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

and: **DairyNZ**
Submitter

Memorandum of counsel for Fonterra Co-operative Group Limited and Dairy NZ (farming)

Dated: 18 November 2014

REFERENCE: JM Appleyard (jo.appleyard@chapmantripp.com)
BG Williams (ben.williams@chapmantripp.com)

Chapman Tripp
T: +64 3 353 4130
F: +64 3 365 4587

245 Blenheim Road
PO Box 2510, Christchurch 8140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch



MEMORANDUM OF COUNSEL FOR FONTERRA CO-OPERATIVE GROUP LIMITED AND DAIRY NZ (FARMING)

May it please the Hearing Panel:

Introduction

- 1 This memorandum of counsel is provided on behalf of Fonterra Co-operative Group Limited and Dairy NZ (*the Submitters*). It provides:
 - 1.1 a brief response to the question that was put forward by the Hearing Panel with regard to the status of a "*proposed National Policy Statement*"; and
 - 1.2 a brief note regarding the questions that were put to **Mr Gerard Willis**.
- 2 Each is addressed below.

National Policy Statement – status and formation

- 3 In footnote 8 to the legal submissions for the Submitters there was reference to the "*proposed NPSFM 2014*".
- 4 During questioning from the Hearing Panel it was noted that the formation of a National Policy Statement follows a different process than that which might apply for example to a Regional Policy Statement or a Regional Plan.
- 5 In terms of further clarification it is noted that:
 - 5.1 the process with regard to the formation of a National Policy Statement is set out in sections 40 to 55 of the RMA – and on the basis of those sections the correct reference to a National Policy Statement in the formation stage is still a "*proposed National Policy Statement*"; but
 - 5.2 only National Policy Statements that have been formed and issued under section 52 of the Resource Management Act 1991 (*RMA*) are relevant considerations when considering a Regional Plan – regard need not be had to a proposed National Policy Statement in terms of a statutory planning process.¹
- 6 Although the formal status of a proposed national policy statement is acknowledged, it submitted that reference in this instance to the proposed NPSFM 2014 (and the section 32 document that supported it) does still provide assistance to the Hearing Panel in the event of any uncertainty in terms of the extent to which:

¹ *Carter Holt Harvey Limited v Waikato Regional Council* [2011] NZEnvC 380, para [51].

- 6.1 the attribute states for "lakes" under the NPSFM 2014 are applicable to "[i]ntermittently closing and opening lagoons" (ICOL's); and
- 6.2 the extent to which Lake Ellesmere/Te Waihora is itself an ICOL.
- 7 Reference can also be made to the letter included in the evidence of Mr Willis (at his Attachment 2) which confirms the Ministry for the Environment's intended approach with respect to ICOLs (in simple terms, that the NPSFM 2014 attribute states for lakes were not intended to apply to ICOLs).
- 8 A number of witnesses² have also since confirmed their views that Lake Ellesmere/Te Waihora is an ICOL for the purposes of the NPSFM 2014.
- Questions put to Mr Willis**
- 9 Provided alongside this memorandum is a small supplementary statement from Mr Willis addressing three questions that were put to him during the presentation of his evidence.
- 10 Mr Willis would obviously be happy to expand or consider any further issues should the need arise.

Dated: 18 November 2014



BG Williams
Counsel for Fonterra Co-operative
Group Limited

² For example Ms Shirley Hayward (Fonterra/DairyNZ) and Dr Greg Ryder (CPW).