



**IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY**

File Ref: CIV-2016-409-000115

BETWEEN:

Barrhill Chertsey Irrigation Limited  
of Ashburton

**Appellant**

AND:

Canterbury Regional Council  
Christchurch

**Respondent**

AND:

Rangitata Diversion Race Management  
Limited

Combined Canterbury Provinces,  
Federated Farmers of New Zealand  
Incorporated

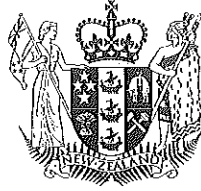
Fonterra Co-Operative Group Limited

Central South Island Fish & Game  
Council

**Associated Respondents**

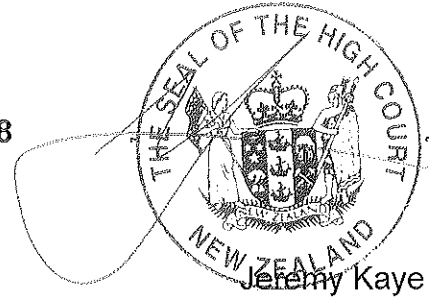
I, **Jeremy Kaye**, Deputy Registrar of the High Court of New Zealand at Christchurch  
**DO HEREBY CERTIFY** that upon hearing from Counsel on 19 March 2018 the  
Honourable Justice Mander **ON AN APPEAL** against a decision of the Canterbury  
Regional Council at Christchurch on 16 April 2018





**IT WAS ADJUDGED** that the appeal be Allowed and that the Respondent is to amend Plan Change 2 to the Canterbury Land and Water Regional Plan as set out in Appendix A.

**DATED at Christchurch High Court this 16 April 2018**



Jeremy Kaye  
**DEPUTY REGISTRAR**

To:  
B G William  
PAC Maw  
VJ Hamm  
CO Carranceja  
M Baker-Galloway  
B Mattheson  
R Gardner  
P Anderson

## APPENDIX A

### PROPOSED AMENDMENTS TO PLAN CHANGE 2 TO RESOLVE APPEALS

The unmodified text that the Parties seek by amended via consent order is shown below shows the 'decisions version' of Plan Change 2. Amendments are shown with insertions in underline and deletions in ~~strikethrough~~.

#### Policies

##### 13.4.12

By 2035, improve water quality in the Lower Hinds/Hekeao Plains Area to achieve the target nitrate toxicity limits set out in Table 13(j) for 'Hill-fed Lower' and 'Spring-fed Plains' surface waterbodies, and an annual average groundwater nitrate-nitrogen concentration of 6.9 mg/L by:

- (a) reducing the discharge of nitrogen from farming activities in fulfilment of Policy 13.4.13; and
- (b) implementing Managed Aquifer Recharge and Targeted Stream Augmentation.

##### 13.4.13

By 2035, farming activities and farming enterprises in the Lower Hinds/Hekeao Plains Area, whether or not they are supplied with water by an irrigation scheme or a principal water supplier, collectively achieve Policy 13.4.12 by:

- (a) requiring, from 1 January 2017, all existing farming activities to discharge no more nitrogen than the loss rate that could be reasonably expected from the implementation of good management practices, calculated on the baseline land use taking into account:
  - (i) The type of farming activity; and
  - (ii) The drainage characteristics of the soil; and
  - (iii) The climatic conditions and topography of the property; and
  - (iv) The type of irrigation system used (if any); and
  - (v) Whether the practices set out in Schedule 24a have been fully adopted; and
- (aa) subject to Policy 13.4.13(a), allowing farming activities that have a nitrogen loss calculation less than 15kgN per hectare per year at 1

September 2015 to increase their nitrogen losses up to but not exceeding 15kgN per hectare per year; and

(ab) subject to Policy 13.4.13(a), enabling farming activities that have a nitrogen loss calculation between 15kgN per hectare per year and 20kgN per hectare per year at 1 September 2015 to apply for resource consent to increase their nitrogen losses up to but not exceeding 20kgN per hectare per year; and

(b) requiring that if at 1 September 2015 a property's nitrogen loss calculation is greater than 20kgN per hectare per year, ~~there are further reductions in nitrogen loss over time (beyond any reductions resulting from Policy 13.4.13(a)) are applied to the nitrogen loss calculation that result in further reductions in nitrogen losses (relative to the property's 1 September 2015 nitrogen loss calculation) of not less than:~~

(i) 15% by 1 January 2025

(ii) 25% by 1 January 2030

(iii) 36% by 1 January 2035

provided that these ~~nitrogen loss~~ reductions do not require the property's nitrogen loss calculation to reduce below 20kgN per hectare per year; and

~~(ba) requiring for any land where a resource consent has been granted, between 1 January 2014 and 15 February 2016, to increase nitrogen losses beyond the nitrogen baseline, the nitrogen loss calculation to be limited to the lesser of that required by Policy 13.4.13(b) or 20kgN per hectare per year; and~~

~~(bb) subject to Policy 13.4.13(b), allowing irrigation of land with water from an irrigation scheme or principal water supplier, only if that land was not already being irrigated at 15 February 2016, and only if the irrigation is established under and prior to the expiry of resource consent CRC121664; and~~

(bb) requiring that the total aggregated nitrogen losses from properties where the nitrogen losses are managed by an irrigation scheme or principal water supplier be limited as follows:

(i) Land either:

- a. irrigated with water first lawfully supplied by an irrigation scheme or principal water supplier before the granting of CRC121664 or CRC162882; or
- b. not irrigated but where the nitrogen losses are accounted for under a resource consent held by an irrigation scheme or principal water supplier;

is subject to Policies 13.4.13(a) and 13.4.13(b) except if Policies 13.4.13(aa) or 13.4.13(ab) apply;

(ii) Land first irrigated with water lawfully supplied by an irrigation scheme or principal water supplier for irrigation authorised and established under and prior to the expiry of resource consent CRC121664 or CRC162882 is limited to a nitrogen loss calculation of 27kgN<sup>1</sup> per hectare per year;

(iii) Land otherwise irrigated with water supplied by an irrigation scheme or principal water supplier for irrigation is subject to Policies 13.4.13(a) and 13.4.13(b) except if Policies 13.4.13(aa) or 13.4.13(ab) apply.

- (ca) except as provided for by Policies 13.4.13(aa), (ab), (ba) and (bb), not allowing any land use intensification, changes in land use, or new irrigation that would increase the nitrogen loss above the land's nitrogen baseline until the average groundwater nitrogen concentration in the Lower Hinds/Hekeao Plains sub-region is below 6.9mg/L.

## Rules

### Irrigation schemes

*Rules 13.5.21, 13.5.22 and 13.5.23 prevail over Region-wide Rules 5.60, 5.61 and 5.62 in the Hinds/Hekeao Plains Area.*

#### **13.5.21**

Despite Rules 13.5.13 to 13.5.20, the use of land for a farming activity in the Lower Hinds/Hekeao Plains Area where the property is fully or partially irrigated with water from an irrigation scheme or principal water supplier and the irrigation scheme or principal water supplier:

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<sup>1</sup> Calculated using Overseer version 6.0.3.

- (a) holds a discharge permit that was granted under Rule 5.62 prior to 1 August 2014; or
  - (b) holds a resource consent that meets the conditions of Rule 5.61; or
  - (c) holds a discharge permit that has been granted under Rule 13.5.22
- is a permitted activity.

### 13.5.22

The discharge of nutrients onto or into land in circumstances that may result in a contaminant entering water in the Lower Hinds/Hekeao Plains Area that would otherwise contravene s15(1) of the RMA is a discretionary activity, provided the following conditions are met:

1. The applicant is an irrigation scheme or a principal water supplier, or the holder of the discharge permit will be an irrigation scheme or a principal water supplier; and
3. ~~The total area of the land irrigated with water from an irrigation scheme or principal water supplier:~~
  - (a) ~~does not exceed the area of land, supplied by that scheme or supplier prior to 1 January 2016; or~~
  - (b) ~~was authorised for irrigation under CRC121664 and the irrigation was established prior to the expiry of CRC121664.~~
2. The aggregated nitrogen loss calculation for land irrigated with water that was first lawfully supplied by an irrigation scheme or principal water supplier, but prior to CRC121664 or CRC162882 being granted, is limited to the nitrogen loss rate that corresponds with the aggregated baseline land use for that land; and
3. The aggregated nitrogen loss calculation for land first irrigated with water where nitrogen losses were authorised by CRC121664 or CRC162882, and where the irrigation was established after the applicable resource consent was granted but prior to the expiry of that resource consent, is limited to 27kgN<sup>2</sup> per hectare per year; and
4. The nitrogen loss calculation for land otherwise irrigated with water fully or partially supplied by an irrigation scheme or principal water supplier for irrigation, is:
  - (a) limited in accordance with Policies 13.4.13(a) and 13.4.13(b) except if Policies 13.4.13(aa) or 13.4.13(ab) apply;
  - (b) if Policies 13.4.13(aa) or 13.4.13(ab) apply, the nitrogen loss calculation is limited to:
    - (i) up to but not exceeding 15kgN per hectare per year, for any property that had a nitrogen loss calculation of less than 15kgN per hectare per year as at 1 September 2015; and
    - (ii) up to but not exceeding 20kgN per hectare per year, for any property that had a nitrogen loss calculation between 15kgN per hectare per year and 20kgN per hectare per year as at 1 September 2015; and
5. Except as provided for by conditions 2, 3 or 4(a) of this rule, for land where irrigation was not authorised and established under either CRC121664 or CRC162882, the nitrogen loss calculation that applies to those properties is not aggregated and redistributed for use on other

<sup>2</sup> Calculated using Overseer version 6.0.3.

land, but can be aggregated and redistributed within the property itself. For the avoidance of doubt, the aggregated nitrogen loss calculations in conditions 2, 3 and 4(a) may be combined to form the total aggregated nitrogen loss calculation.

46. The application for resource consent is accompanied by a legally binding obligation running with the land to achieve in full any applicable future nitrogen loss reductions in Policy 13.4.13(a) and ~~13.4.13(b)~~ or ~~13.4.13(ba)~~ (whichever is applicable).

#### **Notification**

Pursuant to sections 95A and 95B of the RMA an application for resource consent under this rule will be processed and considered without public or limited notification.

Note that limited notification to affected order holders in terms of section 95F of the RMA will be necessary, where relevant under section 95B(3) of the RMA.