

Tabled @ Hearing
TUESDAY-15-03-2016
FONTERRA

in the matter of: the Resource Management Act 1991

and: submissions and further submissions in relation to
proposed variation 4 to the Canterbury Land and Water
Regional Plan

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

Summary of submissions on behalf of Fonterra Limited

Dated: 15 March 2016

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**CHAPMAN
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SUMMARY OF SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

INTRODUCTION

- 1 These submissions are provided on behalf of Fonterra Limited (*Fonterra*) in its 'processing capacity' (i.e. the development and operation of milk processing sites across the Canterbury Region).
- 2 A separate *original* submission has been provided by Fonterra Co-Operative Group Limited and Dairy NZ in relation to issues that might affect the activities undertaken by individual farmers in Canterbury Region. This submission (and the evidence being provided) does not relate to those farming interests – and it is understood that Fonterra Co-Operative Group Limited and Dairy NZ wish to have their submission taken as read.
- 3 Accordingly, these submissions provide an overview of the relief sought by Fonterra in its processing capacity.
- 4 Given the nature of issues associated with plan change 4 (as it affects Fonterra's processing operations) and the evidence already provided (in particular, that by **Ian Mr Goldschmidt**), these submissions are very brief and are principally intended to provide a high level summary of:
 - 4.1 the relief sought by Fonterra which is of particular interest to Fonterra, or which has not been accepted or addressed by the Officer(s). This relief is already been largely covered by **Mr Goldschmidt** (and is passed over quite quickly in the context of these submissions); and
 - 4.2 the relief sought by Fonterra which appears to have been accepted by the Officers. In the interests of efficiency and ensuring the focus is on the 'outstanding issues' **Mr Goldschmidt** has not covered this in his evidence. So that the Hearing Panel is assisted with a brief outline of the relevant issue(s) they are expanded on in the context of these submissions.
- 5 A table cross-referencing 'the scope' for each matter of relief is included in this submission as **Annexure 1**.

MATTERS ALREADY ADDRESSED IN EVIDENCE

- 6 As noted, **Mr Goldschmidt** has already outlined Fonterra's processing operations in the Canterbury region and addressed

Fonterra's position in regard to a number of matters, a brief summary of which is set out here:¹

Inanga spawning provisions.

- 6.1 Fonterra's submission in respect the Inanga spawning provisions was focused on one relative narrow issue which was the need to ensure that some works (for example - construction work or the installation or maintenance of pipes in the bed of waterbodies) could still occur during the Inanga spawning season. This is in circumstances where it would be very difficult for Fonterra to avoid such works occurring.
- 6.2 Fonterra accordingly supports:
- (a) the reference to using the 'best practicable' option and reference to 'where practicable' in Policies 4.86A and 4.86B (as set out by the Officers – with emphasis by way of highlighting added):

4.86A Inanga spawning sites are protected through, as a first priority, avoiding activities within the beds and margins of lakes, rivers, hāpua, wetlands, coastal lakes and lagoons that may damage inanga spawning sites, and where these activities cannot be avoided, the use of best practicable options to minimise all impacts.

4.86B Within the beds and margins of lakes, rivers, hapua, wetlands, coastal lakes and lagoons, damage to inanga spawning habitat is minimised by scheduling works to occur outside the inanga spawning period of 1 March to 1 June inclusive where it is practicable to do so, and by extending this period to 1 January to 1 June inclusive, where the works involve vegetation clearance or earthworks, so as to allow sufficient time for regeneration of the habitat.

and

- (b) the Officer's suggested amendment to Rule 5.139(4) to exempt maintenance of bridges, culverts, pipes, ducts, cables and wires and their support structures from the

¹ Noting that the relief set out with reference to the Officers Report is based on the Version Showing Officer s42A Report Recommendations as red "Tracked Changes, 31 January 2016

requirement to halt work during the Inanga spawning season:

5.139 The use and maintenance of structures, excluding dams, on, in or under the bed of a lake or river are permitted activities, provided the following conditions are met:

...

4. Except for bridges, culverts, pipes, ducts, cables and wires and their support structures²⁶ the maintenance of that part of the structure within the bed of a lake or river is not within an inanga or salmon spawning site listed in Schedule 17, or undertaken in any inanga spawning habitat during the inanga spawning season of 1 March to 1 June inclusive.

Stormwater discharges

- 6.3 In its submission, Fonterra submitted in support of the definitions of "Construction-phase stormwater" and "Stormwater" (the latter excluding the former). It also supported Rules 5.94A, 5.94C and 5.95 but sought amendment to Rule 5.96.
- 6.4 The concern for Fonterra was that potential 'sites' with multiple certificates of title might fall outside Rule 5.96.
- 6.5 In response, the Officer has suggested that the rule be amended to align with the definition of "property" as already included in the LWRP:

5.96 The discharge of stormwater onto or into land where contaminants may enter groundwater is a permitted activity, provided the following conditions are met:

...

(b) 2. The discharge:

(f) is not from a system that collects and discharges stormwater from more than five sites-properties²⁵.

Minor corrections

- 6.6 Fonterra also sought some minor corrections to Rules 5.135, 5.136 and 5.137 to include the words 'use' and 'maintenance' in those rules.

- 6.7 The Officer has since clarified that 'use' and 'maintenance' are intended to be covered by Rule 5.139 and that the Fonterra sought relief may have intended consequences (making some maintenance and use 'not permitted').
- 6.8 Fonterra is however still concerned around the inconsistency that arises in rules 5.135, 5.136 through the use of "*pipes, ducts, cables or wires... whether attached to a structure or not*", the use of 'bridges and culverts' in Rule 5.137 and '*structures*' in Rule 5.139.
- 6.9 Fonterra suggests that Rule 5.139 be amended to read:

The use and maintenance of *bridges, culverts, pipes, ducts, cables, wires and their support* structures, excluding dams, on, in or under the bed of a lake or river are permitted activities, provided the following conditions are met

Kaikoura-Mt Fyfe groundwater allocation zone rules

- 6.10 Fonterra made a submission supporting the proposed amendment to the Kaikoura-Mt Fyfe groundwater limit from 10.1mil m³ per year to 19.2 mil m³ per year.
- 6.11 Although not in evidence, it is noted for completeness that since providing the original submission, Fonterra has announced a proposal to close its Fonterra processing site.
- 6.12 The announcement does not affect Fonterra's submission and Fonterra is not aware of any other submission seeking different relief.

OTHER RELIEF SOUGHT BY FONTERRA

- 7 These matters are not discussed by **Mr Goldschmidt** but are set out for completeness in these submissions.
- 8 In short, Fonterra is in agreement with the position in the Officers Report in respect of the following matters:
- 8.1 Rules 5.77 and 5.78 relating to drainage;
- 8.2 Policy 4.18 relating to sediment-laden water discharge;
- 8.3 Policy 4.28 and the definitions of: 'bio-solids', 'wastewater' and 'on-site wastewater treatment system'; and
- 8.4 Policy 4.13 on the minimisation of the effects of discharge of contaminants into or onto land where it may enter water or discharge to surface water or groundwater.

9 Each is briefly touched on below.

Drainage

10 In respect of this issue, it should be noted that, the Fonterra farming submission also contains relief relating to drainage. This is a different issue to that discussed by Fonterra farming.

11 Fonterra processing sites have drainage systems that are connected to municipal stormwater and wastewater systems. Fonterra anticipates that Rules 5.77 and 5.78 relate to on-farm drainage systems like tile drains. However, in case Fonterra's interpretation was incorrect, it submitted in opposition to the Director-General of Conservation's submission point seeking amendments to Rules 5.77 and 5.78 to include reference to other matters. Fonterra does not agree that objectionable odour should be addressed in these rules, as air discharges are matters for the Air Plan, not the LWRP.

12 The Officer Report has rejected the Director General of Conservation's submission point. Fonterra supports that recommendation.

Sediment-laden water discharge

13 Fonterra, in its submissions, requested retention of Policy 4.18 relating to sediment-laden water discharge. Some minor amendment to this policy was notified. However, the reference to using the best practicable option to minimise loss or discharge of sediment or sediment-laden water to surface water from construction and earthworks where avoidance is not achievable was retained. Fonterra is supportive of the retention of the reference to 'best practicable option'.

14 The Officer Report recommends retaining the notified amendments. Fonterra supports that retention, and seeks that the drafting of Policy 4.18 as notified is accepted.

Sewage, wastewater and industrial and trade wastes

15 Fonterra is supportive of the notified changes to Policy 4.28 and the definitions of: 'bio-solids', 'wastewater' and 'on-site wastewater treatment system'. As explained in Fonterra's submission, Fonterra considers the amendments improve clarity and confirm that the rules which manage on-site wastewater systems apply to those systems that service commercial properties and other non-domestic establishments.

16 Fonterra supports the deletion of trade wastes and other industrial processing wastes from the definition of 'wastewater' and the consequential regulation of industrial and trade waste via different provisions. However, Fonterra's processing sites also contain on-site systems that receive wastewater from facilities that service staff

and employees. Fonterra seeks that PC4 and the LWRP continue to provide for these facilities. Therefore the definition of 'on-site wastewater treatment system' remains relevant to Fonterra's activities.

- 17 Fonterra supports reference to 'property' in the definition of 'on-site wastewater treatment system' for the same reasons as outlined in above.
- 18 It is however noted that while Fonterra sought retention of the definition of 'wastewater' as notified, the amendments to that definition to explicitly state that trade process wastes include livestock processing recommended in the s42A Report are supported.²

Groundwater and Surface Water limits

- 19 Fonterra, supported the notified changes to Policy 4.13 on the minimisation of the effects of discharge of contaminants into or onto land where it may enter water or discharge to surface water or groundwater. However, Fonterra also supports the changes to that policy recommended by the s42A Report.³ Fonterra believes that the Officer's further amendments add clarity and improve the usability of the LWRP:

Discharge of contaminants to land or to water

...

- 4.13 For other discharges of contaminants into or onto land where it may enter water or to surface water bodies or groundwater (excluding those passive discharges to which Policy 4.26 applies), the effects of any discharge are minimised by the use of measures that:

...

- (e) in the case of surface water, results in a discharge that after reasonable mixing:
- (i) meets the receiving water standards in Schedule 5 ~~as a first priority; and or~~
 - (ii) ~~as a second priority~~, does not result in any further degradation in water quality in any receiving surface waterbody that does not meet

² Plan Change 4 (Omnibus) to the Partially Operative Canterbury Land and Water Regional Plan, Section 42A Report, R15/148, 18 December 2015, at page 155-156.

³ Plan Change 4 (Omnibus) to the Partially Operative Canterbury Land and Water Regional Plan, Section 42A Report, R15/148, 18 December 2015, at page 181.

the water quality standards in Schedule 5 or any applicable water conservation order.

Schedule 25 and Oil Companies submission – water takes and supply strategies

- 20 Fonterra provided a further submission in relation to the Oil Companies' submission that discussed Schedule 25.
- 21 In submissions and further submissions the Oil Companies noted (and Fonterra supported in further submissions) a concern that Schedule 25 (which is referred in Policy 4.49 and Rule 5.115) has the potential to create a situation in which non-notified consent applications act as 'de facto' plan changes by determining water supply strategies and protection zones which may have implications for existing water users. To this extent it is proposed under Rule 5.115 that any application for a community water take (a restricted discretionary activity) must now include a water supply strategy including further information as set out by Schedule 25. A water supply strategy was previously required by Rule 5.115, but there was no guidance as to what information a strategy had to contain.
- 22 The Officer Report considers that Oil Companies' (and other submitters) may have misinterpreted the application of Schedule 25. The report states that Schedule 25 is intended as a tool for water supply operators and is only intended to clarify content for water supply strategy referred to in Rule 5.115. The Officer states that matters such as the potential effects on any land located within a proposed community drinking water supply protection zone will be addressed in the resource consent process more generally.
- 23 On the basis that the Officer position is correct Fonterra has no further issue with the Schedule.

Conclusion

- 24 In summary, Fonterra seeks that the relief that is sought in its submissions and as amended through evidence is granted.
- 25 With the amendments set out in the section 42A Report and discussed in **Mr Goldschmidt's** evidence Fonterra considers the final provisions of PC4 will provide sufficient certainty to protect its processing interests.

Dated: 15 March 2016

Ben Williams
Counsel for **Fonterra Limited**

Annexure 1: Summary of relief sought with reference to original and further submission

Please note that this is based on the Fonterra processing submission only

Plan provision	Fonterra submission or further submission (# refers to relevant part of Fonterra submission)
Inanga Spawning sites (definition, Policy 4.86A, Policy 4.86B, Rules 5.136, 5.139, 5.167 and 5.168 Schedule 17, and Maps B-109 and B-113)	Submission: #6
Stormwater (definition, Rules 5.94A, 5.94C and 5.95 and 5.96)	Submission: #2, #4, #11, #12, #13, #14.
Drainage (Rules 5.77 and 5.78)	Further submission: opposed DOC submission point
Sediment-laden water discharge (Policy 4.18)	Submission: #9
Minor corrections (Rules 5.135, 5.136 and 5.137)	Submission: #15
Sewage, wastewater and industrial and trade wastes (Policy 4.28 and the definitions of: 'bio-solids', 'wastewater'	Submission: #1, #3, #5, #10

Plan provision	Fonterra submission or further submission (# refers to relevant part of Fonterra submission)
and 'on-site wastewater treatment system')	
Water takes and supply strategies (Rule 5.115, Schedule 25)	Further submission: supporting Oil Companies
Groundwater and surface water limits (Policy 4.13 and Section 6 - Table 3)	Submission: #7, #17 Further submission: supporting ANZCO submission on Policy 4.13
Other minor submission points (Policy 4.16A, Policy 4.28)	Submission #8