

Janel Hau

From: Sarah Drummond
Sent: Tuesday, 28 October 2014 8:01 a.m.
To: Mailroom Mailbox
Subject: TRIM: Barhill Chertsey Proposed Variation 2 to the Proposed Canterbury Land and Water Regional Plan (Variation 2)
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From: Judy-Anne Stapleton [<mailto:Judy-Anne.Stapleton@chapmantripp.com>] **On Behalf Of** Ben Williams
Sent: Friday, 24 October 2014 4:47 p.m.
To: Sarah Drummond
Subject: Proposed Variation 2 to the Proposed Canterbury Land and Water Regional Plan (Variation 2)

Sarah

We act for Barrhill Chertsey Irrigation Limited (BCI).

We **attach**, for lodging, BCI's submission on Variation 2.

Regards,

Ben

BEN WILLIAMS
SENIOR ASSOCIATE



D: +64 3 353 0343
M: +64 27 469 7132
E: ben.williams@chapmantripp.com
T: +64 3 353 4130
F: +64 3 365 4587

PA: Judy-Anne Stapleton
D: +64 3 353 0396

245 Blenheim Road
PO Box 2510, Christchurch 8140
New Zealand

www.chapmantripp.com
Auckland, Wellington
Christchurch

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Sarah Drummond

Planning Officer Hearings

Planning

027 549 7663

Form 5**SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL FOR POLICY STATEMENT OR
PLAN, CHANGE OR VARIATION**

Clause 6 of Schedule 1, Resource Management Act 1991

To Canterbury Regional Council

Name of submitter: Barrhill Chertsey Irrigation Limited (*BCI*)

- 1 This is a submission on:
 - proposed variation 2 to the proposed Canterbury Land and Water Regional Plan (*Variation 2*)
- 2 Its submissions and sought relief are split between its general submissions in **Annexure 1** and its specific submissions in **Annexure 2**
- 3 BCI wishes to be heard in support of the submission.
- 4 If others make a similar submission, BCI will consider presenting a joint case with them at a hearing

Signed for and on behalf of Barrhill Chertsey Irrigation Limited by its solicitors and authorised agents Chapman Tripp



Jo Appleyard / Ben Williams
Partner / Senior Associate
24 October 2014

Address for service of submitter:

Barrhill Chertsey Irrigation Limited
c/- Ben Williams
Chapman Tripp
PO Box 2510
Christchurch 8041
Email address: ben.williams@chapmantripp.com

Annexure 1

BCI – an overview

- 1 Barrhill Chertsey Irrigation Limited (*BCI*) is a co-operative company with nearly 200 farmer shareholders from within the mid-Canterbury district.
- 2 BCI is the joint venture partner with Electricity Ashburton Limited (the Ashburton co-operative lines company) in relation to the development and operation of the Barrhill Chertsey Irrigation Scheme (*the Scheme*).
- 3 BCI holds resource consents that were granted (in 2001) to take 17 cumecs of water from the Rakaia River and use it for irrigation and hydro-electricity generation. Since that time, BCI has entered into agreements with TrustPower Limited and Rangitata Diversion Race Management Limited regarding a 'water swap' and the use of the Rangitata Diversion Race as a means to convey water across the mid-Canterbury plains.
- 4 The Scheme is authorised to provide water to an area not exceeding 40,000 hectares across the mid-Canterbury plains (between both the Rakaia and Rangitata Rivers).
- 5 The resource consents were given effect to in 2010.
- 6 In September 2013, BCI was granted a land use and discharge resource consent in relation to the management of nutrients (CRC141388). That consent identifies an area of 17,604 hectares in relation to which supply agreements were in place (prior to July 2013) and a further 22,396 hectares of 'new irrigation'.
- 7 In simple terms the resource consent allows water to be supplied to new irrigators provided that all properties supplied water by the Scheme do not in aggregate exceed a nutrient 'cap' that has been allocated to the Scheme.
- 8 Development of the scheme is ongoing (with the latest prospectus issued on 30 September 2014). Over the half the authorised use area (i.e. over 20,000 hectares) is now either being irrigated by the Scheme or subject to supply agreements/subscriptions for shares.
- 9 Given the recent development of the BCI Scheme, all irrigation systems are highly efficient spray (typically centre pivot) systems with relatively low levels of existing nitrogen loss (*N-loss*). There are likely to be limited opportunities for irrigation system/efficiency improvements to be made.

Core concerns in relation to Variation 2

- 10 BCI's primary concerns with regard to Variation 2 include:
 - 10.1 the need to ensure there is certainty around the development of the full (40,000 hectare) Scheme. In this regard, BCI's resource consents form part of the existing environment for the purposes of assessing Variation 2 (and the consents should in effect be regard as being fully implemented);

- 10.2 ensuring that existing irrigation within the Scheme and elsewhere are treated on an 'equal pain basis' in terms of any reductions (i.e. with no singling out of dairy and dairy support) while ensuring that an acceptable level of farming profitability is maintained;
 - 10.3 retaining an appropriate average N-loss level for in relation to 'new irrigation' within an irrigation scheme (currently specified as 27kg N/ha/yr – although BCI is not confident that this is 'fully proven' at this point in time);
 - 10.4 the absence of a known 'starting point'. Although good management is, at a general level supported, there is currently no formal regime within the Variation 2 framework meaning that the starting point for any further reductions cannot be determined;
 - 10.5 the further reductions are unproven. BCI is not confident that the sought reductions can be achieved while retaining an acceptable level of farm profitability. It also needs to be emphasised that every farm is different and reductions which might be relatively easy to achieve on one farm might very difficult to achieve on another; and
 - 10.6 for transfers be to be enabled in limited circumstances (including bolstering irrigation scheme reliability, environmental enhancement and ancillary purposes adjunct to irrigation from an irrigation scheme (e.g. dairy shed supply).
- 11 BCI also notes that it generally supports (and adopts) the Eiffelton Community Group Irrigation Scheme Incorporated submission – especially as it relates to minimum flows and riparian issues in the lower plains area.

Annexure 2: Specific relief sought

Note : Text from Variation relevant to sought amends is set out in italics. Further amends are shown in red and either as *strikethrough* or underline.

Introduction and policies

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| 1-2 | Introduction | <p>The introductory section is currently imbalanced and does not properly reflect the intended approach of Part II of the Act (which includes “<i>managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being...</i>”. Currently too much emphasis is placed on natural or biophysical values, with insufficient regard to social and economic values.</p> <p>Care also needs to be taken when discussing historical land use and the development of agriculture within the Hinds/Hekeao Plains area. Farming and irrigation (including the presence of significant irrigation schemes) are now an embedded part of the landscape and no implication should be drawn that the intention of Variation 2 is to take landuse (and water quality/quantity) back to pre-development state. Reference to historical landuse does not reliably inform the provisions of Variation 2.</p> <p>The introductory section correctly acknowledges the Committee’s “<i>Solutions Package</i>” comprises four main parts but the section then goes on to confuse the reductions that are anticipated by farming with the reductions that are sought in respect of the wider</p> | <p>Oppose, in part.</p> <p>The introductory section needs to be amended to:</p> <ul style="list-style-type: none"> a) better acknowledge the importance of agricultural activities within the Hinds/Hekeao Plains Area (and its direct link to the social and economic wellbeing of the wider community); b) Include a new paragraph (after the paragraph beginning “<i>The Hinds/Hekeao Plains...</i>” and ending with “<i>...ecological and recreational values</i>”: <p style="text-align: center;"><u><i>“The Hinds/Hekeao Plains Area is a locally, regionally and nationally important area of agriculture and food production. Farming is a critical and enduring part of the Hinds/Hekeao Plains Area and provides for (both directly and indirectly) economic, social and cultural wellbeing that needs to be retained.”</i></u></p> <ul style="list-style-type: none"> c) amend the relevant part of the second paragraph on page 2 to read: |

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| | | <p>Hinds/Hekeao Plains area. The proposed achievement of the reductions in farming (currently by 2035) is also very tight given the significant improvements sought. Achievement by 2050 is more appropriate.</p> <p>It is also not clear as to whether the percentage reduction is a target/goal or an actual required reduction – and whether the timeframe for that reduction is similarly appropriate.</p> <p>As set out elsewhere in the submission, the appropriateness of the reference to “<i>good management practice</i>” is unclear. Requiring all farming activities to operate in accordance with ‘<i>good management practice</i>’ by 2017 may not be possible, given that we currently do not know what it is. Reliance should instead be placed on Policy 4.11 of the PLWRP and until that time it needs to be acknowledged that the ‘starting point’ for any further reductions (as well as the timeframe within which they might be achieved) are currently not known.</p> <p>BCI is also concerned to ensure that the plan contemplates a wider range of further mitigation measures than just “<i>managed aquifer recharge to augment groundwater and/or surface water</i>”. Variation 2 seeks to support and enable managed aquifer recharge and in some provisions also seeks to enable targeted stream augmentation. The policies and rules however need to be broadened to support a wider range of actions to improve overall quality of water in the lowland streams, achieve the nitrate concentration sought and improve reliability for surface water takes.</p> | <p>“The Solutions Package require <u>targets a 45 26 percent reduction in nitrogen losses from farming activities in the Lower Hinds/Hekeao Plains Area by 2035/2050. ...”</u></p> <p>d) In terms of the wider relief sought by the submitter it is also noted that the percentage reduction identified in submission point (c) above (potentially along with the achievement of 3,400 tN/yr and 6.9mg N/l ‘targets’), need to be confirmed through a comprehensive and detailed investigation (and subsequent plan change process) that would determine:</p> <ul style="list-style-type: none"> i) the appropriateness of the required reductions to farming activities (i.e. while ensuring farming activities can retain an acceptable level of profitability); and ii) the final timeframes for achieving reductions (and the appropriateness of the ‘targets’ set having regard to the above), <p>e) amend the reference to “<i>managed aquifer recharge</i>” to “<i>catchment scale mitigations</i>”; and</p> <p>f) amend reference to good management practice to accord with approach set out elsewhere in this submission.</p> |

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| 2 | 13.1A: Definition "Baseline Land Use" | <p>The definition of "Baseline Land Use" is unclear, especially as it applies to irrigation schemes and farming enterprises.</p> <p>The following comments are noted:</p> <ul style="list-style-type: none"> • the reference to section 2.9 of the pLWRP means that the "[n]itrogen baseline" is to be as modelled by OVERSEER (or an equivalent model) over the period 1 July 2009 – 30 June 2013, "except in relation to Rules 5.46 and 5.62, where it is expressed as a total kg per annum from the identified area of land"; • despite reference to Rules 5.46 (relating to farming enterprises) and 5.62 (relating to irrigation schemes), the definition of "Baseline Land Use" (in Variation 2) is to be applied "on a property"; • the approach is further complicated by the fact that the table identified on page 5 of Variation 2 suggests that the rules within Variation 2 are to prevail over Rules 5.46 and 5.62; and • it also needs to be confirmed that in the case of an irrigation scheme, baseline is to be determined on the basis of the full consented scheme area (noting that in the case of BCI, its existing discharge consent allows 22,396 hectares of new irrigation across the whole scheme area, | <p>Oppose, in part.</p> <p>The definition of "Baseline Land Use" (and potentially wider Variation 2) needs to be amended to:</p> <ol style="list-style-type: none"> a) expressly contemplate farming enterprises and irrigation schemes (noting that the submitters' suggested alternative relief may impact on the extent irrigation schemes need to be expressly referred to); b) remedy the current issue around reference to Rules 5.46 and 5.62; c) ensure that the consented BCI Scheme is protected; and d) ensure that the nitrogen baseline still enables compliance to be measured against the highest annual N-loss in the period in 2009-2013 (consistent with the use of OVERSEER as a long term model). |

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| | | based on a slightly lower rate of 25 kg N/ha/yr ¹) | |
| 3 | 13.1A: Definition "Good Management Practice Nitrogen Loss Rates" | <p>Although Variation 2 seeks to introduce a definition of "Good Management Practice Nitrogen Loss Rates", the definition is reliant on what is referred to as "good management practice". Currently, "good management practice" is not defined in Variation 2 or the pLWRP, although express reference can be made to Policy 4.11 (of the pLWRP) which contemplates a further plan change occurring prior to 30 October 2016.</p> <p>In this regard:</p> <ul style="list-style-type: none"> it is understood that "good management practice" will be informed by the Matrix of Good Management Practice (MGM) project. The outcome of this project will include information about nitrogen loss rates for different land uses with different soil types and climate under good management practice. The section 32 report advises (at page 108) that "This information will address this issue and is therefore not considered an appropriate reason to not act". This however appears to ignore the express requirements of Policy 4.11 and the fact it would be inappropriate to act while the costs and benefits are not known. <p>Accordingly, good management is supported at a <i>general level</i>. The</p> | <p>Oppose, in part.</p> <p>Variation 2 needs to be amended to include:</p> <ol style="list-style-type: none"> a definition of "good management practice" with reference to the fact that it will be populated in accordance with a full Schedule 1 process (where the costs and benefits can be properly assessed) as a part of the notified plan change under Policy 4.11 of the pLWRP; for any further reductions to reviewed and/or only apply once the outcomes of the plan change referred to are known; and for the references to the timing of the implementation of good management (throughout Variation 2) to contemplate that the actual good management outcomes may take some time to occur (with the actual requirement being to be taking 'positive steps' towards full implementation rather the achievement of actual outcomes from the outset). |

¹ Noting that this was calculated with reference to an earlier version of OVERSEER without the more recent formalised input protocols so may not be directly comparable to the 27kg N/ha/yr figure set out in Variation 2.

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| | | <p>need for formal compliance and the timeframes within which that should occur should however be left to a subsequent plan change (as already contemplated by Policy 4.11). For the same reason, the 'starting point' for any further reduction regime will not be known until the MGM project is complete and the consequent plan change has occurred.</p> <p>As a final matter it is emphasised that the timing of actual compliance with MGM needs to be approached carefully. Although it is accepted that farming interests will need to be making positive steps to implement any formal good management requirements as soon as they are introduced, actual compliance – especially if, for example, extensive irrigation system changes are required, might take some time.</p> | |
| 2 | 13.1A: Definition (new) "target" | <p>As set out elsewhere in this submission, a number of the sought catchment loads and water quality levels are dependent upon the successful implementation of both regulatory and non-regulatory measures (including catchment scale actions (e.g. on-farm mitigations, managed aquifer recharge, and increased irrigation area); local scale actions (e.g. riparian fencing, planting, and well head protection); investigations, monitoring and review of the Solutions Package; and community engagement.</p> <p>It is BCI's view that there is inevitably some uncertainty as to the exact extent all of these will be implemented and, more importantly how they might ultimately contribute to a reduction in N-loss and wider improved water quantity and quality.</p> | <p>Oppose, in part.</p> <p>Variation 2 needs to be amended to include a definition of "target":</p> <p style="padding-left: 40px;">"means, when used in the context of the Hinds/Hekeao Plains Area, an aspiration goal that the Council will, working with the community of the Hinds/Hekeao Plains, work to achieve, to the extent that is practicable, appropriate and accords with the purpose of the Resource Management Act 1991."</p> <p>In addition, all references to sought catchment loads and water quality levels (etc) throughout Variation 2 need to be amended to ensure they are appropriately expressed as targets and not 'hard' limits.</p> |

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| | | <p>It is crucial that the term 'target' therefore not be construed to be a 'limit'. To do so would not recognise the fact that there is uncertainty associated with accuracy, appropriateness and practicability of the targets that Variation 2 seeks to establish.</p> | |
| 3 | Policy 13.4.9(d) | <p>Policy 13.4.9 (d) refers to reducing nitrogen loss in the lower Hinds/Hakeao Plains Area by 45%.</p> <p>The following issues arise:</p> <ul style="list-style-type: none"> as set out elsewhere in this submission, the 45% reduction as the policy might be applied to farming activities is misrepresentative (the actual reduction contemplated by the zone committee was 26% - emphasising that even that number needs to be confirmed through comprehensive and detailed investigation (and potentially a further plan change)); there appears to be a disconnect and/or confusion as between the 45% reduction that is contemplated at a wider catchment scale (having regard to both regulatory and non-regulatory measures) and the 45% and 25% reductions that are contemplated by 2035 for dairy farming and dairy support activities respectively (with a 0% reduction for other activities) in Table 13(h). <p>In regard to the specific wording of the policy (as notified) it is emphasised that the use of the word "and" as against the 45% reduction is confusing (seemingly suggesting that "catchment scale</p> | <p>Oppose, in part.</p> <p>Policy 13.4.9(d) needs to be amended to read:</p> <p style="padding-left: 40px;">reducing overall nitrogen losses <u>from farming activities</u> by <u>45-26%</u> percent in the lower Hinds/Hakeao Plains Area and adopting the use of managed aquifer recharge to augment groundwater and/or surface water.</p> <p>As set out elsewhere in the submission, it will still be necessary to confirm the appropriateness of the 26% reduction following the introduction of both a formal good management regime and a comprehensive and detailed investigation to confirm the appropriateness of the sought 'target' (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> <p>BCI is also concerned to ensure that the plan contemplates a wider range of further mitigation measures than just "managed aquifer recharge to augment groundwater and/or surface water". The policy should be further amended to simply refer to "catchment scale mitigations".</p> |

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| | | <i>mitigations</i> " are in addition to the 45% reduction). | |
| 4 | Policy 13.4.12 | <p>BCI is concerned that Policy 13.4.12 could be interpreted as a limit on the annual discharge rate (of 3,400t N/yr) rather than an actual target (as defined elsewhere in this submission). BCI is also concerned that:</p> <ul style="list-style-type: none"> the achievability and appropriateness of the target of 3,400 tN/yr is not yet proven; and the contribution that farming activities may need to make to any reduction (26%) is based on a starting point that is not known and similarly is not yet proven. <p>A date of 2050 is also likely to be more appropriate (at least as a placeholder) given the significant changes potentially required.</p> | <p>Oppose, in part.</p> <p>Amend Policy 13.4.12 to provide that:</p> <p><u>Improve water quality in the Lower Hinds/Hekeao Plains Area by reducing the discharge of nitrogen to achieve with the goal of achieving a target load of 3,400 tonnes of nitrogen per year by 2035 2050.</u></p> <p>Consistent with the position set out elsewhere in this submission, the reference to 2050 is effectively a 'placeholder date' with the final date, along with the target loss of 3,400t N/yr to be confirmed through a comprehensive and detailed investigation (and potentially a further plan change) (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> |
| 4 | Policy 13.4.13 | <p>Policy 13.4.13 sets out the core approach to managing nitrogen loss from farming activities (including farming enterprises), whether or not supplied water from an irrigation scheme.</p> <p>BCI has the following concerns with respect to the Policy:</p> <ul style="list-style-type: none"> the Policy refers to the target of 3,400t N/yr being 'achieved' suggesting that this threshold is a limit and not a goal; the extent to which (unknown) good management practices | <p>Oppose in part.</p> <p>Amend Policy 13.4.13 to provide that:</p> <p>Farming activities including farm enterprises in the Lower Hinds/Hekeao Plains Area whether or not they are supplied with water by an irrigation scheme or a principal water supplier, achieve a target load of 3400 tonnes of nitrogen per year by shall reduce nitrogen loss by:</p> <p>a) Requiring existing farming activities to meet good management practice nitrogen loss rates implementing good management practices in the manner directed by any plan change in</p> |

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| | | <p>can be adopted by 2017 is currently not clear;</p> <ul style="list-style-type: none"> with reference to Table 13(h) (as included in the Policy), making only 'dairy' and 'dairy support' activities subject to specific percentage reductions now (in terms of their N losses) is not reasonable and the appropriateness of any reduction regime is currently not known given that we do not know what the starting point is; as set out elsewhere in this submission, the references to 27kg N/ha/yr, along with the target loss of 3,400 tN/yr, need to be confirmed through a comprehensive and detailed investigation (and potentially a further plan change) – having regard to the need to ensure farming activities can retain an acceptable level of profitability; and <p>there is also uncertainty around the 30,000 hectare maxima specified in Policy 13.4.13(c). BCI assumes (as is consistent with the determination of the 'existing environment' for the purposes of any RMA assessment) that its existing consented scheme load, is effectively already part of the existing environment for the purposes of Policy 13.4.13(c) – however whether the 30,000 hectares is inclusive or exclusive existing consented authorisations remains unclear.</p> <p>BCI considers that all farms with N-losses over permitted activity levels should ultimately experience the 'same pain', provided that:</p> <ul style="list-style-type: none"> BCI is able to fully implement its consents (noting the different treatment of irrigation schemes under Variation | <p>accordance with Policy 4.11 from 1 January 2017, calculated on the baseline land uses;</p> <p>b) requiring <u>a collective reduction in nitrogen loss from farming activities across the lower Hinds/Hekeao Plains Area for all properties with a nitrogen loss calculation exceeding 20 kg per hectare per annum in accordance with Table 13(h) further reductions for dairy farming and dairy support from 1 January 2020, in accordance with Table 13(h);</u> and</p> <p>c) <u>Determining the extent and timing of nitrogen loss reductions to be achieved on individual farm properties from 1 January 2020 by:</u></p> <p>A. <u>use of an expert farm systems advisory panel reviewing resource consent applications and any associated Farm Environment Plans and providing independent advice to Canterbury Regional Council about the opportunities for nitrogen loss mitigation given the individual circumstances of each farm property.</u></p> <p>B. <u>having regard to the following matters in considering the individual circumstances of each farm property:</u></p> <p>i. <u>The nitrogen baseline for the property and the level of any reductions already achieved from that nitrogen baseline; and</u></p> <p>ii. <u>Any natural or physical constraints to lower nitrogen leaching faced on-farm that are</u></p> |

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| | | <p>2); and</p> <ul style="list-style-type: none"> No one farmer is <i>required</i> to undertake fundamental system changes that might prevent an effective level of profitability being maintained. <p>To this extent, 'grand-parenting' (in terms existing consented entitlements) is acknowledged and an essential part of Variation 2, b where possible regard also needs to be given to ensuring that the same farming activity (as might be permitted by individual nitrogen baselines) on the same soils, climate and irrigation systems is required to comply with the same N-loss rates.</p> <p>As a final matter it is noted that BCI's view is that good management practices need to implemented against the farming activity occurring at the relevant time – for example, if an existing arable farm is converted to dairy (while staying within its nitrogen baseline) then it would be a nonsense for that property to have to comply with the good management practices as might apply to an arable operation.</p> | <p><u>outside of a farmer's control; and</u></p> <p><u>iii. The level of investment in farm infrastructure and where a farm might be in the cycle of infrastructure replacement; and</u></p> <p><u>iv. The capital and operational costs of making nitrogen loss reductions and the benefit (in terms of maintaining a farm's financial sustainability) of spreading that investment over time.</u></p> <p><u>ed)</u> Enabling, by way of resource consent process, land use intensification or changes in land use on a maximum of 30,000 hectares of land, provided:</p> <p><u>i. the nitrogen loss calculation is limited to no more than 27 kg per hectare per year; and</u></p> <p><u>ii the limits set out in Table X</u></p> <p>It is noted that proposed new para c) is possible further and/or alternative relief to the request set out elsewhere in this submission around a comprehensive and detailed investigation to determine the extent of further reductions that are required and reasonable in respect of individual farming properties (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> <p>Proposed Table X would be a table that would, consistent with the</p> |

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| | | | <p>approach in Variation 1 to the pLWRP, have a fixed allocation for each irrigation scheme. It would be prepared having regard to existing consented entitlements.</p> <p>As also noted elsewhere in this submission (and consistent with the above), a policy or rule also needs to be included in the final provisions of Variation 2 that ensures the reference to 27 kg N/ha/yr (as well the references to any other targets/limits) remain appropriate – including the possibility of a further plan change following comprehensive and detailed investigation.</p> |
| 4 | Policy 13.4.14 | <p>Policy 13.5.14 provides for an improvement in flows and/or a decrease in nitrate nitrogen concentrations by enabling managed aquifer recharge and targeted stream augmentation.</p> <p>BCI supports the general intent of the policy however queries the extent to which, as currently worded, the policy can actually be achieved. In this regard, BCI expects it would, for example, be very hard to have an augmentation proposal that didn't, at least in a narrow sense, have some of the effects set out (noting that with any augmentation proposal some adverse effects on local biodiversity and the inundation of existing wetlands could possibly be expected - but would also be offset by 'net overall improvements' elsewhere).</p> | <p>Support, in part.</p> <p>The policy needs to be 're-orientated' to:</p> <ul style="list-style-type: none"> a) "<i>have regard to</i>" the matters set out (rather than only "<i>enabling</i>" managed aquifer recharge and targeted stream augmentation where the various matters are met); and b) ensure that the expected outcome is an 'overall net improvement' in at least most of the various matters set out in (a) to (f) rather than a focus on avoidance (as expressed in a number of the conditions). <p>In the alternative to b) above, BCI seeks that the policy be reworded to refer to avoidance as a first preference, with remedying or mitigating being appropriate where avoidance is not practicable.</p> <p>As a final matter it is noted that "<i>no net loss</i>" in (e) has a technical</p> |

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| | | | meeting in biodiversity offsetting. More neutral wording (such as an overall improvement having regard to the matters set out) is preferred. |
| 5 | Policy 13.4.18, Policy 13.4.19 (and Table 13(e)) | <p>The application of these policies is complicated by what appears to be an unanticipated issue associated with the Zone Committee’s understanding of the application of Rule 5.123 of the pLWRP.</p> <p>At a practical level, BCI supports the take and use of surface water (where such an application is for a replacement consent) be:</p> <ul style="list-style-type: none"> • subject to the minimum flow and allocation limits set out in Table 13(e); and • for the above minimum flows and allocations to only change at such time a further/revised table is introduced following the collaborative planning process currently referred to in the policies. <p>BCI otherwise adopts the submission of the Eiffelton Community Group Irrigation Scheme Incorporated (<i>ECGIS</i>).</p> | <p>Oppose Policy 13.4.18 and Policy 13.4.19. Support, in part Table 13(e).</p> <p>Given the concerns set out BCI supports the ECGIS submission that seeks:</p> <p>a) Policy 13.4.19 be deleted;</p> <p>b) Policy 13.4.18 be amended to read (partially combining the last two lines of the former Policy 13.4.19):</p> <p><u>13.4.18 In the Lower Hinds/Hekeao Plains Area, with the exception of the Lower Hinds River/Hekeao, and until 30 June 2020, any water permit granted to replace an existing water permit will be subject to the minimum flow and allocation limits in:</u></p> <p><u>i) Table 13(e); or</u></p> <p><u>ii) any replacement to Table 13(e) that has been collaboratively developed and included in this Plan through a Schedule 1 RMA process.</u></p> <p>c) The removal of the references to “1 October 2014 – 30 June 2020” from Table 13(e); and</p> <p>d) An advice (noting that an advice note is considered appropriate</p> |

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| | | | <p>in this instance given that it is solely an interpretative aid) noting that that <i>"The replacement of an existing water permit that complies with the minimum flow and allocation limits referred to in Policy 13.4.18 and Table 13(e) will be a restricted discretionary activity under Rule 5.132"</i></p> <p>In addition, BCI supports the inclusion of a policy in the plan expressly committing the Council to the plan change referred to.</p> |

Rules

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| 5 | Rules Table | As set out elsewhere in this submission the extent to which sub-regional rules actually prevail is confusing and unclear – especially in relation to the determination of baseline land uses. | <p>Oppose, in part.</p> <p>Amend table to make it clear as to which rules actually prevail.</p> |
| 7 | Rule 13.5.14 | <p>Rule 13.5.14 provides for the use of land for farming activities and farming enterprises as discretionary activity – with the conditions of the rule <i>inter alia</i> requiring that N-losses not exceed 27kg N/ha/yr and the subject area of land (it appears in combination with new irrigated land within irrigation schemes) not exceeding 30,000ha.</p> <p>As set out elsewhere in this submission, it is not clear as to the extent to which the 30,000 hectares is inclusive or exclusive of</p> | <p>Oppose.</p> <p>Amend Rule 13.5.14 to:</p> <ul style="list-style-type: none"> a) replace the word <i>"Despite"</i> with <i>"Unless"</i>; b) ensure that in accordance with BCI's proposed Table X, an express load (whether expressed as a kg/N, or an irrigation |

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| | | <p>existing consented entitlements. BCI has already sought a new table (Table X) which that would expressly protect the existing consented load for the BCI Scheme and potentially other irrigation schemes in the Hinds/Hekeao Plains Area.</p> <p>BCI is also not clear on the meaning of:</p> <ul style="list-style-type: none"> • “future nitrogen loss”; and • the meaning of the phrase in condition 2 “<i>land subject to Row B of Table 13(i)</i>” (it appears that this is intended to refer to land for which consent has been granted under the pLWRP or Variation 2 that was not irrigated at 1 October 2014). <p>The use of the word “<i>Despite</i>” at the start of the rule also appears to be in error (the correct word should be “<i>Unless</i>” so, for example, farming enterprises are not unintentionally caught by the rule where no increase in combined N-loss is proposed)</p> | <p>area) is set aside for existing consented irrigation schemes, whether implemented or unimplemented. In this regard, BCI seeks to avoid the situation where it has not reduced certainty in terms of being able to develop its full consented entitlements;</p> <p>c) the words “<i>future</i>” and “<i>Row B of Table 13(i)</i>” should be deleted; and</p> <p>d) as also noted elsewhere in this submission, a policy or rule also needs to be included in the final provisions of Variation 2 that ensures the reference to 27 kg N/ha/yr (as well the references to any other targets/limits) remain appropriate – including the possibility of a further plan change following comprehensive and detailed investigation (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> |
| 8-9 | Rules 13.5.19 – 13.4.20 | <p>Minor amendments to clarify position of farming enterprises and to ensure that matters not meeting the conditions of Rule 13.5.14 are dealt with as non-complying activities (on the basis they might not be unreasonable in certain limited circumstances).</p> | <p>Oppose, in part.</p> <p>Amend Rule 13.5.19 to read:</p> <p><u>“The use of land for a farming activity or farming enterprise that does not comply with any of the conditions 1 to 5 in Rule 13.5.14, any of conditions 2 or 3 in Rule 13.5.15 ...”;</u></p> |

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| | | | <p>Amend Rule 13.4.20 to read:</p> <p><u>"The use of land for a farming activity or farming enterprise that does not comply with ... or conditions 1 or 2 of Rule 13.5.18 or a farming enterprise that does not comply with any of the conditions of Rule 13.5.14, is a prohibited activity."</u></p> |
| 9 | Rule 13.5.21 | BCI supports Rule 13.5.21 but notes the concerns around the application of Rules 5.61 and 5.62 as set out elsewhere in this submission. In this regard, BCI currently holds consent granted under Rule 5.62 but it is not exactly clear how the renewal or replacement of that consent is to be processed – BCI presumes the intention is for it to be processed under Rule 13.5.22. | <p>Support, in part.</p> <p>Amend Rule 13.5.1 (or the wider provisions of Variation 2) to make it clear as to which rules (as between Rules 5.61, 5.62 and 13.5.22 are to apply).</p> |
| 9 | Rule 13.5.22 – 13.5.23 and Table 13(i) | <p>BCI has a number of concerns with Rule 13.5.22 (and Table 13(i)):</p> <ul style="list-style-type: none"> Table 13(i) relies on the implementation of the "Good Management Practice Nitrogen Loss Rates" by 2017. As set out elsewhere in this submission, reliance on a formal regime that does not exist yet (in circumstances where we also do not know what timeframe for compliance is reasonable) is not appropriate. BCI has no objection to implementing good management practices in the manner directed by any plan change that occurs in accordance with Policy 4.11 – but until that occurs the 'starting point' for any further reductions is not known; BCI considers it is inappropriate to target dairy farming and dairy support activities as land use activities that need to | <p>Support, in part. Oppose, in part.</p> <p>Amend Rule 13.5.22 by:</p> <ol style="list-style-type: none"> deleting conditions 2 and 3 (and Table 13(i)) and replacing with a cross reference to specific loads and/or area to be set out in proposed Table X; <p>or</p> <ol style="list-style-type: none"> amend Table 13(i) on the basis that: <ol style="list-style-type: none"> the reductions for existing irrigated land (i.e. Row A) will be determined by way of future plan change following the |

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| | | <p>reduce their N losses (beyond the reductions that will be occur by the adoption of good management practices). All farming should be subject to 'equal pain' as set out in this submission with further regard also being had to ensuring that the same farming activity (as might be permitted by individual nitrogen baselines) on the same soils, climate and irrigation systems are required to comply with the same relative N-loss rates;</p> <ul style="list-style-type: none"> • As currently structured, Table 13(i) appears to require reductions for existing irrigation below 27kg N/ha/yr. That approach is not reasonable or equitable (whereas new irrigation within the 30,000 hectare 'cap' can increase its N-losses up to 27kg N/ha/yr with no further reductions being required). Existing irrigation should only be required to reduce N-loss until such time as 27kg N/ha/yr is reached; • Similarly, BCI also reiterates its concerns around the target of achieving an annual discharge rate in the lower Hinds/Hekeao Plains of 3,400 tN/yr by 2035 (as set out in Table 13(g)). This has been derived using a sub-optimal methodology and thus is not appropriate - the timeframe for the 3,400 tN/yr target should be set following the completion of a comprehensive and detailed investigation; and • BCI notes that the Row A of Table 13(i) refers to the nitrogen baseline as being an appropriate starting point for calculations. While not opposing this for irrigation schemes or principal water suppliers that do not have a resource | <p>introduction of a formal good management regime in accordance with Policy 4.11 and a comprehensive and detailed investigation (with an expectation that the set that subsequent plan change would also set the dates for the stepped actual or percentage reductions in Row A of the Table);</p> <ul style="list-style-type: none"> ii) no property (which is currently irrigated in accordance with Row A) is required to reduce N-losses below 27kg N/ha/yr; and iii) as also noted elsewhere in this submission, a policy or rule also needs to be included in the final provisions of Variation 2 that ensures the reference to 27 kg N/ha/yr (as well the references to any other targets/limits) remain appropriate – including the possibility of a further plan change following the comprehensive and detailed investigation (i.e. while ensuring farming activities can retain an acceptable level of profitability). <p>BCI seeks that the two paragraphs that address notification (i.e. that follow after condition 3 of Rule 13.5.22) are retained.</p> <p>Amend Rule 13.5.23 to be non-complying (unless otherwise dealt with in accordance with submissions in relation to multi source properties).</p> |

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| | | <p>consent that permit a level of farming activity and its associated nutrient losses, the company contends that the appropriate starting point for the existing consent holders are their existing consented levels. As set out elsewhere in this submission, this may be addressed either through BCI's amendments to the definition of "<i>Baseline Land Use</i>" or its proposed Table X which would formalise the load for the BCI Scheme.</p> <p>Against the above, BCI supports the proposed approach to notification (being the provisions that follow immediately after condition 3 of Rule 13.5.22). In this regard, the ability to advance such applications on a non-notified basis reflects the high degree of certainty associated with this type of use and the significant positive effects that irrigation schemes and principal water suppliers generate.</p> <p>In terms of Rule 13.5.23, it is noted that there are some uncertainties around the multi-water source properties discussed later in these submissions. In light of that complexity a non-complying activity test might be more appropriate.</p> | |
| 12 | Rule 13.5.34 | <p>BCI considers that a transfer in circumstances where it is being used for environmental enhancement, to booster irrigation scheme supply reliability (or for ancillary scheme uses such as dairy shed supply as might be required following conversion to irrigation and dairy) might be appropriate in some instances.</p> <p>In this regard, a number of existing BCI scheme members hold</p> | <p>Oppose in part</p> <p>Amend Rule 13.5.34 by way of providing an exception (or provide for a new rule, in which case Rule 13.5.34 would cover all circumstances not covered by the new rule) to effect that the take and use of groundwater for environmental enhancement, for the purposes of increasing the reliability of supply from an irrigation scheme or for</p> |

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| | | <p>groundwater consents. The ability to transfer (either in whole or in part) those consents to other properties for the purposes of bolstering scheme supply would encourage those people to join the scheme (noting that relative to non-adaptively managed groundwater, BCI has relatively low reliability).</p> <p>In this regard, the wider Hinds/Hekeao Plains Area will have the benefit of alpine water being introduced into the catchment to offset the very occasional use of groundwater consents for the sole purpose of bolstering irrigation scheme supply.</p> | ancillary irrigation scheme purposes is a discretionary activity. |

Tables

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| 14-19 | All tables | <p>Council has recently notified an implementation programme for the National Policy Statement on Freshwater Management 2014 (<i>NPSFM</i>). That is separate to Variation 2 but BCI notes that some of the metrics in the tables listed as "limits" will be more accurately described as freshwater outcomes under the national objectives framework of the NPSFM.</p> | <p>Oppose in part.</p> <p>Alignment with the NPSFM where possible (acknowledging that Variation 2 may not fully give effect to the NPSFM)</p> |
| 19 | Table 13(g) | <p>As set out elsewhere in this submission, BCI is unclear on the appropriateness of the 2035 date for when the "target" for the Lower Hinds/Hekeao Plains Area must be achieved.</p> <p>In this regard, there are various matters (both regulatory and non-</p> | <p>Oppose in part:</p> <p>Amend Table 13(g) by:</p> <p>a) deleting the reference to the target annual discharge rate of</p> |

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| | | <p>regulatory) that would need to occur to reach the 3,400t N/yr target by 2035. Given the issues that exist, BCI is particularly concerned that achieving 3,400t N/yr by 2035 is neither realistic nor practicable, and that attempting to do so would likely generate adverse social and economic effects.</p> <p>The reductions required to achieve the 3,400 t N/yr load also extend beyond farming activities.</p> <p>Accordingly, BCI supports the use of a target for the Lower Hinds/Hekeao Plains Area, rather than the application of a hard limit (provided it is in fact a target – i.e. something that may or may not be met).</p> <p>BCI also queries whether a better or additional alternative approach is for a concentration limit of Nitrate-N.</p> | <p>3,400t N/yr being achieved by 2035, and replace the target date with 2050 (effectively as a placeholder date) with the final date to be derived from a comprehensive and detailed investigation;</p> <p>b) provide further clarification (as set out elsewhere in this submission) as to the load for the lower plains in Table 13(g) being a target, rather than a limit; and</p> <p>c) ensure that the load expressed in Table 13(g) is calculated by multiplying the current N-loss load by 0.74 (to reflect the actual contribution of farming).</p> <p>And as noted elsewhere in this submission, a policy or rule also needs to be included in the final provisions of Variation 2 that ensures the reference to 3,400t N/yr (as well the references to any other targets/limits) remain appropriate – including the possibility of a further plan change following the comprehensive and detailed investigation (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> <p>Finally, BCI considers that regard should be had to including a concentration limit for nitrate-N (with 8.5 mg/L being a possible appropriate limit).</p> |
| 19 | Table 13(h) | <p>BCI repeats its reasons in respect of Policy 13.4.13.</p> <p>Table 13(h) should be amended to simply provide that by 2050, a 26% reduction is anticipated in the N loss from farming activities that</p> | <p>Oppose.</p> <p>Amend table 13(h) to provide that by 2050, a 26% reduction is</p> |

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| | | currently have N-losses that are greater than the permitted activity standard in the variation. | <p>anticipated in the N loss from farming activities.</p> <p>And as noted elsewhere in this submission, a policy or rule also needs to be included in the final provisions of Variation 2 that ensures the reference to a 26 percent reduction (as well the references to any other targets/limits) remain appropriate – including the possibility of a further plan change following the comprehensive and detailed investigation (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> |
| 20 | Table X (new) | <p>Table X is part of BCI’s suggested alternative relief. It is a table that would specify a specific load and/or area for the BCI scheme and other irrigation schemes (based on both existing irrigation within the relevant scheme area and its existing consented entitlement).</p> <p>The structure of the table would be consistent with that provided for in Variation 1.</p> <p>New irrigation would be calculated at 27 kgN/ha/yr consistent with the wider provisions of Variation 2.</p> | <p>Support, in part.</p> <p>And as noted elsewhere in this submission, a policy or rule also needs to be included in the final provisions of Variation 2 that ensures the reference to any load within the table (as well the references to any other targets/limits) remain appropriate – including the possibility of a further plan change following the comprehensive and detailed investigation (i.e. while ensuring farming activities can retain an acceptable level of profitability).</p> |

General

| Page | Reference | Issue/concern | Relief sought |
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| All | All (references to N loads) | Throughout Variation 2, various limits have been calculated with reference to OVERSEER (or alternatively, compliance will need to be | Support, in part. |

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| | /OVERSEER) | <p>assessed using OVERSEER).</p> <p>Care needs to be taken to avoid limiting the operation of a property, farming enterprise or irrigation scheme based on the results of an analysis in one version when that version will be superseded. In this regard, it is understood that OVERSEER is not yet in a steady state with further refinements and improvements continuing to be made.</p> <p>Accordingly, it appears that the only proper weight that can be placed OVERSEER in a regulatory context is its use as a 'relative tool' rather than an 'absolute tool' – or to put that another way OVERSEER outputs are:</p> <ul style="list-style-type: none"> • not necessarily reflective of actual real life N losses but if the same version of OVERSEER is used it is a useful tool in terms of assessing land use change; but • if different versions of OVERSEER are used the N-losses from an individual farm might vary considerably under each version of the model with no actual change to the real-life activities on farm. <p>BCI seeks to ensure that all limits in the plan are able to be considered/recalculated in light of any further version of OVERSEER.</p> | <p>Provide for a rule to the effect that if OVERSEER is updated, the most recent version can be used to both:</p> <ul style="list-style-type: none"> a) re-calculate any N-loss limit/load (including the nitrogen baseline) described in a plan provision; and b) assess compliance against the re-calculated N-loss limit/load (including the nitrogen baseline) <p>In both cases it would be a condition of the rule that the same input data would be used.</p> |
| All | All (multiple irrigation | It is currently unclear how the limits that apply to an irrigation scheme are to be applied where a property is also irrigated with | <p>Support, in part.</p> <p>Provide for a rule to the effect that where a property is part of an</p> |

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| | sources) | water from other sources. | <p>irrigation scheme, any reductions (and any other compliance matters as might be required under Variation 2), as might be relevant to the N-loss allowance for the scheme, shall be limited a proportional basis (by volume) to the amount of water supplied by the scheme.</p> <p>For example, where a property is 60% irrigated by and irrigation scheme and 40% irrigated from other sources, the irrigation scheme will be responsible accounting for 60% of the property N-loss load (and any reductions that might apply will similarly be approached on the same basis).</p> <p>In the case of new irrigation, any increase to the 27 kg N/ha/yr limit could only occur by virtue of the Scheme on what would effectively be 60% of the property (with the balance of the property being constrained to its nitrogen baseline – although the property owner could of course elect to farm at a lower average N-loss level and spread the losses over the whole property).</p> |
| All | All | N/a | <p>In addition to the specific (and General) relief set out above, BCI seeks such other further and alternative relief that addresses all of the concerns/issues set out.</p> <p>In this respect, the BCI submission should read as applying to, and to the extent necessary opposing, all of Variation 2 and not just the specific provisions identified or discussed in this Annexure 2 table.</p> |