

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the proposed Selwyn District Plan

And: Hearing 1: Strategic Directions

And: **Dairy Holdings Limited**
Submitter and further submitter DPR-0372

And: **Rakaia Irrigation Limited**
Submitter and further submitter DPR-0390

And: **Craigmore Farming Services Limited**
Submitter and further submitter DPR-0388

Legal submissions on behalf of Dairy Holdings Limited, Rakaia Irrigation Limited and Craigmore Farming Services Limited

Dated: 30 July 2021

Reference: B Williams (ben.williams@chapmantripp.com)
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**LEGAL SUBMISSIONS ON BEHALF OF DAIRY HOLDINGS LIMITED,
RAKAIA IRRIGATION LIMITED AND CRAIGMORE FARMING
SERVICES LIMITED**

Hearing 1: Strategic Directions

INTRODUCTION

- 1 These submissions are provided on behalf of:
 - 1.1 Dairy Holdings Limited (*DHL*);
 - 1.2 Rakaia Irrigation Limited (*RIL*); and
 - 1.3 Craigmore Farming Services Limited (*Craigmore*).

(together referred to as '*the Submitters*')
- 2 The Submitters are generally supportive of the Proposed Selwyn District Plan (*Proposed Plan*), but are concerned that it does not acknowledge appropriately the importance of the Selwyn District's most significant industry.
- 3 In the specific context of Strategic Directions, their interest (and without reducing the importance of the relief sought) is narrow in that the Submitters seek the following strategic direction:

Protect the long-term viability of rural production in Selwyn through a framework that delivers economic benefit and sustains the environment.
- 4 This is intended to provide an overarching direction for other chapters, and ensure that the environment is sustained while existing farming activities continue to be enabled. It will also ensure rural production continues to contribute to the social and economic well-being of the Selwyn District.
- 5 These submissions provide a general overview and introduction to the Submitters and their interests in the Selwyn District. This is largely intended to assist in avoiding duplication with regard to a need to otherwise present similar background material in later hearing stages.
- 6 The statutory criteria relevant to consideration of the Proposed Plan is then discussed. The Canterbury Regional Policy Statement (*CRPS*), to which the Proposed Plan must give effect, is specifically addressed.

OVERVIEW OF THE SUBMITTERS

Dairy Holdings Limited

- 7 DHL is New Zealand's largest closely held farming company with 100% of its farming assets in the South Island. DHL is the parent company of a number of farm-owning subsidiaries (together, *the DHL Group*).
- 8 The DHL Group farms are principally located in the Springs Junction (West Coast), Canterbury, Waitaki, and South Otago/Southland regions.
- 9 DHL currently owns and operates 60 dairy farms and milks approximately 52,000 cows.
- 10 DHL has extensive farming interests in the Selwyn District, operating 27 farms. A number of these adjoin or are reliant on the take of water through irrigation infrastructure from the Rakaia River.
- 11 It (through various subsidiary entities) is also the holder of a number of resource consents or a number of various irrigation schemes (including Central Plains, Fereday, North Bank, and Glenroy/Lynton Irrigation).
- 12 DHL's subsidiary members are members of the Rakaia River Irrigation Associated (*RRIA*).

Rakaia Irrigation Limited

- 13 Rakaia Irrigation Limited has been incorporated and will shortly replace the RRIA (although its day-to-day function will remain similar).
- 14 The RRIA is an incorporated society that was incorporated in 1996, though it was in existence prior to this. The purposes of the society include protecting and enhancing its members interests relating to irrigation. This has included the managing of 'stored water orders' from Lake Coleridge.
- 15 Its members include almost all irrigation interests on the Rakaia River except those associated with the two large scheme takes on the river (i.e. relevant for the north bank of the Rakaia River, that exception is limited to the main Central Plains Water take).¹ The majority of members' farm within the Selwyn District.

Craigmore Farming Services Limited

- 16 Craigmore manages farm, horticulture, and forest investments in New Zealand.

¹ Although Central Plains Water is still a member by virtue of other consent interests it has to take and use water from the Rakaia River.

- 17 Established in 2008 by two New Zealand family farmers, Craigmore now has a highly experienced team managing a mix of dairy, grazing, forestry and horticultural properties spread over both islands and more than 15,000 hectares.
- 18 Craigmore's aim is to be a long-term producer of high quality good and forest products, and managing the land sustainably.
- 19 Farming sustainably is at the heart of Craigmore's culture. Craigmore regard it as a privilege and responsibility to manage land, soils, water and other natural resources for future generations.
- 20 Craigmore has one farm in the Selwyn District.
- 21 'Te Awa' is a 600 hectare dry stock and dairy support farm located at Te Pirita. A further 297 hectares is leased as a dairy support block. This enables the dairy enterprise to be self-sufficient in young stock grazing and herd wintering requirements.

STATUTORY FRAMEWORK

Section 74 – the Council's functions

- 22 The Hearing Panel will be well aware that the starting point for considering the Proposed Plan is section 74 of the Resource Management Act 1991 (*RMA*). That section requires the Council to prepare the proposed plan in accordance with:
 - 22.1 its functions under section 31;
 - 22.2 the provisions of part 2;
 - 22.3 its duty under section 32;
 - 22.4 any relevant national policy statements and national planning standards; and
 - 22.5 any regulations.
- 23 Strategic directions are intended to address the key strategic and significant resource management matters for the district and provide a guide to decision making at a strategic level.² It is essential for a well-functioning farming district that the District Plan includes directive policy associated with the importance of rural production in the district.
- 24 In the context of Strategic Directions, these submissions are limited to a brief discussion of section 32 and section 75 with reference to the Canterbury Regional Policy Statement.

² Ministry for the Environment "National Planning Standards" (November 2019) at p32.

Section 32 matters

- 25 The Panel, in determining its decision on Strategic Directions, must be satisfied that the matters in section 32 are achieved and have been satisfied.
- 26 The Section 32 Report provides that for a matter to qualify as a priority and warrant a strategic objective, the matter must be strategically important for achieving integrated management and the purpose of the RMA, or to give effect to a higher order planning document.³
- 27 The Section 32 Report also states that the strategic directions are intended to align the land use considerations of the District Plan with the District Development Strategy – Selwyn 2031.⁴ It goes on to say that the notified strategic objectives have been derived from a number of relevant planning documents, including Selwyn 2031.⁵
- 28 Against the above, Selwyn 2031 recognises that:⁶
- The districts economy does and will continue to have significant reliance on the agriculture sector in relation to its economic stability and growth. This is the primary industry in Selwyn as the largest contributor to the districts GDP as well as providing for a significant portion of the districts jobs.
- 29 The strategy sets five high-level directions to guide Council’s decision making, including sustainably managing Selwyn’s rural and natural resources. It accordingly strives to “*maintain Selwyn District’s identity and character that stems from its productive rural economy, landscapes and iconic rural outlooks*”.⁷
- 30 The purpose of Selwyn 2031 is to provide an overarching strategic framework for achieving sustainable growth across the district to 2031.⁸ It would be appropriate for the proposed Plan to align properly with this overarching policy guidance already developed for the District.
- 31 The Section 32 Report does not consider whether a strategic direction for rural production is necessary and appropriate. As outlined in the CRPS (discussed below) and in Selwyn 2031, there is no dispute that rural production provides substantial social and economic well-being benefits for the Canterbury Region as a whole, and for the Selwyn District in particular.

³ Section 32 Report: Strategic Directions, at p6.

⁴ Section 32 Report: Strategic Directions, at p3.

⁵ Selwyn 2031: District Development Strategy, at p6.

⁶ At p46.

⁷ At p83.

⁸ At p8.

- 32 The manner in which rural production is enabled is of strategic importance and significance in terms of integrated management of the effects of the use, development, or protection of land and associated natural and physical resources within the Selwyn District.

Section 75 – giving effect to higher order planning documents

- 33 In preparing any District Plan, the Council must “*give effect to*” any relevant higher order planning documents in the RMA hierarchy.⁹
- 34 The higher order document of relevance here is the CRPS.
- 35 It is submitted that section 75 is particularly relevant to the Strategic Directions chapter because the purpose of that chapter includes:¹⁰
- 35.1 outlining key strategic or significant resource management matters for the district; and
 - 35.2 providing objectives that address key strategic or significant matters for the district and guiding decision making at a strategic level.
- 36 The Section 42A Report outlines the author’s approach to the statutory requirements for the Proposed Plan.¹¹ The Report states “[r]egard is to also be given to the CRPS...”. It goes on to say “*there are a number of higher order planning documents and strategic plans that provide direction and guidance for the preparation and content of the PDP*”.¹²
- 37 In my submission, the Section 42A Report fails to recognise that the Proposed Plan must “*give effect to*” the CPRS.¹³ “*Have regard*” is necessarily distinct from “*give effect to*”:
- 37.1 the Supreme Court in *King Salmon* said that “*give effect to*” means “*implement*”.¹⁴ It is “*a strong directive, creating a firm obligation on the part of those subject to it*”;¹⁵ whereas

⁹ Resource Management Act 1991, section 75(3).

¹⁰ Ministry for the Environment “National Planning Standards” (November 2019) at p32.

¹¹ Section 42A Report: Strategic Directions, at [4.1].

¹² Section 42A Report: Strategic Directions, at [4.2].

¹³ Resource Management Act, section 75(3).

¹⁴ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77].

¹⁵ At [77].

37.2 in contrast, “*have regard to*” requires the decision maker to give genuine attention and thought to particular matters, but they do not necessarily have to accept them.¹⁶

38 Accordingly, it is submitted that the CRPS does not merely “*provide guidance*”¹⁷ for the content of the Proposed Plan: the Proposed Plan must implement the CRPS.

Canterbury Regional Policy Statement

39 The CRPS has been prepared in accordance with the RMA, and is central to resource management in Canterbury. It is a “*blueprint for promoting sustainable management of natural and physical resource in Canterbury*”.¹⁸

40 As above, the Proposed Plan must give effect to the CRPS. The CRPS contains a number of objectives and policies that clearly prescribe what is required in order to achieve the integrated management of the natural and physical resources of Canterbury.

41 Objective 5.2.1(2)(e) of the CRPS relevantly provides that:

Development is located and designed so that it functions in a way that:

...

(2) enables people and communities, including future generations, to provide for their social, economic and cultural well-being and health and safety; and which:

...

(e) enables rural activities that support the rural environment including primary production;

42 Part of the explanation to Objective 5.2.1 states:

Primary production from Canterbury’s rural area is of significance to the economic and social well-being of Canterbury’s people and communities. It is foreseeable that the well-being of future generations will also be strongly influenced by the ability to continue with such primary production. It is important to manage resources and activities in rural areas so that the foreseeable potential of the rural primary base of Canterbury is maintained.

43 Objective 5.2.1 is supported by Policy 5.3.12, which provides:

Maintain and enhance natural and physical resources contributing to Canterbury’s overall rural productive economy in areas which are valued for existing or foreseeable future primary production [...]

¹⁶ *Foodstuffs (South Island) Ltd v Christchurch City Council* [1999] NZRMA 481 at p9.

¹⁷ As stated in the Section 42A Report: Strategic Directions, at [4.2].

¹⁸ Canterbury Regional Policy Statement, at p7.

- 44 The explanation to Policy 5.3.12 most relevantly provides:

The rural productive base of Canterbury is essential to the economic, cultural and social well-being of its people and communities. Enabling the use of natural and physical resources to maintain the rural productive base is a foreseeable need of future generations.

The ability to appropriately utilise natural resources is a vital element in supporting the efficient and effective rural productive activities. [...]

This policy seeks the management of those areas of rural Canterbury for which inherent characteristics and location meaningfully contribute, or will foreseeably contribute, to the rural productive economy of Canterbury. [...]

- 45 In order to implement Objective 5.2.1 and Policy 5.3.12, the CRPS requires District Plans to enable rural activities. In addition, District Plans must maintain and enhance Canterbury's rural productive economy.
- 46 It is important that rural production in the Selwyn District is recognised and provided for in the Proposed Plan. This status flows from higher-order planning documents and so must be given effect to by the Proposed Plan provisions. It is submitted the strategic direction proposed (or similar) will appropriately give effect to the relevant provisions of the CRPS.

CONCLUSION

- 47 Accordingly, DHL, RIL, and Craigmore seek the insertion of a strategic direction that expressly strives to protect the long-term viability of rural production in Selwyn through a framework that delivers economic benefit and sustains the environment.

Dated: 30 July 2021



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