

Tabled & Hearing
16.07.2015

in the matter of: the Resource Management Act 1991

and: submissions and further submissions in relation to proposed **Variation 2** to the proposed Canterbury Land and Water Regional Plan

and: **Dairy Holdings Limited**
Submitter

Summary of submissions by counsel for Dairy Holdings Limited

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SUMMARY OF SUBMISSIONS ON BEHALF OF COUNSEL FOR DAIRY HOLDINGS LIMITED

Introduction

- 1 These submissions are provided on behalf of Dairy Holdings Limited (*DHL*).
- 2 DHL is a submitter and further submitter in respect of proposed Variation 2 (*Variation 2*) to the proposed Canterbury Land & Water Regional Plan (*pLWRP*).
- 3 It has a substantial interest in the Hinds Plains area and owns or leases 12 properties (being a combination of dairy and dairy support operations).
- 4 At a general level these can be divided between:
 - 4.1 properties above State Highway 1 that are mainly irrigated via either border-dyke or spray irrigation systems with surface water from the Rangitata Diversion Race (RDR) sub-schemes (with a number of these properties also holding consents to take groundwater for either the partial or full irrigation of the relevant properties); and
 - 4.2 properties below State Highway 1 (and outside of the RDR sub-scheme area) that are irrigated via groundwater and spray irrigation systems.
- 5 DHL has been very progressive in terms of both growing its interests in the Hinds Plains area and upgrading its irrigation systems to comply with what it considers to be good management practice (i.e. high efficiency spray irrigation systems with a strong emphasis on both replacing border dyke schemes with spray and moving to surface/scheme water when available as opposed to individually held groundwater).
- 6 A map showing DHL's Hinds Plains' properties was set out in its original submission (and is also included in **Mr Colin Glass'** evidence). It is included for ease of reference in **Annexure 1**.

Approach to submissions

- 7 These submissions briefly address:
 - 7.1 DHL's position on the proposed good management/reduction regime (as is mainly relevant to Policy 13.4.13, the discretion to be exercised under Rule 13.5.17, and Table 13(h)); and
 - 7.2 the importance of the farm enterprise regime; and

- 7.3 the interface between an irrigation scheme and a farming enterprise.
- 8 In taking this approach DHL is conscious that the Panel has already heard from a significant body of technical evidence through the Variation 2 hearing process (including, from the primary sector, that from Rangitata Diversion Race Management Limited (*RDRML*) and Fonterra Co-operative Group Limited/Dairy NZ (*Fonterra*)).
- 9 To that extent, the key themes appear to be:
- 9.1 there is uncertainty in terms of actual existing nitrogen load and the extent to which further intensification can be accommodated in the Hinds Plains area – it may only be half of the 30,000 hectare area identified in the notified version of Variation 2;
 - 9.2 for existing irrigated dairy and dairy support properties (such as those owned or leased by DHL) it appears unlikely that a reduction regime to the extent contemplated by Table 13(h) (i.e. 45% for dairy, 25% for dairy support) can be met on already efficient spray irrigated properties with good environmental systems in place;
 - 9.3 in practice, the achievement of sought catchment outcomes is going to also be dependent on direct interventions 'beyond the farm gate' – the most obvious being managed aquifer recharge and targeted stream augmentation. Individuals such as DHL are unlikely to be in a position to give effect to such actions (with the required surface water being largely limited to those held by the irrigation scheme entities). It does however appear that there are opportunities for such interventions to occur;
 - 9.4 although some increases parts of the catchment are anticipated, Variation 2 will overall result in a reduced nitrogen load in the Lower Hinds/Hekeao Plains Area – and therefore Objective A2 of the National Policy Statement for Freshwater Management 2014 will be met;
 - 9.5 more time is required to meet sought catchment 'targets' and outcomes. Given the interface between the uncertainties around existing catchment load, direct interventions and the overall complexity and inter-relationship between landuse and water quality in the Hinds Plains area, it appears there is a higher degree of justification for longer timeframes under Variation 2; and
 - 9.6 given the significance of the issues and the uncertainties in terms of the extent to which individual reductions can actually

occur, some flexibility needs to be included in the planning regime either through the use of "targets" or by ensuring the rules and supporting policies contemplate there might be individual exceptions to the general reductions for example set out in Tables 13(g) and 13(h).

- 10 DHL generally agrees with the issues as set out and is not proposing to repeat those concerns or provide its own technical analyses in respect of the matters set out. The inter-relationships (and understanding the costs and benefits) are clearly complex – even for something seemingly as simple as the conversion of border-dyke to spray irrigation there will be:
 - 10.1 a reduction in nitrogen load but potentially an increase in concentration; and
 - 10.2 a reduction in groundwater levels through reduced drainage potentially influencing water quantity and quality in the lower catchment.
- 11 It is therefore not just the actual timing of any reductions but also the relative timing (i.e. relative to other 'things' occurring such as managed aquifer recharge and targeted stream augmentation) within which they occur – again, DHL simply submits that the Hearing Panel should be cognisant to the fact that there will be range of considerations that need to be considered at the time (for example) any resource consent is applied for. In simple terms, the Variation 2 planning framework needs to provide the ability for each individual situation to be considered on its merits (but within the general context of wider catchment outcomes being sought).
- 12 In practice, the rules regime included in Variation 2 will also require ongoing monitoring and assessment to ensure its effectiveness. Although to some extent outside of the current Hearing process, it is submitted that existing uncertainties are not a reason for allowing no enablement or flexibility now. Any rules regime around nutrient will always have some element of uncertainty – and DHL certainly anticipates that there will be opportunities to improve the effectiveness of the Variation 2 regime in the future.
- 13 As an aside (with reference to the example set out in paragraph 10 and **Mr Colin Glass'** evidence) DHL also submits that at least until such time we have certainty on the long-term position in the catchment, any required application for resource consent under Rule 13.5.17 (i.e. for a property with a nitrogen loss of over 20 kg N/ha/yr) should also include consideration of the modelled concentration of nitrogen losses and not just the total load. This could include a further item of discretion in the rule requiring consideration of the modelled OVERSEER® load **and** concentration or equivalent support at a policy level.

Good management and reductions

- 14 Again, these submissions do not attempt to discuss the reduction regime in any detail.
- 15 In terms of the evidence provided, **Mr Glass'** evidence brings together (and expands on) the large number of the farm system/mitigation issues that have been addressed in the evidence of various experts. It also provides some real-world insight into the circumstances within which reductions might be able to occur and the likely extent of such reductions.
- 16 Although provided as a non-expert brief, **Mr Glass** has considerable experience and knowledge in terms of the dairy industry and dairy farming – and it is submitted that weight can be placed on his evidence in terms of informing the Hearing Panel's wider recommendation process in terms of Variation 2.
- 17 In terms of the core relief that is being suggested by other primary sector parties:
- 17.1 the intent of the Fonterra/Dairy NZ 36% reduction regime is understood – and in the context of the 45% reduction required for dairying required under Table 13(h), DHL accepts that there is more chance that it is achievable for some but not all properties. This again comes back to the fact that every property is different and particular care needs to be taken when applying sought catchment level reductions to individual situations. A reduction of 36% might be possible for an existing border-dyke property but appears to be very challenging if not impossible for an already efficient spray irrigated property. For this reason DHL considers it very important that any reduction regime remain at a policy level with recognition that it is not 'one size fits all'. DHL would be concerned were the reduction regime to become a rule (or policy that effectively read as a rule) with only limited ability to consider individual circumstances;
- 17.2 the longer timeframes being suggested by some submitters also supported. The longer 'interim regime' (i.e. until 2025 when a 15% reduction would be required) sought by Fonterra will be especially relevant to, for example, allowing remaining border-dyke properties to convert to spray and for property owners to implement the commonly recognised mitigations that are currently accessible and workable to farmers. In DHL's view further reductions (especially for existing spray irrigated activities) are likely to need more fundamental farm system changes and at least based on current technology - without the intervention of managed aquifer recharge and targeted stream augmentation - it is not clear whether more time as suggested by RDRML (i.e. beyond 2035) will in fact

achieve further reductions or simply extend the point at which the same reductions will apply. In either case DHL considers more time beneficial and ultimately consistent with Part II of the Act.

18 Overall, in the most general of terms DHL supports the concerns of Fonterra/Dairy NZ and RDRML but wishes to emphasise that any reduction 'target' that is specified in Variation 2 will not necessarily be achievable for every individual farming situation. The corollary of that of course is that there will be properties that can improve nitrogen levels over and above the 'default' values specified in Variation 2 without difficulty.

19 It is respectfully submitted that the success of Variation 2 will ultimately depend on getting the balance right between identifying long-term catchment outcomes and the individual flexibility that will, in some cases, need to be employed to get there.

Farm enterprise regime

20 The focus of the balance of these submissions is on the Variation 2 farm enterprise regime.

21 In this regard, DHL already has a resource consent in the Selwyn Waihora Zone that allows it to operate a farm enterprise regime between its various subsidiary entities. This pre-dates Variation 1 and has been a critical component in:

21.1 the conversion of DHL's remaining borderdyke properties to spray (noting that the significant cost of converting can be offset somewhat by the provision of both water¹ and nitrogen loss across a wider area); and

21.2 the integrated management of nitrogen loss more generally by DHL.

22 Although DHL does not (yet) hold a farm enterprise consent in respect of the Hinds Plains Area it wants to ensure the final provisions of Variation 2 similarly accommodate such an application being made.

23 There is currently only limited reference to farming enterprises in Variation 2. The main reference is through the similarly worded Rule 13.5.10 and Rule 13.5.18 – the latter simply providing for the lower catchment that:

13.5.18 The use of land for a farming activity as part of a farming enterprise in the Lower Hinds/Hekeao Plains

¹ Noting DHL also has a water users group between all of its surface and groundwater irrigated properties.

Area is a discretionary activity, provided the following conditions are met:

1. The farming enterprise is solely in the Lower Hinds/Hekeao Plains Area; and
 2. The nitrogen loss calculation for the farming enterprise, excluding any area of land subject to a resource consent granted under Rule 13.5.14, does not increase above the nitrogen baseline; and
 3. A Farm Environment Plan has been prepared in accordance with Schedule 7 Part A.
- 24 Against the above, Rule 13.5.14 potentially allows for some small increase in existing nitrogen loss over baseline levels – it appears potentially on an aggregate basis (i.e. effectively the same intensification regime that applies to individuals but spread over the farming enterprise). In practice this probably has lesser relevance to DHL (or any other farming enterprise with a significant dairy or cropping component).
- 25 As set out by the Officer see paragraphs [9.355] to [9.357], the farm enterprise regime was subject to significant discussion during Variation 1 (largely in response to a submission by DHL) and a number amendments were made to provide a more specific set of provisions for farming enterprises and the 'logistics' of actually operating a farming enterprise (including accounting for losses if at a future date a property leaves the farming enterprise).
- 26 On that basis, and in reliance on a number of submissions on Variation 2 (including that of DHL's) the Officer has recommended that a new policy be added and *inter alia* amendments to Rule 13.5.18 be provided:

13.4.13A (1) Enable the establishment of farming enterprises in circumstances where, for the purpose of nutrient management, the total farming activity does not exceed the aggregate of the nitrogen baselines of all the parcels of land used in the enterprise, and any time-framed reductions set out in Policy 13.4.13 are achieved (whether or not the parcels are held in single, multiple, or common ownership).

(2) Enable the disestablishment of farming enterprises, by which each parcel of land formerly used in the enterprise does not exceed either:

(a) the individual nitrogen baseline of the land in that parcel, following any time-framed reductions set out in Policy 13.4.13; or

(b) a nitrogen baseline limit to be determined so that the aggregate of the baselines of all the parcels formerly used in the enterprise, following any time-framed reductions set out in Policy 13.4.13, is not exceeded.

13.5.18 The use of land for a farming activity as part of a farming enterprise in the Lower Hinds/Hekeao Plains Area is a discretionary activity, provided the following conditions are met:

1. The farming enterprise is solely in the Lower Hinds/Hekeao Plains Area; and
2. The aggregated nitrogen loss calculation for the parcels of land held in single or multiple ownership (whether or not held in common ownership) forming the farming enterprise, excluding any area of land subject to a resource consent granted under Rule 13.5.14, does not increase above the aggregated nitrogen baseline for those parcels of land; and
3. A Farm Environment Plan for the parcels of land held in single or multiple ownership (whether or not held in common ownership) forming the farming enterprise has been prepared in accordance with Schedule 7 Part A.

27 DHL fully supports the Officer's recommended amendments.

28 In support of that position, DHL makes the following further points:

28.1 in terms of any future reduction regime, DHL considers it essential that reductions can be applied at the farm enterprise level and not the individual property level. This is the key matter that DHL submits needs to be amended within the proposed farming enterprise and wider Variation 2 (and which is achieved by the Officer). The importance of this is best illustrated by reference to the alternative (i.e. within which properties would need to apply any reduction regime on the basis of their 'pre-farm enterprise' baseline land use). This alternative regime would, in particular, be:

- (a) very onerous for properties within the farming enterprise that had increased their nitrogen as a result of the farming enterprise (e.g. a property that was previously dryland but which was now irrigated would need to be taken as dryland for the purposes of any

reduction regime – despite very significant capital expenditure having been accrued in, for example, converting the property to irrigation); and

- (b) it would potentially be ineffective in terms of properties that had already undertaken efficiency improvements for the purpose of *inter alia* providing surplus nitrogen to properties such as those described above.

28.2 for the same reasons it will often not be reasonable for properties to revert back to their pre-farming enterprise nitrogen loss. Accordingly, on the exit of a property from a farm enterprise it needs to either keep its increased nitrogen allowance **or** continue to comply with its lower (i.e. less than the baseline land use) allowance (as the wider farming enterprise might determine, while at all times ensuring the total nitrogen loss allowance for the farm enterprise as [previously] constructed is not exceeded).

- 29 The only further matter that DHL wishes to touch on in respect of the farming enterprise regime is ensuring that there is nothing in Variation 2 that prevents a farm enterprise from being formed where some or all of the properties also receive irrigation scheme water.
- 30 From reviewing the notified version it appears that this is the case.
- 31 There will inevitably be situations where an irrigation scheme shareholder also owns land outside of an irrigation scheme (DHL is very good example of that) and sensibly wants to operate its own farming operations on a farming enterprise basis.
- 32 In such circumstances, the farming enterprise would be subject to its own baseline nitrogen load (subject to any increase permitted by way of resource consent). In terms of how the irrigation scheme counts its nitrogen loss then it would be necessary to ensure that compliance is still assessed according to the individual property baseline land use (i.e. as if the farming enterprise consent did not exist). This would ensure that the irrigation scheme load remained constant, subject to any reductions that might arise (and avoid potential double or under-counting at a catchment level).

Dated 16 July 2015



Ben Williams
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Annexure 1 – DHL’s farming interests in the Hinds Plains area

