

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV - 2018 - CHC

UNDER the Resource Management Act 1991

A N D

IN THE MATTER of an appeal under cl 14 of the First Schedule to the
Resource Management Act 1991

BETWEEN **FONTERRA CO-OPERATIVE GROUP LTD**

Appellant

A N D **SOUTHLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL AGAINST DECISIONS ON THE PROPOSED SOUTHLAND
WATER AND LAND PLAN BY FONTERRA CO-OPERATIVE GROUP LTD**

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**TO: THE REGISTRAR
ENVIRONMENT COURT
CHRISTCHURCH**

FONTERRA CO-OPERATIVE GROUP LTD (Appellant) appeals against parts of the decision (**Decision**) of the Southland Regional Council (**Council**) on the Proposed Southland Water and Land Plan (**Proposed Plan**).

1. The Appellant made submissions and further submissions on the Proposed Plan.
2. The Appellant is not a trade competitor for the purposes of s 308D of the Resource Management Act 1991.
3. The Appellant received a copy of the Decision on or about 4 April 2018. The appeal period closes on 17 May 2018.
4. The Decision was made by the Council.

Scope of Appeal

5. The parts of the Decision being appealed include those identified below, together with all necessary further consequential amendments including amendments to other parts of the Proposed Plan:
 - (a) Policy 16 - Farming activities that affect water quality
 - (b) Policy 17 - Agricultural effluent management
 - (c) Rule 20 - Farming
 - (d) Rule 32B - Construction, maintenance and use of new agricultural effluent storage facilities
 - (e) Rule 32D - Existing agricultural effluent storage facilities
 - (f) Rule 54 - Abstraction and use of Groundwater

Grounds for appeal

6. The Appellant's grounds for appeal are that those parts of the Decision being appealed:
 - (a) will not promote the sustainable management of resources, and are contrary to other provisions, of the Resource Management Act 1991;

- (b) do not manage the use of resources in a way that enables the community to provide for their social and economic well-being;
 - (c) do not represent an efficient use and development of natural and physical resources;
 - (d) do not appropriately avoid, remedy or mitigate the adverse effects on the environment; and
 - (e) do not represent the most appropriate way to achieve the objectives of the Proposed Plan Changes in terms of section 32 of the Resource Management Act 1991.
7. Without limiting the generality of the above, further specific grounds of appeal are set out in **Appendix 1**.

Relief sought

8. The Appellant requests:
- (a) that the Proposed Plan be amended in the manner described in **Appendix 1**, or words to like effect; and
 - (b) such consequential or related relief as may be necessary to give effect to its concerns described in this notice of appeal, including consequential changes needed to policies as a result of the rules being amended.

Attachments

9. Copies of the following documents are attached to this notice:
- (a) A copy of the Appellant's submissions and further submissions - **Appendix 2**
 - (b) The relevant parts of the Decision being appealed - **Appendix 3**
 - (c) A list of the names and addresses of persons to be served with a copy of this notice of appeal - **Appendix 4**

FONTERRA CO-OPERATIVE GROUP LTD by its counsel:

Signature:
Date:


B.J. Matheson
15 May 2018

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TO: Registrar, Environment Court,
Christchurch

AND TO: Southland Regional Council

AND TO: Submitters listed in Appendix 4

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the Appellant's submission or parts of the decision appealed. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

APPENDIX 1 - SPECIFIC GROUNDS OF APPEAL/REASONS

Provision appealed	Specific grounds of appeal/reasons	Relief sought (in mark-up)
Policy 16(1)(b)	<p>This part of the policy applies in interim period prior to the development of freshwater objectives under Freshwater Management Unit processes.</p> <p>However, it includes reference to application not being granted where “existing water quality is already degraded to the point of being overallocated”. Neither of the terms “degraded” nor “overallocated” are defined by the Proposed Plan. The term “over-allocation” is defined by the National Policy Statement for Freshwater Management (NPSFM) but that definition cannot apply here since the Proposed Plan does not contain freshwater objectives in the interim period.</p> <p>It is therefore unclear what test Policy 16(1)(b) imposes in addition to that imposed by Policy 16(1)(c) - which refers to water quality, in the interim period, having to meet the Appendix E Water Quality Standards or bed sediments needing to meet the Appendix C ANZECC sediment guidelines.</p>	<p>Amend Policy 16(1)(b) by deleting Policy 16(1)(b)(ii) as follows:</p> <p>Policy 16 - Farming activities that affect water quality</p> <p>1. Minimising the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by: ..</p> <p>(b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where: ...</p> <p>(ii) existing water quality is already degraded to the point of being overallocated; or</p>
Policy 17	<p>Changes are sought to Rules 32A-D below, and if those changes are made then corresponding minor amendments should be made to Policy 17 to ensure consistency between the policy and the rule that gives effect to the policy. This is a consequential change to Rule 32, as sought in paragraph 6.1(c) of Fonterra’s primary submission.</p>	<p>Amend Policy 17 as follows:</p> <p>Policy 17 - Agricultural effluent management</p> <p>1. Avoid significant adverse effects on water quality and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, agricultural effluent management systems.</p> <p>2. Manage agricultural effluent systems and discharges from them by:</p> <p>(a) designing, constructing and locating systems appropriately and in accordance with best practice; and</p> <p>(b) maintaining and operating effluent systems in accordance with applicable best</p>

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Rule 20(a)(iv) and new (v)	<p>Rule 20 provides that the use of land for a farming activity is a permitted activity, subject to meeting certain conditions. The condition specified at Rule 20(a)(iv) states: “for all other farming activities, from 1 May 2020, a Farm Environment Plan is prepared and implemented in accordance with Appendix N”. Fonterra’s Edendale manufacturing site (Edendale site) is regionally and nationally significant in terms of its production capacity.</p> <p>Treated process wastewater from the Edendale site is discharged to land via irrigation at five locations, being Pedrian, Ingelmere, Mararua, Leondale and Dobbie Road. The respective discharge consents associated with this activity at those locations were recently granted in 2017 (noting the first four were replacement consents, and the latter was a new discharge permit). These consents are subject to detailed conditions, including a requirement for a management plan that ensures the land is managed to address the discharges effectively.</p> <p>The farming-related activities undertaken on these farms is limited to winter lamb and hogget fattening, which only occurs during autumn and winter. While</p>	<p>practice guidelines; and</p> <p>(c) avoiding any surface run-off or overland flow, ponding or contamination of water, including via sub-surface drainage, resulting from the application of agricultural effluent to pasture; and</p> <p>(d) avoiding the discharge of untreated agricultural effluent to water.</p> <p>Note: <u>Examples of best practice referred to in Policy 17(2)(a) for agricultural effluent include IPENZ Practice Note 21: Farm Dairy Effluent Pond Design and Construction and IPENZ Practice Note 27: Dairy Farm Infrastructure (although these will not be applicable to all above ground tanks).</u></p> <p>Note: <u>Examples of best practice guidelines referred to in Policy 17(2)(b) for agricultural effluent include DairyNZ’s guidelines A Farmer’s Guide to Managing Farm Dairy Effluent - A Good Practice Guide for Land Application Systems, 2015 and A Staff Guide to Operating Your Effluent Irrigation System, 2013.</u></p> <p>Amend Rule 20(a) by adding new (v):</p> <p>Rule 20 - Farming</p> <p>(a) The use of land for a farming activity is a permitted activity provided the following conditions are met:</p> <p>(iv) for all other farming activities, from 1 May 2020 a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N.</p> <p>(v) <u>Provided that condition (iv) does not apply to those activities involving discharges to land from manufacturing activities where:</u></p> <ol style="list-style-type: none"> <u>such discharges are expressly authorised by a discharge consent; and</u> <u>that consent requires there to be a management plan in place to address the adverse effects of that discharge, including the adverse effects of cumulative discharges; and</u> <u>that grazing by stock on the land receiving the discharge is limited to grazing by sheep, provided that if grazing by cattle or deer is proposed then the management plan for the discharge consent is updated to satisfy the obligations described in Appendix N.</u>

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	<p>the farming component is small, these activities contribute to the overall management of the irrigation farms. As such, it is appropriate that the existing discharge consents continue to address all aspects of the wastewater irrigation activity, including ancillary farming.</p> <p>As worded Rule 20(a)(iv) would impose a requirement for a duplicative Farm Environmental Management Plan, and a failure to comply with this condition would require a discretionary activity to be sought.</p> <p>Fonterra does not consider such an outcome to either be efficient or effective, and Fonterra seeks a specific exemption to Rule 20(a)(iv) for manufacturing operations that discharge to land (and which have a specific discharge consent for that purpose).</p>	<p>Or, as an alternative to the above, insert a new definition of farming activity and specifically exclude from that definition the types of activities shown in red mark-up text above.</p>
Rule 20(d)	<p>For an application to intensify or change land use to be considered as a restricted discretionary activity, Rule 20(d) requires an assessment that shows that the annual amount of nitrogen, phosphorus, sediment and microbiological contaminants discharged from the landholding will be no greater than that which was lawfully discharged annually on average for the five years prior to the application being made.</p> <p>There is a practical difficulty with that rule that in that, of the four contaminants listed in Rule 20(d), only nitrogen can be reliably modelled in such a way as to demonstrate, in quantitative terms, that the test of no net change is met at the property scale. Accordingly, there is the potential that no activity will ever be able to satisfy Rule 20(d).</p> <p>However, an expert assessment could demonstrate that, based on the mitigations proposed (and what is known about the effectiveness of various mitigation methods) the expected change in phosphorus,</p>	<p>Amend Rule 20(d) as follows:</p> <p>(d) The use of land for a farming activity that does not meet one or more of conditions (ii) or (iii) of Rule 20(a), or does not meet condition (i) of Rule 20(b), is a restricted discretionary activity, provided the following conditions are met:</p> <p>(i) a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N; and</p> <p>(ii) the application includes the following material, prepared by a suitably qualified person:</p> <p>(1) an assessment that shows that the annual modelled amount of nitrogen, phosphorus, sediment and microbiological contaminants discharged from the landholding will be no greater than that which was lawfully discharged annually on average for the five years prior to the application being made; and</p> <p>(2) for any mitigation proposed, a detailed mitigation plan (taking into account contaminant loss pathways) that identifies the mitigation or actions to be undertaken including any physical works to be completed,</p>

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	<p>sediment and microbial contamination will be positive. The rule should be clarified to ensure that such assessment can satisfy the condition.</p>	<p>their timing, operation and their potential effectiveness.</p> <p>(3) <u>an assessment that shows that, taking into account any mitigations or actions identified under (2) above, the annual amount of phosphorus, sediment and microbiological contaminants discharged from the landholding can be expected to be no greater than that which was lawfully discharged annually on average for the five years prior to the application being made.</u></p>
<p>Rule 32B(a)(i)</p>	<p>Fonterra is concerned to ensure that there are minimal regulatory barriers to the adoption of good on-farm practices (including but not limited to good agricultural effluent storage and discharge practices).</p> <p>Rules 32A, 32B and 32D will individually, and in combination, unnecessarily inhibit the ability of farmers to adopt such practices. Rule 32B(a)(i) contributes to that because:</p> <ol style="list-style-type: none"> 1. The rule seeks to permit any incidental (very small scale) discharges that may be associated with effluent storage even when operating to good practice/design standards. However, in doing so the rule creates a threshold test that would require landholders to demonstrate compliance with pond drop limits on a (potentially) continuous basis to remain a permitted activity. This is contrary to the balance of the rule that requires pond drop tests at specified intervals. 2. Small additions to existing effluent storage facilities designed to improve performance (such as sumps and stone traps) may require consent. Moreover, unless such structures can be certified by a Chartered Professional Engineer as meeting the appropriate code of practice, the consent required will be for a non complying activity. This is an unnecessary and impractical requirement. 	<p>Amend Rule 32B(a)(i) as follows:</p> <p>Rule 32B - Construction, maintenance and use of new agricultural effluent storage facilities</p> <p>(a) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is within the normal operating parameters of a leak-detection system or the pond drop test criteria set out in Appendix P, is a permitted activity provided the following conditions are met:</p> <p>(i) the total-capacity of all <u>any individual agricultural effluent storage structure</u> on a landholding, excluding storage authorised by a resource consent, does not exceed 35 cubic metres; and</p>

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Rule 32B(b)(i)	<p>In addition to the reasons given above, Rule 32B (b) (i) potentially inhibits the construction and use of above ground effluent storage tanks. That is because such tanks are not able to be certified by a Chartered Professional Engineer as being in accordance with the IPENZ Practice Note: <i>Farm Dairy Effluent Pond Design and Construction (2013)</i> or <i>IPENZ Practice Note 27: Dairy Farm Infrastructure (2013)</i> because those practice notes do not apply to above ground tanks. For that reason, above ground effluent storage tanks may require a non-complying resource consent. That is despite above ground tanks offering an effective solution to managing the risk of discharges associated with effluent storage facilities.</p>	<p>(b) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is within the normal operating parameters of a leak-detection system or the pond drop test-criteria-set-out-in-Appendix P, which does not meet condition (i) or condition (ii) of Rule 32B(a) is a controlled activity provided the following conditions are met:</p> <p>(i) the design is certified by a Chartered Professional Engineer as being in accordance with IPENZ Practice Note 2: Farm Dairy Effluent Pond Design and Construction (2013) or IPENZ Practice Note 27: Dairy Farm Infrastructure (2013) to that extent that those Practice Notes are applicable to the effluent storage facility; and</p> <p>(ii) the application includes an operational management plan that addresses operational procedures, emergency response, monitoring and reporting requirements, the undertaking of pond drop tests, and installation of monitoring devices; and</p> <p>(iii) conditions (iii) to (vi) of Rule 32B(a).</p>
Rule 32D	<p>In addition to the reasons given above, Rule 32D potentially imposes unnecessary and inappropriate obligations on small-scale components of the agricultural effluent storage system. The term “agricultural effluent storage” is defined in the Proposed Plan and includes structures other than the storage ponds and tanks. These additional structures did not previously require consent and hence will need to meet the conditions of Rule 32D(a)(ii). These conditions include requirements for pond drop test. Furthermore, pond drop tests are required for both ponds and tanks. Detecting leakage from a tank does not require a pond drop test and imposing such an obligation is unnecessary and inappropriate. It is also important that Rule 32D can authorise repair of existing agricultural effluent ponds where that repair does not constitute replacement (which Rule 32A deems to require consent as a new effluent</p>	<p>Rule 32D -Existing agricultural effluent storage facilities</p> <p>(a) The use of land for the <u>repair</u>, maintenance and use of an existing agricultural effluent storage facility that was constructed prior to Rule 32D taking legal effect, and any incidental discharge directly onto or into land from that storage facility which is within the normal operating parameters of a leak detection-system-or-the-pond-drop-test-criteria-set-out-in-Appendix P, is a permitted activity provided the following conditions are met:</p> <p>(i) the construction of the existing agricultural effluent storage facility:</p> <ol style="list-style-type: none"> (1) was lawfully carried out without a resource consent; or (2) was authorised by a resource consent; and <p>(ii) where the construction of the existing agricultural effluent storage facility was lawfully carried out without resource consent, the landholding owner or their agent must provide information to the Southland Regional Council upon request, demonstrating that <u>any the-component-of-an-existing-agricultural-effluent-storage-facility-that-has-a-capacity-of-more-than-35m³</u> is either:</p> <ol style="list-style-type: none"> (1) fully lined with an impermeable synthetic liner, or is of concrete construction, or-is-above-ground-level and;

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	<p>storage facility). Repair might include, for example the replacement of a pond liner and that should be clear on the face of Rule 32D.</p>	<p>(a) has a leak detection system that underlies the entire agricultural effluent storage facility which is inspected not less than monthly and there is no evidence of any leakage; and</p> <p>(b) is certified by a Suitably Qualified Person in accordance with Appendix P within the last 10 years as meeting the relevant pond drop test criteria in Appendix P; or</p> <p><u>(c) is an above ground storage tank constructed in accordance with a building consent and has been certified by a Suitably Qualified Person within the last 10 years as having no visible cracks, holes or defects that would allow effluent to leak from the tank; or</u></p> <p>(2) certified by a Suitably Qualified Person in accordance with Appendix P within the last three years as:</p> <p>(a) having no visible cracks, holes or defects that would allow effluent to leak from the effluent storage facility; and</p> <p>(b) meeting the relevant pond drop test criteria in Appendix P.</p> <p>(b) The use of land for the maintenance and use of an existing agricultural effluent storage facility that was constructed prior to Rule 32D taking legal effect, and any incidental discharge directly onto or into land from that storage facility which is within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P, that does not meet one or more conditions of Rule 32D(a) is a discretionary activity.</p>
Rule 54(a)(iv)	<p>Rule 54(a)(iv) requires metering of groundwater takes greater than 20,000 litres per day and daily recording of water take data.</p> <p>While metering may be appropriate, the requirement for daily recording is unnecessary and inappropriate for such small volumes. In addition, it is more onerous than that which applies to consented takes which typically have a weekly reporting requirement</p>	<p>Amend Rule 54 (a) (iv) as follows:</p> <p>iv) where the volume of the take exceeds 20,000 litres per day, a water meter capable of recording the rate of take and the daily volume of take must be used. Water take data must be recorded daily <u>at least weekly</u> and provided to the Southland Regional Council on request. The accuracy of the water meter must be verified every 12 months.</p>