

Tabled at Hearing

20/09/2016

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

*and:* submissions and further submissions in relation to  
proposed **Plan Change 5** to the proposed Canterbury  
Land and Water Regional Plan

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

Legal submissions on behalf of Dairy Holdings Limited

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Dated: 20 September 2016

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## LEGAL SUBMISSIONS ON BEHALF OF DAIRY HOLDINGS LIMITED

### INTRODUCTION

- 1 These submissions are provided on behalf of Dairy Holdings Limited (*DHL*) in relation to proposed Plan Change 5 (*PC 5*) to the Canterbury Land & Water Regional Plan (*LWRP*).
- 2 DHL is generally supportive of the overall intent of the notified version of PC 5 but is also seeking a number of amendments to either better reflect that intent or improve its workability for farming operations in Canterbury.
- 3 These submissions accordingly focus on a limited number of the key legal issues relevant to DHL that arise out of PC 5's proposed provisions. These issues are:
  - 3.1 the need for a policy and amended rules to better provide for what have been referred to as farm enterprises/nutrient user groups in Part A to PC 5;
  - 3.2 the need for a policy that provides for an Environmental Management Strategy to be prepared for farming enterprises, similarly to irrigation schemes;
  - 3.3 the need for PC 5 to provide for existing but unimplemented consents;
  - 3.4 the need for PC 5 to better provide for changes in land use during the baseline period, and acknowledge the natural year-to-year variability in farming;
  - 3.5 the appropriateness of the restrictive policies in the green and light blue nutrient allocation zones; and
  - 3.6 the need for an alternative consenting pathway where modelling limitations prevent accurate farm system modelling.
- 4 DHL maintains its other original and further submissions in their entirety. These include, for example, the following relief:
  - 4.1 deletion of Policy 4.11 relating to consent duration;<sup>1</sup>
  - 4.2 deletion of Policy 4.38AB relating to the permitted baseline;<sup>2</sup>

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<sup>1</sup> See point 8 of DHL's original submissions.

<sup>2</sup> See point 12 of DHL's original submissions.

- 4.3 amendment to Rule 5.41A to better provide for use of land within irrigation schemes;<sup>3</sup>
  - 4.4 amendment to Rule 5.42A to allow for greater flexibility in the management of nutrients on a whole-farm basis where the property spans multiple nutrient allocation zones;<sup>4</sup>
  - 4.5 amendment to Schedule 7 to better accommodate irrigation schemes and to clarify that the matters in Schedule 7 do not apply to stock water takes.<sup>5</sup>
- 5 These submissions do not detail the above because these matters have been covered by other submitters, or are sufficiently covered in DHL's original submissions.

## BACKGROUND

### Difficulties in further reducing N-losses

- 6 Before addressing the matters set out above, by way of background it is useful to refer to the evidence of **Mr Colin Glass** that explains that:
- 6.1 DHL operates an efficient farming system that focuses on importing low quantities of supplementary feed, and harvesting higher quantities of pasture;<sup>6</sup>
  - 6.2 significant investment has already (voluntarily) been made by DHL in increasing the efficiency of its irrigation infrastructure, and on-farm management is reasonably close or in many cases at industry-agreed 'good management practice';<sup>7</sup> and
  - 6.3 given the above, it will typically be very difficult for it to further reduce nitrogen losses without significant implications for DHL and its farming operations.
- 7 In a practical sense, DHL has to an extent 'pre-empted' some of the changes that have now been made by other farmers with the impact of dairy-down turn (noting that under the PC5 regime DHL gets no benefit for being an 'earlier adopter' and it also does not get the advantages that will apply to some other farmers through having a higher/more intensified nitrogen baseline).

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<sup>3</sup> See point 21 of DHL's original submissions.

<sup>4</sup> See point 22 of DHL's original submissions.

<sup>5</sup> See point 32 of DHL's original submissions.

<sup>6</sup> See the evidence of Colin Glass at paragraph 21.9.

<sup>7</sup> See the evidence of Colin Glass at paragraph 17.

### **Benefits of nutrient user groups/farming enterprises**

- 8 As **Mr Glass** has explained, nutrient user groups and farming enterprises have allowed DHL to improve the viability of both irrigated-block conversions to spray and conversions to irrigation on dryland blocks without any overall increase in adverse environmental effects.<sup>8</sup>
- 9 On that basis, DHL submits that encouraging 'collective' allocation across the region is consistent with:
  - 9.1 the approach that has already been taken elsewhere through plan changes 1, 2 and 3 (*PC 1*, *PC 2* and *PC 3*) as well as resource consents granted under the parent LWRP;
  - 9.2 the general emphasis on at least maintaining overall water quality under the NPS; and
  - 9.3 incentivising compliance with overall nitrogen loss limits.
- 10 All of the benefits of *Nutrient User Groups* are briefly recognised in the section 32 analysis of Part B of PC 5, but there is no explanation of why these benefits (and equivalent provisions) should not apply region-wide.<sup>9</sup>
- 11 In particular, DHL submits that Part A should contain an equivalent policy and amended rules that encourage use of *Nutrient User Groups* and/or *Farm enterprises* region-wide.
- 12 *Nutrient User Groups* and *Farming enterprises* are, in DHL's submission, squarely an integrated management tool.<sup>10</sup> They reflect the connectedness of freshwater resources in a nutrient allocation zone by allowing inputs from multiple properties to be managed in an integrated manner.
- 13 Nutrient management collectives (as both terms are sometimes referred) also provide an avenue to monitor and implement wide-reaching good management practice, which is essential to maintain and improve water quality. This is both an efficient use of resources and an example of integrated management.

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<sup>8</sup> See evidence of Colin Glass at paragraph 33.

<sup>9</sup> See section 13.3.3 – Evaluation – of the section 32 Report, last line of table on page 13-28 and the fourth bullet point in the first line of the table on page 13-29. See also the general discussion on page 13-24.

<sup>10</sup> Integrated management is a key part of both the Canterbury Regional Policy Statement and the Canterbury Water Management Strategy. See for example Objective 7.2.4 and Policies 7.3.8 and 7.3.9 of the RPS; and page 7 of Canterbury Water Management Strategy Strategic Framework, November 2009.

## **NEW POLICY AND AMENDED RULES FOR FARM ENTERPRISES/NUTRIENT USER GROUPS**

14 As noted above, DHL submits that Part A of PC 5 should incorporate a policy and amended rules, better supporting *Farming enterprises/Nutrient User Groups*.

15 The rationale for this submission is that:

15.1 *Farming enterprises/Nutrient User Groups* are an appropriate approach to the integrated management of nutrients; and

15.2 in terms of consistency, PC 1 and PC 2 both allow for, and have a policy framework supporting, *Farming enterprises* and there is no principled reason for PC 5 to now take a different approach

16 Prior to discussing the more specific issues with collective nutrient management that DHL has noted in its original submission it is useful to briefly touch on the difference between *Farming enterprises* and *Nutrient User Groups*.

### **A preliminary matter – is there a distinction?**

17 It is noted that throughout DHL's original submission reference is made to both *Nutrient User Groups* and *Farming enterprises*. It is useful to clarify at the outset that it is DHL's view that both are effectively the same concept – with the core characteristic of both being that a single (combined) nutrient allocation is assigned to multiple properties.

18 Therefore, although DHL has referred to (in particular) *Nutrient User Group* throughout its submission that as much as anything has been for the purposes of ensuring 'scope'. Subject to the general approach set out in these submissions, DHL is relatively ambivalent in terms of what actual term/phrase is used (although it is noted that the phrase *Farming enterprise* is consistent with the LWRP, PC 1 and PC 2).

19 To recap:

### **LWRP**

19.1 The 'parent' Canterbury Land & Water Regional Plan includes a definition of *Farming enterprise* and a simple discretionary activity rule dealing with their establishment (being Rule 5.46). It does not include any mention of *Nutrient User Groups* with, in effect, the *Farming enterprise* regime covering both concepts. It also has little policy guidance, at least compared to PC 1 and PC 2.

### **PC 1 and PC 2**

19.2 PC 1 and PC 2 both provide for collective management of nutrients by farming enterprises but similarly make no mention of nutrient user groups. In both PC 1 and PC 2, the sub-regional nutrient management rules, including those relating to farm enterprises, prevail over the regional rules:

- (a) Rule 11.5.11 (PC 1) and Rule 13.5.10 (PC 2) provide for farming enterprises as a discretionary activity, whether or not the parcels of land are held in single, multiple or common ownership; and
- (b) Policies 11.4.17 (PC 1) and 13.4.13B (PC 2) enable the establishment and disestablishment of farming enterprises.

For ease of reference, the relevant policies and rules from PC 1 and PC 2 that relate to nutrient management by farming enterprises are attached and marked **Appendix A**.

### **PC 3**

19.3 Against the above, PC 3 has taken an alternative approach and refers to both farming enterprises and nutrient user groups (and it is this approach that has been brought through to Part B, PC 5).

19.4 The relevant sections of PC 3 are similarly attached and marked **Appendix B**.

20 To further illustrate the [lack of] difference in approaches the definitions of *Farming enterprise* (as it is set out in the LWRP and which also applies to PC 1 and PC 2) along with the definition of *Nutrient User Group* from PC 3 (which applies only to that area and which is also repeated in Part B of PC 5) are set out below:

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.
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.

21 Accordingly – it is submitted that in terms of the definitions the only practical difference appears to be that under the PC 3 (and Part B) framework multiple farm environment plans would be prepared at the individual property level under a *Nutrient User Group* (with an overlying management plan) whereas for a *Farming enterprise* a single farm enterprise plan would be prepared and apply to all properties. Or, to put the position another way – PC 3 and Part B of

PC 5 appear to split the existing concept of *Farming enterprise*, with a *Nutrient User Group* effectively been a sub-set or special kind of *Farming enterprise*.

- 22 Both concepts are still fully captured by the existing *Farming enterprise* regime (only) as set out in the LWRP and PC 1 and PC 2.
- 23 In DHL's submission, PC 3 therefore creates unnecessary confusion by giving the one existing concept two names. However, it is accepted that the final content of PC3 is obviously beyond the scope of the immediate hearing process and DHL accepts that it may still be necessary for Part B of PC 5 to follow the final position in PC 3.
- 24 Regardless:
  - 24.1 DHL seeks as much consistency as is possible between PC 5 and the provisions of the LWRP (as it now includes) PC 1 and PC 2; and
  - 24.2 in particular, there is currently no policy guidance in the parent LWRP (unlike PC 1 and PC 2) as to the formation and termination of farming enterprises under the LWRP.
- 25 Although the DHL agrees with the reporting officers re the "complexity and overlap"<sup>11</sup> that would occur were a definition of "Nutrient User Group" introduced into Part A, for absolute clarification it is emphasised that DHL:
  - 25.1 was only responding to the existing complexity that is already in Part B (and seeking to have that repeated for purposes of consistency in Part A); and
  - 25.2 is quite happy (in the alternative) with the concept of *Farming Enterprise* alone remaining in Part A – provided that an equivalent policy approach set out for *Nutrient User Groups* in Part B (and as is also consistent with that for *Farming enterprises* in PC 1 and PC 2) is brought into Part A.

#### **Concerns with collective nutrient management**

- 26 Another concern of DHL's is apparent narrowing of the circumstances where consent for a *Farming enterprise* and a *Nutrient User Group* can be obtained.
- 27 In this regard, underlying some of the wider concerns of the reporting officers appears to be a lack of confidence in the ability of collective allocations to be accounted for – and desire to, for example, avoid *Farming enterprises/Nutrient User Groups* overlapping with irrigation schemes.

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<sup>11</sup> See section 42A Report at paragraphs 7.299 and 7.300.

- 28 Parts of that rationale are explicit in the section 32 and officers' reports. For example:<sup>12</sup>

*"it is clear that all three of the above regimes [(being irrigation schemes, farm enterprises and nutrient user groups)] could apply to the same properties. Should this occur across the region, I consider it possible, if not probable, that the distribution and sharing of nutrient losses could become opaque, to the extent that confidence that NPS-FM objectives, the RPS and CLWRP objectives were being achieved would be lost."*

- 29 Obviously this concern is largely resolved should reference to *Nutrient User Groups* be kept out of Part A – but in the event that there are still concerns re the overlap between *Farming enterprises* and irrigation schemes, DHL submits that concerns of 'opacity' are overstated and misplaced because:
- 29.1 all collective allocations are capped – i.e. more allocation to one party must mean less to another. It is very simple 'accounting' to show how much nutrient is being used and where it has come from;
  - 29.2 any 'shifts' in allocation between properties will often entail associated infrastructure changes on farm. These are not easily or quickly reversed (either physically or financially). This factor makes any risk of significant allocations 'washing around' between persons simply unrealistic;
  - 29.3 irrigation schemes in particular already have very clear annual reporting requirements; and
  - 29.4 parties in a multiple ownership nutrient management collective are accountable to every other member of that collective. There are strong incentives for all parties to make transparent and robust written arrangements for allocations, monitoring and reporting.
- 30 DHL submits that it is quite reasonable to expect that a property might be a part of an irrigation scheme, and also part of a *Farming enterprise*. PC 1 (especially for existing irrigated properties) and PC 2 do not expressly prohibit this. Conversely, PC 3 and Part B of PC 5 do prohibit this,<sup>13</sup> but as currently drafted it appears that Part A does not follow that approach and DHL has proposed further relief to clarify the position.<sup>14</sup>
- 31 In DHL's submission it is important that it has the flexibility to be able to manage properties that fall within an irrigation scheme

<sup>12</sup> See section 42A Report at paragraphs 7.301.

<sup>13</sup> See Rule 15.5.9(4) of PC 3 and 15B.5.8 and 15B.5.9 of PC 5, Part B.

<sup>14</sup> See for example, DHL's original submission point 20.

under a *Farm enterprise* arrangement. DHL's own farming consent as well as those held by Central Plains (both in the Selwyn Waihora area) are good examples of where existing regimes appear to be workable despite the apparent concerns now set out by the reporting officers.

#### **Summary of relief sought on nutrient allocation collectives**

- 32 DHL submits that Part A of PC 5 ought to incorporate a policy that provides for the establishment of farming enterprises, consistent with PC 1 and PC 2, and also consistent with PC 3 to the extent that it provides for farming enterprises (without the need to differentiate between nutrient user groups and farming enterprises, as PC 3 does at present).
- 33 In addition, DHL submits that amendments should be made to Rules 5.46A, 5.56AA and 5.58B. This relief is detailed in **Schedule 1**, and is an alternative form of the relief originally sought by DHL in submission point 26. This relief seeks to combine DHL's proposed rule relating to nutrient user groups with the existing PC 5 rules relating to farm enterprises, to avoid any unnecessary duplication and confusion. In this context, DHL submits that this proposed relief is within the scope of its original submission.

#### **ENVIRONMENTAL MANAGEMENT STRATEGIES FOR FARM ENTERPRISES**

- 34 Policy 4.41D provides for matters that need to be provided in an Environmental Management Strategy for an irrigation scheme. There is no equivalent policy for farming enterprises, and DHL submits that there ought to be.
- 35 We note that both DHL and Central Plains Water sought insertion of a Policy 4.41DD in their original submissions.
- 36 During the PC 5 hearing on 25 August, in response to the evidence of **Ms Susan Goodfellow** for Central Plains Water, the Commissioners questioned whether the relief suggested through insertion of Policy 4.41DD could be achieved by simply inserting "*or farming enterprises*" into the first sentence of Policy 4.41D. **Ms Goodfellow** responded that she thought that this would achieve the same result.
- 37 DHL agrees with this approach, but notes that some consequential amendments to Policy 4.41D(c) and (d) (which currently only refer to irrigation schemes) would be necessary in order to make the whole policy apply appropriately to farming enterprises.

### **EXISTING BUT UNIMPLEMENTED CONSENTS**

- 38 DHL echoes the concerns of some other submitters about the need for PC 5 to adequately provide for consented/permitted activities (and intensification in particular) that have been implemented after the baseline period.<sup>15</sup>
- 39 When intensification has occurred after the baseline period pursuant either to a consent or permitted activity rules, in DHL's submission it is unrealistic to expect farmers to meet a nitrogen baseline or Baseline GMP Loss Rate that is calculated based on the pre-intensification land use.<sup>16</sup>

### **CHANGES IN LAND USE DURING BASELINE PERIOD**

- 40 A similar issue to the existing but unimplemented consents arises where there has been multiple land-uses during or after the baseline period.
- 41 In this regard, the following definitions refer to the 'nitrogen loss rate' over the nitrogen baseline period or most recent four year period:
  - 41.1 Baseline GMP loss rate;
  - 41.2 Good management practice loss rate;
  - 41.3 Nitrogen baseline; and
  - 41.4 Nitrogen loss calculation.
- 42 In DHL's submission, the definitions of Baseline GMP loss rate and Good Management Practice Loss Rate should refer to the 'highest annual' nitrogen loss rate, to reflect the natural year-to-year variability in farming practice.
- 43 To illustrate the point (in terms of Baseline GMP Loss Rate):
  - 43.1 in accordance with the existing nitrogen baseline, properties already have to comply with the average of their nitrogen losses over the 2009-13 period (meaning in a practical sense some may have already had to reduce from their higher year nutrient losses); and

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<sup>15</sup> See legal submissions on behalf of Barrhill at paragraphs 39-59, and evidence of Mrs Harris on behalf of Barrhill, at paragraph 117.

<sup>16</sup> See DHL's original submission points 1, 3, 4, 5, 10, 13, 18, 23, 24, 25 and 31.

- 43.2 against the above, where there have been multiple land-uses either during or after the baseline period (with different nitrogen losses), a farmer might still be complying with the nitrogen baseline but find that they have to make disproportionately more reductions to achieve the Baseline GMP Loss Rate.
- 44 For example, a farmer that has changed to being a dairy farmer (in complete compliance with its nitrogen baseline) during the baseline period should, it is submitted, be required to comply with the highest annual losses during the baseline period – rather than the average (as otherwise those farmers will effectively be hit by a second requirement to reduce prior to considering their Good Management Practice Loss Rate).
- 45 Similarly, the definition of Good Management Practice Loss Rate refers to the losses associated with “*the farming activity carried out over the most recent four year period*”. There might be more than one land use carried out over that period – with potentially quite different good management practice loss rates. A farmer that was acting entirely lawfully and changed land use in accordance with its nitrogen baseline might still be required to reduce to its average losses – effectively a second reduction with no regard to what is actually occurring on farm.
- 46 It is further submitted that amending these definitions to refer instead to the ‘highest annual’ nitrogen loss rate in the relevant time period will not, as the reporting officer suggests, set an unnecessarily high loss rate. Rather, it will allow for the inevitable year-to-year changes in farming practice. Some seasons will fall well-under the highest annual loss rate, while others will come much closer to it. Using a lower *average* figure (or imposing an ‘average on an average’) would be unduly restrictive, and would not adequately provide for the seasonal variability and changes in land use that is an integral part of any farming system.
- 47 For these reasons, DHL seeks amendment to the definitions listed at paragraph 41, as set out in its original submission at points 1, 3, 4 and 5.

#### **GREEN AND LIGHT BLUE NUTRIENT ALLOCATION ZONES**

- 48 In DHL’s submission, Policy 4.38AA is unnecessarily restrictive for nutrient allocation zones that are currently meeting their water quality limits, with capacity for intensification.<sup>17</sup>

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<sup>17</sup> See DHL’s original submissions at point 11.

- 49 Policy 4.38AA restricts increases in nitrogen loss from farming activities in the green and light blue nutrient allocation zones to no more than a total of 5kg/ha/yr above the Baseline GMP Loss Rate.
- 50 By definition the light blue and green nutrient allocation zones are currently meeting water quality limits with some 'headroom' for future intensification. However, the effect of Policy 4.38AA significantly limits this intensification potential, even where that intensification would not cause adverse effects on water quality.
- 51 Similarly, Policy 4.38A should not apply to the green and light blue nutrient allocation zones. Because of the nature of these zones, with 'headroom' for some intensification, there should be greater flexibility to allow for some increases over the nitrogen baseline (where such increases will not cause adverse environmental effects).
- 52 DHL therefore seeks amendments to Policy 4.38AA as set out in its original submission at points 11 and 13.

#### **ALTERNATIVE PATHWAY**

- 53 Again, DHL notes that a number of submitters have already addressed the concept of an alternative pathway for considering resource consents in some detail. DHL supports an alternative where OVERSEER® does not accurately model a farm system, or where the Farm Portal cannot be relied on to generate accurate outputs (even where the farm is operating at industry-agreed good management practice).<sup>18</sup>
- 54 DHL submits that it is imperative that an alternative consenting pathway is provided through PC 5.
- 55 Linked to this concern is DHL's submission that the requirement to register with the Farm Portal by 1 July 2017 and achieve compliance with Good Management Practice Loss Rates is too tight, given the number of issues with the Portal (as set out in the evidence of other submitters) that need to be worked through before that date.<sup>19</sup>
- 56 DHL refers to the evidence of **Mr Chris Hansen** on behalf of Ravensdown, and **Mr Gerard Willis** on behalf of Fonterra which set out an appropriately constrained alternative pathway that is consistent with the directions of the NPS and RPS, whilst providing sufficient recognition of the importance of existing farming activities.

<sup>18</sup> See evidence of Eva Harris on behalf of Barrhill; Chris Hansen on behalf of Ravensdown and Gerard Willis on behalf of Fonterra.

<sup>19</sup> See DHL submission points 14, 15 and 23.

**RELIEF**

57 Accordingly, DHL seeks amendment to PC 5 to include:

57.1 a policy in Part A that provides for the establishment and disestablishment of *Farm enterprises*, consistent with PC 1 and 2 (and Part B as it relates to *Nutrient User Groups*). i.e.:

Applications for a resource consent to establish a farming enterprise shall describe:

- a) the procedures and methods for recording nitrogen losses from properties within the farm enterprise; and
- b) the methods for redistributing nitrogen losses when a property joins or leaves a farm enterprise; and
- c) the annual reporting requirements; and
- d) how compliance with the actions set out in each Farm Environment Plan will be achieved

OR, alternatively to be consistent with PC 1 and PC 2:

- 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 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; 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.

57.2 amendments to various rules that provide for farming enterprises as a discretionary activity where specified conditions are met;<sup>20</sup>

57.3 amendments to Policy 4.41D to require Environmental Management Strategies from farm enterprises;<sup>21</sup>

<sup>20</sup> See also submission point 26 of DHL's original submissions

- 57.4 amendments to various policies and rules to acknowledge existing but unimplemented consents and changes in land-use after the baseline period;<sup>22</sup>
- 57.5 amendment to Policies 4.38A and 4.38AA to provide more flexibility for intensification in the green and light blue nutrient allocation zone;<sup>23</sup>
- 57.6 provision of an alternative consenting pathway to overcome the limitations of the Farm Portal and OVERSEER®;<sup>24</sup> and
- 57.7 the further relief set out in DHL's original submissions, referred to at paragraph 4 above.

Dated 20 September 2016



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<sup>21</sup> See also submission points 19 and 20 of DHL's original submissions.

<sup>22</sup> See submission points 1, 3, 4, 5, 10, 13, 18, 23, 24, 25 and 31 of DHL's original submissions.

<sup>23</sup> See submission points 11 and 13 of DHL's original submissions.

<sup>24</sup> See submission points 14, 15, 27, 29, 30 and 33 of DHL's original submissions.

## SCHEDULE ONE

### Alternative relief sought by DHL on Rules 5.46A, 5.56AA and 5.58B

(in effect combines DHL's proposed relief at Point 26 of its submission with that at Point 31 of its submission)

Policy/Rule	Proposed wording
Amendments to rules 5.46A, 5.56AA, 5.58B	<p>Within the [<i>Red/Orange/Green or Light Blue</i>] Nutrient Allocation Zone, the use of land for a farming activity as part of a farming enterprise is a discretionary activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> <li>1. A Farm Environment Plan has been prepared for the farming enterprise in accordance with Part A of Schedule 7 and is submitted with the application for resource consent; and</li> <li>2. <u>An Environmental Management Strategy has been prepared for the farming enterprise in accordance with Policy 4.41D; and</u></li> <li>3. <del>Until 30 June 2020 the</del> <u>The nitrogen loss calculation for the farming enterprise does not exceed the nitrogen baseline and, from 1 July 2020 the Good Management Practice Loss Rate; and the combined total of:</u> <ol style="list-style-type: none"> <li>a. <u>for the properties that do not receive water from an irrigation scheme or principal water supplier:</u> <ol style="list-style-type: none"> <li>i. <u>until 30 June 2020, the nitrogen baseline; and</u></li> <li>ii. <u>from 1 July 2020 the Baseline Good Management Practice Loss Rate,</u></li> </ol> <u>plus any increase lawfully permitted by this plan; and/or</u> </li> <li>b. <u>for the properties that do receive water from an irrigation scheme or principal water supplier, where that irrigation scheme or principle water supplier holds a resource consent that controls nutrient loss from properties supplied, the amount specified for those properties by that resource consent.</u></li> </ol> </li> <li>4. The properties comprising the farming enterprise are in the same surface water catchment and Nutrient Allocation Zone, as shown on the Planning Maps.</li> </ol>

## APPENDIX A – PC 1 and PC 2

### PC1 Extracts

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.
Fertiliser	means: 1. a solid or fluid substance or biological compound, or mix of substances or biological compounds that is described as, or held out to be for, or suitable for, sustaining or increasing the growth, productivity, or quality of plants or, indirectly, animals through the application to plants or soil

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- 11.4.17(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.
- 11.4.18 Despite Policies 11.4.7 to 11.4.9, 11.4.11, 11.4.16 and 11.4.17, restricting farming activities and farming enterprises so that from 1 January 2037 their nitrogen loss calculations are not more than 30 kg of nitrogen per hectare per annum.
- 11.4.19 Irrigation schemes efficiently manage nutrient discharges, by requiring any discharge consent issued to an Irrigation Scheme described in Table 11(j), to include conditions that:
- (a) Require that the relevant Irrigation Scheme Nitrogen Limits in Table 11(j) are not exceeded; and
  - (b) Where the Irrigation Scheme Nitrogen Limits in Table 11(j) are set in order to provide for a Scheme to establish or expand in area, enable the discharge of nitrogen only in proportion to the area of the Scheme that is operational; and
  - (c) For land that was not irrigated prior to 1 January 2015, require the Irrigation Scheme to account for all nutrient losses from farming activities that are partly or fully supplied with water by the Scheme; and

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**11.5.11** The use of land for a farming activity as part of a farming enterprise in the Selwyn Te Waihora sub-region is a discretionary activity, provided the following conditions are met:

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#### Canterbury Land and Water Regional Plan

1. 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; 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 has not increased above the aggregated nitrogen baseline for those parcels of land; and
3. Land that was not irrigated prior to 1 January 2015 is not supplied with water from an irrigation scheme described in Table 11(j).

**11.5.12** The use of land for a farming activity or farming enterprise that does not comply with Condition 2 of Rule 11.5.7, Conditions 1 or 3 of Rule 11.5.9, Conditions 1 or 3 of Rule 11.5.10 or Conditions 1 or 3 of Rule 11.5.11 is a non-complying activity.

**11.5.13** The use of land for a farming activity or farming enterprise that does not comply with Condition 2 of Rule 11.5.10 or Condition 2 of Rule 11.5.11 is a prohibited activity.

**11.5.14** From 1 January 2037, the use of land for a farming activity or farming enterprise where the nitrogen loss calculation for the property is greater than 80 kg per hectare per annum is a prohibited activity.

## PC2 Extracts

Proposed ~~Variation 2~~ Plan Change 2 to the ~~Proposed~~ Canterbury Land and Water Regional Plan - Section 13 Ashburton

- (b) the implications for fully achieving the target nitrate-nitrogen concentrations in Policy 13.4.12 by 2035; and
- (c) the capital and operational costs of making nitrogen loss rate reductions and the benefit (in terms of maintaining a farming activity's financial viability) of spreading that investment over time; and
- (d) the nature, sequencing, measurability and enforceability of any steps proposed to achieve the nitrogen loss rate reductions.<sup>51</sup>

- 13.4.13B<sup>51</sup>(1) Enable the establishment of farming enterprises in circumstances where, for the purpose of nutrient management, the nitrogen loss from the total farming activity does not exceed the aggregate of the nitrogen baselines of all the land used in the enterprise, and any time-framed reductions set out in Policy 13.4.13 are achieved (whether or not the land is held in single, multiple, or common ownership).
- (2) Enable the disestablishment of farming enterprises, provided the land formerly used in the enterprise does not exceed either:
- (a) the individual nitrogen baseline of the land, taking account of any applicable 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 land formerly used in the enterprise, following any time-framed reductions set out in Policy 13.4.13, is not exceeded.<sup>52</sup>

Proposed ~~Variation 2~~ Plan Change 2 to the ~~Proposed~~ Canterbury Land and Water Regional Plan - Section 13 Ashburton

- and
4. The potential effects, including cumulative effects, of the activity on surface water and groundwater quality, sources of drinking-water, and aquatic ecosystems.<sup>73</sup>

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

- 1. The aggregated<sup>74</sup> nitrogen loss calculation for the parcels of land held in single or multiple ownership (whether or not held in common ownership) forming<sup>75</sup> the farming enterprise does not increase above the greater of 15kg/ha/yr or the<sup>76</sup> aggregated nitrogen baseline for those parcels of land<sup>77</sup>; and
- 2. The farming enterprise is solely in the Upper Hinds/Hekeao Plains Area; 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<sup>78</sup> has been prepared in accordance with Schedule 7 Part A.

13.5.11 The use of land for a farming activity that does not comply with conditions ~~2 or 3~~ of Rule 13.5.9A<sup>79</sup> or conditions ~~2 or~~<sup>80</sup> 3 of Rule 13.5.10 is a non-complying activity.

13.5.12 The use of land for a farming activity that does not comply with condition 1 of Rule 13.5.9A<sup>81</sup> or condition ~~1 or~~<sup>82</sup> 2 of Rule 13.5.10 is a prohibited activity.

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<sup>109</sup> nitrogen loss calculation for the parcels of land held in single or multiple ownership (whether or not held in common ownership) forming<sup>104</sup> the farming enterprise, excluding any area of land subject to a resource consent granted under Rule 13.5.14, does

not increase above the greater of 15kg/ha/yr or the<sup>103</sup> aggregated nitrogen baseline for those parcels of land<sup>106</sup>; 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<sup>107</sup> has been prepared in accordance with Schedule 7 Part A

13.5.19 The use of land for a farming activity that does not comply with ~~any of conditions 2 or 3 in Rule 13.5.15, conditions 2 or 4 of Rule 13.5.16, condition 1 of Rule 13.5.15A or<sup>108</sup> condition 3 of Rule 13.5.17, or the use of land for a farming activity as part of<sup>109</sup> a farming enterprise that does not comply with condition 3 of Rule 13.5.18, is a non-complying activity.~~

13.5.20 The use of land for a farming activity that does not comply with ~~condition 1 of Rule 13.5.15, condition 2 of Rule 13.5.16,<sup>110</sup> condition 2 1 of Rule 13.5.17 or conditions 1 or 2 of Rule 13.5.18 or a farming enterprise that does not comply with any of the conditions of Rule 13.5.14<sup>111</sup>, is a prohibited activity.~~

## APPENDIX B – PC 3

Plan Change 3 to the Partially Operative Canterbury Land and Water Regional Plan - Section 15- Waitaki and South Coastal Canterbury

Northern Streams Hill	means land within the Northern Streams Area identified on the Planning Maps as Hill Area.
Northern Streams Plains	means land within the Northern Streams Area not identified on the Planning Maps as Hill Area.
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.

### *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 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 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 to describe:

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

Collectives

15B.4.17 Applications for a resource consent to establish a Nutrient User Group or an Aquaculture Nutrient User Group shall describe:

- (a) the procedures and methods for recording nitrogen losses from properties within the Nutrient User Group or Aquaculture Nutrient User Group; and
- (b) the methods for redistributing nitrogen losses when a property joins or leaves a Nutrient User Group, or when an aquaculture operation joins or leaves an Aquaculture Nutrient User Group; and
- (c) the annual reporting requirements; and
- (d) how compliance with the actions set out in each Farm Environment Plan or Aquaculture Environment Plan will be achieved.