

# Nutrient Allocation Policy

## PDS Final Draft v1.0

### 1.0 Background

HWP holds several Consents to maintain and operate the Scheme including to take water from the Hurunui River and to use it to irrigate land in the Hurunui and Waipara catchments and to discharge Nutrients. These Consents have a variety of conditions relevant to the allocation of Nutrients, including:

- For the Hurunui catchment, which has an operative sub-regional plan (HWRRP):
  - Nitrogen leached below the root zone from farming activities of the Scheme above SH1 is not to exceed a modelled dissolved inorganic nitrogen load limit of 1270 tonnes per year;
  - No phosphorus is to be discharged from a farm in excess of the baseline for that farm as no increase is allowed in dissolved reactive phosphorus in the Hurunui River reaching SH1;
  - Waypoint reviews are to be undertaken at 15,500 ha and 33,500 ha for Scheme compliance with nitrogen and phosphorus limits specified in the Consents and in the HWRRP;
  - To achieve resolution of appeals to the Consents, a Three-Way Agreement was executed between Amuri Irrigation, Ngāi Tahu Property and HWP. It prescribes methodologies to be used by each party when assessing compliance with Nutrient management resource Consent conditions;
  - Some of the HWP resource Consent conditions require compliance with measured Nutrient levels in the Hurunui River at the SH1 bridge – HWP is not the only contributor to such effects but may need to respond to changes in aggregate Nutrient levels.
- For the Waipara catchment, which does not have a sub-regional plan and is red zoned in terms of water quality objectives in the CLWRP:
  - The discharge of nitrogen from properties being supplied with HWP water is not to exceed a maximum quantum made up of: 146 tonnes (yet to be confirmed by Consent CRCXXXX), plus; the aggregate of the baseline for proposed irrigated, non-irrigated and any existing (as at 2011) irrigation on farms to be provided with HWP water.
- For every property receiving HWP water,
  - GMP is to be adopted on-farm and a FEP is to be completed for the entire Farming Business. It is to take into account all sources of Nutrients used in the farming activity (irrigated and non-irrigated) and identify all relevant Nutrient management practices and mitigation measures. The FEP will be audited on a frequency determined by the Consents in the Hurunui catchment, and by the CLWRP in the Waipara catchment;

- Modelling of Nitrate-nitrogen discharge losses individually from farms will be by use of Overseer®. The aggregate Scheme-wide Nitrate-nitrogen discharge allowances in the Consents were modelled at the time the Consents were applied for using the Lilburn look-up tables for the Hurunui catchment and Overseer® look-up tables for the Waipara catchment. The three methodologies produce different results.

Given the variety of Nutrient discharge modelling methodologies and assumptions in the various Consents, and the need to comply with both measured (in-river) and modelled (on-farm) discharges; to ensure on a continuing basis that all Consent conditions are not breached, HWP will need to hold a buffer between the allocations made to individual Farmers, and the aggregate consented entitlements held by HWP.

Farmers will be entitled to access water and Nutrients from HWP upon acquiring Water Right Shares and entering into a Water Supply Agreement with HWP. The Water Supply Agreement will transfer from HWP to the Farmer some of the rights and obligations held in the Consents. This Nutrient Allocation policy addresses the apportionment of Nutrients to the Farmer, or more specifically, the apportionment of the right to discharge Nutrients from the farm.

The Consents which provide for Nutrient discharges are, and will continue to be, held by HWP. Farmers will be granted, pursuant to this Nutrient Allocation Policy and the terms of their respective Nutrient Licence Agreement, the conditional right to discharge a specified amount of Nutrients. The amount of Nutrients to be allocated to each Farmer will be no more than the Nutrients required for their individual Farming Business when operating under GMP.

## 2.0 Purpose

The purpose of this Nutrient Allocation Policy is to equitably distribute Nutrient apportionment to all eligible Farmers across the Scheme, and:

1. Outline the objectives and principles that underpin the Nutrient Allocation Policy separately for the Hurunui and Waipara catchments;
2. Advise Farmers of the Nutrient Allocation Policy and how it will be managed within each catchment and across each development stage of the Scheme;
3. Provide Farmers with certainty on access to a Nutrient discharge apportionment from the Consents by:
  - a. Enabling flexibility of land use by a Farmer without pre-determining at the outset the irrigated farming system that may be adopted by a Farmer;
  - b. Ensuring that Consents conditions are not breached individually by the Farmer and in aggregate by HWP;
  - c. Recognising individual Farmer nitrogen baselines are different; and
  - d. Maintaining capacity for later access to nutrient apportionments by HWP should waypoint reviews require Scheme-wide reductions, or additional and/or existing irrigators require a further apportionment.
4. Provide details of the HWP discharge Consents and how HWP intends to manage compliance with the Consents.

The Nutrient Allocation Policy may need to change over time in order to take into account changes in law and/or district or regional plans and HWP's water take and discharge Consent conditions, and the management actions required to comply with the Consent conditions, or to achieve equity and fairness between Farmers.

Any amendments will be communicated to all Farmers, following consultation on proposed changes.

### 3.0 Definitions

“CLWRP” means the operative Canterbury Land and Water Regional Plan.

"Consent or Consents" means the resource consent/consents held or relied upon by HWP to construct, maintain and operate the Scheme including the Discharge Consent and Land-Use Consent, to take and use water for the Scheme and to discharge Nutrients and includes all other such consents deemed necessary by HWP from time to time and any associated or auxiliary consents and amendments or variations thereto.

"Discharge Consent" means HWP's Waipara Nutrient Discharge Consent.

“Existing Irrigators” means a Farmer whose land was irrigated prior to 20 December 2013 in the Hurunui catchment, and prior to 20 November 2011 in the Waipara catchment pursuant to consents held by parties other than HWP.

“Farmer” means a person or entity that has entered into a Water Supply Agreement and holds Water Rights Shares in HWP.

“Farming Business” means all the properties utilised as part of a farm (whether irrigated or not) and as included in a Farmer’s FEP. This includes all irrigated land, and any other support/wintering /dryland block that is utilised as part of a farm entity within the Hurunui or Waipara catchments. If any part of a Farmer’s property is included in the Scheme Area, the entire property is to be accounted for under this Nutrient Allocation Policy.

“FEP” means a Farm Environment Plan as defined in the General Terms of Water Use, and Farm Environment Management Plan has the same meaning for the Farming Business.

“GMP” means industry-approved Good Management Practice as determined:

- In the case of the Hurunui catchment by the HWP land use consent (CRC172780), or any updates or variations thereof, and
- In the case of the Waipara catchment, the HWP Waipara Nutrient Discharge consent (CRCXXXXXX), or any updates or variations thereof.

“HWP” means Hurunui Water Project Ltd.

“HWRRP” means the Hurunui Waiau River Regional Plan.

"Land-Use Consent" means HWP's Hurunui Catchment Land-Use Consent.

“Nitrogen Licence Agreement” means the licence by which HWP allocates to each individual Farmer the right to discharge Nitrate-nitrogen from the Farming Business pursuant to the Consents.

“Nitrate-nitrogen” means the annual amount of nitrate-nitrogen that may be leached below the root zone as estimated for the Farming Business using Overseer®.

"Nutrients" means Nitrate-nitrogen and phosphorous.

“Three-Way Agreement” means the legally binding 2015 agreement with Amuri Irrigation Company Ltd and Ngāi Tahu Property Ltd that, amongst other things, defines the methodology to be used by all parties when determining nutrient calculations for on-farm nutrient losses.

“Scheme” means the HWP scheme providing surface water for community irrigation.

“Scheme Area” means the area to be serviced by the Scheme in the Hurunui and Waipara catchments and which is located within the command areas defined in the various Consents for take and use of water, discharge from land, and change of land use.

“Scheme GMP Look-Up Table” means the Overseer® look-up table to be used when calculating the nitrogen discharge from various land uses in the Waipara catchment.

“Scheme Land” means land that is situated in whole or in part in the Scheme Area, upon which the Farmer undertakes the Farming Business.

“Suitably Qualified Person” means a person that holds a Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University.

“Water Right Share” means shares in HWP allocating water and Nutrients with the rights and obligations set out in HWP's constitution.

“Water Supply Agreement” has the meaning set out in HWP’s constitution and records the basis of water supply between a Farmer and HWP.

## 4.0 Nutrient Allocation Principles

In establishing a Nutrient Allocation Policy several key issues were considered:

- Farmers need surety for investment purposes;
- To the greatest extent possible, all Farmers should be treated with fairness and equity;
- Maximising the hectares irrigated under the Scheme (within defined environmental constraints) will reduce the annual charge for all Farmers;
- Both HWP and Farmers must be accountable for nitrogen and phosphorus apportionment and use;
- Retaining options for future intensification via a genuine phased conversion plan will give maximum flexibility for both the Scheme and for the individual Farmer, and
- The need to safeguard Nitrate-nitrogen apportionments to enable the Scheme to develop to its full potential.

In recognition of this, and to ensure equitable access to the available apportionment arising from the Consents, five founding principles have been adopted:

- Nitrate - nitrogen allocated in the Consents will be retained by HWP;
- Farmers will be allocated, via a Nutrient Licence, the right to use (but not own) no more than the Nitrate-Nitrogen required for their individual Farming Business when operating under GMP;
- Individual FEP’s will define the extent and nature of the Farmer’s Farming Business and demonstrate how the apportionment under the Nutrient Licence is to be utilised;
- HWP will retain the right to manage adjustments to Nutrient Licences for all Farmers to achieve any required reductions arising from any future reviews under the Consents;
- Nutrient ‘trading’ will not be permitted between any parties operating under the Consents, because any nitrogen loss from a Farming Business is seen by HWP as an environmental liability to be minimised, and not an asset to be traded.

HWP seeks to enable as much new irrigation as is possible (within defined environmental constraints) to reduce the “per hectare” capital and operating costs that arise from the Scheme. Nutrient management requirements within the Consents provide a most significant constraint on

total irrigated area within the Scheme, so nutrient apportionments to Farmers need to be managed with considerable care.

The Nitrate-nitrogen apportionment and the discharge Consents are held by HWP. HWP will licence the Nitrate-nitrogen apportionment to the Farmer on a case-by-case basis.

## 5.1 Hurunui Catchment Land-Use Consent

HWP Farmers' Nitrate-nitrogen losses are authorised under several of the Consents, and there are many conditions that have to be satisfied. This section of the Nutrient Allocation Policy for the Hurunui catchment primarily aligns with the Land-Use Consent (CRC172780), which contains the greatest detail. The Land-Use Consent incorporates flexibility and limits to ensure that Nutrient losses can be managed and reported at both individual farm and whole of Scheme levels.

Of immediate relevance to the Nutrient Allocation Policy, the Hurunui Catchment Land-Use Consent:

- Defines the method to convert the SH1 in-river nitrate-nitrogen limit to a modelled below root zone calculation for individual farming activities using Overseer®;
- Requires HWP to maintain a catchment Nutrient load model and budgeting tool to track changes from the aggregate Nutrient discharges arising from farming activities within the Scheme;
- Requires a FEP to be prepared for each property receiving HWP water, with the FEP to include the total property (including areas not using HWP water), and for the adoption of GMP throughout the entire property;
- Defines the content of each FEP, and in particular requires the maximum annual amount of Nitrate-nitrogen that may be leached below the root zone to be specified;
- Requires HWP to obtain from Farmers who winter stock outside of the HWP Scheme Area but within the Hurunui catchment, to give an undertaking that the wintering area has a FEP that also requires adoption of GMP;
- Allows HWP to supply water for use on land where irrigation is authorised by a separate land use (or discharge) consent, but only if that separate land use consent has conditions no more lenient than set out in the Consent. This will be of significance to Existing Irrigators.

## 5.2 Waipara Catchment Discharge Consent

HWP Farmers' nitrogen losses are authorised under several of the Consents, and there are many conditions that have to be satisfied. This section of the Nutrient Allocation Policy for the Waipara catchment primarily aligns with the Discharge Consent (CRCXXXXX) which contains the specific requirements for that catchment. The Discharge Consent incorporates flexibility and limits to ensure that nutrient losses can be managed and reported at both individual farm and whole of Scheme levels.

Of immediate relevance to the Nutrient Allocation Policy, the Waipara Catchment Discharge Consent:

- Defines the properties within an area of land where HWP irrigation water can be applied and result in a Nutrient discharge;
- Specifies the aggregate maximum rate at which nitrogen may be discharged from such properties having regard to the 2011 nitrogen baseline for each property plus a share of the Scheme allowance of 146.3 tonnes p.a.;
- Requires HWP to maintain a schedule of properties which includes information on the Nitrate-nitrogen baseline for each property and whole farm Nitrate-nitrogen loss apportionment from the Scheme;

- Requires an FEP to be prepared for each property receiving HWP water, with the FEP to include the total property (including areas not using HWP water), and for the adoption of GMP throughout the entire Farming Business;
- Defines the content of each FEP, and in particular requires the maximum annual amount of Nitrate-nitrogen that may be leached below the root zone to be specified.

## 6.0 Hurunui Water Project Nutrient Allocation Policy

- HWP's Scheme-wide Nitrate-nitrogen allocation will be held by HWP;
- HWP will licence its Nitrate-nitrogen allocation to Farmers;
- The Farmer's Nutrient Licence Agreement will specify that:
  - The Nutrient Licence will only be available to a Farmer for so long as they remain a holder of Water Right Shares in HWP, a holder of a validly executed Water Supply Agreement and continue to operate their Farming Business;
  - Nutrient discharges for all current and planned land uses in the Farming Business will be assessed at GMP using Overseer®;
  - For each Water Right Share held, the Farmer will be entitled to an initial Nutrient apportionment from the Consents that is sufficient, after assessing the baseline discharge for the Farming Business, to discharge up to 40kg/Water Right Share/year of Nitrate-nitrogen. i.e. baseline + HWP initial apportionment = 40kg/year for each Water Right Share held. If the baseline equals or exceeds 40kg/Water Right Share/year there will be no initial apportionment from the Consent;
  - Should the Farmer's GMP-based current land use, together with developments planned for the next three years (and able to be demonstrated as such in a credible manner), be shown to require a Nitrate-nitrogen quantum greater than the initial Nutrient apportionment, then the Farmer can apply to HWP for an additional Nitrate-nitrogen apportionment;
  - HWP will have sole discretion whether or not to accept such an application, and to subsequently allocate additional Nitrate-nitrogen to a Farmer;
  - Approval of an application for additional Nitrate-nitrogen apportionment will not be unreasonably withheld by HWP. Any additional Nitrate-nitrogen allocated to a Farmer will:
    - Be subject to review on a rolling three-year basis, and
    - Require a Farmer to demonstrate continued compliance with the Farmer's FEP and adherence to GMP in the entire Farming Business, and
    - Require a Farmer to have advanced development plans (or any other initiatives) included in the Farmer's application for an additional Nitrate-nitrogen apportionment, and
    - Be able to be withdrawn by HWP if the Farmer breaches the term of its Nutrient Licence Agreement.
  - If a Farmer is an Existing Irrigator, the Nutrient License Agreement will only be available for that part of a property using HWP water. It cannot be redistributed across land that is irrigated with water from other parties' consents.
- A Farmer must prepare and maintain a FEP for the entire Farming Business;
- The upper limit of the Nitrate-nitrogen discharge included in a FEP will be guided by:
  - The requirement for GMP for the current and proposed land uses in the entire Farming Business;
  - Any re-distribution of the nitrogen baseline within the Farming Business together with the application of the HWP initial, and any additional, Nitrate-nitrogen apportionment specified in the Farmer's Nutrient Licence Agreement;
  - The aggregate modelled Nitrate-nitrogen loss for the proposed Farming Business inclusive of irrigation (calculated using Overseer®).

- Farmers may change their farming systems from time to time provided they do so within the limits set by their Nutrient Licence Agreement, and such change is consistent with their GMP and FEP requirements;
- HWP can refuse to enter into a Nutrient Licence Agreement with a Farmer if:
  - Any of the Scheme-wide nutrient discharge limits require it to do so, or
  - A Farmer breaches the terms of their FEP or Water Supply Agreement, or
  - A Farmer has breached the terms of an earlier Nutrient Licence Agreement.
- Should any of the Scheme-wide reviews contained in the Consents trigger the need for a reduction in Nitrate-nitrogen apportionments licenced to Farmers under Nutrient Licence Agreements, this will be implemented in the following priority order:
  - First, by reducing apportionments for any unused additional Nitrate-nitrogen apportionment;
  - Secondly, by reducing apportionments for any unused initial Nitrate-nitrogen apportionment;
  - Thirdly, by pro-rata reductions of any used additional Nitrate-nitrogen apportionment;
  - Fourthly, by pro rata reductions of any used initial Nitrate-nitrogen apportionment.
- Depending on the regulatory environment and the ability to demonstrate compliance with Consent conditions, if any of HWP's Nitrate-nitrogen apportionment is not fully licensed under the above process, it may be available at a later point for new or existing Farmers.

## 7.0 Nutrient Licence Agreement Application Process

The Nutrient Licence Agreement will define the terms and conditions under which a Farmer will have access to Consents allowing change of land use and/or rights to discharge Nutrients from Scheme Land. A Farmer's application for a Nutrient Licence Agreement will cross reference with the Farmer's FEP and will need to include the following information:

- The area and land use of the Farming Business in the Farmer's FEP;
- The area and land use of the Farming Business that was irrigated (if relevant) prior to 20 December 2013 in the Hurunui catchment, and prior to 1 November 2011 in the Waipara catchment;
- The area and land use of the Farming Business that was not irrigated prior to 20 December 2013 in the Hurunui catchment, and prior to 1 November 2011 in the Waipara catchment;
- The area of the Farming Business proposed to be irrigated, and the land use to be associated with such irrigation;
- The Nitrate-nitrogen baseline (.xml file format or equivalent model approved by the Chief Executive of Environment Canterbury) for the Farming Business (prepared by a Suitably Qualified Person);
- A Nitrate-nitrogen loss model (.xml file format or equivalent model approved by the Chief Executive of Environment Canterbury and prepared by a Suitably Qualified Person) for the proposed irrigated farming system (and including any stages taken to develop fully); and
- A description of the timeframe to achieve full development, which must not exceed three years from the time HWP first makes irrigation water available to the land to which the Nutrient License Agreement applies.

## 8.0 Questions and Answers

This section is intended to answer frequently asked questions and to guide an understanding of the Nutrient Allocation Policy.

1. How much Nitrate-nitrogen will be allocated with each Water Right Share?

Each Water Right Share will entitle a Farmer to a Nitrate-nitrogen discharge as of right of up to 40kg per Water Right Share This 40 kg per Water Right Share is to be made up of the baseline for the

Farming Business, together with any apportionment of Nitrate-nitrogen (called the “Initial Nutrient Apportionment”) from the Consents that is necessary to achieve 40kg per Water Right Share. If the baseline is already above 40kg per Water Right Share, no Nutrient apportionment will be made from the Consent. The Initial Nutrient Apportionment will remain with the Farming Business for so long as the Farming Business has a Water Supply Agreement with HWP.

2. Is a greater Nitrate-nitrogen apportionment able to be secured by a Farmer?

Yes. Application can be made by a Farmer to HWP for an “Additional Nutrient Apportionment” of Nitrate-nitrogen from the Consents. While always operating within the terms of the Consents, it is HWP’s intention to enable maximum flexibility of land use for Farmers, rather than to constrain land development options. Approval of applications for an Additional Nutrient Apportionment of Nitrate-nitrogen will not be unreasonably withheld by HWP. Applications will be assessed on a number of criteria including:

- Adherence to Good Management Practice for all current and proposed land uses in the Farming Business;
- Continuing compliance with the Farm Environment Plan for the Farming Business;
- Delivery of any development programme described in an application for an increased Nitrate-nitrogen apportionment, and
- Compliance with the terms of the Farmer’s Nutrient Licence.

The additional apportionment of Nitrate-nitrogen to a Farmer from the HWP consents will be subject to a rolling three-year review to ensure the application criteria continue to be met by the Farmer, and HWP consent conditions are adhered to.

3. What is the Nutrient Licence Agreement?

The Nutrient Licence Agreement is the means of contracting to each Farmer their individual Nitrate-nitrogen entitlement when operating under the HWP consents. Each Farming Business will have its own unique set of requirements for Nitrate-nitrogen discharge, so the Nutrient Licence Agreement will personalise Nitrate-nitrogen entitlements and provide investment certainty for the Farmer to enable farm development to be undertaken with confidence.

4. Is the Nitrate-nitrogen apportionment to individual Farmers able to be reviewed by HWP?

Yes, but only in a structured and hierarchical manner. When operating under the HWP consents, amongst other things, the Farmer is required to apply GMP and adhere to a FEP – failure to do so can result in the Nitrate-nitrogen apportionment under the Nutrient Licence Agreement being reviewed and reduced by HWP.

In addition, should any of the Scheme-wide reviews in the Consents trigger the need for a reduction in the allowed Nitrate-nitrogen discharges of all Farmers, this will be done by initially focussing on unused apportionments, before then focussing on apportionments that are used in accordance with GMP and an individual’s FEP.

5. Will I be able to apply for an additional apportionment of Nitrate-nitrogen from HWP if I am not changing my Farming Business immediately, but want to preserve future options?

A Farmer can make application at any time for an additional apportionment of Nitrate-nitrogen. In all cases, any additional apportionment granted will be subject to a rolling three-year review – generally HWP will allow a Farmer to hold an additional apportionment of Nitrate-nitrogen if the

Farmer can demonstrate a credible and verifiable farm development programme to support such an additional apportionment.

HWP will monitor the implementation of the proposed farm development and land intensification through the FEP audit process. If the rolling three-year assessment shows the Farming Business has not been intensified as planned, HWP may decide that the balance of the additional apportionment of Nutrients may no longer be available to the Farmer.

6. What happens if I hold a change of land use or discharge consent in my own name, and want to access water and Nutrients under the Consents?

The Consents require that if a property holds an existing consent and wishes to use water under the Consent on the same area of land, then the use of water must comply with the terms of the Consent. The combined application rate of water from multiple sources is not allowed to exceed 0.58 l/sec/ha.

7. What happens to my Nitrate-nitrogen apportionment when new Overseer<sup>®</sup> versions are released?

The Consents provide for the recalculation of Nitrate-nitrogen entitlements upon new versions of Overseer<sup>®</sup> being released, with reconciliation back to the Consent entitlements. Any recalculation of Consent entitlements will in turn be transferred to individual Farmers under the terms of the Nutrient Licence Agreement.

8. Is there a Phosphate apportionment with the Water Right Share?

No. Phosphate discharges must be held at or below the baseline for a Farming Business.

9. Are the Nutrient apportionment rules different in the Hurunui and Waipara catchments?

Yes. Nutrient management in the Hurunui and Waipara catchments are governed by two separate Consents. HWP has sought to apply the Nutrient apportionment rules in a consistent manner to Farmers in the two catchments, to the extent enabled by the Consent conditions.

10. What is role of the FEP in relation to Nutrient management?

The FEP is the means of personalising to each Farmer's Farming Business, the Scheme-wide Nutrient management conditions that are relevant to that Farmer when operating under the Consents. The FEP will describe for each land use, soil type and farming system, the GMP that will be applied and the means of achieving farm development when using water and Nutrients that are made available to the Farmer via the Consents.

The FEP will be audited on a frequency determined by the observed level of compliance with the provisions of the approved FEP. Non-compliance with GMP or the FEP could lead to review of entitlements under the Farmer's Nutrient Licence Agreement.

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# Nutrient Licence Agreement

Date:

## Parties

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- (1) Hurunui Water Project Limited (**Company**)
- (2) [ ] (**Farmer**)

## Background

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- A. The Company is the owner of the Consents relating to the taking of water from the Hurunui River and providing for the discharges of Nutrients in the Scheme Command Area.
- B. The Farmer operates the Farming Business in the Scheme Command Area, has entered into a Water Supply Agreement with the Company and holds Water Rights Shares in the Company.
- C. The Company has agreed to grant the Farmer a licence to discharge a specified amount of Nutrients under the Consents subject to the terms and conditions of this Agreement.

## Agreement

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### 1. Definitions and interpretation

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1.1 In this agreement unless the context otherwise requires:

**Additional Nutrient Apportionment** means any additional apportionment of Nutrients, over and above its Initial Nutrient Apportionment, which may be applied for and allocated to the Farmer in accordance with the terms of the Nutrient Allocation Policy.

**Agreement** means this nutrient licence agreement, any schedules and any subsequent amendments by which the Company allocates to the Farmer the right to discharge Nutrients from the Farming Business pursuant to the Consents.

**Application Form** means the application form relating to Shares which has been completed and signed by the Farmer.

**Company** means Hurunui Water Project Limited, or such other company as has been nominated by Hurunui Water Project Limited to have rights and perform the obligations of Hurunui Water Project Limited under this Agreement.

**Consents** means the resource consents/consents held or relied upon by the Company to construct, maintain and operate the Scheme including to take and use water for the Scheme and to discharge Nutrients and includes all other such consents deemed necessary by the Company from time to time and any associated or auxiliary consents and amendments or variations thereto.

**Consent Conditions** means any conditions attaching to the Consents.

**Existing Irrigator** means a Farmer whose land was irrigated prior to 20 December 2013 in the Hurunui catchment, and prior to 20 November 2011 in the Waipara catchment pursuant to resource consents held by parties other than the Company.

**Farmer** means a person or entity that has entered into a Water Supply Agreement and holds Water Right Shares in HWP.

**Farming Business** means all the properties utilised as part of a farm (whether irrigated or not) and as included in the Farmer's FEP. This includes all irrigated land, and any other support/wintering/dryland block that is utilised as part of a farm entity within the Hurunui or Waipara catchments. If any part of the Farmer's property is included in the Scheme Area, the entire property is to be accounted for.

**FEP** means any farm environmental plan, farm management plan or farm environmental management plan required to be prepared under the Consents in the form required by the Company in respect of the Farming Business.

**Financiers** means any bank, financial institution or other third party providing secured financing to the Company from time to time and includes any facility agent and/or security trustee acting on behalf of any such person or persons.

**General Terms** means the general terms of water use as amended or varied from time to time.

**GMP** means industry-approved Good Management Practice as defined in the Consents and specified in the Farmer's FEP.

**Initial Nutrient Apportionment** means the Farmer's initial apportionment of Nutrients determined in accordance with clause 4 and Schedule 1.

**Nutrient Allocation Policy** means the process whereby the Company will in its absolute discretion equitably allocate nutrient discharge rights to individual farmers consistent with the Company's obligations under the Consents.

**Nutrients** means nitrate-nitrogen.

**Nutrient Baseline** means the average annual loss of Nutrients from the Farming Business as modelled using the latest version of Overseer® calculated in accordance with the Nutrient Allocation Policy.

**Ordinary Share** has the meaning set out in clause 3.2 of the Company's constitution.

**Scheme** means the properties serviced by the scheme infrastructure and other properties located in the Scheme Command Area.

**Scheme Command Area** means at any time, the command area for the Scheme identified in the Consents at that time or such further areas the Board of the Company may determine in its absolute discretion.

**Share** means a share in the capital of the Company including but not limited to ordinary Shares, Water Right Shares and any classes of those Shares.

**Shareholder** means:

- (a) a person whose name is entered into the Share register as the holder for the time being of one or more Shares in the Company;
- (b) until the person's name is entered in the Share register, a person who is entitled to have that person's name entered in the Share register under a registered amalgamation proposal as a Shareholder in an amalgamated company.

**Transfer Agreement** means the short form water agreement binding the purchaser of Water Right Shares to the Water Supply Agreement.

**Water Right Share** has the meaning set out in clause 3.3 of the Company's constitution.

**Water Supply Agreement** means the Application Form together with the General Terms or the Transfer Agreement together with the General Terms as the case may be, allowing access to water as revised or updated from time to time in accordance with the General Terms and the Company Policies as amended from time to times.

**Working Day** means 9:00am to 5:00pm New Zealand time excluding weekends, public holidays and regional holidays in Canterbury.

- 1.2 In this agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) words importing one gender include the other gender;
  - (c) a reference to a "party" means a party to this agreement and includes that party's executors, administrators, successors, substitutes and permitted assigns;
  - (d) headings are for ease of reference only and do not affect the interpretation of this agreement;
  - (e) references to clauses and schedules are references to clauses and schedules in this agreement;
  - (f) references to any "\$" or currency are references to New Zealand dollars;
  - (g) references to any statutes or regulations are to New Zealand statutes and regulations and includes all consolidations, amendments, re-enactments, or replacements of the same;
  - (h) no rule of strict construction will apply against the party which drafted any clause in this agreement and seeks to rely on it, this agreement having evolved and been mutually negotiated by the parties as equals;
  - (i) any covenant not to do a thing also constitutes an obligation not to suffer or permit or cause that thing to be done; and
  - (j) subject to any specific provision to the contrary, any consent required to be given pursuant to this agreement may be withheld at the absolute discretion of the party required to give the consent.

## **2. Term**

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- 2.1 This Agreement shall continue until such time as it is terminated in accordance with the provisions of this Agreement.
- 2.2 The Farmer must not terminate, rescind or accept any repudiation of this Agreement.

## **3. Grant of licence**

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- 3.1 The Company grants to the Farmer the exclusive right to discharge Nutrients from its Farming Business in accordance with the Schedule 1, on the terms and subject to the conditions set out in this Agreement.
- 3.2 The Farmer acknowledges that its right to discharge Nutrients in accordance with this Agreement is subject to the Consents and any Consents Conditions.

- 3.3 The rights contained under this Agreement will only be available to the Farmer for so long as it remains the holder of Water Right Shares in the Company (as detailed in Schedule 1), holds a validly executed Water Supply Agreement and continues to operate the Farming Business.
- 3.4 The Farmer agrees and acknowledges that:
- (a) it has read and understood the Nutrient Allocation Policy;
  - (b) it is bound by the Nutrient Allocation Policy; and
  - (c) the Company may need to change the Nutrient Allocation Policy over time in order to take into account changes in law and/or district or regional plans and the Company's water take and Consent Conditions, and the management actions required to comply with the Consent Conditions, or to achieve equity and fairness between farmers.
- 3.5 If the Farmer is an Existing Irrigator, the rights contained in this Agreement will only be available for that part of the Farmer's Farming Business using water from the Scheme. It cannot be redistributed across land that is irrigated with water from other parties' resource consents. Any irrigation implemented after 1 November 2011 shall be added to the Nutrient Baseline as detailed in Schedule 1.

#### **4. Initial Nutrient Apportionment**

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- 4.1 The Initial Nutrient Apportionment that is licenced to the Farmer shall be:
- (a) determined by the number of Water Right Shares held by Farmer and the Nutrient Baseline as detailed at Schedule 1; and
  - (b) allocated to the Farmer for the duration of the Consents, provided the Farmer continues to have a valid Water Supply Agreement with the Company.
- 4.2 For each Water Right Share held, the Farmer will be entitled to an Initial Nutrient Apportionment from the Consents that is sufficient, including any Nutrient Baseline, to discharge 40kg per hectare per year of Nutrients from each irrigated hectare.
- 4.3 For the avoidance of doubt, if the Farmer's Nutrient Baseline exceeds 40kg per hectare per year there will be no Initial Nutrient Apportionment from the Consent.

#### **5. Additional Nutrient Apportionment**

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- 5.1 The Farmer may apply to the Company for an Additional Nutrient Apportionment in accordance with the Nutrient Allocation Policy should the Farmer's GMP-based current land use, together with developments planned for the subsequent three years (and able to be demonstrated as such in a credible manner), be shown to require a Nutrient quantum greater than the Initial Apportionment (**Additional Nutrient Application**).
- 5.2 Any Additional Nutrient Application shall be made in accordance with the then current Nutrient Allocation Policy.
- 5.3 The Company shall not unreasonably withhold its acceptance of any Additional Nutrient Application received from the Farmer (either in whole or in part).
- 5.4 Any Additional Nutrient Apportionment granted by the Company shall:
- (a) be added to the Initial Nutrient Apportionment shown in Schedule 1;
  - (b) be subject to review on a rolling three-year basis;

- (c) require the Farmer to demonstrate continued compliance with the Farmer's FEP and adherence to GMP in its entire Farming Business; and
- (d) be able to be terminated by the Company if the Farmer breaches the term of this Agreement.

## **6. Farmer Compliance**

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- 6.1 The Farmer acknowledges and agrees that:
- (a) in respect of the Initial Nutrient Apportionment and Additional Nutrient Apportionment (if any), it shall meet GMP and FEP standards in respect of its whole Farming Business;
  - (b) in respect of the Additional Nutrient Apportionment (if any), the Farmer must undertake the development/land use intensification described in their Additional Nutrient Application within three years of the Additional Nutrient Application being accepted by the Company.
- 6.2 The Farmer acknowledges that the Company has the right to modify or terminate this Agreement:
- (a) in respect of both the Initial Nutrient Apportionment and Additional Nutrient Apportionment (if any), if the Company determines in its sole discretion that the Farmer,
    - (i) has failed to comply with clause 6.1(a); and/or
    - (ii) has failed to meet the Company's conditions as set out in the Nutrient Allocation Policy.
  - (b) in respect of the Additional Nutrient Allocation (if any), if the Company determines in its sole discretion that the Farmer has failed to comply with clause 6.1(b).

## **7. Consent Conditions and Priority of Allocation**

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- 7.1 The Farmer acknowledges that the Consents contain Consent Conditions which may trigger the need for a reduction in the Nutrient allocation licensed to it under this Agreement and that the Company may implement any reduction of Nutrient allocations for all Farmers in the following priority order:
- (a) firstly by reducing allocations for any unused Additional Nutrient Apportionment;
  - (b) secondly by reducing allocations for any unused Initial Nutrient Apportionment;
  - (c) thirdly by pro-rata reductions of any used Additional Nutrient Apportionment; and
  - (d) fourthly by pro rata reductions of any used Initial Nutrient Apportionment.

## **8. Transferability of rights**

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### **The Company's rights**

- 8.1 The Company's rights and obligations under this Agreement are freely assignable, and will ensure to the benefit of and be binding upon its successors or assigns.

### **Farmer's limited rights**

- 8.2 The rights granted to the Farmer under this Agreement are exclusive to it and cannot, without the prior written consent of the Company, be transferred or assigned, including by merger,

consolidation or reorganisation, to any other manufacturer, person, firm or corporation or sub-license or performed on behalf of a third party. The acquisition or transfer of any Shares from the Farmer by or to any person who is not a shareholder of the Farmer at the date of this agreement is deemed to be a transfer or assignment for the purposes of this clause 8.2.

## **9. Contract Review**

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- 9.1 The Company may at any time review and amend the terms and conditions of this Agreement including:
- (a) to take account of changes and ensure compliance with relevant laws, district or regional plans or the Consents;
  - (b) to take account of farming and irrigation practice (to be determined by the Company in its sole discretion);
  - (c) to make such changes or fix any errors (for example, to correct the Water Right Share or Nutrient Baseline details as set out in Schedule 1) as may be necessary from time to time; or
  - (d) to take account of any requirements of the Financiers in connection with the financing of the scheme.
- 9.2 The Farmer shall become bound by an amendment under clause 9.1 on receiving written notice of the change or alternatively at the discretion of the Company shall be required to enter into a new Agreement and pay all the Company's costs in respect of that Agreement.

## **10. Disputes**

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- 10.1 If either party has any dispute with the other in connection with the Agreement:
- (a) that party will promptly give full written particulars of the dispute to the other party; and
  - (b) the parties will promptly meet together and in good faith try and resolve the dispute.
- 10.2 If the dispute is not resolved within ten Working Days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 10.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings. The mediation will be conducted by a LEADR New Zealand Incorporated panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 10.4 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator. The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996.
- 10.5 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 10.6 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 10.7 The parties must continue to comply with their obligations under this Agreement and the Water Supply Agreement during the dispute resolution process.

10.8 Nothing in this clause 10 shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court.

## **11. Complete agreement; no warranty**

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11.1 This Agreement contains a complete statement of all the arrangements made between the parties with respect of its subject matter, cannot be changed or terminated orally, and is binding upon the parties' respective successors and assigns, if any.

## **12. Waiver**

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12.1 The failure of any party under this Agreement to insist upon strict adherence to any term or terms of this Agreement on any occasion is not to be considered a waiver or deprive or limit that party of the right thereafter to insist upon strict adherence to that term in the particular instance or that term or any other term of this Agreement in any instance. Any waiver must be in writing.

## **13. Partial invalidity**

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13.1 Should any part of this Agreement be declared or held invalid for any reason, such invalidity will not affect the validity of the remainder of this Agreement.

## **14. No agency**

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14.1 The relationship between the Company and the Farmer is not that of principal and agent, but that of licensor and licensee, and the Farmer must not conclude any contract or agreement or make any commitment, representation or warranty which binds the Company or otherwise act in the name of or on behalf of the Company

## **15. Governing law**

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15.1 This Agreement is subject to the laws of New Zealand. Each party agrees to submit to the exclusive jurisdiction of the tribunals and courts of that country with respect to any claim or matter arising out of or in connection with this Agreement.

# Execution

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Signed by **Hurunui Water Project Limited** by:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by **[Farmer]** in the presence of:

\_\_\_\_\_  
[Farmer]

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## Schedule 1

### Initial Nutrient Apportionment

	Nutrients
Number of Water Right Shares held: <input type="text"/> x 40 kg/ Water Right Share/ year ( <b>Nitrogen</b> ) <b>Box 0</b>	<input type="text"/> kg <b>Box 1</b>
Nutrient Baseline (Overseer®) for Farming business:	<input type="text"/> kg <b>Box 2</b>
<b>Initial Nutrient Apportionment=</b> $\frac{(\text{Box 1} - \text{Box 2})}{\text{Box 0}} \text{ kg/ Water Right Share/ year}$ [If <b>Box 1</b> – <b>Box 2</b> ≤ 0, <b>Box 3</b> = 0]	<input type="text"/> kg <b>Box 3</b>

### Additional Nutrient Apportionment

	Nutrients
Number of Water Right Shares held: <input type="text"/> x 40 kg/ Water Right Share/ year ( <b>Nitrogen</b> ) <b>Box 0</b>	<input type="text"/> kg <b>Box 1</b>
<u>Nutrient Budget (Overseer®)</u> Box 0	<input type="text"/> kg/ WRS/ year <b>Box 4</b>
<b>Additional Nutrient Apportionment=</b> ( <b>Box 4</b> – 40kg per Water Right Share per year)	<input type="text"/> kg <b>Box 5</b>