Tabled at Hearing on 6 November 2015

under: the Resource Management Act 1991

in the matter of: Proposed PC3 to the Canterbury Land & Water Regional Plan – 'South Coastal Canterbury Sub-regional Area'.

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

Summary of submissions (**Processing**)

Dated: 6 November 2015

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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 and Water Regional Plan (*LWRP*).

2 These submissions relate to the processing interests of Fonterra Co-operative Group Limited (*Fonterra*). Separate submissions are being provided on a joint basis with DairyNZ Limited in relation to the wider provisions of PC3 that address *inter alia* nutrient management, water quality and water quantity.

3 At the time of preparing these submissions (and as already advised to the Hearing Panel in the *Memorandum of counsel – in relation to appearance at hearing* (2 November 2015)), Fonterra's submission points relating to its processing interests appear to have been largely accepted (or they are not commented on) by the Council Officers and no submitters have raised direct issue with the relief sought (which in most cases is simply confirmation of the provisions as set out in notified plan).

4 In the interests of an overall efficient hearing process, these submissions are accordingly very brief. Fonterra has already provided detailed technical evidence (including the planning evidence of **Mr Willis** which discusses in significant detail the relief sought) and in the absence of any further issues arising subsequent to the provision of evidence in chief brief comment on the following is all that is provided:

4.1 the load of 40 tonnes (nitrogen /year) in Table 15(o);

4.2 the amendments required to address 'substitution' of existing farming load for industrial load;

4.3 sewage (and where it should be counted);

4.4 Consent duration; and

4.5 water quantity (including non-consumptive takes) and transfers

5 Each is discussed below.

Table 15(o) – the 40 tonne load

6 As notified, Table 15(o) provides that:

Table 15(o): Nitrogen load limits for urban and industrial discharges in the South Coastal Canterbury Area

Area	Timing	Load limit (t/yr)
Northern Streams	From 01 May 2015	8 (Potato processing wastewater)
Waihao-Wainono		40 (Milk processing wastewater) 2 (Waimate community sewerage)
Morven-Sinclairs		0

7 The key issue for Fonterra is the need to ensure the continuing provision of 40 tonnes of nitrogen per year within the Waihao-Wainono Area for 'Milk processing wastewater'.

8 On the basis of evidence called by Fonterra, the load will be sufficient to cover the existing Studholme operations (which, given the relatively small and only partially developed nature of the Studholme site are around 2.8 tonnes per year).[1] It will also be sufficient to cover giving full effect to the already consented discharge from the Studholme site (which equates to 38.84 tonnes per year).

9 In this sense a 40 tonne limit accurately reflects the existing consented "baseline". However, in terms of the assessments undertaken (and similarly set out in evidence of Fonterra) it is noted that the likely load from an expanded site will still be comfortably within the 40 tonne load as set out in Table 15(o):

9.1 under a 'scenario 1' expansion (being giving effect to Fonterra's already consented second 5 metric tonne dryer on the site) the existing discharges would effectively double – to around 6 tonnes per year; and

9.2 under a 'scenario 2' expansion (being two new 30 metric tonne milk powder dryers, a new off-site wastewater treatment plant, expanded storm-water storage pond systems, and expanded sewage treatment plant and associated disposal field system), the discharge would be the same as Scenario 1 at around 6 tonnes - given that the main volume of nutrient load from the site would be discharged to the coastal marine area.

10 Although these are both comfortably less than the 40 tonne load limit in Table 15(o), it is important to remember that the load is not just about Fonterra and is also intended to capture other future industrial discharges (whatever they might be).

11 As set out by **Mr Willis** the provision for such headroom is "*prudent planning*" to ensure the ongoing economic and social wellbeing of

[1] See Rob Potts evidence,

the community (as nitrogen limits restrict land use change and intensification in the future). If it is not used in the immediate future then there will be a "dividend" to water quality.

Industrial and trade process wastewater - substitution

12 One of the key issues in Plan Change 1 (Selwyn Waihora where Fonterra's Darfield site is located) was the need to ensure that wastewater and sludge discharges could occur on rural land where farming activities were being undertaken (i.e. over and above the industrial and trade process nitrogen allocation in Table 15(o)). In such circumstances the nitrogen discharged would be the same or less than that occurring on the land prior to the discharge.

13 In effect, this is a 'substitution rule'. In the particular case of Fonterra, it allows it to dispose of what is referred to throughout evidence as 'WAS' - waste activated sludge and 'DAF' – dissolved air floatation sludge to land – effectively as a fertiliser substitute for existing farming operations. In that context, Fonterra would obviously not be managing the relevant farming operation as an industrial process and the individual property load would not be increasing its nitrogen losses above that existing prior to provision of WAS / DAF.

14 The same approach is needed for the same reasons in PC3.

15 To this extent, the Officer Report appears to agree with the general intent of the changes to Rule 15.5.17 but raises a concern around the extent to which the maximum caps would still be met (at para 10.334). As clarified by **Mr Willis**, it is intended that the maximum caps would continue to be met (exactly as if it were a 'pure' farming operation).

16 Changes to Rule 15.5.17 (along with two supporting policies - Policy 15.4.9A and Policy 15.4.9B) are therefore sought.

17 Although the need for the amendments to Rule 15.5.17 appears to be agreed (as between Fonterra and the Officer Report), the need for the policies was not at the time the report was prepared (at para 10.326). As set out by **Mr Willis** it appears there is some misunderstanding and errors in terms of the Officer approach which have been resolved and favour the inclusion of the policies.

18 The rule change sought by Fonterra is set out below:

> ***Despite Rules 15.5.1 to 15.5.12, the discharge of any wastewater, liquid waste or sludge waste from an industrial or trade process, including livestock processing, excluding sewage, into or onto land, or into or onto land in circumstances where a contaminant may enter water is a discretionary activity provided the following conditions are met.***

1. The discharge in addition to all lawfully established existing discharges from trade and industrial processes does not exceed the nitrogen load limit in Table 15(o) for industrial or trade processes; or

2. The nitrogen loss from the discharge in combination with any other activity, including farming, occurring on the land, is less than the greater of

a) any authorised nitrogen loss from the activity that is being replaced; and

b) the applicable maximum cap set out in Table 15(m); ~~and~~ or

~~2.~~ For all discharges, the best practicable option is used for the treatment and discharge.

19 The policies sought are set out in paragraph 118 of **Mr Willis'** evidence.

Sewage

20 Fonterra is relatively ambivalent in terms how its sewage load is accounted for under the rules framework (provided that it is actually counted somewhere) – however, as set out in its original submission and expanded on the evidence of **Mr Willis** and **Mr Potts**, exactly 'where' Fonterra Studholme sewage would be counted in the wider LWRP and PC3 framework is currently not clear.

21 In simple terms, the reason for this is that Fonterra is presumably not intended to fall within the "*Waimate community sewerage*" scheme under Table 15(o). Nor is it (given the site comprises of multiple certificates of title) a "*community wastewater treatment system*" or an "*on-site wastewater treatment system*" (as defined in the LWRP).

22 Although the nitrogen load associated with the Studholme site is currently very small (0.04 tonnes as noted by **Mr Potts**) it obviously needs to be covered somewhere. Accordingly, after very careful and detailed consideration (including having regard to the comments of the Officer), the most appropriate amendment is that proposed in respect of Rule 15.5.15.

23 This is set out in paragraph 99 of **Mr Willis'** evidence.

Consent duration

24 Fonterra is concerned on the basis that under Policy 15.4.35 the use of a common catchment expiry approach is not necessary and that a blanket '10 year maximum duration' is unreasonable. In particular, it might potentially prevent large infrastructure such as milk powder plants being constructed given the absence of investment certainty.

25 As can be seen across Fonterra's wider submission (i.e. in terms of its farming interests) deletion of the policy is preferred. In the alternative careful consideration should be given to ensuring it only

applies to resource consents that relate to the take and use surface or groundwater - emphasising that is still not reasonable for its processing operations, so a further amendment is sought to clarify that:

> *...(d) Despite (a) to (c) above, enable consents to be granted for large capital intensive activities for up to 35 years.*

26 Ultimately, especially in the case of large industrial activities each situation will need to be considered on a case-by-case basis. To this extent a decision on what is an appropriate duration is to be primarily made for the purposes of the RMA, having regard to the actual and potential effects on the environment and relevant provisions of applicable planning documents.[2]

27 The Officer Report has suggested that it will still be open, despite the wording of Policy 15.4.35 for applicants to seek longer durations on a case by case basis (see para 12.26). With respect, given the relatively inflexible wording of the notified policy and the lack of guidance against which discretion should be exercised against that framework, Fonterra does not consider that approach reasonable, workable or consistent with the wider outcomes anticipated through Part II of the RMA.

Water quantity and transfers

28 These are not discussed in any detail in these submissions other than to note that the approach being sought by Fonterra is consistent with that sought and approved in respect of plan change 1 (Selwyn Waihora) and subsequently sought in respect of plan change 2 (Hinds Plains).

29 The amendments sought include:

29.1 clarifying that water takes for non-irrigation purposes are assessed against the general policy of requiring takes to be reasonable and to demonstrate efficiency of use of water for the particular end use (this appears to have been accepted in the Officers Report and Fonterra supports the amendments proposed); and

29.2 creating an exception in policy for when water takes/transfer may not occur to recognise that some takes (and subsequent use) can result in a neutral or positive water balance and should be provided for. Changes to enable this are proposed to Policies 15.4.23, 15.4.24 and 15.4.30.

30 Both are discussed in detail in **Mr Willis'** evidence.

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[2] *PVL Proteins Limited v Auckland Regional Council* EC Auckland, A61/2001, 3 July 2001 at para [27].

Conclusion

31 In accordance with the directions provided for by the Hearing Panel, Fonterra understands that the evidence of **Mr Rob Potts**, **Mr Peter Callander** and **Mr Mike Copeland** will be taken as read.

32 These submissions (as stated at the outset) are also very brief and simply provide an overview of *some* of the key issues that affect Fonterra. Other still very important issues are discussed in the evidence of **Mr Willis**.

33 Both should in no way be taken as suggesting Fonterra views PC3 as being of 'lesser importance' to its wider operations. As is clearly set out in evidence Fonterra's interests in the PC3 area are very significant and the final provisions will be fundamental to the viability of, for example, the proposed expansion of the Studholme site.

34 Fonterra is calling (and will be presenting) evidence from:

34.1 **Mr Ian Goldschmidt** (National Environment Group Manager, who although (in terms of the Environment Court code of conduct) is providing non-technical evidence is relatively familiar with the more technical aspects of milk processing as they relate to PC3; and

34.2 **Mr Gerard Willis** (planner) who, as noted, discusses in detail the wider relief sought by Fonterra.

35 For completeness it is also noted that **Mr Willis** is also providing evidence in respect of the Fonterra 'farming' case.

Dated: 6 November 2015

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Ben Williams
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