

Tabled at Hearing ~~30/09/2014~~  
01/10/14

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*under:* the Resource Management Act 1991

*in the matter of:* submissions and further submissions in relation to  
proposed Variation 1 to the proposed Canterbury Land  
and Water Regional Plan

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

Synopsis of submissions for Fonterra Co-operative Group Limited  
(processing)

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Dated: 1 October 2014

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**CHAPMAN  
TRIPP** 

## SYNOPSIS OF SUBMISSIONS FOR FONTERRA CO-OPERATIVE GROUP LIMITED (PROCESSING)

### **Introduction**

- 1 These submissions are provided on behalf of Fonterra Co-operative Group Limited (*Fonterra*).
- 2 They are limited to a discussion of Fonterra's processing interests within the Selwyn Waihora zone (as are relevant to in relation to proposed Variation 1 to the proposed Canterbury Land and Water Regional Plan (*Variation 1*)).
- 3 At a later date,<sup>1</sup> Fonterra will provide separate submissions and evidence (jointly with DairyNZ Limited) in relation to 'farming activities' within the Selwyn Waihora zone. There is limited cross-over between the 'two presentations' although some of the wider catchment considerations that will be discussed in the 'farming activities' presentation will have relevance to processing (at least on a general basis).
- 4 These instead submissions provide:
  - 4.1 a brief overview of the background to the Darfield processing plant;
  - 4.2 an outline of the issues of concern to Fonterra (in is processing capacity) and a brief outline of the relief being sought;
  - 4.3 Fonterra's view on the extent to which the load for industrial and trade processes is included within catchment limits; and
  - 4.4 a brief discussion of "*best practicable option*" in the context of **Mr Rob Potts** evidence and Policy 11.4.10 / Rule 11.5.22.
- 5 These submissions are deliberately brief on the basis that almost all issues have been comprehensively addressed in evidence (and/or do not raise 'legal issues' that need to be addressed by way of submission).
- 6 **Background to the Darfield processing plant**  
The formation of Fonterra under the Dairy Industry Restructuring Act 2001 (*DIRA*) has already been briefly addressed in evidence.<sup>2</sup>
- 7 *DIRA* does however have wider contextual relevance in terms of Selwyn Waihora and the extent to which it is incumbent on Fonterra

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<sup>1</sup> Scheduled for 15 October 2014.

<sup>2</sup> Ian Goldschmidt, evidence para 14.

to collect and process milk (with the Darfield processing plant being critical to fulfilling that obligation).

- 8 Of particular note:
- 8.1 section 73 of DIRA requires Fonterra to accept all applications to become a shareholding farmer and it also requires Fonterra to accept all applications to increase the volume of milk supplied by a shareholding farmer; and
- 8.2 Fonterra has very limited ability to reject supply – with the only material means being under section 95.<sup>3</sup> This allows for rejection if the cost of transporting the milk of the new entrant exceeds the highest cost of transporting another shareholders farmer's milk – but understandably has little relevance to the Canterbury Plains.
- 9 On the basis of DIRA, and continuing growth in milk production across wider Canterbury, Fonterra commenced construction of the Darfield processing plant in August 2012, and the site was expanded as a part of 'Stage 2 expansions' in August 2013. Further expansions are possible in the future.
- 10 The Darfield processing plant represents an investment of over \$500m,<sup>4</sup> and when processing at full capacity the Fonterra Darfield plant processes 8.6% of New Zealand's peak milk production.<sup>5</sup> The plant itself accounts for around 5% of New Zealand's total exports by value.<sup>6</sup>
- 11 The continued operation of the Darfield processing plant saves up to 30,000 truck and tanker kilometres per day and allows capacity risk to be spread across three main Fonterra plants in the South Island (Darfield, Clandeboye and Edendale).<sup>7</sup>
- 12 Overall, it is submitted that the continuing presence of the Darfield processing plant (and importantly, its presence within the Selwyn Waihora Zone) is significant at local, regional and national scales.<sup>8</sup>

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<sup>3</sup> The further reason is under section 94 where the supply is less than 10,000 kg of milk solids per year.

<sup>4</sup> Ian Goldschmidt, evidence para 23.

<sup>5</sup> Mike Copeland, evidence para 27.

<sup>6</sup> Mike Copeland, evidence para 28. Based on Statistics New Zealand June year 2013/14 merchandise trade statistics.

<sup>7</sup> Mike Copeland, evidence, para 36.

<sup>8</sup> Refer Mike Copeland, evidence more generally.

**Outline of issues**

- 13 In its processing capacity, Fonterra is generally supportive of the overall vision of the catchment,<sup>9</sup> however in terms of the notified version of Variation 1, Fonterra (in its processing capacity) had concerns around two main areas:<sup>10</sup>
- 13.1 waste disposal from Industrial and Trade Processes (*ITPs*), including:
- (a) the extent to which ITP waste disposal activities would have to comply with both the farming rules and the ITP waste disposal rules;
  - (b) the ability of an ITP waste water disposal activity to 'replace' a farming activity and adopt the load already applying to that property (rather than being required to comply with a limit of 15 kg N/ha/yr);
  - (c) the use of 'best practicable option(s)'; and
  - (d) the load limit for ITP's assumed in Table 11(i),
- 13.2 water usage, including:
- (a) the requirement for ongoing water use to be determined on the basis of demonstrated use;
  - (b) uncertainties around the extent to which adaptive management conditions might or might not be renewed on similar terms in the event of consent renewal;
  - (c) the requirement for 50% of water to be surrendered on transfer of a water permit.
- 14 Fonterra's concerns (especially in respect of waste disposal) have in part been addressed in the recommendations provided by the section 42A Officer. Although of course not binding on the Hearing Panel, Fonterra has considered and expanded on the Officers recommendations in its evidence.
- 15 In simple terms Fonterra supports/seeks:
- 15.1 the deletion of industrial or trade processes from Table 11(i) (or if reference is retained, the limit be amended to reflect the actual Fonterra load, being 58.9 or 61.4 tonnes, depending on whether it is with or without sludge waste);

<sup>9</sup> Ian Goldschmidt, evidence para 11.

<sup>10</sup> Refer Sharon Dines, evidence paras 11, 14 and 39 for more detailed summaries.

- 15.2 the use of “*good management practices*” as opposed “*best practicable option*” in Policy 11.4.10 and Rule 11.5.22 (noting that this issue is discussed in a little more detail in these submissions at para 21 to 27);
- 15.3 amendments to Policy 11.4.14 (if it is retained), Rules 11.5.6, 11.2.25 and new Rule 11.5.25A (see para 15.6 below), to make it clear that industrial and trade process are to be treated on a different basis to farming;
- 15.4 to allow for:
- (a) discharges from an industrial or trade process where the discharge was lawfully established prior to 13 February 2014;<sup>11</sup> **and**
  - (b) in the case of an expanded industrial and trade process, to allow for discharges (as a discretionary activity) provided the discharge does not exceed the lawfully permissible nitrogen loss from the farming activity that it replaces;<sup>12</sup>
- 15.5 to amend the reference to “*sewerage*” to “*sewage*”;
- 15.6 a new rule Rule 11.5.25A to allow for the use of sludge waste as a fertiliser substitute along with an appropriate definition of sludge waste;
- 15.7 for ongoing water use to be determined on the basis of reasonable use (rather than demonstrated use), along with clarification to make it clear that the ‘reasonable use test’ under Schedule 10 does not apply to industrial and trade processes;<sup>13</sup>
- 15.8 to reduce the restrictions on transfers (including the ‘50% reduction requirement’) where the net effect of the transfer is to enable a proposal with a neutral or positive water balance;<sup>14</sup>
- 15.9 to ensure that if adaptive management conditions are imposed on renewal, they are only imposed on the basis of an equivalent adaptive management regime.<sup>15</sup>

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<sup>11</sup> Policy 11.4.10 and Rules 11.5.6 and 11.5.25

<sup>12</sup> As above (albeit expressed as alternative in the relevant policy/rule).

<sup>13</sup> Policy 11.4.23.

<sup>14</sup> Policy 11.4.22 and Rule 11.5.37.

<sup>15</sup> Policy 11.4.27

- 16 The actual relief sought is set out in detail the evidence to be called by Fonterra and is not repeated here.<sup>16</sup>

**Calculation of catchment N load**

- 17 Fonterra wishes to briefly address the Officer's (Mr McCallum-Clarks) response to a question raised by the Commissioners. The relevant question and answer is set out in full below (from the document titled "VARIATION 1 TO PLWRP - QUESTIONS ARISING FROM SECTION 42A REPORT"):

**Page 202 -Para 11.297**

If we delete the allocation for community sewage schemes and industrial and trade processes, wouldn't CRC still need to account for those losses in term of the overall catchment load limit? Namely what is gained by the recommended deletion that outweighs the loss of specificity?

*There are both positives and negatives with respect to the recommended provisions. The removal of the load limit for industrial and community discharges is certainly a reduction in specificity. However, it is only a very small fraction of the total nitrogen being discharged in the catchment.*

*The suggested provisions enable existing discharges to be managed in accordance with their existing consents and best practicable option, and the growth in any industrial or community discharges effectively needs to be offset by reduction in farming discharges from the relevant land.*

*It is also acknowledged that there are issues with measurements and estimation of the nitrogen component of the existing industrial and community discharges and a number of submissions have been lodged opposing these provisions.*

- 18 With respect, Fonterra is not clear as to whether the Officer has actually addressed the question that has been put by the Hearing Panel. Although the Officer's comments are correct in the specific context of deleting reference to community [sewage] systems and industrial or trade processes in the specific context of Table 11(i), in Fonterra's view the amendments recommended by the Officer (and expanded on by Fonterra) do **not** prevent those loads being considered when assessing any wider catchment load.
- 19 In particular:
- 19.1 the Regional Council will have knowledge of the resource consent held in relation to industrial and trade process

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<sup>16</sup> And in particular, in the evidence of **Ms Sharon Dines**

activities (noting the requirement under Variation 1 for those consents to also include N discharge limits);

- 19.2 In terms of the above, the proposed approach has a 'reference date' re activities established prior to 13 February 2014 (the N load for which, at least post Variation 1, should be able to be assessed with a high degree of certainty)<sup>17</sup> - or to put that another way, the existing discharges form part of the existing environment for the purposes of Variation 1; and
- 19.3 future expansion will take place by way of 'taking over' existing farming load (so no actual increase will occur).
- 20 Overall, the fact that industrial and trade process activities might be able to occur as a permitted activity (without reference to a Table 11(i) limit) does not in any way assume those matters 'cannot be counted' calculating any total catchment load. There are already various permitted activities (and natural processes) that need to be assumed when considering the existing environment and when calculating any catchment load.

**Best practicable option versus good management practice**

- 21 Policy 11.4.10 as notified requires any person discharging wastewater, liquid waste or sludge from an industrial or trade process to adopt the "*best practicable option*" to manage the treatment and discharge. The phrase is also referred to in Rule 11.5.22.
- 22 On the basis of **Rob Potts** evidence, Fonterra seeks to replace the term "*best practicable option*" with "*good management practice*" - principally on the basis that there are number of broad and subjective considerations that might go into defining what "*best practicable option*" is - not of all of which, for example, accord with reduced N leaching. The use of "*best practicable option*" also implies that only one 'solution' is available when in reality a number of options might be appropriate.
- 23 It is accepted that best practicable option is defined in the Resource Management Act 1991 (*RMA*) on the basis that:

**Best practicable option**, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

- (a) The nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and

<sup>17</sup> Noting that there have been some errors with respect to the calculation of the limits in Table 11(i), such as that relating to the Fonterra N load that has been identified in its submission.

- (b) The financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) The current state of technical knowledge and the likelihood that the option can be successfully applied:

- 24 However, in this instance it is submitted that the starting point is to look at policy 11.4.10 in the context of Variation 1 – which, in semi-analogous circumstances, uses ‘good management practice’<sup>18</sup>, in the context of policy 11.4.13 and to a lesser extent includes, for example, matters which might be consistent with good management practice more generally in Schedule 24.
- 25 Obviously it would be desirable for the final provisions of Variation 1 to avoid internal consistency between the approach to discharges from industrial and trade premises under policy 11.4.10 and discharges from farming activities under policy 11.4.13 (with different standards applying to each).
- 26 On similar basis, it would be desirable to avoid the sometimes rather complex<sup>19</sup> considerations that go into determining ‘best practical option’ considerations have been met when considering the objectives and policies of the plan.
- 27 Section 70(2) of the RMA clearly allows the Hearing Panel to consider “*other alternatives*” for the purposes of achieving the “*most efficient and effective means of preventing or minimising ... adverse effects on the environment*” – again consistent with the use of ‘good management practice’. Best practicable option might again become relevant when imposing conditions,<sup>20</sup> but for the reasons stated it appears that “*good management practice*” is the better approach in the context of the objectives and policies of the plan.<sup>21</sup>

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<sup>18</sup> Relating to ‘*Good Management Practice Nitrogen and Phosphorous Loss Rates*’ – which are yet to be defined.

<sup>19</sup> See for example the line of case law extending from *Auckland Kart Club Inc v Auckland City Council* (Unreported, A124/92, Planning Tribunal at Auckland, 22 October 1992, Kenderdine J).

<sup>20</sup> Section 108(2)(e).

<sup>21</sup> Noting that “*best practicable option*” can only in very limited circumstances be the subject of a declaration or enforcement order – sections 311(2) and 316(5), limiting its ‘usefulness’ in planning regime.



### CONCLUSION

- 28 The Darfield processing plant is a matter of local, regional and national importance.
- 29 The notified version of Variation 1 was intended to accommodate both the continued existence and possible expansion of the Darfield processing plant.
- 30 The Officer has recommended a number of further amendments which have been expanded on by Fonterra. Fonterra considers its sought amendments (being those based on the Officers 'version') will be effective in terms of achieving the wider outcomes envisaged by Variation 1.

### EVIDENCE BEING CALLED

- 31 Fonterra (in its processing capacity), is calling evidence from the following witnesses:
- 31.1 **Mr Ian Goldschmidt** – company and overview of operations;
- 31.2 **Mr Mike Copeland** – economics;
- 31.3 **Mr Rob Potts** – nutrient management;
- 31.4 **Mr Peter Callander** – groundwater/allocation; and
- 31.5 **Ms Sharon Dines** – planning.

Dated: 1 October 2014



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Ben Williams  
Counsel for **Fonterra Co-operative  
Group Limited**

Tabled at Hearing 01/10/14

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER**

Variation 1 to the Land and Water  
Regional Plan

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**STATEMENT OF NEIL BETTERIDGE ON BEHALF OF SYNLAIT MILK LIMITED**

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closely with their milk supplies to ensure that a best practice environmental approach is taken on farm and to ensure high environmental standards are maintained. On average milk supply farms are located 43km from the Synlait plant to ensure total integrity and traceability of supply. This focus on quality has enabled Synlait to build trust with customers in our supply chain.

10. Synlait Milk appreciates the opportunity to provide feedback on Variation 1.

### **SYNLAIT'S ROLE IN THE DAIRY PROCESSING ENVIRONMENT**

11. While I have outlined very briefly some of the on-farm programmes that Synlait use to incentivise its suppliers to improve and manage their on-farm environmental management and the quality of their milk supply, Synlait remains a processor of milk delivered from the farm gate to its Dunsandel processing facility. The trends, which this plan is encouraging, is for better, more efficient use of the available water resource and the control of nutrient management – but the plan is definitely not placing a limit on dairying growth.
12. As the nutrient environment is strengthened under the plan, the response that I am seeing is that the farming community is taking on board the need for further controls and the need to demonstrate better management and compliance to ECan.
13. At one end of the spectrum, this is satisfied by simply better management, Overseer is run, fertiliser applications are monitored, waterways are fenced and controlled.
14. At the other end of the spectrum, farmers are constructing feed pads/wintering barns and wintering cows off farm to ensure that the dairy farm meets nutrient management targets. The point I am making is that, from the processor's perspective, there does not appear to be any slow-down in the quantity of milk being delivered to our Dunsandel premises.
15. Add to that the development of new irrigation schemes and the piping of previously inefficient schemes in our region, and the prognosis that we have reached is that forecast supply will increase dramatically.
16. While farmers have room to manage their nutrient allocations, Synlait's plant is modern and already developed to latest available technology. Our "room to move" is very limited – and accordingly any suggestion in the plan that the

osmosis prior to use in the milk plant to ensure it meets strict food safety requirements.

22. Two wastewater streams are generated by the plant. Clean process water is condensate evaporated from milk and water used in cooling processes. It is sufficiently clean to be discharged to land without additional treatment. Water used in other processes is treated via the Dissolved Air Flotation (DAF) plant, which separates out milk solids to form the treated wastewater stream, which contains some milk residue and traces of nitric acid, caustic soda and dairy sanitizers.
23. The solids separated from treated wastewater in the DAF process form a sludge. Synlait holds a consent to spread DAF sludge to land, however, we largely provide it to pig farms as stock feed, using the consent as a secondary disposal method.
24. Both clean process water and treated wastewater are irrigated onto the Dunsandel Dairies farm via centre pivots, subject to consent conditions including application rate, nitrogen loading and return periods. As demonstrated in the evidence of Hilary Lough, the volume of water returned to the catchment is greater than that abstracted for use.
25. Clean process water is also used for other functions around the site where possible, including flushing centre pivots, rinsing milk tankers and watering lawns and trees.
26. Our wastewater system is highly automated, controlled and closely monitored. It has been subject to on-going refinement since operations began in 2008, ranging from implementing an alert system to track compliance to construction of a feed pad on Dunsandel Dairies, providing a facility to stand cows off the paddock during wet periods. Synlait is committed to a culture of continual improvement and we continue to invest in our wastewater system.
27. Even though our business is seasonal to some extent, the pattern of water use does not mirror irrigation demand. The first and most obvious issue is that water requirements are not weather dependent. Management of waste water streams, during high rainfall events, when we are producing more water than we take, is one of the most critical issues for the plant to deal with.

for irrigation to being non-consumptively used through the plant. Given this, it doesn't seem reasonable to apply a surrender requirement designed to reduce over-allocation to non-consumptive uses. In our legal submissions we propose amendments to provide for non-consumptive water uses.

### **Waste Water**

36. Synlait largely support the ECan officer's recommended provisions for discharge of industrial wastewater. We appreciate that the importance of providing for future growth has been recognised and that some of our submission points on practically achieving this have been taken on board. We do propose minor amendments intended to provide flexibility in managing our operations within agreed nitrogen loss limits.
37. As for water use, Synlait's planned future development is reliant on being able to discharge wastewater to new areas of land. We acknowledge the need for controls on nitrogen loss. Our proposed amendments provide a mechanism to enable development without causing any increase in nitrogen load to the catchment.
38. We support the ECan recommendation that new wastewater discharges are limited to the lawfully permissible nitrogen loss of the property it goes onto. However, it is impractical for wastewater discharges to be subject to further reductions as required by Variation 1 as it stands. Once the plant is established the volume and quality of wastewater it produces is set and cannot realistically be reduced to meet reduced nitrogen loss limits.
39. The legal submissions have put forward a new proposed rule to allow for a new industrial and trade waste enterprise approach. This is the industrial equivalent to the farming enterprise provided for in Variation 1 and would provide Synlait flexibility to optimise wastewater disposal over multiple blocks, while achieving the required nitrogen loss limits.

### **CONCLUSION**

40. Synlait support the intent of the plan and consider it largely strikes a reasonable balance between achieving the freshwater objectives and enabling future industrial growth.