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To whom it may concern

Submission on the Dairy Industry Restructuring Amendment Bill (No 3)

Environment Canterbury thanks the Primary Production Committee for the opportunity to submit on the Dairy Industry Restructuring Amendment Bill (No 3) (the Bill). This submission follows our submission to the Ministry for Primary Industries (the Ministry) on the Dairy Industry Restructuring Act (DIRA) Review in February of this year.

Environment Canterbury's interest in DIRA centres on the open entry provisions, and specifically the requirement for Fonterra to accept milk from new shareholders and to accept any quantity of milk from its shareholders. This submission will focus on those provisions in the Bill that relate to the open entry provisions.

Responding to environmental challenges requires aligned policies

New Zealand faces significant environmental challenges, particularly around land use and its impact on water. The growth of the dairy industry has had considerable economic benefit to New Zealand, including to Canterbury, but this growth has also had negative effects on our environment, through increased greenhouse gas emissions, nitrate leaching, and the expansion of dairy into increasingly marginal land areas.

In Canterbury we know these challenges very well. Responding to them requires a range of targeted policies and tools, such as those delivered nationally and regionally through the Resource Management Act 1991. Notably they include the requirements on regional councils to implement the current National Policy Statement for Freshwater Management. In 2012 we imposed strict nitrate discharge limits for the first time, which essentially took the form of not allowing any increase above 2009 – 2013 average nitrate losses. These rules have had a direct impact on the number of dairy conversions. We are now moving towards lower (i.e. tougher) nitrate limits that reflect industry-agreed Good Management Practices, as well as the recommendations of local water management zone committees. Alongside this we have also established water quantity limits across most of Canterbury.

This submission is also made against the backdrop of a draft new National Policy Statement for Freshwater Management. Many of the proposals in the draft National Policy Statement will support Environment Canterbury's efforts to manage the environmental effects of intensive

rural land use. Given the significance and magnitude of these and future requirements it is important to ensure that other policies align with, or at least do not hinder, efforts to address these challenges. Environment Canterbury considers the Bill delivers on this and improves DIRA's alignment with efforts to address these land use challenges.

Environment Canterbury strongly supports the provisions within the Bill that will assist with local and central government actions to deliver a more sustainable land-based sector. In particular, we support those provisions in Clause 22 that provide Fonterra with the ability to refuse milk supply from farmers in circumstances where milk is not compliant or unlikely to comply with Fonterra's terms and standards of supply or is supplied from newly converted dairy farms.

In our earlier submission to the Ministry, we argued the existing DIRA open-entry provisions impact negatively on the dairy industry's environmental performance through influencing landowner decision making, at least at the margin, resulting in increased cattle numbers and milk production above what would otherwise be the case. This affects our ability as a regional council to respond to land use challenges such as water quality. We are particularly pleased to see provisions in the Bill not previously consulted on – namely providing Fonterra with discretion to refuse applications to become shareholders in, and supply milk to, Fonterra if milk is supplied from newly converted dairy farms.

While this is supported, the Bill and its supporting cabinet papers and regulatory impact assessments are not clear on how the Bill landed on a 50% threshold for the dairy conversion exception (e.g. new section 96A enables Fonterra to reject an application if “*more than 50% of the production land that is used to produce the milk for supply to the new collection point is new production land*”). We agree with the Cabinet paper commentary concerning the need for this exception provision to avoid capturing relatively limited extensions to existing farms, however a 50% threshold would appear to go considerably beyond this. **We recommend that the Committee assesses whether a lower threshold** would better enable Fonterra to manage uncertainty of future milk supply while also reducing the influence that DIRA has on decisions to convert land into dairy production.

Environment Canterbury also supports those provisions that clarify that Fonterra's terms of supply can relate to, and price differentiate on the basis of, various on-farm performance matters, including environmental, animal welfare, climate change and other sustainability standards. We note that the Explanatory note for the Bill states that “*Fonterra and its farmer-shareholders are expected to fully utilise the flexibility afforded by these amendments, including better management of discharges and greenhouse gas emissions*”. We consider there to be merit in the Government periodically assessing the extent to which these amendments are utilised, and where they are, to gauge the extent to which the terms of supply and price differentials incentivise improvements in on-farm environmental performance. Such information would be useful for development of future regional and national environmental policy.

Notwithstanding the above comments, Environment Canterbury continues to see merit in exploring the removal of the open entry provisions, and in particular, testing regional deregulation of the open entry provisions. The Commerce Commission highlighted that this could enable the Government to experiment with deregulation before adopting the preferred pathway nationwide. As the region with Fonterra's lowest market share and a relatively competitive farm gate market, and with some of the most pressing land use challenges, testing the removal of the open entry provisions in Canterbury alone should be considered.

The Commerce Commission also recommended in 2016 that a staged approach to transition pathways to deregulation was appropriate. The Bill as drafted does not allow for this. Instead Clause 27 requires perpetual reviews, which we would argue create regulatory instability and uncertainty, and constrain the ability of parties, including regulatory agencies like Environment Canterbury, to plan ahead. We would like to see an approach to the DIRA review and expiry provisions that provides clarity and certainty. Specifically, we favour the approach adopted in the original DIRA of clear, pre-defined termination thresholds.

Environment Canterbury thanks the Primary Production Committee for the opportunity to submit on the Dairy Industry Restructuring Amendment Bill (No 3). Environment Canterbury does not wish to be heard.

Yours sincerely



Steve Lowndes

Chair

CC: Cr David Caygill