

Tabled at Hearing 17/10/14

in the matter of: the Resource Management Act 1991

and: submissions and further submissions in relation to proposed variation 1 to the proposed Canterbury Land and Water Regional Plan

and: **Dairy Holdings Limited**
Submitter

Summary of submissions by counsel for Dairy Holdings Limited

Dated: 17 October 2014

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SUMMARY OF SUBMISSIONS ON BEHALF OF COUNSEL FOR DAIRY HOLDINGS LIMITED

Introduction

- 1 These submissions are provided on behalf of Dairy Holdings Limited (*DHL*).
 - 2 *DHL* is a submitter and further submitter in respect of proposed Variation 1 (*Variation 1*) to the proposed Canterbury Land & Water Regional Plan (*pLWRP*). It is also the entity¹ with the largest farming interest in the Selwyn Waihora zone - comprising 22 farming properties (dairy and dairy support) over an area of 6,186 hectares.
 - 3 Following incorporation, the company has been very progressive in terms of both growing its interests in the Selwyn Waihora zone and upgrading its irrigation systems to comply with what it considers to be good management practice (i.e. high efficiency spray irrigation systems with a strong emphasis on replacing deep groundwater with surface water sources).
 - 4 A map showing *DHL*'s current properties along with a further map showing the general groundwater direction are included in **Annexure 1**.
 - 5 These submissions briefly address:
 - 5.1 *DHL*'s position on the proposed good management/reduction regime (as is mainly relevant to policies 11.4.13 and 11.4.14); and
 - 5.2 The importance of the farm enterprise regime.
 - 6 In taking this approach it is noted that *DHL* has worked closely with Fonterra Co-operative Group Limited and DairyNZ in terms of its submission and evidence on good management and reductions – *DHL*'s own presentation (and wider relief sought) should be informed by that earlier material.
- Good management and reductions**
- 7 As noted previously,² **Mr Glass'** evidence brings together (and expands on) the large number of the farm system/ mitigation issues that have been addressed in the evidence of various experts that have provided evidence to the wider hearing process.

¹ Noting that its farming interests are held by wholly owned subsidiary entities.

² Summary of submissions on behalf of Fonterra Co-operative Group Limited and Dairy NZ, 15 October 2014, para 38.

- 8 Although provided as a non-expert brief, **Mr Glass** has considerable experience and knowledge in terms of the dairy industry and dairy farming – and it is submitted that weight can be placed on his evidence in terms of informing the Hearing Panel’s wider recommendation process in terms of Variation 1.
- 9 In regard to this legal submission, DHL simply adopts paragraphs 15 to 25 of the *Summary of submissions on behalf of Fonterra Co-operative Group Limited and Dairy NZ*,³ in short to the effect that:
- 9.1 DHL is fully supportive of ‘good management practice’ but considers it inappropriate to include a requirement to comply with a formal regime when, with the greatest of respect, no one really has any idea what that future *formal* regime might entail; and
- 9.2 The likely need for further N-loss reductions over time is acknowledged (noting the suggested 14% reduction set out elsewhere in evidence), but at this point in time DHL, like a number of other submitters, does not have confidence that there is sufficient information available to determine how any such reduction regime might be applied at an individual property level.
- 10 DHL therefore supports the need for a further plan change (after that which will presumably occur anyway by virtue of Policy 4.11 of pLWRP). By that time it is submitted that all parties will be able to place a much greater level of confidence (as well as being properly able to understand the costs and benefits) of what might then be proposed in terms of any further reduction regime.

Farm enterprise regime

Background

- 11 As far as DHL is aware, it is the only entity in Selwyn Waihora Zone that holds a formal resource consent for the purposes of what is in effect a farming enterprise regime – this is the ‘nutrient management group consent’ that is discussed in the evidence of both **Mr Glass** and **Mr Callander**.
- 12 DHL has effectively pre-empted the core aspects of the farming enterprise regime introduced by Variation 1 – and in this regard, the continuation of the farm enterprise regime will be critical to DHL’s ongoing operations. It is very concerned to ensure that an effective and workable farm enterprise regime continues in the context of Variation 1.

³ Dated 15 October 2014.

13 DHL's existing resource consent (as well as any further consent that might be obtained pursuant to Variation 1) will be a critical component in:

13.1 The conversion of DHL's remaining borderdyke properties to spray (noting that the significant cost of converting can be offset somewhat by the provision of both water⁴ and N-loss across a wider area); and

13.2 The integrated management of N-loss more generally by DHL.

14 The following points are emphasised:

14.1 The DHL consent (described as being "to use land for farming and to use water") is based around "Nutrient Management Group-CRC143288". This currently includes all of DHL's Selwyn Waihora properties but can also be extended in the future (up to 10,000 hectares) to include either DHL land or any other third-party owned/controlled land where those property owners wish to 'pool' and manage their N-loss together. In this regard it is noted that the definition of "farming enterprise" in the pLWRP appears to be generally consistent with the DHL nutrient management group:

| | |
|---------------------------|--|
| 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 |
|---------------------------|--|

14.2 Against the above, it appears there is still some uncertainty/confusion as to exactly how effective the regime actually is within the Variation 1 framework.⁵ Initial concerns were also raised by DHL (and other submitters) with regard to the extent to which third party land could actually form part of a farming enterprise – however, having considered the various submissions and evidence, DHL is comfortable with the definition of "farming enterprise" included within the pLWRP and the main issue is instead its application in the Variation 1 framework; and

14.3 In terms of any future reduction regime, DHL considers it essential that reductions can be applied at the farm enterprise level and not the individual property level. This is the key

⁴ Noting DHL also has a water users group between all of its surface and groundwater irrigated properties.

⁵ See for example, the evidence of Peter Callander and Colin Glass, as well as the evidence of Vance Hodgson, HortNZ, para 8.1-8.3.

matter that DHL submits needs to be amended within the proposed farming enterprise and wider Variation 1 framework. The importance of this is best illustrated by reference to the alternative (i.e. within which properties would need to apply any reduction regime on the basis of their 'pre-farm enterprise' baseline land use). This alternative regime would, in particular, be:

- (a) very onerous for properties within the farming enterprise that had increased their N-loss as a result of the farming enterprise (e.g. a property that was previously dryland but which was now irrigated would need to be taken as dryland for the purposes of any reduction regime – despite very significant capital expenditure having been accrued in converting the property to irrigation); and
- (b) it would potentially be totally ineffective in terms of properties that had already undertaken efficiency improvements for the purpose of *inter alia* providing surplus N to properties such as those described in paragraph 14.3(a) above.

15 In terms of the relief sought, DHL is conscious that **Mr Callander** addresses a couple of options in his evidence (and a number of suggestions have also been put forward by Horticulture New Zealand against which DHL is a further submitter). Rather than complicate the Hearing Panel with yet another set of detailed relief, DHL simply notes it in particular supports:

15.1 Expanding the definition of *Baseline Land use* to include the words "*or farming enterprise*" (or otherwise ensuring the wider rule/policy regime is capable of fully assessing and managing N-loss at the farm enterprise level);⁶ and

15.2 amending Policy 11.14.14 by adding the words "*farming activities or farming enterprises to...*" in line 1 and "*Where a property or farming enterprise's nitrogen... loss*" in 11.4.14(b).⁷

16 In addition to the above, it is noted that were Policy 11.4.13 to be retained some complication may arise through the need to apply the currently unknown "*Good Management Practice Nitrogen or Phosphorous Loss Rates for the **property's baseline landuse***" (emphasis added). It is DHL's submission that in a farm enterprise

⁶ See, for comparison the approach of Rule 5.46 of pLWRP.

⁷ Noting that these amendments would be in addition to those set out in the evidence of Fonterra and DairyNZ regarding, for example the indicated 14% reduction and the suggested 11.7A – which are also supported by DHL.

context (or for that matter, any context) good management practice should be applied according to the actual/current landuse rather than what it might have been doing in the period 2009-13.

- 17 It is also further submitted that provision also needs to be made for ensuring that on the exit of a property from a farm enterprise consent it either keeps its increased N-loss allowance **or** has to continue to comply with its lower (i.e. less than the baseline land use) allowance (as the wider farming enterprise might determine, while at all times ensuring the total N-loss allowance for the farm enterprise as [previously] constructed is not exceeded).
- 18 Having such a property revert back to its baseline land use would be problematic for the same reasons discussed above.

Interface with Central Plains

- 19 As noted in **Mr Glass'** evidence, DHL has six properties that fall within the Central Plains Scheme area and either directly or indirectly will have some interface with the Scheme. These same properties also form part of DHL's existing farming enterprise/nutrient management group consent.
- 20 The properties include:
- 20.1 Three properties that are currently supplied water that is distributed by the Glenroy Community Irrigation Scheme (a small irrigation scheme entity with intakes taking water from the Rakaia River at Te Pirita) (the *Glenroy Scheme*). Under the agreement reached, the Glenroy Scheme is to retain its irrigation take and use consents but the water will be supplied to the Glenroy Scheme from the Central Plains main canal under contract (i.e. Central Plains' infrastructure be used for conveyance with no role in terms of either the take or use of water); and
- 20.2 The three other DHL farms will become Central Plains shareholders following the transfer of an irrigation take consent to Central Plains. However, this may also still effectively be a conveyance arrangement with DHL having the right to use the Central Plains use consent **or** to continue to use water under their existing DHL use consents (again emphasising that the agreement includes the transfer of an existing surface water consent to Central Plains with DHL having rights, in addition to other shareholders, in respect of the water transferred).
- 21 It is of course accepted that at all times water is being taken and used by DHL under the Central Plains use consent(s), DHL would comply with the Central Plains use consent(s). However, if water is both taken and used under consents that do not form part of the

definition of Central Plains Scheme (as defined in Variation 1) – i.e. with the water only being conveyed through Central Plains' infrastructure, then it is submitted that it would be unreasonable for N-loss to be managed at anything other than the individual property level.

- 22 DHL therefore strongly supports Central Plains' sought relief which would be to allow existing irrigation to be managed (in terms of *N-loss*) according to its own individual reduction regime (as might apply – including any farm enterprise regime that might affect those properties).
- 23 If the Hearing Panel does not accept that sought relief (or if it is otherwise considered appropriate to join 'existing' and 'new' together), then DHL respectfully submits that continuing provision needs to be made for the continuation (and formation) of farming enterprises both wholly within and partially within the Central Plains Scheme.
- 24 In terms of 'counting' the total N-loss from the Central Plains Scheme it is however noted that in such circumstances it would be necessary to ensure that compliance (for Central Plains) under Table 11(j) is still assessed according to the individual property baseline land use as if the farming enterprise consent did not exist. This would ensure that the Scheme load remained constant (and avoid potential double or under-counting at a catchment level).

Dated 17 October 2014

Ben Williams
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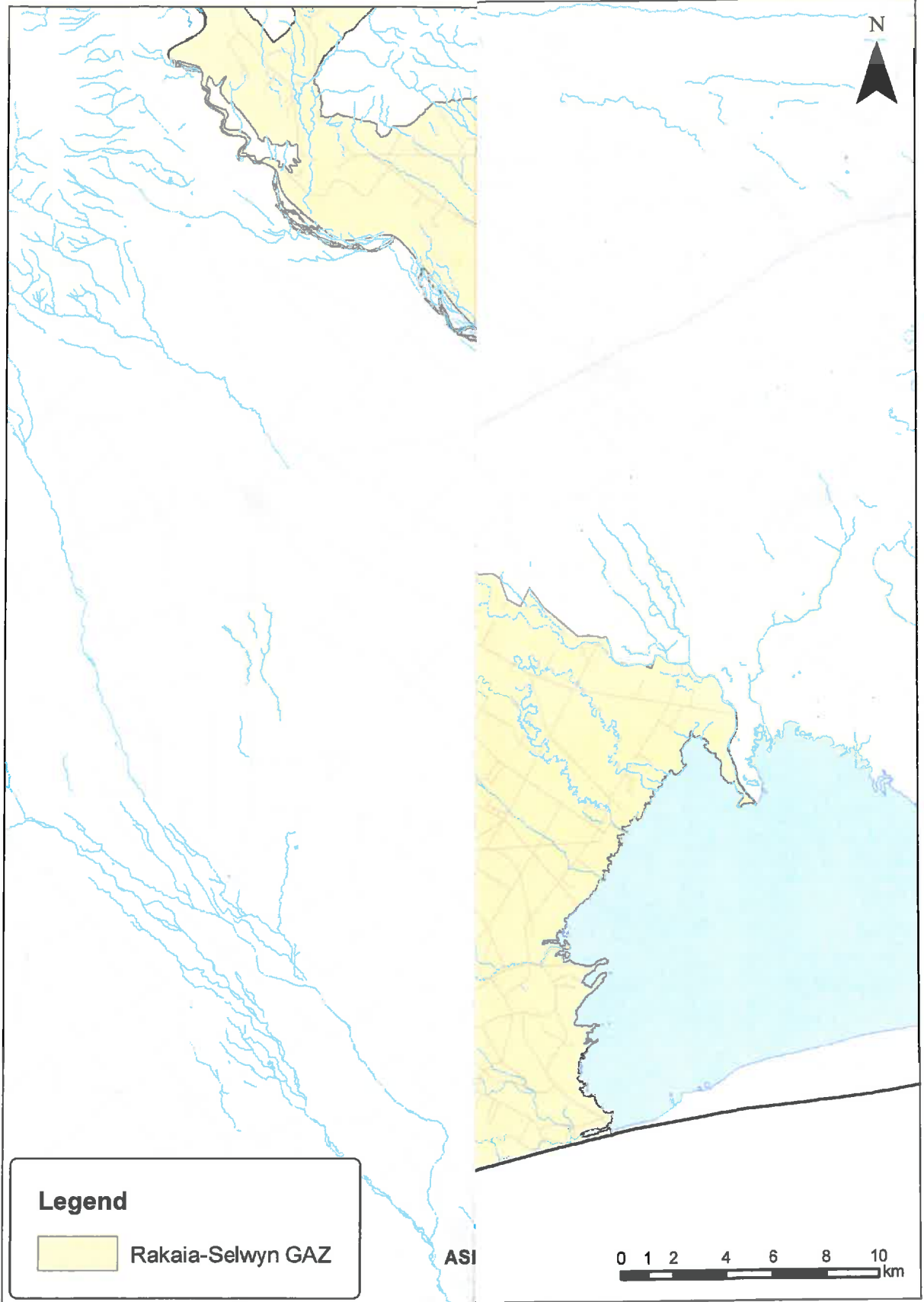


FIGURE ONE

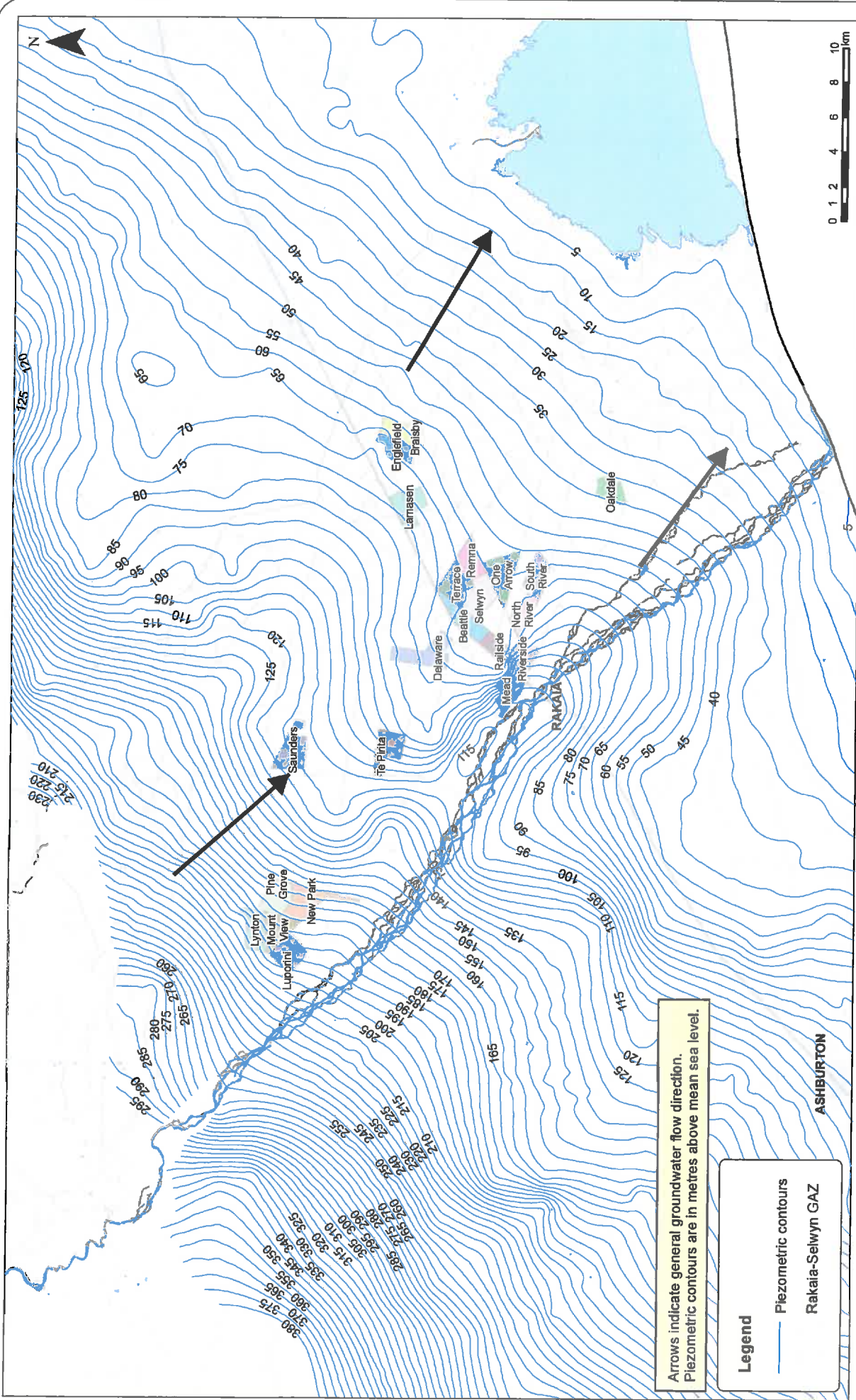


FIGURE 2: PIEZOMETRIC CONTOURS AND GROUNDWATER FLOW DIRECTION