In the matter of the Resource Management Act 1991

And

In the matter Variation 1 to the Land and Water Regional Plan

MEMORANDUM OF THE COMMISSIONERS ON BEHALF OF SYNLAIT MILK LIMITED

10 October 2014

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INTRODUCTION

1 During the Variation 1 hearing on 1 October 2014 the Commissioners requested further information arising out of the case presented on behalf of Synlait Milk Limited ("Synlait"), in particular:

1.1 A proposed definition of "Good Management Practice". This arises out of the request by Synlait to replace "Best Practicable Option" with "Good Management Practice" in Rule 11.5.25.

1.2 Revised wording for Rule 11.5.25(2)(b) as proposed by Synlait, so that the rule better reflects the proposed 'unders and overs' concept for nutrient loss management over the area covered by the new enterprise rule.

1.3 Wording for a proposed new policy relating to non consumptive takes. The context for this is that Policy 11.4.30 relates to applications by existing consent holders which have a high depletion effect. The policy enables those takes to be replaced with takes from deep groundwater. Synlait sought a new third clause be added to this policy to enable existing resource consent holders to take groundwater where the water use is non consumptive. The section 42A report did not support this change on the basis that this policy is directed at existing stream depleting takes, so as an alternative Synlait suggested the introduction of a new policy to enable non consumptive takes.

2 These matters are addressed below.

DEFINITION OF "GOOD MANAGEMENT PRACTICE"

3 Synlait suggest the following definition:

> *Good Management Practice in relation to industrial wastewater discharge, means the treatment and discharge of wastewater is undertaken in a manner consistent with industry good practices, in order to minimise environmental impacts of the discharge, including the loss of nutrients to groundwater.*

4 It is considered that the key advantage of this over "*best practicable option*" is that it leaves open a range of possible methods for achieving Good Management Practice which can be tailored to the specific circumstances and the particular site. In comparison "best practicable option" implies that there is only one option available.

5 We note that during the hearing reference was made by the Panel to the fact that a previous submitter had referred to a water use audit consent condition as an example of Good Management Practice. Synlait consents contain audit requirements and Synlait supports the audit requirement as a means of verifying compliance with Good Management Practice.

6 It is appropriate for consents to include such conditions relating to maximising water use efficiency. However at present, there are no equivalent appropriate guidelines for industrial wastewater treatment and discharge that could be specified. In the future, if such guidance were to be developed, then this could be incorporated into consent conditions or used to guide the consenting process.

REVISED WORDING FOR RULE 11.5.25(2)(B)

7 Synlait propose the following revisions to rule 11.5.25(2):

2. Where the nitrogen loss from the discharge is the same or less than the lawfully permissible nitrogen loss from the farming activity that is replaced.

3. Notwithstanding Condition 2, the lawfully permissible nitrogen loss from the farming activity replaced may be exceeded on an "unders and overs" basis provided the total nitrogen loss from all properties contained in an Industrial and Trade Process Enterprise is the same or less than the combined nitrogen loss authorised by resource consents and the lawfully permissible nitrogen loss from the farming activity that is replaced.

For the purposes of this rule "Industrial and Trade Process 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 managing the discharge of wastewater, liquid waste, or sludge waste from an industrial or trade process located within the Selwyn Waihora Catchment.

8 The basis of the rule would ensure that:

8.1 Notwithstanding forecast growth Synlait accepts that a "line in the sand" is drawn with respect to the existing baseline for all properties on which it manages wastewater flows and discharges.

8.2 On the basis that the evidence is of an expanding industry, this will ensure that no further deterioration in groundwater quality will occur.

WORDING FOR POLICY ON NON CONSUMPTIVE TAKES

9 Synlait proposes the following new policy:

> *Enable new groundwater takes where the take, use and subsequent discharge results in a neutral or positive water balance.*

10 This would include for example a land based water disposal system.

OTHER MATTERS

11 During the hearing Synlait proposed changes to the provisions relating to transfers in order to cater for non consumptive takes. The additional wording proposed to the provisions was based on that proposed by Fonterra and was as follows:

> *the water take is or will, following transfer, be for an industrial activity and, when considered in conjunction with other activities on the site to which the water is transferred, results in a neutral or positive water balance.*

12 There is a potential issue with the reference to the take being considered in conjunction with other activities on "the site" (given the narrow definition of "site" in the proposed Land and Water Regional Plan).

13 As set out in the evidence of Ms Lough presented on behalf of Synlait, the volume of treated and clean wastewater produced from the Synlait processing site exceeds the volume of groundwater abstracted. The use of that water at the Synlait Plant is therefore non consumptive. However that water is returned to the aquifer when it is discharged to land, which currently occurs over the DD1 and/or DD2 properties shown in Figure 1 attached to Ms

Lough's evidence. This is a separate "site" to the processing plant (but it involves the same aquifer).

14 In order to provide further certainty that this would fall within the proposed transfer provisions relating to non consumptive takes, Synlait propose that a minor amendment be made to the wording set out at paragraph 11 above as follows:

> *the water take is or will, following transfer, be for an industrial activity and, when considered in conjunction with other activities on the site to which the water is transferred, results in a neutral or positive water balance (following discharge, either on that site or another site).*

15 This amended wording affects the following provisions:

15.1 Policy 11.4.22 (paragraph 86 of legal submissions presented on behalf of Synlait);

15.2 Rule 11.5.37, condition 4 (paragraph 88 of legal submissions);

15.3 Rule 11.5.38 (paragraph 90 of legal submissions).

Dated 10 October 2014

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