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*in the matter of:* the Resource Management Act 1991

*and:* submissions in relation to **plan change 3** to the  
proposed Canterbury Land and Water Regional Plan

*and:* **Dairy Holdings Limited**  
*Submitter*

## Summary of submissions

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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 & Water Regional Plan (LWRP).
- 2 These submissions are provided on behalf of Dairy Holdings Limited (DHL).
- 3 DHL is calling evidence from **Mr Colin Glass** (who unfortunately cannot attend the hearing). On that basis these submissions provide a very brief outline of DHL prior to turning to the one issue that is properly addressed in these submissions – the nutrient user group/farm enterprise regime proposed under PC3.
- 4 The main basis of DHL's interest in the nutrient user group/farm enterprise regime is ensuring consistency with other sub-regional chapters of the LWRP and what is being done elsewhere in Canterbury. In its original submission DHL included a number of other matters that have now either being dealt with by others or which appear to not be in dispute. For the sake of completeness, DHL simply confirms its original submission points.

### Dairy Holdings Limited

- 5 DHL is a New Zealand registered company with 100% of its farming assets in the South Island.
- 6 For the 2015/16 season it is operating 58 dairy units on ~13,797 effective hectares, milking 46,000 cows and is on target to produce approximately 16.26 million kilograms of milk solids.
- 7 Although it has considerable farming interests in other parts of Canterbury, in the South Coastal Canterbury area its interest is more limited, being:
  - 7.1 two dairy properties ('Cantley' and 'Sunrise') that are wholly reliant on the Morven Glenavy Ikawai (MGI) Scheme;
  - 7.2 a third dairy property ('Retell') that is able to access both MGI Scheme water and surface water from the Waikakahi Stream; and
  - 7.3 a large dryland wintering support property in Waihaorunga.
- 8 The three dairy properties are all located in the Morven Sinclairs area so the impact of PC3 (as notified) is likely to be relatively small.

- 9 The Waihaorunga property is located in the Waihao-Wainono area so will need to comply with relevant maximum cap(s). Although it may or may not be an issue for DHL's own property, as discussed by Mr Glass support properties in particular provide their own special challenges in terms of reducing nutrient loss.
- 10 DHL's view, consistent with its approach in other LWRP-based hearings is that ultimately nutrient loss needs to be approached on a catchment basis. Activities such as wintering support are intimately connected with the level of dairying in a catchment so it is sensible to look at both together.
- 11 Enabling the use of nutrient user groups and farm enterprises is an effective way to ensure this occurs in an integrated manner.

**Farm Enterprise / Nutrient User Groups**

- 12 DHL already holds a resource consent in the Selwyn Waihora Zone that allows it to operate what is referred to as a "*Nutrient Management Group*" between its various subsidiary Selwyn Waihora entities.
- 13 This pre-dates Variation 1 and has been a critical component in:
- 13.1 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 water and nitrogen loss across a wider area); and
- 13.2 the integrated management of nitrogen loss more generally by DHL.
- 14 DHL does not hold an equivalent consent in the South Coastal Canterbury area and in reality there is probably little need for it based on the location and extent of its farming operations and the notified form of PC3 (in terms of, in particular, the management of nutrients in the Morven Sinclairs area).
- 15 The appearance at this hearing (at least in the context of the proposed farm enterprise regime) is therefore largely limited to ensuring a consistent regime across the wider LWRP framework. It also 'future proofs' DHL's interest in the area (although there will inevitably be others that may benefit from the regime from the outset).
- 16 DHL was an active participant in the Variation 1 (and more recently Variation 2) processes. Both those variations (accepting that decisions have only been released on Variation 1) simply refer to a "*farm enterprise*". It is DHL's view (as was the case with the Variation 1 Hearing Panel) that "*Farm enterprise*" includes both the

situations that PC3 attempts to differentiate between – i.e. farm enterprises and nutrient user groups.

17 In this regard the decisions version of Variation 1 provides:

17.1 a new policy:

11.4.15A (1) Enable 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 (whether or not the parcels are held in single, multiple, or common ownership).

(2) Enable 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; 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 is not exceeded

and

17.2 various references to “*farming enterprises*” in the rules that deal with *inter alia* “*farming activities*”. In simple terms a farming enterprise is treated as any other farming activity.

18 In the context of Variation 1, what is a “*farming enterprise*” is not defined – but an advice note advises that:

*The terms “farming enterprise”, “nitrogen loss calculation” and “nitrogen baseline” are defined in Section 2.9 of this Plan.*

19 This (i.e. avoiding duplication or different definitions across the plan) is obviously a common sense approach and means that at least for Variation 1, a “*farming enterprise*” is, as per the LWRP definition, simply:

Farming enterprise	means an aggregation of parcels of land held in single or multiple ownership (whether or not held in common ownership) that constitutes a single operating unit for the purpose of nutrient management.
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20 Under PC3 “*farming enterprise*” is similarly not defined (suggesting that the LWRP definition still applies). PC3 however goes on to provide a definition of Nutrient User Group that at least in the large

part effectively overlaps with the existing definition of farming enterprise:

Nutrient User Group	means a group of properties in multiple ownership, where the owners of those properties undertake farming activities and operate as a collective for the purposes of nutrient management.
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- 21 Without looking at the detail of definitions (but in terms of 'normal English usage') DHL considers "*Nutrient User Group*" may have been a better label the place on both arrangement(s) being enabled through PC3 – but unfortunately the Hearing Panel is to some extent stuck with the existing label of "*Farming enterprise*" which appears to already largely cover what is being separately categorised under PC3 through the nutrient user group regime.
- 22 In its original submission, DHL (consistent with the above) submitted that the basis of, and need for a distinction between, a "*Nutrient User Group*" and a "*Farming enterprise*" is not clear. DHL continues with that view and that for ease of plan workability, PC3 should refer to one or the other and not both (and in simple terms, given the LWRP already includes a wider definition of "*Farming enterprise*", that definition dispenses with the need for a definition of "*Nutrient User Group*").
- 23 In addition to the above, DHL also submitted that what happens on the disestablishment of a farming enterprise is not clear. To this extent, properties may have changed their farming systems on the basis of the farming enterprise regime/water user group regime and it may not, in some cases, be practical to revert back to their original nitrogen baseline or flexibility cap (as might apply).
- 24 DHL accordingly sought the following amendments in its original submission:
- 24.1 the deletion of the definition of "*Nutrient User Group*" throughout PC3 (and revert to use of the "*Farming enterprise*" regime contained in the LWRP); and
- 24.2 amendments policies 15.4.10 – 15.4.13 to provide:

***Nutrient User Groups and Farming Enterprises***

15.4.10 Flexibility in nitrogen management is enabled by allowing an increase in nitrogen loss beyond the respective nitrogen baseline, except for any land within the Northern Streams Hill and Waihao-Wainono Hill areas, provided the property is part of:

- (a) ~~a Nutrient User Group~~, or
- (~~b~~) an ~~Irrigation s~~Scheme; or
- (c) a Farming Enterprise.

15.4.11 Avoid catchment nutrient load limits being exceeded **by only** allowing Farming Enterprises ~~or Nutrient User Groups~~ to establish and operate where all the properties are located in the same Surface Water Allocation Zone.

15.4.12 Maintain water quality by restricting the movement of nitrogen between properties unless:

- (a) the property is part of a Farming Enterprise ~~or Nutrient User Group~~; and
- (b) the combined nitrogen loss calculation from all properties forming the ~~Nutrient User Group~~ Farming Enterprise does not exceed the sum either:
  - (i) the flexibility cap for the respective area; or
  - (ii) the nitrogen baselines for the respective area whichever is the greater; and
- (c) the maximum cap is not exceeded on any individual property.

15.4.13 Manage nutrient losses by requiring applications for a resource consent to establish a ~~Nutrient User Group~~ Farming Enterprise to describe:

- (a) the procedures and methods for recording nitrogen losses from properties within the ~~Nutrient User Group~~ Farming Enterprise; and
- (b) the methods for ~~redistributing-recalculating the~~ combined nitrogen loss load when a property joins or leaves the ~~Nutrient User Group~~ Farming Enterprise; and
- (c) the annual reporting requirements; and
- (d) how compliance with the actions set out in each Farm Environment Plan will be achieved.

15.4.13A Enable disestablishment of Farming Enterprises, by which each parcel of land formerly used in the enterprise does not exceed either:

- (a) the individual flexibility cap and nitrogen baseline (which is ever is greater) of the land in that parcel; or
- (b) a nitrogen loss limit to be determined so that the aggregate of the flexibility caps and nitrogen baselines (which is ever is greater) of all the parcels formerly used in the enterprise is not exceeded.

25 In response to amendments sought to the definitions and Policies 15.4.10 to 13, the Officer Report advises that:

10.224 I agree with the submission from Dairy Holdings, that it appears that the definition of "Nutrient User Group" is similar to the definition of "Farming Enterprise", such that at first reading, the concept of a Nutrient User Group is an unnecessary duplication of the farming enterprise construct that is defined within the LWRP. However, it is important to understand the distinction between the two definitions and how they are to be treated under PC3.

10.225 The LWRP defines a "Farming Enterprise" as:

*means an aggregation of parcels of land held in single or multiple ownership (whether or not held in common ownership) that constitutes a single operating unit for the purpose of nutrient management.*

10.226 The definition of "Nutrient User Group" in PCB states:

*means a group of properties in multiple ownership, where the owners of those properties undertake farming activities and operate as a collective for the purposes of nutrient management.*

10.227 The key distinction between the two regimes is that a Farming Enterprise operates as a "single operating unit" whereas a Nutrient User Group "operates as a collective". This is further distinguished in the respective rules. In particular, a Farming Enterprise is required to submit a single FEP that covers all properties within the Enterprise, whereas the management of on farm practices occurs on a per property basis under a Nutrient User Group (while still managing nutrient losses across the group).

10.228 While the distinction between the Farming Enterprise and Nutrient User Group regimes is subtle, I consider that they offer different benefits to those properties that form either a Farming Enterprise or a Nutrient User Group. I understand that the Nutrient User Group concept is an important tool to collectively manage nutrient losses, while still enabling each participant to manage each operation separately, in order to meet both the freshwater and the economic outcomes set out in the ZIP Addendum, and as such I recommend that both regimes are retained in PCB.

- 26 With respect to the Officers, when they state there is a difference between a "single operating unit" and that which "operates as a collective", from an overall nutrient management perspective (which is of course what the plan is ultimately trying to deal with) there is no difference between the two – i.e. whether there is a collection of properties operated together (i.e. the "single operating unit") or a collection of properties (i.e. the "operates as a collective"), the overall management regime is the same – i.e. the pooling of total combined nitrogen loss and the redistribution between them.
- 27 Accordingly, even there were merit in the "subtle" distinction relied on by the Officer it is submitted that it does not ultimately achieve anything. In many cases it may also not be particularly easy to apply – e.g. consider a 'group' comprising two properties owned by the same person and a third owned by a third party.
- 28 On that basis, the simpler, more consistent approach sought by DHL should be preferred.
- 29 For completeness it is noted that the Officer Report agrees with the inclusion of Policy 15.4.13A.
- Evidence**
- 30 As noted above, DHL has provided evidence from **Mr Glass** but this being taken as read for the purposes of the hearing.

31 If required any questions can be addressed in writing.

Dated 18 November 2015

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Ben Williams  
Counsel for Dairy Holdings Limited