

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

**AND**

**IN THE MATTER OF** Council Hearing for Hearing  
Group 1 – Proposed  
Canterbury Land and Water  
Regional Plan, Canterbury  
Regional Council

**STATEMENT OF EVIDENCE OF MELISSA LEANNE DOUCHÉ ON BEHALF OF THE  
POULTRY INDUSTRY ASSOCIATION OF NEW ZEALAND (INC) AND THE EGG  
PRODUCERS FEDERATION OF NEW ZEALAND (INC)**

**1.0 INTRODUCTION**

- 1.1 My name is Melissa Leanne Douché and I am a Planner at Harrison Grierson Consultants Limited. I hold a Bachelor of Planning (2008) from the University of Auckland. I have 5 years practical experience as a Planner. I am a Graduate Plus member of the New Zealand Planning Institute.
- 1.2 In my role at Harrison Grierson, I have been involved in the review of numerous plan changes and full Regional Plan reviews on behalf of clients, particularly relating to issues that concern the rural sector. I am familiar with the provisions of the Operative Canterbury Natural Resources Regional Plan ('NRRP') and provided feedback to Canterbury Regional Council on the provisions of the NRRP prior to the notification of the Proposed Canterbury Land and Water Regional Plan ('pLWP').
- 1.3 I appear in relation to submissions lodged by the Poultry Industry Association of New Zealand (Inc) ('PIANZ') and the Egg Producers Federation of New Zealand (Inc) ('EPFNZ'). PIANZ and EPFNZ represent the interests of 74 poultry operations in the Canterbury region.
- 1.4 Although this is a Council hearing, I can confirm that I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses in giving this evidence. In that regard, I confirm that this evidence is within my area of expertise (except where otherwise stated) and I have not omitted to consider material facts known to me that could alter or detract from the opinions I express in this statement of evidence.

1.5 I have read the section 42A report for Hearing Group 1 and I support a number of recommendations made by the reporting officers as follows:

- The amended set of general objectives, including the reworked versions of Objective 3.11 and 3.14. I consider that these objectives are now clearly outcome focused, with an emphasis on providing for economic and social wellbeing whilst protecting environmental values, as opposed to providing for specific activities;
- The amended wording of Policy 4.4, which has been amended to refer to 'stock water' as a first priority for water allocation, as opposed to the more specific 'stock drinking water supplies'. The term 'stock water' is now used consistently throughout the pLWP;
- The removal of the unnecessary definition of 'indoor intensive farming'; and
- The amended wording of Policy 4.46, which now clarifies that priority shall be given to drinking water and stock water needs during period of low flow or low water levels within a catchment.

1.6 The recommendations that I do not agree with relate to the suite of rules controlling the allocation of surface and ground water (Rules 5.84 to 5.88 covering the permitted standards for small takes and Rules 6.9 and 6.10 covering takes that cannot meet the permitted standards) and the assumption made in the officers' report that water take rules cannot apply to stock drinking water takes as these are already provided for under section 14(3)(b) of the Resource Management Act 1991 ('RMA').

1.7 In my statement I will address the following points in relation to which I have a contrary view to the views expressed in the officers' report. My evidence is structured as follows:

- The proposed policy framework in the pLWP relating to water allocation for stock water;
- The statutory context relating to stock water under Section 14(3)(b) of the RMA and relevant case law;
- Suggested amendments to the planning framework; and

- Conclusion.

## **2.0 PROPOSED PLWP POLICY FRAMEWORK FOR WATER ALLOCATION**

### **Logical Hierarchy of Water Allocation Objectives and Policies**

- 2.1 A submission and further submission were prepared on behalf of the Department by myself and a colleague in relation to water allocation issues, specifically in relation to:
- Objectives 3.11 and 3.14;
  - Policies 4.4, 4.20-4.21, 4.23 and 4.46-4.47; and
  - Rule 5.84 - 5.88.
- 2.2 PIANZ and EPFNZ are interested in the water allocation provisions of the pLWP, particularly those relating to providing for stock drinking water, as the majority of all water takes held by Canterbury poultry farmers are for the purpose of providing sufficient drinking water for stock, with lesser amounts required for regular shed cleaning. A consistently available supply of drinking water is essential for the welfare of intensively farmed poultry; the industry has confirmed that a supply rate of 0.3L per bird, per day is the minimum amount of water required to keep poultry alive. As such, the focus of this evidence relates solely to how water for stock drinking purposes is provided for in the pLWP.
- 2.3 I acknowledge that the relevant objectives and policies of the pLWP identify stock water as a priority take, particularly during periods of low flows, low water levels or in situations where catchments are over-allocated and water take consents are being renewed.
- 2.4 In my opinion there is a logical policy hierarchy in the pLWP supporting stock water takes. Objectives 3.3 and 3.4 relate to maximising the social and economic benefits of taking water, subject to the environmental protection focused Objectives 3.10 to 3.14<sup>1</sup>. These objectives are supported by more specific policies relating to stock water (Policies 4.4, 4.46 and 4.47), confirming that stock water is a first priority take. This priority is appropriate given the requirement to be consistent with relevant statutory documents such as the National Policy Statement Freshwater Management 2011 ('Freshwater NPS').

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<sup>1</sup> New objective numbering as proposed in s42A report – Hearing Group 1

Animal drinking water is listed as a 'national value' in the preamble to the Freshwater NPS. Although these national values are not prioritised specifically, animal drinking water is grouped at the top of the list along with human drinking water and community water supplies.

2.5 I agree with the approach outlined in Policy 4.46 relating to stock water takes being exempt from minimum flow restriction conditions, provided that water supply is managed to restrict the use of water where possible during periods of low flows or water levels. This will ensure that poultry stock can be kept alive during drought periods as long as only the minimum amount of water required for welfare reasons is abstracted.

2.6 Similarly I agree with the approach outlined in Policy 4.47, which states that when a surface or groundwater allocation regime is exceeded within a catchment, any further allocation of water is limited to abstraction for meeting stock water requirements (as well as abstraction for other first priority takes). Again, this is supportable on the grounds of animal welfare; the policy appropriately recognises that only essential takes for the purposes of keeping humans and animals alive and healthy should be provided for in situations where catchments are over allocated.

2.7 To summarise, I consider that the policy framework relating to water allocation in the pLWP is very clear; the pLWP provides for stock water takes as 'first priority' takes and recognises that these takes should be enabled in situations where continued abstraction or additional allocation would otherwise be inappropriate.

### **Disconnect between Policy Framework and Implementing Rules**

2.8 The key issue that I raise in relation to the water allocation provisions of the pLWP is how the rules in Chapter 5 fail to implement the policy regime set out in Chapters 3 and 4 for the management of stock water takes.

2.9 In the original submission and further submissions made on behalf of PIANZ and EPFNZ, questions were raised regarding which rules farmers would apply under for stock water takes, particularly when the volumes and abstraction rates exceed the permitted take levels allowed by Rules 5.84 to 5.88. It appears that stock water takes are either:

- a) not provided for specifically and are therefore subject to the default surface and groundwater restricted discretionary and non-complying rules (Rules 5.9 and 5.10) like all other takes; or
- b) are exempt from requiring a water take permit for stock water due to the interpretation note included under the 'Small and Community Water Takes' heading, and repeated again under Rule 5.88:

*'Note: Nothing in this Plan affects an individual's right to take water in accordance with section 14(3)(b) of the RMA.'*

- 2.10 This note is confusing as it appears to be an interpretation note applying to the pLWP as a whole, yet it has been included as a subset of the 'Small and Community Water Take' rules. Although the submission requested that the intention of this interpretation note was clarified, no comments have been provided in the Officers' report.
- 2.11 I consider that the notified version of the pLWP fails to expressly provide for stock water takes under any of the water take rules in Chapter 5, despite the policy framework clearly indicating a more permissive rule regime should be implemented that would provide for the taking of water for stock as a 'first priority' take.

### **Council Officers' Response**

- 2.12 In many cases throughout the s42A report, submitters are not referred to by name, so it is difficult to ascertain whether the comments are related directly to submission points raised on behalf of PIANZ and EPFNZ. However, it is assumed in relation to Rule 5.84, the following comment relates to the PIANZ/EPFNZ submission:

*'One submitter seeks that the rule should expressly provide for stock water takes (as opposed to the inclusion of water races). It is noted that the rule provides for all small takes, regardless of the end use, and that Section 14(3)(b) of the RMA allows for stockwater takes. In these circumstances no change is required.'*<sup>2</sup>

- 2.13 Comments on Rules 5.85-5.87 refer to, or reiterate the comment on Rule 5.84; effectively that stock water takes below the thresholds outlined in Rules 5.84-

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<sup>2</sup> Page 264, s42A report – Hearing Group 1

5.87 are treated like all other small takes regardless of the end use. I accept this explanation for the small take provisions, however it does not answer the question of which rule applies to stock water takes if they exceed the small take limits.

- 2.14 The Council Officers' partially address this question in their comments relating to Rule 5.101, which is the default rule for groundwater takes that cannot comply with the permitted levels specified in Rules 5.86 and 5.87:

*'Two submissions request that the Rule be amended to explicitly allow domestic and stock water takes, and the Ashburton DC made a general submission that requests that objectives, policies and rules provide for first order priority for stock water afforded in the RMA. In a similar vein, ANZCO et al sought the inclusion of a new rule that provided for the taking and use of water for livestock as a discretionary activity. The rule does not distinguish between uses but water takes for an individual's reasonable domestic needs, and for animals, are protected by Section 14 of the RMA, and these rights cannot be altered by the rules in the pLWP. It is not considered necessary to duplicate existing statutory protections in the Rule, or create additional rules when the existing are sufficient to manage the effects of abstractions.'*<sup>3</sup>

- 2.15 I understand this comment to mean that rules relating to stock drinking water have not been provided for in the pLWP as water takes for stock drinking are already provided for under section 14(3)(b) of the RMA and the pLWP therefore cannot introduce any specific stock water rules that might restrict stock water takes.

- 2.16 Taking this idea a step further, I understand the comments by the Council Officers' to mean that farmers wishing to abstract either surface or groundwater for stock drinking water do not need to apply for a water take permit under the proposed rules of the pLWP, as they already have access to as much stock drinking water as necessary for their operations under section 14(3)(b) of the RMA.

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<sup>3</sup> Page 286, s42A report – Hearing Group 1

### 3.0 STATUTORY CONTEXT

#### Section 14(3)(b) of the Resource Management Act 1991

3.1 I disagree with the assumption that because stock water is provided for under section 14(3)(b) of the RMA, the pLWP cannot introduce rules that would restrict stock water takes in any manner.

3.2 The full wording of section 14(3)(b) of the RMA is as follows:

*'14(3) A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if:*

*(b) in the case of fresh water, the water, heat, or energy is required to be taken or used for—*

*(i)...*

*(ii) the reasonable needs of an individual's animals for drinking water,—*

***and the taking or use does not, or is not likely to, have an adverse effect on the environment.'*** [emphasis added].

3.3 While section 14(3)(b) does provide explicitly for animal drinking water, the proviso at the end of the section is that the take cannot have an adverse effect on the environment, otherwise the right to take water under this section is revoked.

3.4 In my opinion, the only way to ascertain whether an allowed take under section 14(3)(b) is having an adverse effect on the environment is for the Canterbury Regional Council to specify that stock water takes are also subject to the allocation limits of the catchment or groundwater zone. If the Council does not have water take rules in place for the abstraction of stock water in relation to these limits, there is no way to tell what impacts the allowed takes under section 14(3)(b) are having on the environment.

3.5 This approach is supported by the National Policy Statement for Freshwater Management 2011: Implementation Guide, which states that:

*'Limits and determining over-allocation need to account for all takes, whether by consented or permitted activities (ie, including section 14(3)(b) takes)* [emphasis added]. *Permitted activities can make up a significant quantity of*

*cumulative takes from a waterbody. For example, takes for stock water, domestic use or fire fighting.*<sup>4</sup>

### **Relevant Case Law**

3.6 There has also been recent case law which supports a water allocation regime that controls stock water takes to ensure such takes are not resulting in over-allocation within a catchment. In *Carter Holt Harvey Ltd v Waikato Regional Council*<sup>5</sup>, the question was raised as to whether section 14(3)(b) takes can be constrained by rules in a regional plan. Judge Whiting made the following comments:

*'[105] Section 14(3)(b) of the Act provides a statutory authorisation for the specified taking and using of water. The right to take is not absolute. The take or use must be required; the need must be reasonable; and the taking or using does not, or is not likely to have an adverse effect on the environment.'*

3.7 The appellants in this case challenged that including rules that constrain section 14(3)(b) takes would be ultra vires in terms of a regional council's obligations under section 30(4)(f) of the Act; namely that a regional council can only make rules to allocate water 'as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).'

3.8 Judge Whiting rejected this submission, stating:

*'[111]...The authorisation to take pursuant to Section 14(3)(b) is not unlimited. The taking or use must not have, or be likely to have, an adverse effect on the environment. There is no qualifier to "adverse effect" so, on the face of it, any effect which is greater than de minimis would be sufficient to terminate the statutory authorisation. The constraining provisions proposed in Variation 6 do not "affect the activities authorised by s14(3)(b)". Rather, what they seek to do is define the point at which a take, that would otherwise be authorised under Section 14(3)(b), has, or is likely to have, an adverse effect, and hence fails to gain the statutory authorisation.'*

3.9 As such, rules introducing restrictions on section 14(3)(b) takes in situations where the take would result in a cumulative take greater than the allowed

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<sup>4</sup> National Policy Statement for Freshwater Management 2011: Implementation Guide, Policy B5, pg 31

<sup>5</sup> [2011] NZEnvC 380



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surface and groundwater allocation limits were upheld by the Court.

- 3.10 I see two clear advantages to this approach to controlling section 14(3)(b) takes. Firstly the Council retains the ability to monitor all water takes within a catchment or groundwater zone, including those that would otherwise be unknown to Council and simply taken under section 14(3)(b) without being checked. It provides Council with recourse to require resource consent for a new stock water take in an over allocated catchment or groundwater zone and potentially decline the application if required.
- 3.11 Secondly, it gives certainty to applicants as to what approvals they require from Council in order to take stock water, as opposed to relying solely on the wording of section 14(3)(b). Farmers can contact Council to check on whether their stock water takes will exceed the allowed limits for their catchment or groundwater zone and will not require consent if there is sufficient capacity available (i.e. the take will then be an allowed take under section 14(3)(b)). Furthermore, as summarised by Judge Whiting:

*'[112]... It is preferable for would be converters to have a clear statement in the Plan of the respondent's position on when Section 14(3)(b) takes have, or will likely have, an adverse effect and hence lose their statutory authorisation, rather than leaving that to the vagaries of possible enforcement action.'*

#### **4.0 SUGGESTED AMENDMENTS TO THE PLANNING FRAMEWORK**

- 4.1 Having established that it is appropriate for the Canterbury Regional Council to include specific rules relating to stock water takes that exceed relevant surface and groundwater allocation limits, I suggest a rule regime similar to the regime introduced into the Waikato Regional Plan by Variation 6, but formatted to fit the rule format of the pLWP. I have included an example new rule (Rule 5.XX) as Attachment A to this evidence.
- 4.2 I have made several assumptions in the drafting of Rule 5.XX:
- That section 14(3)(b) takes established before the notification of this plan are protected. As such, the new rules will only apply to new operations with stock, conversions of land involving a new type of stock or operations wishing to increase the total number of stock; and
  - The wording of the policy framework for water allocation in the pLWP

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supports stock water takes as a 'first priority' take. As such, I have assumed that a more favourable activity status for stock water takes that exceed surface and groundwater limits is appropriate, compared to the non-complying activity status of other takes that exceed the limits. This is the same as how other 'first priority' takes are treated, i.e. community water supply takes under Rule 5.88.

- 4.3 Rule 5.XX introduces a 'trigger point' where resource consent is required for stock water takes. The trigger point is whether the relevant limits in Section 6-15 of the pLWP will be exceeded as a result of the stock water take. If there is still sufficient capacity available, then no resource consent is required and the prospective applicant can abstract the stock water under section 14(3)(b).
- 4.4 Rule 5.XX will also allow Council to collect information about the extent of stock water being taken under section 14(3)(b) in the Canterbury region as prospective applicants will need to contact Council and inform them of their proposed rate and volume of take to confirm whether sufficient capacity is available.
- 4.5 I have proposed Condition (i) of Rule 5.XX requiring an operative Water Supply Strategy for two reasons. Firstly to be consistent with Rule 5.88 for community supply takes, and secondly to be consistent with Policy 4.47. This policy expressly provides for water allocation for group, community and stock water takes in situations where the rate of take or volume of water already exceeds the maximum allocation limit for surface water or groundwater. If both Policy 4.47 and Rule 5.XX are going to allow for stock water takes in over-allocated water bodies, it is appropriate to require a document outlining how water takes will be reduced during periods of low flows or levels.
- 4.6 I envisage that this new rule will allow the majority of farmers to continue to take stock water under section 14(3)(b) of the Act as they do currently, except in situations where a catchment or groundwater zone is over-allocated when a resource consent will be required. I consider that the proposed changes provide a balance between allowing Council to meet their obligations under sections 14(3)(b) and 30(4)(f) of the Act, while also protecting the environment from potential adverse effects.

## **5.0 CONCLUSION**

- 5.1 I generally support the majority of recommendations made in the s42A report for Hearing Group 1, particularly in relation to the proposed objectives and policies which clearly support the taking of stock water as a 'first priority' take.
- 5.2 I disagree with the reporting officers' that they are unable to draft rules in the pLWP to control the taking of stock water because it would alter the right to take water under section 14(3)(b) of the Act. In my opinion it is more in keeping with the intention of section 14(3)(b) to identify the trigger point where taking water for stock drinking purposes would cause an adverse effect on the environment; indeed section 14(3)(b) only provides for takes which are able to demonstrate that adverse effects on the environment will not, or are unlikely to, occur. Without the pLWP providing this clarification, farmers have no certainty as to how much water is appropriate to abstract for drinking water purposes, particularly from waterbodies that are known to be either fully allocated or over-allocated.
- 5.3 I consider that proposed new Rule 5.XX, included as Attachment A to this evidence, provides a balance between enabling farmers to take water under section 14(3)(b) where appropriate, while allowing Council to control larger stock water takes from over-allocated waterbodies to ensure adverse environmental effects are minimised.

**Melissa Douché**  
**BPlan, GradNZPI**

**Attachment A – Draft Rule 5.XX**

## **Attachment A – Draft Rule 5.XX**

**Rules 5.84-5.87** – retain as drafted in the s42A report.

**Rule 5.88** – retain as drafted in the s42A report, except that the second interpretation note should be deleted.

**New Rule 5.XX for stock water takes from groundwater or surface water (should be inserted after Rule 5.88)**

The taking and using of water for stock drinking supplies from groundwater or surface water is a restricted discretionary activity when:

- (a) The take was not previously existing prior to 11 August 2012; and
- (b) The take would otherwise be allowed by section 14(3)(b) of the Act, except when assessed in combination with all other existing resource consented and allowed takes, the take does not comply with any rate of take and seasonal or annual volume limits set in Section 6-15 for the relevant surface water body, or the take does not comply with the limits set in Section 6-15 for the relevant Groundwater Allocation Zone.

provided the following condition is complied with:

- (i) There is an operative Water Supply Strategy.

The Canterbury Regional Council will restrict discretion to the following matters:

1. The reasonable demand for water, taking into account the number and type of stock that are to be supplied with drinking water and the potential growth in demand for water;
2. The effectiveness and efficiency of the distribution network;
3. The adequacy of the Water Supply Strategy;
4. The effect on other water takes, including the reliability of supply;
5. Any beneficial effects from the use of water;
6. Compliance with any relevant Water Conservation order; and
7. The extent to which the proposed activity is inconsistent with the Strategic Policies of this Plan.