective D1 and Policy D1 of the NPSFM largely relate to the plan formulation process rather than to its contents. However, the involvement of Ngāi Tahu in the preparation of the LWRP and of Plan Change 5 has resulted in outcomes of substance throughout. In particular we refer to Policies 15B.4.1, 15B.4.2 and 15B.4.3; Rule 15B.5.15 matter of discretion 10, 15B.5.19 and 15B.5.22 matters of discretion 3 and 4; the cultural indicator in Tables 15B(a) and 15B(b) and the insertion into Schedule 7 regarding mahinga kai.

[573] We consider that Plan Change 5 would enable giving effect to Objective D1 and Policy D1 of the NPSFM.

Overall assessment of giving effect to the NPSFM

[574] We have given particular consideration to the extent to which Plan Change 5 would give effect to the NPSFM. We bear in mind that the NPSFM is general in nature, applying throughout New Zealand. It is the CRPS that applies specifically to the Canterbury Region, and responds to the natural and physical resources and the relative circumstances of social, economic and cultural wellbeing within it. We address below the extent to which Plan Change 5 would give effect to the CRPS.

[575] Understanding the general context in which the NPSFM is to apply, and having considered the LWRP and Plan Change 5 by reference to the several substantive directions made in that instrument that are applicable, we assess that the plan change (incorporating amendments we recommend) would substantially give effect to the contents of the NPSFM.

New Zealand Coastal Policy Statement 2010

[576] A number of the objectives and policies of the NZCPS have some relevance to an evaluation of proposed Plan Change 5, particularly the Part B provisions. In particular, we note

- a directive to maintain coastal water quality in Objective 1;
- recognition in Objective 6 of the interrelationship between activities on land and the potential to protect natural and physical resources in the coastal marine area;
- the need to provide for the integrated management of natural and physical resources in the coastal environment and activities that affect that environment, as set out in Policy 4;

- a directive to protect indigenous biological diversity in Policy 11;
- a directive, in Policy 21, to improve water quality in the coastal environment where it has deteriorated to the extent that it is having a significant adverse effect on a number of identified areas; and
- the need to reduce sediment loadings in runoff arising from land use activities (Policy 22).

[577] To the extent that they are applicable to our consideration and our recommendations we consider that Plan Change 5 would enable giving effect to these objectives and policies of the New Zealand Coastal Policy Statement.

Canterbury Regional Policy Statement (CRPS)

[578] The applicable regional policy statement is the CRPS described in Chapter 5 of this report. In considering the submissions on Plan Change 5 and making our recommendations on them, we carry out the duty that the LWRP is to give effect to the CRPS.

[579] The Section 32 Report describes, at section 2.3.2 and Appendix 4, the relevant provisions of the CRPS and how Plan Change 5 gives effect to those provisions. We appreciate the report authors' advice and we have had regard to it, particularly with respect to Appendix 4 of the Section 32 Report, and the subsequent Section 32AA Report.

[580] We have also carefully considered the submissions and further submissions, legal submissions and evidence regarding the extent to which Plan Change 5 gives effect to the CRPS, where it was considered (by some submitters) to be deficient in that regard, and how it might be improved (in their view) to give better effect to the CRPS. Again, we do not cross-reference that material here as the individual references are too numerous.

[581] Against that background, contents of the CRPS that are relevant to Plan Change 5 address the following topics.

Ngāi Tahu issues and provisions

[582] Chapters 2 and 4 of the CRPS relate to issues significant to Ngāi Tahu and provide for their relationship with resources. Plan Change 5 responds to them directly and indirectly in several respects. In particular we refer to Policies 15B.4.1, 15B.4.2 and 15B.4.3; Rules 15B.5.15 matter of discretion 10, 15B.5.19 and 15B.5.22 matters of discretion 3 and 4; the cultural indicator in Tables 15B(a) and 15B(b).

[583] We consider that the plan change (incorporating our recommended amendments) would give effect to those chapters of the CRPS.

Fresh water

[584] Relevantly, Chapter 7 of the CRPS relates to sustainable management of fresh water; parallel processes for management, protection of intrinsic values, integrated management of water resources, adverse effects of activities on the natural character of fresh water; water quantity and land uses, fresh water quality and land uses, efficient allocation and use of fresh water, integrated solutions to freshwater management, existing activities and infrastructure, precautionary approach, and resolution of freshwater management issues.

[585] Plan Change 5 (incorporating amendments that we recommend) would add to the LWRP by inserting specific provisions for the Waitaki Catchment area, particularly with regard to sustainable management of fresh water including parallel processes for management, protection of intrinsic values, and integration of water resources; addressing adverse effects of certain activities on the natural character of fresh water; water quality and land uses; and based on involvement of the community and Ngāi Tahu in the collaborative process. Those features are found throughout the plan change as we recommend it is amended.

[586] We consider that the plan change (incorporating our recommended amendments) would give effect to Chapter 7 of the CRPS.

Ecosystems and biodiversity

[587] Relevantly, Chapter 9 of the CRPS relates to halting decline of ecosystems and indigenous biodiversity; restoration or enhancement of them; protection of significant indigenous vegetation and habitats; protecting significant natural areas; an integrated management approach; and protection and enhancement of wetlands.

[588] Plan Change 5 (incorporating recommended amendments) would add to the LWRP by specific provisions for the Waitaki Catchment area, partly directly, and more indirectly, responding to the applicable contents of Chapter 9.

[589] We consider that the plan change (incorporating our recommended amendments) would add to the LWRP giving effect to Chapter 9 of the CRPS.

Overall assessment of giving effect to the CRPS

[590] We have given particular consideration to the extent to which Plan Change 5 would add to the LWRP giving effect to the CRPS in responding to the natural and physical resources and the relative issues and circumstances bearing on social, economic and cultural wellbeing within the region. This includes our own assessment of the recommended amendments contained in the Section 42A reports, together with the legal submissions and evidence provided by submitters.

[591] Having considered the relevant contents of the LWRP and of Plan Change 5 by reference to the several substantive directions made in that instrument that are applicable, we assess that the plan change (incorporating amendments we recommend) would substantially give effect to the applicable contents of the CRPS, as directed by section 67(3) of the RMA.

Chapter Twenty-one

Evaluation and Recommendations

Evaluation duties

- [592] In accord with section 32 and clause 5 of Schedule 1 of the RMA that a local authority preparing an ‘amending proposal’ that would amend an operative plan is to prepare and publish an evaluation report on the proposal, the Council prepared and publicly notified an evaluation report on Plan Change 5 dated 27 August 2015 (‘the Section 32 Report’).³¹⁶
- [593] Section 32AA of the RMA requires a further evaluation of any changes that are made to the proposal after the initial evaluation report is completed. The further evaluation may be the subject of a separate report, or may be referred to in the decision-making record.³¹⁷
- [594] Clause 10 of Schedule 1 of the RMA directs that a local authority’s decision on submissions on a plan is to include such further evaluation, to which it is to have particular regard when making its decision.³¹⁸
- [595] An evaluation report is to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects anticipated from implementation of the proposal.³¹⁹
- [596] A further evaluation that is referred to in the decision-making record is to contain sufficient detail to demonstrate that further evaluation has been duly undertaken.³²⁰
- [597] If our recommendations in this report are adopted by the Council, this report (including its appendixes) is intended to form part of the Council’s decision-making record. Therefore, in compliance with the direction in Schedule 1,³²¹ and electing the second option in section 32AA(1)(d), we include in this report the further evaluation of the amendments to Plan Change 5 that we recommend.
- [598] In considering the amendments to Plan Change 5 requested in the submissions (whether the recommendations are contained in the main body of this report or in Appendix A of it) we have, to the extent practicable, examined and assessed the criteria itemised in section 32 to the extent applicable. In doing so, we have taken into account the Addendum to the Section 32 Report dated 12 December 2016, which we adopt and incorporate by reference in this report.³²² The detail of the further evaluation is indicated in the combination of relevant contents of the main body of the report, of Appendix A, and of the Addendum.
- [599] Where appropriate, we have considered the section 32 criteria in the detail corresponding with the relative scale and significance of the anticipated effects of implementing the amending proposal. Further, when making our recommendations on the submissions, we have had particular regard to that

³¹⁶ Section 32 Evaluation Report for Plan Change 5 (Nutrient Management and Waitaki Sub-region) to the Canterbury Land and Water Regional Plan, 4 February 2016.

³¹⁷ RMA, s 32AA(1)(d) and (2).

³¹⁸ RMA, Schedule 1, cl 10(4)(aaa).

³¹⁹ RMA, s 32(1)(c).

³²⁰ RMA, s 32AA(1)(d)(i).

³²¹ RMA, Schedule 1, cl 10(2)(ab)

³²² Plan Change 5 to the Canterbury Land and Water Regional Plan Addendum to the Section 32 Report, 12 December 2016.

further evaluation.

- [600] Many of the submission points on Plan Change 5 relate to particular provisions of Plan Change 5 that do not stand alone, but are combined in an integrated body of provisions that is intended to be understood, and to be implemented, as a coherent whole. To the extent that they do, we have also evaluated the whole by reference to the section 32 criteria.

Reasonably practicable options

- [601] In examining whether the amendments to the plan change are the most appropriate ways to achieve the objectives, we have sought to identify other reasonable and practicable options.
- [602] In doing that, we have confined our consideration to options presented in the submissions or the Section 42A Report, and to combinations and refinements of them. We have not cast about for other options of our own initiative. We consider that would be beyond our function as hearing commissioners, and could deprive submitters of opportunity to comment on any options discovered in that way.

Efficiency and effectiveness

- [603] An assessment of the efficiency and effectiveness of amendments to the plan change has to involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment.³²³
- [604] Further, if practicable, the assessment is to include quantifying those benefits and costs;³²⁴ and assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject-matter.³²⁵ In those respects, too, we have confined our consideration of those matters to the evidence given by the Council and submitters. We consider that, without expert evidence, it would be generally problematic for us to attempt to quantify benefits and costs of amendments, the implementation of which may be anticipated to have environmental, social or cultural effects, in comparison with benefits and costs of economic effects that can be assessed in money's worth. So in those respects we have made assessments that are more broad and conceptual, rather than analytical and calculated.

Most appropriate option

- [605] Scrutinising reasonably practicable options, and assessing efficiency and effectiveness of amendments to the plan change, are elements in evaluating which is the most appropriate way to achieve the objectives of the LWRP. In that regard we apply the reasoning of the High Court in the Transmission Gully case,³²⁶ that the evaluation is broad enough to include other relevant criteria. In the case of Plan Change 5, it should include the Council's duties to have the LWRP give effect to the higher-order instruments, the NPSFM and the CRPS; and to have particular regard to the vision and principles of the CWMS.

³²³ RMA, s 32(2)(a).

³²⁴ RMA, s 32(2)(b).

³²⁵ RMA, s 32(2)(c).

³²⁶ *Rational Transport Society v NZ Transport Agency* [2012] NZRMA 298 at [45] and [46].

Evaluation

[606] The Section 42A Reply Report (including the authors' responses to our questions on it) contained detailed advice to assist us to make further evaluations on amendments to the plan change in response to submissions.

[607] We have considered that report, and except to the extent that in this report we specifically address a particular topic, we accept the advice contained in it. With that exception, rather than duplicating those contents, we incorporate that report in this, and adopt its contents together with the reasons contained in Appendix A as the basis for our recommendations on the submissions on the plan change.

Conclusion and recommendations

[608] We have considered and deliberated on the proposed plan change; the submissions lodged on it; and the reports, evidence and submissions made and given at our public hearings. In reaching our recommendations, we have sought to comply with all applicable provisions of the RMA; we have had particular regard to the further evaluation of the amendments to the plan change we are recommending, and to the vision and principles of the CWMS. The relevant matters we have considered, and our reasons, general and particular, for them are summarised in the main body of this report and in Appendix A. On our evaluations of them, we are satisfied that the amendments we recommend are the most appropriate for achieving the objectives and for giving effect to the NPSFM and the CRPS.

[609] **We therefore recommend the amendments to Plan Change 5 contained in the main body of the report and in Appendixes A and B.**

DATED 1 June 2017



David Sheppard Hearing Commissioner (Chairman)



Rob van Voorthuysen Hearing Commissioner



Edward Ellison Hearing Commissioner

Appendices

Appendix A – Schedule of Recommended Decisions

Appendix A is bound in a separate volume

Appendix B – Proposed Plan Change 5 – Inclusive of Recommended Amendments

Appendix B is bound in a separate volume

Appendix C – Reference

Appendix C is attached to this report

Appendix C – Reference Material

1. National Policy Statement for Freshwater Management 2014
2. New Zealand Coastal Policy Statement 2010
3. Canterbury Regional Policy Statement 2013
4. Vision and Principles of Canterbury Water Management Strategy – Strategic Framework (November 2009), extract from Schedule 1 to Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010
5. Central South Island Sports Fish and Game Management Plan 2012-2022
6. Te Rūnanga o Ngāi Tahu Freshwater Policy
7. Te Rūnanga o Ngāi Tahu HSNO Statement (2008)
8. Te Whakatau Kaupapa – Resource Management Strategy for Canterbury (1992)
9. Te Rūnanga o Tohu Raumati
10. Mahaanui Iwi Management Plan (2013)
11. Iwi Management Plan of Kati Huirapa Arowhenua – Rakaia to Waitaki (1992)
12. Section 32 Evaluation Report for Plan Change 5 (Nutrient Management and Waitaki Sub-region) to the Canterbury Land and Water Regional Plan, 4 February 2016
13. Section 32AA evaluation - Addendum to the Section 32 Report dated 12 December 2016
14. Section 42A Report, Report Number R16/23, including:
 - (a) Errata dated 15 January 2016
 - (b) Officers s42A Report Errata Table dated 14 July 2016
 - (c) Officers' Response to Hearing Panel's Questions dated 12 August 2016
 - (d) Officers' Response to Further Panel's Questions on s42A Report dated 17 August 2016
 - (e) Plan Change 5 Revised Appendix I – Part A incorporating recommended amendments to PC5 Part A considering the response to the Hearing Panel's Questions dated the 12 August 2016 and the response to the Hearing Panel's Questions dated the 17 August 2016 and including the corrections made in the Officers Errata Report
 - (f) Officers' Responses to Further Questions of Hearing Commissioners on Council Section 42A Report dated 22 August 2016
15. Section 42A Reply Report, Plan Change to the Canterbury Land and Water Regional Plan Officer's s42A dated 2 December 2016, including:
 - (a) Responses to the Questions of the Hearing Commissioners on the Section 42A Reply report dated 12 December 2016 including Appendix A
 - (b) Responses to the questions of the hearing commissioners arising at the Reply Hearing on 12 December 2016
16. Ministry for the Environment. Managing water quality: Examining the 2014 National Policy Statement dated 2015
17. Canterbury Certified Farm Environment Plan (FEP) Auditor Manual

18. Industry-agreed Good Management Practices relating to water quality – 18 September 2015
19. Matrix for Good Management Overview Report – Including Addendum
20. LUWQ Governance Group. The preferred approach for managing the cumulative effects of land use on water quality in the Canterbury region – A working paper R12/23
21. Upper Waitaki Shared Vision Forum. The Mackenzie Agreement: A shared Vision and Strategy, and a Proposal for a Mackenzie Country Trust
22. Technical overview of the current status of the Upper Waitaki Zone in 2014 – 6 October 2014
23. Technical overview of the current status of the Lower Waitaki River Catchment in 2014
24. Lower Waitaki Freshwater Management Units Current Land Use (Jan 2015)
25. Upper Waitaki Freshwater Management Unit Current Land Use (Dec 2013)
26. Waitaki Catchment Climate Zones
27. Waitaki Catchment Soil Classes
28. Aislabie, M., Smith, O. Community engagement in the Upper and Lower Waitaki Limit Setting Process – Technical Report R15/134
29. Clarke, G., Meredith, A. Nutrient contribution to lakes from Canada Geese in the Upper Waitaki Canterbury Water Management Zone
30. Clarke, G. Predicting consequences of future scenarios: Lake water quality – Technical Report R15/156
31. Clarke, G. The current water quality state of lakes in the Waitaki catchment – Technical Report R15/157
32. Clarke, G., Greer, M. Lower Waitaki catchment water quality and ecology: state and trend – Technical Report R15/111
33. Dairy NZ Economics Team. Reducing N leaching on Upper Waitaki Dairy Farms
34. Duff, K. Irrigation Effects on Stream Flows in the Upper Waitaki CWMZ Zone dated 8 August 2014 – Memorandum
35. Duff, K., Clark, D. Whitneys Creek Flows dated 26 June 2014 – Draft Memorandum
36. Etheridge, Z. Predicting consequences of future Scenarios in the Waitaki Catchment: Lower Waitaki Groundwater quality – Technical Report R15/60
37. Ford, R., Meredith A. Nutrient Capacity of CLWRP Orange & Green Nutrient Management Zones – Memorandum
38. Gray, D., Meredith, A., Clarke G. Phosphorus sources and transport in the Upper Waitaki catchment – Draft
39. Gray, D. Waitaki limit setting process. Predicting consequences of future Scenarios in the Upper Waitaki rivers and streams: Water quality and ecology – Technical Report R15/59
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41. Greer, M., Clarke, G., Gray, D. Waitaki limit setting process. Predicting consequences of future scenarios in the Lower Waitaki: Surface water quality and ecology – Technical Report R15/81

42. Grove, P. Modelling biodiversity outcomes for the Upper Waitaki Water Management Zone under various land use change scenarios dated 12 October 2015 - Memorandum
43. Grove, P. Modelling biodiversity outcomes for the Lower Waitaki Water Management Zone under various land use change scenarios dated 12 October 2015 - Memorandum
44. Hanson, C.R. Nitrate concentrations in Canterbury groundwater – a review of existing data– Technical Report R02/17
45. Harris, S., Kravchenko, A. Travel Cost Valuation of Recreation in the Upper Waitaki Catchment (2015)
46. Hickey, C.W and Martin M.L. A review of nitrate toxicity to freshwater aquatic species – Technical Report R09/57
47. Hill, Z., Ford, R. Canterbury land use statistics and nitrate losses – Memorandum
48. Hume E., Brown H., Sinton S., Meenken E. Arable and horticultural crop modelling for the Matrix of Good Management – a technical summary
49. Lilburn, L. Analysis of some options for the implementation of a regional LWRP Flexibility Cap – Memorandum
50. Lilburn, L., Webb, T., Robson M., Watkins, N. Estimating nitrate-nitrogen leaching rates under rural land uses in Canterbury (updated) – Technical Report R14/19
51. Lilburne, L., Webb, T. Soil and climates in Canterbury: clusters for the Matrix for Good Management project
52. McDowell, R.W., Nash D. A review of the Cost-Effectiveness and Suitability of Mitigation Strategies to Prevent Phosphorus Loss from Dairy Farms in New Zealand and Australia
53. Mojsilovic, O., Shaw, H. Upper Waitaki planning and hydrological boundaries dated 11 June 2015 – Memorandum
54. Mojsilovic, O., Duff, K., Shaw, H., Palmer, K., Steel, K. Generation of nitrogen and phosphorus loss estimates in the Waitaki Catchment – Technical Report R15/109
55. Ogle, G. Calculation of Nitrogen and Phosphorus losses to ground water and waterway from farm systems in the Upper Waitaki dated 2014
56. Ogle, G. Management strategies for mitigating nitrogen losses on a Dry Subhumid farm in the Upper Waitaki Catchment dated 2014
57. Ogle, G. Preliminary investigation into mitigation strategies dated 2014
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59. Palliser, C., Elliot, S., Yalden, S., Shankar, U. Waitaki Water Quality Catchment Modelling (2015)
60. Pinxterhuis, I., Kuhn-Sherlock B., Dennis S. Matrix of Good Management – Estimating nutrient loss of Canterbury dairy farm systems operating at Good Management Practice – December 2015
61. Ragnarsson, S., Stiven, W. The Farm Portal – System Description and Requirements Document
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63. Scott, M. The current state of groundwater quality in the lower Waitaki – Technical Report R15/41
64. Shaw, H. Aquaculture Information for Upper Waitaki Zone dated 12 September 2014 – Memorandum

65. Shaw, H., Harris, S. Good Management Practice and Maximum Feasible Mitigation dated 4 December 2014 – Memorandum
66. Shaw, H. Aquaculture information for Upper Waitaki Zone dated 12 September 2014 – Memorandum
67. Shaw, H., Palmer, K. Waitaki Limit Setting Process: Technical Review – Technical Report R15/99
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71. Unwin, M.J. Assessment of significant salmon spawning sites in the Canterbury region – Technical Report U06/59
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73. Wilcock, R., Monaghan, R., Quinn, R., Srinivasan, S., Houlbrooke, D., Duncan, M., Wright-Stow, A., Scarsbrook, M. Trends in water quality of five dairy farming streams in response to adoption of best practice and benefits of long-term monitoring at the catchment scale dated 2013
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