

Tabled @ Hearing 19 June 2015

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the proposed Variation 2 to the Proposed
Canterbury Land and Water Regional Plan -
Section 13 Ashburton

**LEGAL SUBMISSIONS ON BEHALF OF
DAIRYNZ LIMITED AND FONTERRA CO-OPERATIVE GROUP LIMITED**

19 JUNE 2015

RUSSELL McVEAGH

B J Matheson / A L McConachy
Phone +64 9 367 8000
Fax +64 9 367 8163
PO Box 8
DX CX10085
Auckland

EXECUTIVE SUMMARY

- A. To achieve sustainable management of the region's natural and physical resources, and to give effect to both the Canterbury Regional Policy Statement ("**CRPS**") and the National Policy Statement for Freshwater Management 2014 ("**NPSFM**"), average nitrogen concentrations in shallow groundwater must reduce from 13.2mg/L¹ to 6.9mg/L² by 2035.
- B. In response, Variation 2 to the proposed Canterbury Land and Water Regional Plan ("**Variation 2**") proposes a planning regime for the Hinds/Hekeao Plains Area ("**district**") that:
- (a) by 2035, requires dairy farms and dairy support farms to reduce nitrogen losses by 45% and 25%, respectively; but
 - (b) at the same time, enables an increase in nitrogen discharge on up to 30,000ha of land.
- C. DairyNZ Limited ("**DairyNZ**") and Fonterra Co-operative Group Limited ("**Fonterra**") (together, "**the submitters**") support the water quality objective of Variation 2, however they say that the:
- (a) assumptions underlying the required nitrogen discharge reductions are based on flawed nutrient modelling and an incorrect assessment of current load;
 - (b) assumptions underlying the relatively low costs of mitigation are based on flawed on-farm modelling and an incorrect assessment of the potential options that farmers may employ to reduce nitrogen;
 - (c) allocation of up to 30,000ha of land marked for intensification is unrealistic, and the potential benefits of Variation 2 are therefore overstated; and
 - (d) inputs used for the economic modelling relied upon by the Canterbury Regional Council ("**Council**") are inappropriate, and

¹ 13.2 mg/L includes an allowance for the lag effects.

² Restrictions on nitrogen losses will reduce the average groundwater concentration to 9.2 mg/L, with managed aquifer recharge ("**MAR**") being required to reduce further to 6.9 mg/L.

the potential costs of mitigation required by Variation 2 are therefore underestimated.

D. DairyNZ and Fonterra have proposed an alternative planning regime that:

- (a) allows "low" leaching farms to increase their nitrogen discharges up to a 15kg N/ha/yr "Tier 1 flexibility cap" as a permitted activity;
- (b) allows "medium" leaching farms (leaching between 15 and 20kg N/ha/yr) to increase their discharges to a 20kg N/ha/yr "Tier 2 flexibility cap" as a restricted discretionary activity;
- (c) limits any further increases to the estimated 15,000ha³ of land within consented irrigation schemes yet to receive water; and
- (d) requires all farming activities discharging over 20kgs N/ha/yr (regardless of the type of activity) to reduce their discharges by 36% by 2035.⁴

E. In comparison with Variation 2, DairyNZ/Fonterra's proposed solution:

- (a) achieves the same water quality objective (ie 6.9 mg/L);
- (b) achieves that objective within the same time period (ie by 2035); and
- (c) achieves that objective for less cost:⁵
 - (i) Variation 2 will cost 2.5% of local GDP by 2035 and \$650 million for the 20-year period.
 - (ii) DairyNZ/Fonterra's solution will cost 2.0% of local GDP by 2035 and \$232 million for the 20-year period.

³ This 15,000ha is based on a best estimate. It has been very difficult to try and identify how the 30,000ha was calculated, and which proportion of that 30,000ha is "consented" for irrigation use.

⁴ This proposal includes a slight deferment of the first commitment period from 2020 to 2025.

⁵ Both values in net present value ("NPV"), with the 5% discount rate applied.

- F. Accordingly, in our respectful submission, the DairyNZ/Fonterra solution is the most appropriate way to meet the objectives of the proposed Canterbury Land and Water Regional Plan ("**LWRP**") because that solution will, at a lesser cost than Variation 2, nonetheless:
- (a) achieve the sustainable management of the region's natural and physical resources;
 - (b) give effect to the CRPS and the NPSFM;
 - (a) implement the objectives of the LWRP; and
 - (c) have particular regard to, and achieve the vision of, the Canterbury Water Management Strategy ("**CWMS**").

1. INTRODUCTION

- 1.1 These legal submissions are presented on behalf of DairyNZ and Fonterra in relation to proposed Variation 2. Given the alignment of interests between the two organisations in the district, the submitters have elected to present a joint case to the Commissioners.

About the submitters and their approach to planning

- 1.2 As the Commissioners will be aware, Fonterra is a global co-operative owned by over 10,700 farmers across New Zealand, and is the world's largest diversified milk processing company and the leading exporter of dairy products. Fonterra has 165 suppliers in the district.⁶ DairyNZ is the industry organisation representing New Zealand's dairy farmers.
- 1.3 Dairy farming throughout New Zealand contributes significantly to the economic and social wellbeing of many rural communities, including in the district.
- 1.4 Notwithstanding that social and economic contribution, DairyNZ and Fonterra are both firmly of the view that:
- (a) an integrated and effective approach to monitoring and managing the effects of dairy farming is critical, particularly in respect of water quality objectives and outcomes; and
 - (b) both industry and regulators have a responsibility to ensure that dairy farming across the country is managed such that it occurs in a sustainable way, enabling positive environmental, social, cultural and economic outcomes for farmers and their communities.⁷

⁶ These farmer shareholders, and associated farm managers, contractors and tanker drivers are significant participants in the social fabric of the community. They directly and indirectly support local businesses such as rural retailers, farm suppliers, rural transport and cartage providers, seed producers, ground and surface water irrigation providers and rural consultancies.

⁷ Refer to the Final Report and Decisions of the Board of Inquiry into the Tukituki Catchment Proposal, dated 18 June 2014, at [130] - [131]:

[130] Understandably effects arising from intensification of land use, particularly an increase in dairy farming, raise concerns on the part of those supporting improved water quality. Recognising those concerns, counsel for Fonterra and Dairy NZ observed:

"Over the past several decades, New Zealand has seen a period of rapid growth of dairy farming throughout the country, and this growth has contributed greatly to the economic and social wellbeing of many rural communities. But this growth has, at times, lacked an integrated and effective approach to monitoring and managing the effects of dairy farming. That must change."

1.5 Achieving those objectives will require a planning and management regime that:

- (a) is effective, equitable, transparent and certain, for regulators, farmers, stakeholders, and the broader communities;
- (b) sets enforceable environmental outcomes (limits and targets), that are developed by the communities and which recognise the diversity of interests inherent in the protection, management and use of water;
- (c) has appropriate regard to the economic and social impacts of more stringent environmental protection; and
- (d) recognises that effective regulation and industry initiatives require both mandatory (rules and contractual elements) and non-mandatory (other methods and industry best practice) components.

1.6 The DairyNZ/Fonterra proposed solution has been developed to incorporate and reflect all of those elements, so as to achieve a planning regime that is not only effective in achieving the outcomes, but is also enduring.

Witnesses

1.7 The submitters have filed evidence from the following witnesses:

- (a) **Mr James Ryan** - Regional Policy Manager at DairyNZ. Mr Ryan provides a summary of DairyNZ's interest in Variation 2, and its commitment to supporting good management practices.
- (b) **Ms Sue Ruston** - Environmental Policy Manager at Fonterra. Ms Ruston summarises Fonterra's presence in the district, and outlines the processes Fonterra has in place for the management of environmental effects associated with farming practices.

Counsel told the Board that both Fonterra and Dairy NZ are firmly of the view that both regulators and the dairy industry have a responsibility to ensure that future growth of dairy farming occurs in a sustainable way.

[131] The Board agrees. Managing intensification of land use in a sustainable way is necessary if effect is to be given to the NPSFM. It also reflects the underlying philosophy of the RMA; the promotion of sustainable management of natural and physical resources.

- (c) **Ms Shirley Hayward** - Water Quality Specialist at DairyNZ. Ms Hayward agrees with the Council's proposed water quality outcomes and objectives. However, Ms Hayward considers the nitrogen load limit proposed in Variation 2 is inappropriate due to flaws in the Council's model. Ms Hayward provides an alternative scenario that allows a combination of realistic irrigation development, flexibility for low emitters and significant reductions from high emitters to achieve the proposed water quality outcomes.
- (d) **Dr Peter Brown** - Senior Water Resource Engineer with Aqualinc Research Ltd. Dr Brown presents farm scale mapping of the current irrigated area and system type, and the extent of the future area that can be irrigated in the district to calculate the current land use. He also models the differences in estimated farm and catchment nitrate root zone load losses, depending on which version of Overseer is used and how drainage under irrigation is modelled, to support a revision of the numbers used in Variation 2.
- (e) **Mr Mark Neal** - Farm Systems Specialist at DairyNZ. Mr Neal modelled the on-farm impacts of Variation 2 and concluded that the Council's assessment of these impacts is inaccurate due to overstatements in the ease of mitigation for farmers, and an understatement of the costs involved in the required mitigations. Mr Neal adjusted the assumptions used by the Council to use more comprehensive, accurate and realistic figures. Adjusting the inputs to more realistic assumptions showed that the impacts of the 45% proposed nitrogen reduction for dairy in Variation 2 would lead to a reduction in EBIT (adjusted) of between 25% and 33%, in stark contrast to the overall positive impact predicted by the Council's economic modelling.
- (f) **Dr Brian Bell** - Director of Nimmo-Bell & Company Ltd. Dr Bell provided an assessment of the aggregate direct benefits and costs to the dairy industry of Variation 2 as proposed by the Council, and assessed the same effects with DairyNZ/Fonterra's proposed alternative solution. His results showed the marginal change in the Variation 2 solution for existing dairy and dairy

support is \$74m (28% more costly) compared with the solution proposed by DairyNZ/Fonterra.

- (g) **Dr James Douglas Fairgray** - Dr Fairgray provided an assessment of the economic effects of both Variation 2 and the proposed DairyNZ/Fonterra alternative on the district and the region, as well as associated effects on employment. Dr Fairgray concludes that DairyNZ/Fonterra's 3 stage implementation solution would have the lowest negative effects on economic activity and jobs within the district.
- (h) **Mr Gerard Willis** - Director of Enfocus Ltd. Following an evaluation of the statutory framework and the planning principles of efficiency, fairness, equity, and social durability that need to be considered in setting appropriate allocations on nitrogen, Mr Willis concludes that the DairyNZ/Fonterra proposal is a more appropriate solution than Variation 2 as proposed.

2. SPECIFIC LEGAL ISSUES

Water transfers

Vires argument - can transfers be classified as prohibited activities?

- 2.1 Rules 13.5.33 and 13.5.34 classify transfers of water as a prohibited activity. The submitters oppose this classification. We acknowledge that this issue was discussed in the Commissioners' decision on Variation 1, and it was held in that decision that there was jurisdiction under the Resource Management Act 1991 ("RMA") to classify transfers as prohibited.⁸
- 2.2 We accept that the appropriate classification is a question of planning merits (and submissions on that point are made below), however counsel respectfully submit that there is no jurisdiction under the RMA for transfers to be classified as prohibited. In that regard, we say that:
 - (a) Section 136(2)(b) provides that a transfer can either be expressly allowed by a regional plan, or it has been approved by

⁸

Report and Recommendation of the Hearing Commissioners on Variation 1 to the Proposed Canterbury Land and Water Regional Plan, at [342] - [362].

the consent authority that granted the permit "on an application under subsection (4)".⁹

- (b) Section 136(4) commences with: "An application under subsection 2(b)(ii)—".
- (c) The classes of activities are described in s 87A of the RMA. Section 87A(6) states that if an activity is described in this Act, regulations (including a national environmental standard), or a plan as a prohibited activity:
 - (a) no application for a resource consent may be made for the activity; and
 - (b) the consent authority must not grant a consent for it.
- (d) Because s 136 envisages that an application "may be made" to transfer a water permit, s 136 cannot have envisaged that any such activity would be classified as a prohibited activity - because no application "can be made" for a prohibited activity.¹⁰ We accept that a regional plan could legitimately classify any such application as either a controlled, restricted discretionary, discretionary or non-complying activity.
- (e) Finally, a different approach is evidenced in the matching provisions - s 137 Transferability of discharge permits. Section 137(3) states:
 - (3) The holder may make the transfer if it is for another site and is to any person, if a regional plan—
 - (a) allows the transfer; or
 - (b) allows the holder to apply to the consent authority that granted the permit to be allowed to make the transfer.

The difference in wording between s 137(3)(b) and s 136(2)(b) is in our submission deliberate. Under s 137(3)(b) the regional plan must "allow the holder to apply to the consent authority", which leaves it open to a regional plan not to allow that to occur

⁹ Refer s 137 for the how the section could have been worded if prohibited status was contemplated.

¹⁰ For example, s 136(4)(b) is written in mandatory language - an application for transfer "shall be in the prescribed form" and "shall be considered as if it were an application for resource consent."

- ie to make such an application for transfer to be a prohibited activity. There is no equivalent wording in s 136(2)(b).

2.3 We submit that the interpretation set out above will achieve the same beneficial outcomes as the purposive interpretation referred to in the Commissioners' decision¹¹ on Variation 1:

- (a) The regional council can appropriately manage transfers of water, and any such application for transfer could be declined or be subject to appropriate conditions. The Council will be able to give effect to its obligations under the NPSFM and CRPS without needing to have recourse to prohibited activity status for all transfers.¹²
- (b) In particular, any application for transfer under s 136(2)(b) must be within the same catchment, and, because allocation limits are usually set within catchments, transferring a water permit *within* that catchment would not increase over-allocation. At worst the over-allocation would remain the same. Even if the actual take (and therefore actual effects) might increase as a result of transfer, rules can be drafted in a way that precludes that occurring, and ensures that it is only the actual taken volume that is being transferred (refer, eg Mr Willis's proposed rule).¹³
- (c) To the extent that regional councils are required to remedy any over-allocation (or avoid over-allocation), then this can be achieved in ways other than relying on a prohibited activity rule.¹⁴
- (d) Far from requiring that transfers are prohibited, the wording of key policies within the NPSFM support the argument that transfers should *not* be classified as prohibited.¹⁵

¹¹ Report and Recommendation of the Hearing Commissioners on Variation 1 to the Proposed Canterbury Land and Water Regional Plan, at [360].

¹² For example, Policy B5 of the NPSFM and Policy 7.3.4(2)(a) of the CRPS are about avoiding further additional allocation - not the use of existing allocated water.

¹³ Parliament's restriction of any transfer to within the same catchment is a further factor that would count against the scheme of the RMA envisaging that such a transfer could be classified as prohibited.

¹⁴ For example, there are specific powers to review existing resource consents when a regional plan becomes operative and a review is necessary in order to ensure that new limits are met (eg, s 128(1)(b) RMA).

¹⁵ Refer Policy B3 of the NPSFM, which requires councils to "state criteria by which applications for approval of transfers of water take permits are to be decided" - a prohibited activity classification could not contain such criteria.

Merits argument - discretionary is more appropriate than prohibited

- 2.4 We submit that a discretionary activity status would be more appropriate, provided certain conditions are met.
- 2.5 In the decision on Variation 1, the Commissioners considered that for the purpose of s 32(2)(c) of the RMA, there was uncertainty or insufficient information about the circumstances of allowing potential transfers and their environmental effects. The Commissioners therefore considered that the risk of not prohibiting transfers would fall short of giving effect to the relevant policies of the NPSFM and the CRPS on over-allocation of water.¹⁶
- 2.6 The standards that Mr Willis proposes to attach to a discretionary activity classification address this uncertainty, because:
- (a) The transfer would only be enabled if the volume of water being transferred had actually been used in recent years.
 - (b) The transfer could not exceed the average annual volume taken and used over the preceding four-year period, or the period 1 July 2009 – 30 June 2013, whichever is greater.
 - (c) Any transfer would therefore be at the same, or lesser, rate in its new location. There could be no increase in use.¹⁷
- 2.7 The proposed amended rule recommended by Mr Willis is the most appropriate form of rule because:
- (a) The amended rule gives effect to Objective B2 of the NPSFM as it avoids further over-allocation, and is likely to reduce over allocation because transfers will result in a "sinking lid" to the volumes taken.¹⁸
 - (b) The amended rule gives effect to Objective B3 of the NPSFM, which is to improve and maximise the efficient allocation and efficient use of water.

¹⁶ Report and Recommendation of the Hearing Commissioners on Variation 1 to the Proposed Canterbury Land and Water Regional Plan, at 626.

¹⁷ Based on a four year averaging of past use. If necessary, the rules could specify that any transfer not complying with Mr Willis' proposed discretionary activity standard would become clarified as non-complying.

¹⁸ Noting that there are other methods of reducing over-allocation suggested in Variation 2, which DairyNZ and Fonterra support, including provision for surface water and stream depleting groundwater users to surrender their take for a deep groundwater take.

- (c) The amended rule is consistent with Policy B3 of the NPSFM, which requires:

... every regional council making or changing regional plans to the extent needed to ensure the plans state criteria by which applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water.

- (d) The Council's proposed rule is inconsistent with Policy B3 because that policy requires councils to "state criteria by which applications for approval of transfers of water take permits are to be decided" - a prohibited activity classification could not contain such criteria.
- (e) The Council's rule inappropriately assumes that in every case, and in every possible factual situation, a transfer should attract a prohibited activity classification. Preventing any such application for transfer to be heard on its merits would not only be inconsistent with the objectives and policies of the NPSFM (see above), but it could also stifle innovation and result in perverse outcomes whereby an inefficient use was continued because there was no ability to transfer that water take to a more efficient use that might have less environmental effects.¹⁹
- (f) The amended rule gives effect to Policy 13.4.6 which seeks to prohibit transfers that would result in *increased use* of water increased use arising from a transfer (this is because there would be no increased use of water possible).
- (g) Classifying the amended rule as a discretionary activity (subject to meeting the specified standards) allows the consent authority to undertake a full assessment of effects and an assessment

¹⁹

See section 16 of the Evidence in Chief of Mr Willis for DairyNZ/Fonterra. Suggested conditions would require that the volume of water to be transferred for annual take and use does not exceed the current use. Refer also to the findings of the Court of Appeal in *Coromandel Watchdog of Hauraki Inc v Ministry of Economic Development* [2008] 1 NZLR 562 ("**Coromandel Watchdog**") that when determining activity status, councils should focus on what is "the most appropriate" status for achieving the objectives of the district plan, which, in turn, must be the most appropriate way of achieving the purpose of sustainable management, at [28]. Following *Coromandel Watchdog*, the Environment Court in *Thacker v Christchurch City Council* ENC Christchurch C026/09, 6 May 2009, at [42] emphasised:

The imposition of prohibited activity status on any activity or activities is the most draconian form of control available under RMA. A prohibited activity is not only one for which a resource consent must not be granted by a consent authority, but a proponent of such an activity may not even make an application for it. Although not specifically stated by any of the parties to these proceedings there was an implicit acceptance that prohibited activity status was not one which should be imposed lightly and without detailed consideration.

against the relevant objectives and policies. On a case by case basis applications for transfers can be declined in appropriate circumstances.

Conflict between the *Ngati Kahungunu* and *Tukituki* decisions

2.8 Counsel has reviewed the Commissioners' Questions arising from the Section 42A Report and Responses document, and in particular pages 6 and 7 of that document which address the recent decisions of the High Court in *Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Council*²⁰ and the Environment Court in *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council*.²¹

2.9 Counsel offer the following observations about those two decisions and whether there is any conflict:

- (a) The Objectives of the two documents were different:
 - (i) In *Tukituki* Objective TT1(f) to the Regional Plan read: "To sustainably manage the use and development of land, the discharge of contaminants ... so that: (f) The taking and use of water for primary production and the processing of beverages, food and fibre is provided for". (The appeal upheld that wording.²²)
 - (ii) In *Ngati Kahungunu* Objective 21 to the Regional Policy Statement as notified read: "No degradation of existing groundwater quality in the Heretaunga Plains and Ruataniwha Plains aquifer system". (The appeal supported that wording being reinstated, subject to the Ruataniwha Plains aquifer being removed by Plan Change 6.²³)
- (b) The essence of the *Ngati Kahungunu* decision was the Court's finding that existing groundwater quality includes the nitrates and other contaminants that are dispersed within the ground and which will eventually find their way into the aquifer - in other

²⁰ *Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Council* [2014] NZHC 3191 ("*Tukituki*").

²¹ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50 ("*Ngati Kahungunu*").

²² *Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Council* [2014] NZHC 3191, at [202] - 205].

²³ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [107].

words, the lag effect, or as the Court phrased it "the load to come".²⁴ The Court appeared to be saying that, in assessing a measure of "no degradation", that assessment had to be against the existing groundwater which will include the groundwater with that lag effect. So, one could presumably comply with that objective by ensuring that rules did not allow the "existing groundwater quality" so defined to be worsened *from that future state*. That is not the same thing as saying that there can be no further discharge to ground; it is simply saying that any rules should look to improve (or as a minimum maintain) groundwater quality.

- (c) This definition of "existing groundwater quality" (ie including the "load to come") is also important to the second question the Court posed, which was to ask whether there are any legal consequences of having an objective that cannot be achieved.²⁵ The answer, the Court says, is no. The Court's preference was to have an objective that required maintenance or enhancement, even if actually the groundwater quality did deteriorate. In the latter case, the Court says, the reason for degradation despite more stringent rules could be because of the "load to come".²⁶
- (d) In the *Tukituki* decision, the focus was on sustainably managing the taking and use of water, land use, and the discharge of contaminants, so as to achieve a range of outcomes.²⁷ Outcome TT1(f) was one of many objectives. Others included the maintenance and enhancement of habitat and health of eco-systems (outcome (a)), and safe and reliable drinking water (outcome (b)). Accordingly, while providing for outcome (f) *might* result in contaminants entering the groundwater that does

²⁴ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [41].

²⁵ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [78].

²⁶ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [78].

²⁷ The overall objective of Objective TT1 was to "sustainably manage" a number of activities comprising "the use and development of land", "the discharge of contaminants", and the "taking, using, damming and diverting of fresh water", with the use of the phrase "sustainably manage" reflecting the phrase in Objective A1 of the NPSFM - "sustainably managing the use and development of land, of discharges of contaminants" - and the purpose of the RMA, in s 5 - "to promote the sustainable management of natural and physical resources".

not necessarily mean that the other objectives will be compromised.²⁸

2.10 Counsel do not consider that the two decisions do conflict, provided that the *Ngati Kahungunu* decision is applied carefully. By that we mean that the decision should stand for the propositions that:

- (a) Regional councils should have as their objectives the improvement or at least maintenance of water quality.²⁹
- (b) In assessing "existing water quality" regard can be had to the effect of those contaminants already within the ground (ie the lag effect or "load to come"), but any such future effect is no justification for arguing that regional councils can set a lower standard than maintain or improve. In other words, if the likely future quality is going to decline, that cannot be a justification to reduce the level of control over land uses that cause the discharge of such contaminants.³⁰
- (c) There is no legal impediment to an objective being aspirational in nature, as opposed to an objective that can be met within the lifetime of the particular plan. But it remains important to know whether an objective is being achieved at all - in other words, while an objective may not need to be achievable, it is important to be able to monitor how close reality is to that aspirational goal.³¹
- (d) In setting targets and limits in regional plans, regional councils must give effect to the NPSFM and regional policy statements, and should be cognisant of the duties of regional councils under ss 30(1)(c)(ii) and 69(3) of the RMA.³²

2.11 To the extent the two decisions do conflict, then clearly the High Court decision should be preferred.

²⁸ *Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Council* [2014] NZHC 3191, at [202] - 205].

²⁹ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [29].

³⁰ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [41] - [42].

³¹ *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, from [78].

³² *Ngati Kahungunu Iwi Inc v The Hawke's Bay Regional Council* [2015] NZEnvC 50, at [28] - [29]; [57] and [79].

- 2.12 We do not believe that it is appropriate to read the *Ngati Kahungunu* decision in a way that would preclude rules allowing the discharge of any contaminants to land or into water. Such a stringent interpretation would be contrary to the RMA, the NPSFM and, in this case, the CRPS.
- 2.13 In our submission, both Variation 2 and the DairyNZ/Fonterra solution are entirely consistent with those propositions set out in paragraph 3.10 above, and in particular the proposed rules will result in the improvement of the groundwater quality.

3. DAIRYNZ AND FONTERRA'S APPROACH TO VARIATION 2

- 3.1 The submitters accept that the district is a highly modified environment, much of which comprises intensive land use. Average nitrogen concentrations in both shallow groundwater and groundwater-fed streams are elevated across the catchment, in particular in the Lower Hinds Plains Area. DairyNZ and Fonterra agree that the average nitrate nitrogen concentrations in shallow groundwater need to reduce from 13.2mg/L (including an allowance for lag effects) to 6.9mg/L.³³
- 3.2 DairyNZ and Fonterra therefore support the intent behind Variation 2, the freshwater outcomes proposed for the Hinds Plains Area rivers in Table 13(a), the nitrate toxicity targets in Table 13(j), and the targets for groundwater in Table 13(k).
- 3.3 However, while supporting the overall water quality objective, DairyNZ and Fonterra had numerous concerns with Variation 2 as notified. The submitters proposed a number of changes to Variation 2 in their submissions and further submissions. While some of these changes were accepted by the Council in its Section 42A report ("**42A Report**"), in our submissions the provisions proposed by the 42A report require further amendments.
- 3.4 DairyNZ and Fonterra have proposed an alternative solution to address these concerns, which is set out in the revised mark-up version of the Variation included as Appendix 2 to Mr Willis' evidence.³⁴ For the Commissioners' convenience, this mark up (underline and strikethrough) shows:

³³ Ashburton Zone Committee Zone Implementation Plan Addendum, Hinds Plains Area, March 2014, at page 23.

³⁴ Evidence in Chief of Mr Willis for DairyNZ/Fonterra, at 44.

- (a) Council's notified changes in black;
- (b) Council's 42A Report changes in red; and
- (c) DairyNZ/Fonterra changes proposed in their evidence in blue.

Proposed solution

3.5 The key differences between the approach taken in Variation 2 and the DairyNZ/Fonterra alternative solution are summarised in the table at **Appendix 1** to these submissions.³⁵ (An A3 version of this table is separately provided.)

3.6 Specifically:

- (a) The Council has set a load limit of 3,400 tonnes N/yr, based on an existing modelled load of 4,500 N/yr. The modelling undertaken by the Council significantly underestimates current nitrogen losses, using incorrect inputs for nitrogen losses and drainage values and failing to adjust for known deficiencies in the model.³⁶
- (b) DairyNZ and Fonterra have re-modelled the existing load at 6,508 tonnes N/yr. The reference to a target load of 3,400 tonnes in the notified policies and Table 13(g) therefore places inappropriate reduction requirements on farming activities in the catchment. Due to the uncertainties surrounding the target load, the submitters consider that target load should be expressed as a percentage reduction of the existing load.³⁷
- (c) Variation 2 provides for increases in nitrogen discharge on 30,000ha of land (which includes land within consented irrigation schemes yet to receive water, and the balance apparently on a first-in-first-served basis). We submit the 30,000ha referenced in Variation 2 is inappropriate, based on the existing irrigated

³⁵ This table was provided as part of Ms Hayward's Evidence in Chief for DairyNZ/Fonterra.

³⁶ Evidence in Chief of Mr Neal for DairyNZ/Fonterra, at 4. Note that DairyNZ and Fonterra's findings on the underestimation of the existing load are supported by the experts called by Fish and Game - see the Rebuttal Evidence of Mr Wilson for Fish and Game, at 6.

³⁷ Evidence in Chief of Ms Hayward for DairyNZ/Fonterra, at 5.7.

land use in the catchment.³⁸ A more realistic irrigation expansion scenario is likely to be 15,000ha.³⁹

- (d) The DairyNZ/Fonterra proposed allocation solution allows low leaching farms to increase their nitrogen discharges within a 15kg N/ha/yr "Tier 1 flexibility cap" as a permitted activity. 17 tonnes is also set aside for medium leaching farms (in the 15-20kg range) to increase their discharges to 20kg N/ha/yr in the "Tier 2 flexibility cap" as restricted discretionary activities.⁴⁰
- (e) The phase-in of reductions in Variation 2 proposes four incremental stages being 2020, 2025, 2030 and 2035, requiring a 15% reduction requirement in the first 5 years followed by 10% for each 5 year period thereafter. The DairyNZ/Fonterra solution proposes just three stages with the 15% reduction required by 2025 (rather than 2020).⁴¹ The full 36% reduction would be required by 2035 and an interim target of 25% for 2030. In respect of this proposed change:
 - (i) The key reason for this is to allow the sector time to identify and implement lower cost mitigation options than those that may be currently available.
 - (ii) While this solution extends the first timeframe for reduction, within this time period reductions are required to reach good management practice ("**GMP**") and, in reality, improvements will occur prior to the 2025 target (for example, through investments in infrastructure). The submitters therefore do not consider that there will be any material adverse effects arising from this short deferment.

3.7 Ms Hayward's evidence shows that the DairyNZ/Fonterra solution will deliver the targeted 9.2mg/L nitrate nitrogen concentration in shallow

³⁸ Evidence in Chief of Mr Brown for DairyNZ/Fonterra, at 4.5.

³⁹ Evidence in Chief of Mr Neal for DairyNZ/Fonterra, at 7.1; Evidence in Chief of Ms Hayward for DairyNZ/Fonterra, at 6.8.

⁴⁰ Evidence in Chief of Mr Willis for DairyNZ/Fonterra, at 12.7.

⁴¹ We note that the economic evidence for DairyNZ and Fonterra models both a 3-stage and a 4-stage solution to show the economic implications of different scenarios. However, as noted in the Evidence in Chief of Mr Willis, at 13.6, the preferred approach is the 3-stage approach, as was sought in Fonterra's original submission.

groundwater by 2035.⁴² That concentration will, as is proposed by Variation 2, be further reduced to 6.9mg/L through MAR.

3.8 The DairyNZ/Fonterra solution will cost 2.0% of local GDP by 2035 and \$232 million for the 20-year period (in NPV terms), while the Council's allocation will cost 2.5% of local GDP by 2035 and \$650 million for the 20-year period (in NPV terms).⁴³

3.9 In comparison with Variation 2, DairyNZ/Fonterra's proposed solution:

- (a) achieves the same water quality objective (ie 6.9 mg/L);
- (b) achieves that objective within the same time period (ie by 2035); and
- (c) achieves that objective for less cost.

3.10 Accordingly, in our respectful submission, the DairyNZ/Fonterra solution is the most appropriate way to meet the objectives of the LWRP because that solution will, at a lesser cost than Variation 2, nonetheless:

- (a) achieve the sustainable management of the region's natural and physical resources;
- (b) give effect to the CRPS and the NPSFM;
- (c) implement the objectives of the LWRP; and
- (d) have particular regard to the vision and principles of the CWMS.

4. DAIRYNZ AND FONTERRA'S POSITION ON OTHER PARTIES' AMENDMENTS

4.1 As set out in the rebuttal evidence of Ms Hayward and Mr Willis, DairyNZ and Fonterra oppose the relief sought by the Central South Island Fish and Game Council ("**Fish and Game**").

4.2 By way of summary:

- (a) Fish and Game seeks to impose an unrealistically low nutrient concentration threshold, including for dissolved inorganic nitrogen ("**DIN**") and dissolved reactive phosphorous, which

⁴² Evidence in Chief of Ms Hayward for DairyNZ/Fonterra, at 4.27.
⁴³ Evidence in Chief of Dr Fairgray for DairyNZ/Fonterra, at 7.23.

appears to reflect the nutrient levels of a near pristine environment. Such an approach is inappropriate for the district.

- (b) Adding DIN limits to the "outcomes" in Table 13(a) blurs the line between outcomes and limits, and establishes an internal conflict within Variation 2 between the limits and targets in Table 13(j) for an annual median nitrate-nitrogen limit of 6.9mg/L and the DIN limits in Table 13(a). This would result in ambiguity.
- (c) Fish and Game asserts that because Council's modelling may have significantly underestimated the existing nitrogen load, the target loads may therefore be unachievable and there should be no further irrigation expansion in the catchment. However:
 - (i) The underestimation does not necessarily make achieving the desired in-stream concentrations easier or harder. Rather, it changes the quantum of the target load. Due to that uncertainty, DairyNZ and Fonterra seek to express the target load as a percentage reduction from the current state.
 - (ii) Additionally, existing irrigation consents form part of the existing environment.⁴⁴ As such, they must be allowed to be exercised in a manner consistent with the terms and conditions specified, including in relation to managing nutrient loss. This is not "additional allocation."⁴⁵
- (d) Fish and Game contend that the estimated benefits of MAR should not be written into Variation 2 until proven. The submitters disagree:
 - (i) All rules and practises around nutrient management are to some extent uncertain, and any rule regime will require ongoing monitoring and assessment of its effectiveness over the next 20 years.
 - (ii) Without making an allowance for the expected reduction from MAR, the reductions required from farming operations within the district would be much

⁴⁴ For example, see *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA).

⁴⁵ Evidence in Chief of Mr Wilson for Fish and Game, at 40.

more significant and could result in significant economic and social effects.

- (iii) If, through the monitoring, MAR was not proven to be effective, then the appropriate approach at that time would be to re-assess the whole regime of controls, including the reductions required and any other mitigation options that might exist at that time.
- (iv) However, if MAR was successful, and if tighter reductions had been imposed at the outset (ie if MAR had not been taken into account), then the community would have experienced significant social and economic adverse effects unnecessarily.
- (v) The ability to rely on MAR was a core part of the overall package that was developed by the Ashburton Zone Committee process, including reductions from existing farmers, some intensification⁴⁶, and the ability to rely on MAR. The process adopted by that committee to identify acceptable community outcomes is consistent with the approach required by the NPSFM. It would be inappropriate to simply set aside a core part of that package, without re-examining all other elements of Variation 2.

5. STATUTORY FRAMEWORK

- 5.1 Turning to the statutory context in which these provisions must be determined, we refer to the "consideration process" described by the Commissioners in their decision on Variation 1.⁴⁷

Identification of issues and options

- 5.2 In sections 3 and 4 above, we have identified the issues arising from primary submissions on Variation 2 and identified options for addressing

⁴⁶ This was referred to in the ZIP Addendum at "up to 30,000ha of new irrigation for which consent has been granted", although the exact amount of new irrigation to be provided for was uncertain. See the Ashburton Zone Committee Zone Implementation Plan Addendum, Hinds Plains Area, March 2014, at page 47.

⁴⁷ Report and Recommendation of the Hearing Commissioners on Variation 1 to the Proposed Canterbury Land and Water Regional Plan, at [164].

those issues, as well as discarding those options that are not reasonably practicable (including the relief sought by Fish and Game).

Scope of the Council's authority to amend the Variation

- 5.3 The scope of the relief sought by the submitters is set out in **Appendix 2**.

Assessing the extent to which adopting that option would, more fully than not making that amendment, give effect to higher-order documents

- 5.4 The relevant higher-order planning instruments are identified in Mr Willis' evidence.⁴⁸

- 5.5 Any regional plan must give effect to a national policy statement.⁴⁹ In respect of the NPSFM:

- (a) The NPSFM requires that freshwater limits are established in accordance with Policies CA1 - CA4, and that freshwater limits are set to ensure freshwater objectives are met.
- (b) The Council has adopted a staged implementation programme, as freshwater objectives have not yet been established. The NPSFM allows for this, directing that regional councils implement a progressive implementation policy as promptly as is reasonable in the circumstances, and by no later than 31 December 2025 (although allowing for an extension to 31 December 2030 in various circumstances).⁵⁰
- (c) Achieving the freshwater objectives needs to be phased cognisant of the economic cost involved. This is made clear in the Preamble to the NPSFM.⁵¹

Where changes in community behaviours are required, adjustment timeframes should be decided based on the economic effects that result from the speed of change. Improvements in freshwater quality may take generations depending on the characteristics of each freshwater management unit.

- (d) The alternative solution proposed by DairyNZ and Fonterra achieves the identified water quality objectives at the same time

⁴⁸ Evidence in Chief of Mr Willis for DairyNZ/Fonterra, at Appendix 1.

⁴⁹ Section 67(3)(a), RMA. We have not expressly considered in these submissions the NZCPS, but we accept that instrument must also be given effect to (s 67(3)(b), RMA)

⁵⁰ NPSFM Policy E1(b).

⁵¹ NPSFM Preamble.

as, and for less cost, than Variation 2. Accordingly, the DairyNZ/Fonterra option better gives effect to the NPSFM than Variation 2.

- (e) The NPSFM does not "cover the field",⁵² and therefore the Commissioners may have recourse to Part 2 of the RMA. In that regard, we submit that the DairyNZ/Fonterra option will achieve the purpose of the Act.

5.6 A regional plan must also give effect to a regional policy statement. In respect of the CRPS:

- (a) The DairyNZ/Fonterra solution better gives effect to that document than Variation 2, for reasons explained above.
- (b) We accept that, unlike the NPSFM, the CRPS does cover the field, and therefore it is not permissible to rely on Part 2 of the RMA to read down any of the provisions of the CRPS. We do not consider it necessary to do so in this case as the DairyNZ/Fonterra solution gives effect to the objectives and policies of the CRPS.

5.7 In making any decision, the Commissioners must "have particular regard to" the vision and principles of the CWMS.⁵³ In our submission, the DairyNZ/Fonterra solution is consistent with - and would promote - the vision and principles better than Variation 2. In particular, being able to achieve the same environmental outcome (the water quality objective) at a lesser cost directly gives effect to the vision.⁵⁴

To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework.

⁵² See the Report and Recommendation of the Hearing Commissioners on Variation 1 to the Proposed Canterbury Land and Water Regional Plan, at [298]. The Commissioners found that the NPSFM does not cover the field as it does not contain provisions on the use of fresh water resources in a way, or at a rate, which enables people and communities to provide for their social, economic or cultural wellbeing, and for their health and safety; nor does it directly address matters identified in s 6, RMA as matters of national importance, such as natural character; outstanding natural features and landscapes; and areas of significant indigenous vegetation and significant habitats of indigenous fauna.

⁵³ The Council (Temporary Commissioners and Improved Water Management) Act 2010, s 63.

⁵⁴ The Council (Temporary Commissioners and Improved Water Management) Act 2010, Schedule 1.

Effects on the environment of activities

- 5.8 The adverse effects arising from the proposed rules on the environment have been considered.⁵⁵ The definition of "environment" includes "social and economic conditions".⁵⁶ The DairyNZ/Fonterra amendments to the rules will not give rise to any increased adverse effects compared to those rules provided for in Variation 2,⁵⁷ and in fact the amendments will result in less adverse effects on the social and economic components of the environment.⁵⁸

Will any allocation rule exceed the limits set out in s 30(4) of the RMA

- 5.9 None of the DairyNZ/Fonterra amendments contravene the requirements of s 30(4) of the RMA.

Relative efficiency and effectiveness of the options to achieve the objectives and risks of acting or not acting

- 5.10 The objectives against which the relative efficiency and effectiveness of any proposed amendments should be measured comprise the relevant objectives of the LWRP⁵⁹ and the purpose of the Variation.⁶⁰
- 5.11 In a broader sense, the Variation must:
- (a) give effect to the NPSFM and the NZCPS;⁶¹
 - (b) give effect to any RPS;⁶²
 - (c) be prepared in accordance with Part 2,⁶³ and
 - (d) not be inconsistent with any water conservation order or any other relevant regional plan.⁶⁴
- 5.12 In respect of those objectives, DairyNZ/Fonterra has identified the relative assessment of costs and benefits of its proposed solution.

⁵⁵ Resource Management Act 1991, s 68(3).

⁵⁶ Resource Management Act 1991, s 2.

⁵⁷ Evidence in Chief of Mr Willis for DairyNZ/Fonterra, at 18.4(e).

⁵⁸ Evidence in Chief of Dr Fairgray for DairyNZ/Fonterra, at 7.23.

⁵⁹ Resource Management Act 1991, s 32(3).

⁶⁰ Resource Management Act 1991, s 32(6).

⁶¹ Resource Management Act 1991, ss 67(3)(a)-(b).

⁶² Resource Management Act 1991, s 67(3)(c).

⁶³ Resource Management Act 1991, s 66(1)(b).

⁶⁴ Resource Management Act 1991, s 67(4).

- 5.13 While there is uncertainty about implementing any proposed nutrient management regime, the risks of the DairyNZ/Fonterra proposal are no greater than Variation 2.⁶⁵

Identify the relevant objectives and select which of the options is the most appropriate way of achieving the relevant objectives

- 5.14 DairyNZ/Fonterra submit that its proposed solution is the most appropriate way of achieving the relevant objectives identified above.
- 5.15 In comparison with Variation 2, DairyNZ/Fonterra's proposed solution:
- (a) Achieves the same water quality objective (ie 6.9 mg/L).
 - (b) Achieves that objective within the same time period (ie by 2035).
 - (c) Achieves that objective for less cost:⁶⁶
 - (i) Variation 2 will cost 2.5% of local GDP by 2035 and \$650 million for the 20-year period; and
 - (ii) DairyNZ/Fonterra's solution will cost 2.0% of local GDP by 2035 and \$232 million for the 20-year period.
 - (d) Is also the most equitable solution:
 - (i) There is a "flexibility cap" to provide flexibility in land use for low emitters.⁶⁷
 - (ii) Intensification through the introduction of new irrigation is only enabled where irrigation of that land is already consented - ie where it forms part of the "existing environment".⁶⁸

⁶⁵ In any event, because both regimes involve reduced nitrogen leaching, the worst case scenario would be a smaller improvement in groundwater concentrations than what had been modelled.

⁶⁶ Both values in NPV, with 5% discount rate applied.

⁶⁷ In their further submissions, DairyNZ and Fonterra adopted the relief sought in respect of the flexibility cap in the primary submissions of the Hinds Plains Land and Water Partnership, Federated Farmers Combined Canterbury Branch and Rangitata Diversion Race Management Limited.

⁶⁸ This is estimated to be 15,000ha. As notified, Variation 2 would provide for further, unconsented, land to be intensified (up to 30,000ha). The "headroom" for this future intensification would occur at the expense of existing dairy farmers.

- (iii) The solution applies reductions across the board, rather than targeting a particular land use.⁶⁹
- (e) Will better account for the current uncertainties about the size of the existing nitrogen load being applied to land within the district:
 - (i) If the actual load is not 4,500 t/N/year (but is in fact much higher), imposing a specific load limit of 3,400 t/N/year could result in a much greater reduction than is required to meet the water quality objectives.
 - (ii) By comparison, if a percentage reduction is applied as against the total current load, then there is no risk of this reduction being significantly more stringent than required.

6. CONCLUDING SUBMISSION

- 6.1 DairyNZ and Fonterra strongly support the environmental outcomes sought through Variation 2. However, DairyNZ and Fonterra respectfully request that the Commissioners adopt their alternative solution, as set out in the amendments proposed by Mr Willis.
- 6.2 DairyNZ and Fonterra's solution will ensure that the intended environmental outcomes are met, while best taking into account the associated social, cultural and economic effects. In particular, this will enable the continued operation of existing and well-established dairy farming in the region, which underpins the social and economic wellbeing of the district.

B J Matheson / A L McConachy

Counsel for Fonterra Co-operative Group Limited and DairyNZ Limited

⁶⁹

While we accept that, in reality, the majority of intensive land use within the catchment is related to dairying activities, we submit that any allocation regime must be land use neutral. If another land use leaches over 20kg N/ha/yr, there is no equitable reason why it should not be subject to the same reductions regime.

**Appendix 1 - Summary of key differences between the Council's modelled solution
(Variation 2) and the DairyNZ/Fonterra solution**

Environment Canterbury - Variation 2					
ECan's 2011 land use data Scott 2014 model			ECan's Variation 2 provisions Scott 2014 model		
	Area (hectares)	Load (tonnes nitrogen)		Area (hectares)	Load (tonnes nitrogen)
Existing land use not earmarked for development	97,000	3,928	Existing land use subject to GMP and further reductions Reductions required: 45% dairy and 25% for dairy support down to 20 kgN/ha/yr	97,000	2,701
Drylandland earmarked for irrigation conversion	30,000	596	Land earmarked for irrigation conversion - base load	30,000	596
			Load allocated for conversion to irrigated dairy/dairy support/arable		214
Total	127,000	4,524	Total	127,000	3,511
Predicted groundwater concentrations			Predicted groundwater concentrations		
Drainage volume	Mm ³ /yr	364	Drainage volume	Mm ³ /yr	350
Root zone nitrate concentration	mg/L	12.4	Root zone nitrate concentration	mg/L	10.0
Predicted average nitrate concentrations in shallow groundwater	mg/L	12.4	Predicted nitrate concentrations in shallow groundwater	mg/L	9.2
DairyNZ/Fonterra proposed solution					
DairyNZ - 2013 land use using DNZ/Overseer 6.2 model			DairyNZ/Fonterra solution -using DNZ/Overseer 6.2 model		
	Area (hectares)	Load (tonnes nitrogen)		Area (hectares)	Load (tonnes nitrogen)
Current land use - not earmarked for development	82,535	5,772	Existing land use subject to GMP and further reductions Reductions required: 36% for all properties > 20 kgN/ha/yr down to 20 kgN/ha/yr	82,535	3,639
Area earmarked for irrigation conversion	15,000	389	Area earmarked for irrigation conversion	15,000	461
Low N farmland (<20 kgN/ha/yr) (assumed not going to irrigation development)	29,465	397	Low N farmland (<20 kgN/ha/yr) (assumed not going to irrigation development) PA flex to 15 kgN, RDA flex to 20 kgN (limit 17t N)	29,465	479
Total	127,000	6,508	Total	127,000	4,579
Drainage volumes and nitrate concentrations			Drainage volumes and nitrate concentrations		
Drainage volume	Mm ³ /yr	469	Drainage volume	Mm ³ /yr	469
Root zone NO ₃ -N concentrations from DNZ/Aqualinc and DNZ/Overseer 6.2 models	mg/L	11.2-13.9	Root zone NO ₃ -N concentrations from DNZ/Aqualinc and DNZ/Overseer 6.2 models	mg/L	9.1-9.7
Predicted average nitrate concentrations in shallow groundwater	mg/L	13.2	Predicted average nitrate concentrations in shallow groundwater (assuming no changes to drainage inputs)	mg/L	9.2

Appendix 2 - Scope of DairyNZ/Fonterra's suggested amendments

The solution proposed by DairyNZ and Fonterra in evidence is broadly as sought by the submitters in their submissions and further submissions on Variation 2, although aspects of the relief sought have been refined due to further modelling being undertaken, and to take account of amendments to Overseer. Given the Commissioners' findings on scope in the Variation 1 decision,⁷⁰ the table below addresses the scope of DairyNZ/Fonterra's suggested amendments.⁷¹

⁷⁰ Report and Recommendation of the Hearing Commissioners on Variation 1 to the Proposed Canterbury Land and Water Regional Plan, at Chapter Three.

⁷¹ Refer to section 14 of the Evidence in Chief of Mr Willis for DairyNZ and Fonterra, where he discusses each of the amendments sought in detail with reference to the relevant primary and further submissions.

	Topic	Relief sought in evidence	Submission reference	Relief sought in submission	Comment on further submissions
1.	Transfers of resource consents	The evidence of Mr Willis supports Fonterra's primary submission, and proposes an alternative option to design a discretionary activity rule that enables the transfer of that volume of water actually used in recent years.	Fonterra primary submission points V2 pLWRP-782	Fonterra's submission sought to delete Rules 13.5.33 and 13.5.34 meaning that the matter of transfers would default to Rule 5.133 of the LWRP.	
2.	Target load	The DairyNZ/Fonterra solution proposes to express the target load as a proportion (70%) of the existing load.	Fonterra primary submission points V2 pLWRP-768, 779, 806.	Fonterra's submission sought to express the catchment nitrogen load (in Policies 13.4.12 and 13.4.13) as 70% of the catchment load contributed by farming activities as at 1 October 2014.	
3.	Intensification	The DairyNZ/Fonterra solution seeks reference to land within the command area of irrigation schemes consented at 1 October 2014 that was not supplied with water from that scheme at 1 October 2014.	Dairy Holdings Ltd submission point V2 pLWRP-987.	Fonterra further submitted in support of the submission by Dairy Holdings Ltd seeking such relief.	
4.	Flexibility cap	The DairyNZ/Fonterra solution includes a flexibility cap, as described at paragraphs D and 4.6(d) above.	Hinds Plains Land and Water Partnership primary submission points V2 pLWRP-322, 324; Federated Farmers Combined Canterbury Branch primary submission points V2 pLWRP-283, 313; Rangitata Diversion Race Management Limited primary submission point V2 pLWRP-707.	The notion of a flexibility cap was introduced in the primary submissions of the Hinds Plains Land and Water Partnership, Federated Farmers Combined Canterbury Branch and Rangitata Diversion Race Management Limited. Fonterra further submitted in support of this approach.	DairyNZ and Fonterra have worked with other primary sector groups to refine the specific flexibility cap numbers, as now sought in evidence, for clarity and workability.
5.	Reductions	The DairyNZ/Fonterra solution proposes a 36% "activity neutral" reduction requirement.	Fonterra primary submission points V2 pLWRP-739, 759.	Fonterra's primary submission sought 30% reductions.	The reduction percentage has been refined following further modelling to be closer to the Council's Variation 2 requirement, but on the basis of accurate modelling.
6.	Implementation timeframes	The DairyNZ/Fonterra solution proposes a 3 stage timeframe for implementation.	Fonterra primary submission point V2 pLWRP-779.	Fonterra's primary submission proposed a 3 stage timeframe for implementation.	