Before the Independent Commissioners


And

In the Matter of: the hearing of submissions and further submissions on Variation 1 to the Proposed Canterbury Land and Water Regional Plan (Selwyn-Te Waihora) (Variation 1)

Memorandum of Counsel for ANZCO Foods Limited (Submitter ID 52274)

Dated: 8 October 2014
Introduction

1. The purpose of this Memorandum is to address the following three matters raised by Commissioner van Voorthuysen at the Variation 1 hearing on 30 September 2014:

   (a) Clarification of ANZCO Foods Limited's (ANZCO) position as to the Reporting Officer’s recommendations on Policies 11.4.6 and 11.4.8 of Variation 1;

   (b) Whether the amendments to Policy 11.4.22 and Rule 11.5.37 proposed in the evidence of Ms Sharon Dines on behalf of Fonterra Co-operative Group Limited (Fonterra) would address ANZCO’s concerns about water permit transfers; and

   (c) Whether the concerns raised in ANZCO’s submission on Policy 11.4.23 and Rule 11.5.32 would be more fully addressed through specific guidance being provided in Variation 1 for water takes for non-irrigation purposes.

2. ANZCO’s position in respect of these matters is set out below.

Reporting Officer’s Recommendations on Policies 11.4.6 and 11.4.8

3. ANZCO understands that the Reporting Officer has recommended the retention of Policy 11.4.6 and the deletion of Policy 11.4.8. These recommendations form part of a package of amendments to the provisions in Variation 1 concerning discharges from community sewage systems and industrial and trade processes, in response to submissions by various parties (including ANZCO).

4. ANZCO supports the Reporting Officer’s recommendations on Policy 11.4.6 and Policy 11.4.8, provided that the Reporting Officer’s

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1 It is noted that no specific recommendation on Policy 11.4.6 (including in respect of ANZCO’s submission point V1pLWRRP-1476) appears to have been made by the Reporting Officer in the Section 42A Report. It is therefore assumed by ANZCO that the Reporting Officer recommends that this Policy be retained.

2 Section 42A Report, page 204.
recommendation to delete the nitrogen limit for industrial and trade processes from Table 11(i) is adopted.

5. However, should the Hearings Committee determine that the more desirable position is to retain a nitrogen limit for industrial and trade process discharges in Table 11(i), ANZCO maintains the position as expressed in its original submission on Policy 11.4.6. That is, that Policy 11.4.6 should be deleted given the inherent difficulties with the methodology adopted by the Canterbury Regional Council in estimating the 106 T/year limit, as explained in the evidence presented to the Hearings Committee by ANZCO's expert witnesses, Mr Douglass and Mr Ensor.

6. For completeness, is it noted that the Section 42A Report appears to incorrectly record the nature of the decisions sought in ANZCO's submission in relation to the Variation 1 policies concerning nitrogen limits. In relation to that matter, the Section 42A Report states:

"ANZCO and CMP request Policies 11.4.7, 11.4.8 and 11.4.10 be deleted."

7. However, ANZCO's submission sought decisions in respect of Policies 11.4.6 and 11.4.10 only.

Water Permit Transfers - Fonterra's Proposed Amendments to Policy 11.4.22 and Rule 11.5.37

8. Under Variation 1 as notified, Rule 11.5.37 provides for the temporary or permanent transfer of water permits as a restricted discretionary activity subject to compliance with various conditions. Condition 4 requires 50% of the volume allocated under a water permit to be surrendered on transfer. This aspect of Rule 11.5.37 is supported by Policy 11.4.22(c).

9. The Reporting Officer has recommended that Policy 11.4.22(c) and Rule 11.5.37(4) be retained as notified.

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3 Submission ID V1pLWRP-1476.
5 Submission ID V1pLWRP-1476.
6 Submission ID V1pLWRP-1477.
10. Fonterra’s planning witness, Ms Dines, has proposed amendments to Policy 11.4.22 and Rule 11.5.37 to enable an exclusion to this requirement where the transfer is a water take for an industrial activity and results in a neutral or positive water balance when considered in conjunction with other activities on the site to which the water is transferred.\(^8\)

11. Unfortunately, Ms Dine’s proposed amendments would provide no benefit to ANZCO (or livestock processors generally) as unlike milk processing operations, livestock processing operations do not create a neutral or positive water balance.

12. On that basis, ANZCO’s position on the surrender requirement proposed under Policy 11.4.22(c) and Rule 11.5.37(4) remains as expressed in its original submission and the evidence of ANZCO’s planner, Mr Ensor. That is, that Policy 11.4.22(c) and Rule 11.5.37(4) be amended so as to:

(a) delete the requirement that 50% of groundwater transferred be surrendered; and

(b) instead enable a case by case assessment of the proportion of groundwater to be surrendered, consistent with the approach taken under Rule 5.133 of the Proposed Canterbury Land and Water Plan.

13. The specific amendments sought by ANZCO in respect of these provisions are set out on page 3 of Annexure A to Counsel’s legal submissions, which were presented to the Hearings Committee on 30 September 2014.

**Reallocation of water – Policy 11.4.23 and Rule 11.5.32**

14. ANZCO’s submission raised concerns about the requirement under the notified version of Policy 11.4.23 that takes for irrigation would only be reallocated to exiting resource consent holders (on consent renewal) at a rate and volume that reflects “demonstrated use”.\(^9\) ANZCO was concerned that this did not reflect the realities of industrial users, particularly livestock

\(^7\) Section 42A Report, pages 310 and 320.
\(^8\) Set out at paragraphs 46 to 47 in Ms Dine’s Statement of Evidence (dated 29 August 2014).
\(^9\) Submission ID V1pLWRP-1493.
processors who must secure water ahead of demand. It raised a similar concern about Rule 11.5.32.10

15. The Reporting Officer has recommended various amendments to address issues raised by submitters on Policy 11.4.23 and Rule 11.5.32, which ANZCO supports.

16. However, at the hearing on 30 September 2014, Commissioner van Voorthuysen asked whether the concerns raised in ANZCO’s submission would be more fully addressed by further amendments that provide guidance for non-irrigation water takes.

17. ANZCO agrees with the Commissioner that further guidance of this nature would be helpful, and would more fully address the concerns raised in its submission.

18. ANZCO’s planning witness, Mr Enson, has given some further thought to the Commissioner’s suggestion and considers that guidance could be provided by the following (or similar) amendments.11

(a) Policy 11.4.23:

"Only reallocate water to existing resource consent holders at a rate and volume\textsuperscript{3} in the case of irrigation takes that reflects demonstrated reasonable use as calculated in accordance with Schedule 10 to provide a volume required to meet demand conditions in eight and a half out of ten years for a system with an application efficiency of 80% and in the case of takes for industrial activities, that is reasonably necessary to meet the existing water requirements for the activity and projected demand."

\textsuperscript{10} Submission ID V1pLWRP-1486.
\textsuperscript{11} Note: Variation 1 text is shown in black; amendments recommended in the Section 42A Report are shown in black text and tracked changes (additions shown in underline and deletions shown in strikethrough), with Mr Enson’s further amendments shown in bold text and tracked changes (additions shown in underline and deletions shown in strikethrough) and grey shading.
(b) Rule 11.5.32:

"The taking and use of surface water from a river, lake or wetland or groundwater within the Selwyn Waihora catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity, provided the following conditions are met:

...

6A For the renewal of existing takes for industrial activities, the annual volume and rate of take is reasonably necessary to meet the existing water requirements for the activity and projected demand.

..."

Concluding Comment

19. Counsel wishes to thank that Hearings Committee for allowing ANZCO to provide clarification as to its position on these matters.

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8 October 2014