

Tabled at Hearing on 6 November 2015

under: the Resource Management Act 1991

in the matter of: Proposed Plan Change 3 to the Canterbury Land and Water Regional Plan - Section 15 - Waitaki and South Coastal Canterbury.

and: **Fonterra Co-operative Group Limited**

Dairy NZ Limited

Summary of submissions (**Farming**)

Dated: 6 November 2015

REFERENCE: JM Appleyard (jo.appleyard@chapmantripp.com)
BG Williams (ben.williams@chapmantripp.com)

Chapman Tripp
T: +64 3 353 4130
F: +64 3 365 4587

245 Blenheim Road
PO Box 2510, Christchurch 8140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch



SUMMARY OF SUBMISSIONS

INTRODUCTION

- 1 This hearing is in the process of considering submissions and further submissions in relation to proposed plan change 3 (PC3) to the Canterbury Land & Water Regional Plan (LWRP).
- 2 These submissions are provided on behalf of Fonterra Co-operative Group Limited (*Fonterra*) and DairyNZ Limited (*DairyNZ*) (together 'the submitters'). Given the alignment on the 'farming' aspects of PC3, a joint case is being presented to the Hearing Panel.
- 3 A separate case is being provided by Fonterra (alone) in relation to its processing interests in the PC3 area – principally focused on a discussion of its Studholme processing site.

OUTLINE OF THE SUBMITTERS

- 4 As the Hearing Panel will be well aware, Fonterra is owned by approximately 10,600 farmer shareholders. It is the world's leading milk processor and dairy exporter and through an integrated "grass to glass" approach delivers milk products to customers and consumers around the world.¹
- 5 Fonterra has approximately 60 farmer shareholders across the South Coastal Canterbury area.² Fonterra and its shareholders are a significant contributor to the local community and economy.³
- 6 DairyNZ is the industry organisation representing all New Zealand dairy farmers.⁴ It employs approximately 250 staff, with a key focus of the organisation being research to support good management practices.⁵

Approach to submissions

- 7 These submissions briefly cover some of the 'key issues' legal in respect of PC3. That includes
 - 7.1 the National Policy Statement for Freshwater Management 2014 (NPSFM);

¹ Sue Ruston evidence, para 9.

² Sue Ruston evidence, para 10.

³ Mike Copeland evidence; Sue Ruston evidence.

⁴ Dr Michael Scarsbrook evidence.

⁵ Dr Michael Scarsbrook evidence, para 6.

- 7.2 the appropriateness of including a DIN limit in Table 15(c) in light of the NPSFM framework; and
 - 7.3 the extent to which the Horticulture NZ point regarding "*Rootstock and crop survival water*" is appropriate.
- 8 At paragraph 10, these submissions also include a very brief introduction to the wider relief being sought by the submitters and the more technical matters that are addressed in the evidence of (in particular) **Mr Neal** and **Mr Kitto**. That is the limit of the 'technical material' touched on in these submissions.

KEY ISSUES IN RESPECT OF PC3

- 9 There are a large number of issues raised in the submissions and further submissions by the submitters. As noted above, only a very limited number of these are discussed here. In terms of the matters that are not discussed, **Mr Willis'** evidence in particular brings together the issues and the relief sought (as also raised through evidence).
- 10 In simple terms that broader relief includes ensuring that:
- 10.1 the freshwater outcomes specified in PC3 (and included in Tables 15(a), (b) and (c)) remain as notified (the one exception to this which also appears to have been accepted in the Officer Report is the *E.coli* outcome sought for Lake Wainono (noting further that **Mr Kitto** also agrees with some aspects of the Fish & Game relief in relation to temperature));
 - 10.2 the catchment nitrogen loads (Table 15 (p)) and flexibility caps and maximum caps (Tables 15 (m) and (n) respectively) can accommodate changes in the OVERSEER model. To this extent, and as set out in the evidence of **Mr Neal**,⁶ there are a number of concerns and inconsistencies with regard to how the relevant caps have been calculated – and the extent to which they reflect appropriate/actual "good practice" nitrogen losses. In simple terms the submitters are seeking that the limits remain 'dynamic' and adaptable to new and improved information in terms of inputs and versions of the OVERSEER model; and
 - 10.3 given the 'residual uncertainty' about the exact impact of the nitrogen limits (on an individual basis) it is also the submitters' case that some flexibility needs to be incorporated into the timeframes incorporated into the plan framework to

⁶ And supported by other witnesses (see for example, Mr Hansen for Ravensdown) and in part acknowledged by the Officers.

accommodate any individual difficulties with complying with property specific nitrogen discharge limits.

- 11 At a more general level consistency is sought with the 'wording' and approach being taken elsewhere in Canterbury (most notably the Variation 1 -Selwyn Waihora and Variation 2 - Hinds catchments which are more advanced into terms of the sub-regional planning process). **Mr Willis** has at a number of places throughout his farming evidence (and for that matter his processing evidence) referred to changes that were sought and accepted in the context of Variation 1 and which are currently being sought in the context of Variation 2.
 - 12 Ultimately all variations (including PC3) will form part of the **same** plan. Although it is accepted that the South Canterbury Coastal area does not share the same 'challenges' as in other areas, it is respectfully submitted that wherever possible, consistency with Variation 1 and 2 (as well as the wider now operative LWRP) should be preferred – subject again to the specific challenges faced (or not faced) in the South Canterbury Coastal area.
- The NPSFM – and staged implementation**
- 13 A detailed discussion of the higher order planning instruments and their application to PC3 has already been set out in evidence.
 - 14 Consistent with the evidence of **Mr Kitto** and **Mr Willis**, it is accepted that there are currently challenges with managing the freshwater resources of, and achieving appropriate outcomes within, the South Canterbury Coastal area. PC3 does not however have to deal with the potentially 'severe' over-allocation that has occurred elsewhere in Canterbury.
 - 15 In simple terms it appears that the focus of PC3 is instead on ensuring land use change can proceed without exceeding acceptable limits (while contemporaneously achieving improvements in water quality where values are already compromised – especially in relation to Wainono Lagoon).
 - 16 At least at a conceptual level 'cornerstone tools' such as augmentation, the Wainono Restoration project and environmental flow regimes appear to be accepted by all submitters.⁷ It is also acknowledged that for those to occur further irrigation will need to be facilitated within the PC3 framework (most notably through the development of the Hunter Downs and Waihao Schemes which are able to access 'alpine water' from the Waitaki River).

⁷ For example: Angela Christensen evidence (Fish and Game), para 27, 43 and the various witnesses for the Department of Conservation.

- 17 To the extent that the South Canterbury Coastal Area does not have, for example, the level of 'over allocation' and the same need for 'claw back', it is (despite the comments earlier in these submissions calling for consistency) also important to remember that the context for considering PC3 is in many respects different than Variation 1 and Variation 2 that preceded it.
- 18 However, it is also accepted that the context and anticipated outcomes sought through PC3 must still be considered through the same NPSFM framework – appreciating that a regional plan must ultimately give effect to a national policy statement.⁸
- 19 In the case of the NPSFM and PC3:
- 19.1 as set out by the Officer Report (para 6.96) the Council has adopted a staged implementation programme given that freshwater objectives have not yet been established. The NPSFM accommodates this through providing that regional councils are to implement the policy as promptly as is reasonable in the circumstances – and by no later than 31 December 2025 (or 31 December 2030 as might apply in various circumstances).⁹ In this context it appears to be accepted by most submitters that not all of the measures that PC3 relies on to maintain and improve water quality are currently in place¹⁰ and that staged implementation is required and appropriate;¹¹
- 19.2 the main issue expressed through the evidence of (in particular) **Mr Kitto**, and the witnesses called by the Department of Conservation and Fish and Game appears to instead be the appropriateness of the various limits and targets as proposed throughout the notified version of PC3. To support its position, much of Fish and Game's evidence is based on evidence presented by it in other hearing processes. It is respectfully submitted that particular care should be taken when considering such 'evidence' (or more correctly 'witness statements') – which have prepared in a different context (especially where the relevant witness is not present to present that evidence). In such circumstances it is simply submitted that *prima facie* more weight should be given to that evidence provided in the express context of PC3;

⁸ RMA, s67(3)(a).

⁹ NPSFM, Policy E1(b)

¹⁰ For example: Angela Christensen evidence (Fish and Game), para 27

¹¹ For example: Angela Christensen evidence (Fish and Game), para 26

- 19.3 on the basis that PC3 seeks to implement (for example) Objective A1 and Objective A2 of the NPSFM then the Hearing Panel will need to *inter alia* consider the extent to which the “overall quality of freshwater within a region is maintained or improved”.¹² In light of the augmentation proposed (which will only be achieved through enabling irrigation) and the anticipated improvement in, for example, the TLI of Wainono Lagoon, it appears that this will be achievable (especially when compared to other areas in Canterbury where a material reduction in water quality is anticipated prior to improvements occurring) – appreciating that the management of augmentation will more than likely still need to be managed adaptively over time;
- 19.4 to the extent that submitters may have raised concern with the presence or absence of individual contaminants in (for example) Tables 15(a), (b) and (c) - or have raised issue with the individual limit/target proposed - then it is also worth emphasising the comments of the Court in *Ngati Kahungunu iwi Inc v Hawkes Bay Regional Council*:¹³

[60] It might, perhaps, be appropriate for a Council to regard *overall quality* as permitting some increase in a type of contaminant (nitrate-nitrogen, for instance) in a particular water body, so long as that was matched or exceeded in its adverse effects by, say, a reduction in some other contaminant, so that the ... *quality of the water* ... taken overall, was at least no worse.

In simple terms it is not every contaminant where an improvement has to be shown. Equally the absence of a limit or a target for a contaminant is not necessarily relevant if overall water quality is still being improved.

- 19.5 In addition to the above, it is also emphasised that the achievement of freshwater objectives is not to occur in a vacuum – it needs to occur in a manner cognisant of the wider economics and social cost involved. As the preamble to the NPSFM advises:¹⁴

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

¹² NPSFM, Objective A2

¹³ [2015] NZEnvC 50, at para 56

¹⁴ NPSFM, Preamble.

depending on the characteristics of each freshwater management unit.

and

19.6 equally, the NPSFM does not “*cover the field*” with the Hearing Panel still having the ability to have wider recourse to Part II of the RMA.¹⁵

Table 15(c) - DIN and the NPSFM

- 20 As set out in the Council Officer water quality technical material (as in part relied on by **Mr Kitto**), nutrient concentrations (both nitrogen and phosphorus) are generally variable across the spring-fed streams. Hook Drain and Sir Charles Creek have relatively high (and it appears increasing) median DIN concentrations, whereas in other streams, DIN levels remain relatively low and stable.
- 21 Against that relatively variable back-drop Fish and Game seeks that Table 15(c) be amended so that all DIN limits are amended to 0.8 mg/L or less. The stated reason for this appears to be reliance on evidence produced as a part of the plan change 6 (Tuki Tuki catchment proposal) – which in turn was based on work undertaken in relation to the hill fed rivers of the Manawatu.
- 22 The evidence of **Mr Kitto** is that a limit that is appropriate to one catchment is not necessarily appropriate to another – particularly those in different regions (with different geologies, river types and flows). On that basis, **Mr Kitto** supports the catchment-specific consideration undertaken by the Council and now expressed in the notified version of Table 15(c).
- 23 In addition to the above, it is emphasised that the use of a DIN Limit is not anticipated under the NPSFM.
- 24 By way of comparison to what is being done elsewhere it is also noted that outside of both the Tuki tuki catchment and the

¹⁵ This was discussed by the differently comprised Hearing Panel considering plan change 1 (Selwyn Waihora), where at paragraph 298 of the *Report and Recommendation of the Hearing Commissioners adopted by the Council as its Decision on 23 April 2015* it stated:

“[298] ... We have considered whether the NPSFM ‘covers the field’ of the LWRP and Variation 1. Although it primarily relates to management of fresh water resources, it extends to integrated management of fresh water and the use and development of land, including the interactions between fresh water, land, associated ecosystems and the coastal environment. Even so, the NPSFM, while regulating the use of fresh water, 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 section 6 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. So despite Ms Begley’s opinion, we find that the NPSFM does not ‘cover the field’.

Manawatu Wanganui (Horizons) One Plan (noting that the 0.8 mg/L was derived for the Tuki tuki catchment using data from the Manawatu) its use is very limited.¹⁶

Root stock and crop survival water

- 25 Horticulture New Zealand has sought that a new term "*Rootstock and crop survival water*" be defined as follows:

Water provided for the protection of root stock or permanent horticulture, and protection of crops, excluding pasture species, animal fodder crops and maize through a reliability standard set at 100%.

- 26 In times of restriction it is then proposed that such 'water' would have priority – in simple terms water could be taken regardless of levels and flows (such that there would be no requirement to reduce or cease flows as the minimum flow is approached or breached respectively).
- 27 With respect not only does the proposal appear to be in conflict with the desire to protect in-stream values during times of low flow (not to mention potential inconsistency with the NPSFM), but it also appears to conflict with the more general RMA principle of 'not picking winners' (at least without very detailed consideration as to the costs and benefits – and not just the benefits to one sector – being horticulture here).

Conclusion

- 28 Ultimately, PC3 as notified is largely reflective of the outcomes envisaged by the Zone Implementation Committee. This includes:
- 28.1 providing for irrigation development (in accordance with the consents Hunter Downs and Waihao Schemes) schemes;
- 28.2 augmenting the Wainono Lagoon and undertaking other environmental restoration; and
- 28.3 increasing river flows (at least at the stage when alternative water sources are available).
- 29 The submitters consider that PC3 (subject to the amendments proposed which all generally try to better that intent) has done a

¹⁶ Counsel is only aware of plan change 6A (Otago) and the now rather dated Variation 5 (Lake Taupo) that make reference to a DIN limit.

By comparison the *Regional Water and Soil Plan for Northland*, the proposed *Auckland Unitary Plan*, the *Bay of Plenty Regional Water and Land Plan*, the *Waikato Regional Plan*, the *Natural Resources Regional Plan* for the Wellington Region, the *Regional Water Plan for Southland* and all other plans in Canterbury do **not** use or make reference to a DIN Limit.

credible job of giving effect to what are potentially challenging outcomes that will take time to achieve. Some flexibility does however need to be included into the wider rules and policy regime.

- 30 The submitters are equally concerned to ensure that Tables 15(a), (b) and (c) (where the existing "Outcomes" and "Limits" respectively have been determined with careful regard to the outcomes expressed in paragraph 28) remain unchanged – subject to the minor amendments around *E coli* and temperature discussed earlier in these submissions.

Evidence

- 31 The submitters are calling evidence from:
- 31.1 **Mr Justin Kitto** (water quality);
 - 31.2 **Mr Mark Neal** (nutrients); and
 - 31.3 **Mr Gerard Willis** (planning).
- 32 The small 'company' briefs provided by **Dr Michael Scarsbrook** and **Ms Sue Ruston** are to be taken as read.

Dated: 6 November 2015

Ben Williams
Counsel for Fonterra Co-operative
Group Limited and Dairy NZ Limited