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*in the matter of:* the Resource Management Act 1991

*and:* submissions and further submissions in relation to  
proposed **Plan Change 7** to the Canterbury Land and  
Water Regional Plan

*and:* **Dairy Holdings Limited**  
*Submitter*

Legal submissions on behalf of Dairy Holdings Limited

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Dated: 28 September 2020

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## LEGAL SUBMISSIONS ON BEHALF OF DAIRY HOLDINGS LIMITED

### INTRODUCTION

- 1 These submissions are provided on behalf of Dairy Holdings Limited (*DHL*) in relation to proposed Plan Change 7 (*Plan Change 7*) to the Canterbury Land & Water Regional Plan (*LWRP*).
- 2 DHL is generally supportive of the overall intent of the notified version of Plan Change 7 but is seeking a number of amendments to better reflect that intent, improve its workability for farming operations in Canterbury, and ensure that environmental outcomes are appropriately balanced against the practical and economic demands of farming in Canterbury.
- 3 An overview of DHL's farm system and in particular DHL's operations in the Plan Change 7 areas has been provided in the evidence of **Colin Glass**. Specific issues relating to the Rangitata-Orton High Nitrate Concentration Area and groundwater aspects of Part B of Plan Change 7 (relating to the Orari-Temuka-Opihi-Pareora (*OTOP*)) Sub-region have been covered in **Neil Thomas**' evidence.

### OUTLINE OF SUBMISSIONS

- 4 In the interests of avoiding any unnecessary duplication, these submissions will take the statements of evidence of **Mr Glass** and **Mr Thomas** as read, and will focus solely on a limited number of the key issues relevant to DHL that arise out of Plan Change 7's proposed provisions, namely:
  - 4.1 Policy 14.4.20;
  - 4.2 Policy 14.4.7 and Rules 14.5.7-14.5.11;
  - 4.3 the mapped extent of the Rangitata-Orton High Nitrate Concentration Area; and
  - 4.4 the mapped extent of the Nitrate Priority Area in the Waimakariri Sub-region.
- 5 DHL maintains its other original and further submissions in their entirety.
- 6 These submissions do not detail a number of matters raised on the basis that these have been covered by other submitters, or are sufficiently covered in DHL's original submissions. In particular, these submissions do not expand on the submission points relating to nutrient management in the Waimakariri Sub-region.

- 7 DHL is a shareholder in the Waimakariri Irrigation Limited (*WIL*) scheme, through which DHL's four Waimakariri farms receive water and have their nutrient losses managed by the scheme under its resource consents.
- 8 DHL generally supports the relief sought by WIL and therefore intends to largely defer to WIL in respect of the proposed nutrient management provisions in Part C of Plan Change 7.

## **BACKGROUND**

### **Ability to reduce further reduce N-losses**

- 9 Before addressing the matters set out above, by way of background it is useful to refer to the evidence of **Mr Colin Glass** that explains that:
- 9.1 DHL operates an efficient farming system that focuses on importing low quantities of supplementary feed, and harvesting higher quantities of pasture;<sup>1</sup>
- 9.2 significant investments and reductions have already (voluntarily) been made by DHL, and on-farm management is reasonably close or in many cases at industry-agreed '*good management practice*';<sup>2</sup> and
- 9.3 given the above, it will typically be very difficult for DHL to further reduce nitrogen losses without significant implications for DHL and its farming operations.
- 10 DHL's largely self-contained system and resulting control over its cost structure has to date enabled it to successfully ride the significant volatility of the industry. In a practical sense, DHL has to an extent 'pre-empted' some of the changes that now have to be made by all farmers, including under the National Environmental Standard for Freshwater 2020 (*NESFW*). For example, **Mr Glass** explains in his evidence that DHL has recently started reducing its nitrogen fertiliser use each year by approximately 20 kg/N/ha per annum to a present (2020) rate of 200 kg/N/ha per annum, and is expecting to make further reductions in the coming years.<sup>3</sup>
- 11 DHL took this step of its own accord to address both nitrogen leaching concerns and also in preparation for potential ETS obligations in the future. DHL is therefore very likely to be able to meet the nitrogen cap of 190kg/ha and avoid having to obtain resource consents for fertiliser application under subpart 4 of Part 2

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<sup>1</sup> See the evidence of Colin Glass at paragraphs 14-16.

<sup>2</sup> See the evidence of Colin Glass at paragraphs 18-19, 27, 54.

<sup>3</sup> See the evidence of Colin Glass at paragraph 19.

of the NESFW when those requirements come into force on 1 July 2021.

- 12 In respect of nutrient management provisions proposed by Part C of Plan Change 7, DHL has been supportive of the position taken by WIL but does wish to emphasise that although 2030 reductions will most likely be achievable, 2040 reductions would only be achieved with considerable effort and for many operations, potential reduction in farming viability.

**Benefits of nutrient user groups/farming enterprises**

- 13 As **Mr Glass** has explained, nutrient user groups and farming enterprises have allowed DHL to improve the viability of both irrigated-block conversions to spray and conversions to irrigation on dryland blocks without any overall increase in adverse environmental effects.<sup>4</sup>

- 14 On that basis, encouraging 'collective' allocation across the region is consistent with:

14.1 the approach that has already been taken elsewhere through plan changes 1, 2 and 3 (*PC 1, PC 2 and PC 3*) as well as resource consents granted under the parent LWRP;

14.2 the general emphasis on at least maintaining overall water quality under the NPS; and

14.3 incentivising compliance with overall nitrogen loss limits.

- 15 In this respect DHL supported in principle the submissions by Rangitata South Irrigation Limited and Beef + Lamb New Zealand seeking that a policy and rule framework be included in Plan Change 7 that enables the establishment of nutrient user groups in the same catchment.

- 16 The section 42A report recommends that this relief is rejected on the basis that the LWRP already includes region-wide provision for farming enterprises, and therefore doubts whether nutrient user groups would provide additional value.<sup>5</sup> DHL's concern with this approach is that the LWRP *does* include nutrient user group and farming enterprise provisions in the other Sub-regional sections (such as section 11 Selwyn Te Waihora sub-region, section 13 Ashburton, section 15 Waitaki and South Coastal Canterbury) as well as in the region-wide provisions.

- 17 DHL sees no reason why, at the very least for consistency, the same approach should not be adopted in respect of the OTOP and

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<sup>4</sup> See evidence of Colin Glass at paragraphs 76-81.

<sup>5</sup> Section 42A Report at paragraph 12.19.

Waimakariri Sub-regions. In particular, DHL is concerned that the absence of farming enterprise and nutrient user group provisions in those Sub-regional sections may be interpreted as an indication that such activities are less appropriate in those Sub-regions, and have not been specifically contemplated or assessed as being appropriate.

- 18 DHL supports the inclusion of the farming enterprise and nutrient user group provisions in the Sub-regional chapters for OTOP and Waimakariri.

### **AMENDMENTS SOUGHT TO PART B OTOP PROVISIONS**

#### **Policy 14.4.20**

- 19 In its submission DHL expressed a concern that the OTOP policy direction does not '*close the door*' on consents being granted for farming activities to exceed the Baseline GMP Loss Rate. DHL has a support property outside of the HNCA (Coryston) that currently has consent CRC190003 to exceed the nitrogen baseline (and Baseline GMP Loss Rate) and DHL seeks that it be accommodated, including any renewal, in the Section 14 provisions.
- 20 It appears that this will be achieved by the para (a) of the Policy that refers to the Baseline GMP Loss Rate previously being lawfully exceeded:
- a. the Baseline GMP Loss Rate has been lawfully exceeded prior to 20 July 2019 and the application for resource consent contains evidence that directly and specifically establishes that the exceedance was lawful;
- 21 DHL is however concerned around the application of (b) of the Policy. As the resource consent was granted in August 2018, it appears that (b) will not be complied with (or more correctly, come renewal when looking at the second part of (b) it will be necessary to look at the full four years prior to 20 July 2019, most of which it did not hold consent for):
- b. the nitrogen loss calculation remains below the lesser of either the Good Management Practice Loss Rate or the nitrogen loss calculation that occurred in the four years prior to 20 July 2019; and
- 22 DHL therefore sought an amendment to Policy 14.4.20 to allow activities to exceed the Baseline GMP Loss Rate where the applicant can demonstrate that the proposed increase would not have an adverse environmental effect.

- 23 The section 42A report considered that this amendment is not appropriate on the basis that there is no such exception in the region-wide nutrient allocation zone (NAZ) policy framework.<sup>6</sup>
- 24 This is hard to reconcile with:
- 24.1 the fact that there are existing consented activities, obviously granted against that framework;
  - 24.2 evidence that there will be circumstances (Coryston was an orange zone and the consent applied for prior to plan change 5) where some effects may be acceptable and not adverse; and
  - 24.3 more generally, reliance on the regional position which appears to defeat the purpose of developing provisions specifically for a sub-region and the desirability of taking a catchment-by-catchment approach.<sup>7</sup>
- 25 When preparing its original submission, DHL took the position that a requirement to demonstrate that exceeding the Baseline GMP Loss Rate would not have an adverse environmental effect is a high threshold for applicants for consent, requiring expert evidence in order to prove that the requirements are satisfied.
- 26 Although the above is correct, we think the main focus also needs to be the presence of an existing resource consent and the renewal of it. This could be achieved by including an "or" between (a) and (b) – although should there be an exceedance of (b) then the renewal of a resource consent should also be on 'no greater terms' than the existing consent.
- 27 DHL accordingly seeks that Policy 14.4.20 is amended to provide better recognition of existing consents in (a) and to allow activities to exceed the Baseline GMP Loss Rate where the applicant can demonstrate that the proposed increase would not have an adverse environmental effect.
- Policy 14.4.7 and Rules 14.5.7-14.5.11**
- 28 DHL sought amendments to the policy and rules associated with the T allocation to address what it considers is unnecessary confusion resulting from the introduction of that additional allocation block.

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<sup>6</sup> Section 42A Report at paragraph 12.34.

<sup>7</sup> This approach also seems inconsistent with the long-standing direction in the NPSFM that management of the resource needs to reflect the catchment-level variation and different demands on the resource across regions, including Policy 3 of the NPSFM 2020 which directs that freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

- 29 As the submission and evidence for DHL states, the DHL property at 100 Wallace Road (*Tata*) Tata has a consented groundwater take that is connected to surfacewater, but there is no 'T allocation' provided for the relevant Rangitata-Orton Zone in Table 14(zb). DHL therefore considers that it is unclear how Rule 14.5.7(1) might be applied given that there is no T Allocation. To a lesser extent DHL also considers that the framework would provide greater certainty if it stipulated that in the absence of any minimum flow limit for the connected surfacewater body in the plan, the Rule is met.
- 30 **Mr Thomas** in his evidence sets out that, based on the resource consent inventory, the Rangitata Orton GAZ is over-allocated regardless of how the allocation status is calculated, and concludes that it is therefore reasonable that no T allocation block is available in the Rangitata Orton GAZ.<sup>8</sup> DHL accepts that that is the case, but remains concerned that the policy and rule framework is not sufficiently clear in this respect.
- 31 The section 42A report recommends that the T Allocation block and associated references in the policy and rule framework are deleted, including the deletion of Policy 14.4.7 and rules 14.5.7 and 14.5.8. The report supports a number of alternative amendments to this framework, in the event that the Commissioners are not minded to remove the 'swap provisions' from Plan Change 7. However, the section 42A report does not provide any proposed amendments to the provisions that would otherwise be deleted.
- 32 DHL therefore remains concerned that, if the Commissioners are not minded to remove the 'swap provisions', the extent of amendments necessary to provide the certainty and clarity required has not been outlined in detail.
- 33 DHL supports the proposed deletion of Policy 14.4.7 and Rules 14.5.7 and 14.5.8, which it considers would sufficiently address its concerns with these provisions. In the event that these provisions are not deleted, DHL seeks that Policy 14.4.7 and Rules 14.5.7 to 14.5.11 be reworded to make it clear:
- 33.1 how different takes are to be treated;
- 33.2 that all existing groundwater consents (even where they are connected to surfacewater) are to be treated as A Allocation in the Rangitata-Orton Area;

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<sup>8</sup> Evidence of Mr Thomas at paragraphs 41-44.

33.3 clarification by way of a note on Table 14(zb) (or similar in the associated rules) that where no T Allocation is provided for all takes are to be treated as A Allocation.

### **RANGITATA ORTON HIGH NITRATE CONCENTRATION AREA**

- 34 A principal concern for DHL with Part B of Plan Change 7 is the mapped extent of the proposed Rangitata-Orton High Nitrate Concentration Area (*HNCA*). In its submission DHL sought that the Rangitata-Orton HNCA be restricted to the areas currently zoned red and orange for nutrient allocation, on the basis that the areas around the Pareora, Orari and Rangitata rivers are low-risk for nitrate groundwater concentrations and unlikely to materially contribute to the relevant areas of nutrient concern.
- 35 DHL's Tata property is proposed to be included in this HNCA, however this property is currently identified as being 'green' under the LWRP nutrient allocation zoning, meaning water quality outcomes are being met. Inclusion in this HNCA would require a 20% reduction in nitrogen loss for the Tata property by 2035. **Mr Glass** in his evidence explains that, while DHL expects that varying levels of reductions will be required for its farms elsewhere where water quality outcomes are not being met, in this case investment decisions have been made for the Tata property in reliance of the 'green' status of this area.<sup>9</sup>
- 36 The section 42A report recommended that DHL's submission (and a similar submission by the Pye Group) be rejected on the basis that:<sup>10</sup>
- 36.1 results of recent monitoring suggest a deterioration in water quality;
  - 36.2 as part of the OTOP sub-regional nutrient management framework, Plan Change 7 removes the NAZ layer from the sub-region; and
  - 36.3 there is a need for reductions beyond GMP in this area to address water quality issues.
- 37 **Mr Thomas** has addressed these findings of in his evidence, and concludes that data indicating water quality issues in this currently green zoned area are occurring in 'localised hot spots' that are either located at the edge of the zone (at the boundary with the red zone), or are bores where the elevated concentrations represent outliers in the dataset.<sup>11</sup> **Mr Thomas** therefore concludes that the

<sup>9</sup> Paragraph 45.

<sup>10</sup> Section 42A report at paragraphs 12.174-12.175.

<sup>11</sup> Evidence of Neil Thomas at paragraph 22.



groundwater nitrate nitrogen concentrations in the current green zone do not appear to be elevated, based on the available data, and that the area does not meet the definition of a 'high nitrate concentration area'.<sup>12</sup> **Mr Thomas** therefore considers that there is justification for altering the outline of the proposed Rangitata Orton HNCA to include only the current red and orange areas.<sup>13</sup>

- 38 **Mr Thomas** does recommend that leaching reductions should be required in the current green zoned area, but does not consider that the same scale of reductions proposed for the current orange and red zones are required. **Mr Thomas** therefore considers that a reasonable approach in this area would be to apply the 5% and 10% proposed reductions by 2030, but that further reductions should be based on outcome and trends of further water quality monitoring, including groundwater data.<sup>14</sup> **Mr Thomas** has prepared a map, shown in his evidence as Figure 7, showing the proposed amendments to the HNCA.
- 39 The proposed approach to nutrient management in the OTOP sub-region differs significantly on either side of the HNCA boundary, with no percentage reductions in nitrogen loss for properties outside of the HNCA, beyond what is required to meet the Baseline GMP Loss Rate. In order to implement **Mr Thomas'** recommendation for a single stage of reductions in the area proposed to be excluded from the HCNA, Plan Change 7 could be amended to:
- 39.1 create a sub-area in the Rangitata Orton HNCA and specify in Table 14(zc) that reductions are only required in that sub-area to 2030, not 2035; or
- 39.2 require broader reduction requirements across the sub-region, adopting **Mr Thomas'** *prudent* approach, given the intensity of the land use and elevated nitrate nitrogen concentrations in surface water.
- 40 This ties back to DHL's broader concern, expressed in its submission on Plan Change 7, that provisions should provide for and focus on the actual outcomes sought (i.e. the relevant water quality parameters, including in groundwater), rather than providing for the reductions themselves as the 'measure of success'. Such an approach would seem warranted in this green-zoned area, where groundwater data shows that water quality outcomes are being met, with the exception of several outliers, and that this area is not dominated by land based recharge.

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<sup>12</sup> Evidence of Neil Thomas at paragraph 24.

<sup>13</sup> Evidence of Neil Thomas at paragraph 34.

<sup>14</sup> Evidence of Neil Thomas at paragraph 38.

- 41 Concerns about the elevated levels of nitrate-nitrogen in McKinnon's Creek, and the need to regulate for those concerns in Plan Change 7, would appear to have been superseded to an extent by the recent government announcements (noting that **Mr Thomas'** evidence is that, in general, McKinnons Creek meets the water quality targets and is showing an improving trend.<sup>15</sup>) Improvements in water quality will already be occurring through:
- 41.1 region-wide requirements for properties to comply with a GMP Loss Rate from 1 July 2020;
  - 41.2 restrictions in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 that restrict activities that are acknowledged to be having an impact on water quality, such as intensive winter grazing and applications of synthetic fertiliser; and
  - 41.3 similarly, restrictions in the Resource Management (Stock Exclusion) Regulations 2020 that require exclusion of stock for wetlands, lakes and wide rivers.
- 42 It is therefore submitted that **Mr Thomas'** prudent approach to water quality through requiring reductions that will improve the surface water quality in McKinnons Creek is already provided for through a range of requirements that are intended to improve water quality. Requiring percentage reductions in leaching alongside these more direct measures does not seem like an efficient method of address the problem of elevated levels of nitrate-nitrogen in McKinnons Creek.
- 43 DHL therefore seeks that the green-zoned area adjacent to the Rangitata River is (largely) excluded from the Rangitata-Orton HNCA, as set out in **Mr Thomas'** evidence.

#### **NITRATE PRIORITY AREA BOUNDARY**

- 44 The DHL submission raised concern that one of its properties, called Brown Rock, is split between the upper and lower Waimakariri terraces but has been included in its entirety in the Nitrate Priority Area. DHL's submission explained that, on the lower terrace, surface and groundwater flows towards the river rather than back into the Zone, and, accordingly, to date the lower terrace area has been a green zone under the LWRP. DHL therefore considered that the Nitrate Priority Area shown on the notified planning maps was either in error, or an inappropriate change has been made to the boundary to capture some of the lower terrace area.

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<sup>15</sup> Evidence of Neil Thomas at paragraph 32.

- 45 The section 42A report recommends that all submissions seeking amendments to the nitrate priority areas (and sub-areas) on the planning maps are rejected, on the basis that:
- 45.1 the NPA boundary is based on a combination of groundwater and surface water catchment boundaries;
  - 45.2 it would be inappropriate to align the sub areas with catchment boundaries, as catchment boundaries are defined by surface water sources and not groundwater recharge areas; and
  - 45.3 the delineation of the NPA used a different method to that used for the identification of the NAZ.
- 46 Based on this criteria, it is difficult to understand why the lower terrace area has been included in the Nitrate Priority Area. In addition, the current green zoning of this area indicates that water quality outcomes are being met, therefore it is not clear why nitrates need to be considered a priority in this area. It therefore makes no sense for this area to be subject to reductions as all water clearly flows in the opposite direction.
- 47 DHL seeks that the maps are amended so that the Nitrate Priority Area does not include the currently green-zoned land on the lower terrace of the Waimakariri River.

#### **RELIEF**

- 48 Accordingly, DHL seeks amendment to PC 7 to include the key changes set out in Schedule 1 that are discussed in these submissions.
- 49 DHL still seeks the changes set out in DHL's original submissions.

Dated 28 September 2020

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Ben Williams  
Counsel for **Dairy Holdings Limited**

## SCHEDULE ONE

### Key relief sought by DHL

Policy/Rule	Sought wording	Submission point
<b>Part B - OTOP</b>		
Policy 14.4.20	<p>Policy 14.4.20 to be amended to provide:</p> <p><u>In the Orari-Temuka-Opihi-Pareora sub-region, only consider granting an application for a land use consent for a farming activity to exceed the Baseline GMP Loss Rate where:</u></p> <ul style="list-style-type: none"> <li>a. <u>the Baseline GMP Loss Rate has been lawfully exceeded prior to 20 July 2019 and the application for resource consent <span style="color: red;">is for an activity of the same (or lesser) scale, nature and intensity as the previous lawful exceedance, and</span> contains evidence that directly and specifically establishes that the exceedance was lawful; <span style="color: red;">and/or</span></u></li> <li>b. <u>the nitrogen loss calculation remains below the lessor of either the Good Management Practice Loss Rate or the nitrogen loss calculation that occurred in the four years prior to 20 July 2019; and</u></li> <li>c. <u>for properties within the Rangitata Orton High Nitrogen Concentration Area, Fairlie Basin High Nitrogen Concentration Area and Levels Plain High Nitrogen Concentration Area, the applicant commits to achieving the percentage-based nitrogen loss reductions in Table 14(zc).</u></li> </ul>	PC7-415.13
Policy 14.4.7 and Rules	DHL supports the amendments to these provisions proposed in the section 42A report, but otherwise seeks:	PC7-415.65

<p>14.5.7-14.5.11</p>	<ul style="list-style-type: none"> <li>- that Rules 14.5.7 – 14.5.11 be reworded to make it clear how different takes are to be treated; and</li> <li>- that all existing groundwater consents (even where they are connected to surfacewater) are treated as A Allocation in the Rangitata-Orton Area; and</li> <li>- clarification by way of a note on Table 14(zb) (or similar in the associated rules) that where no T Allocation is provided for all takes are to be treated as A Allocation; and</li> <li>- such other amendments that are necessary and reflective of the concerns set out in DHL’ submission.</li> </ul>	
<p>Planning Maps (including A-092)</p>	<p>Mapping of the Rangitata-Orton High Nitrate Concentration Area is amended in line with <b>Figure 7</b> in the Brief of Evidence of Neil Thomas.</p>	<p>PC7-415.7</p>
<p><b>Part C - Waimakariri</b></p>		
<p>Definitions of Nitrate Priority Sub-areas and planning maps</p>	<p>Amendment of Table 8-9 in accordance with <b>Appendix 1</b> of the Brief of Evidence of <b>Bianca Sullivan</b> for Waimakariri Irrigation Limited, and the associated amendments sought by DHL and WIL in their submissions and evidence.</p>	<p>PC7-415.62 PC7-415.61</p>

Mapping of Nitrate Priority Sub-areas	Amendment of the Nitrate Priority Area mapping to exclude the currently green-zoned land on the lower terrace of the Waimakariri River.	PC7-415.66
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