

In the matter of the Resource Management Act 1991

And

In the matter of Proposed Plan Change 7 to the Canterbury Land and Water
Regional Plan

**LEGAL SUBMISSIONS ON BEHALF OF SYNLAIT MILK LIMITED
SUBMITTER NUMBER PC7-188**

2 NOVEMBER 2020

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Introduction

- 1 These legal submissions are presented on behalf of Synlait Milk Limited (**Synlait**), in support of its submission on Proposed Plan Change 7 (**PC7**) to the Canterbury Land and Water Regional Plan (**CLWRP**).
- 2 Synlait's submission addressed a range of issues, but broadly can be split into 'farming issues' which relate to its suppliers, and 'industrial issues' which relate to the Synlait Foods Talbot Forest Cheese factory in Temuka. Synlait has not presented evidence in support of its submission on farming issues, and instead focuses only on those submission points which relate to the industrial activity at Temuka, specifically:
 - 2.1 Transfer of water permits for industrial purposes; and
 - 2.2 Ensuring flexibility for practical solutions where policies and rules require nutrient loss reductions from both industrial activities and farming activities.
- 3 Synlait filed two briefs of evidence in supports of its submission:
 - 3.1 Expert planning evidence of Tim Ensor; and
 - 3.2 Company evidence from Andrew Bull.
- 4 Since the filing of evidence, there has been a change of personnel at Synlait Foods. Mr Bull will not be presenting his evidence, rather the company evidence will be presented by Mr Steven McComb. Mr McComb is relatively new to the role, but will be able to assist the Commissioners with any specific practical queries arising from Mr Bull's evidence.

Water for Industrial Purpose

- 5 Synlait's original factory is located at Dunsandel, within the Selwyn – Waihora sub-region of the CLWRP. The reasons for the submission on PC7 arise from Synlait's experience with its Dunsandel site, and in particular seeks consistency within the CLWRP sub-regional chapters with how industrial water transfers are addressed.
- 6 As outlined in the planning evidence of Mr Ensor, this is a matter that has been previously considered under Variation 1 to the Land and Water Regional Plan for the Selwyn – Waihora sub-region (**Variation 1**). As Mr Ensor notes, Mr Peter Callander provided evidence for Fonterra outlining the industrial process that generates a positive water balance. Ms Hilary Lough presented similar evidence for Synlait at that hearing, concluding that the water

discharge from the Synlait plant resulted in a net aquifer gain, while an irrigated agricultural operation generally results in a net aquifer loss¹.

- 7 Variation 1 proposed (and ultimately implemented) similar 'claw back' provisions where groundwater allocations were transferred off-site. However, as noted at paragraph 11 of Mr Ensor's evidence, the Commissioners determined that industrial usage which will result in neutral or positive water balance should be treated differently – and so not subject to the percentage reductions on transfer.
- 8 Several further submissions expressed opposition to industry being treated differently. Synlait received further submissions from Central South Island Fish and Game Council², Temuka Catchment Group Incorporated³, Temuka Catchment Working Party⁴ and Timaru District Council⁵. The reasoning for opposing the relief sought by Synlait can be summarised as:
- 8.1 Concerns around equity, if industrial users were treated differently to irrigation or other consumptive uses;
- 8.2 The proposal would not capture community drinking water and community water supplies, and so this would not protect the Council's interest in providing for those supplies; and
- 8.3 If industrial needs achieve community water supply requirements, then transfers would be exempt from the allocation reduction requirement.
- 9 With respect, Synlait considers that none of these further submission points raise issues which should prevent the amendment as sought by Synlait. In particular:
- 9.1 There are practical differences between industrial use and irrigation use, for example:
- a. Water use is not seasonally driven to the same degree and so water demand does not follow the same daily and yearly demand cycles as for irrigation;
 - b. Water use is driven by certain product lines, rather than seasonal considerations; and
 - c. Industrial uses have a greater latitude to provide for adaptive re-use of water, with irrigation for farming being one common example.

¹ Evidence of Hilary Kay Lough at [24]

² Submitter ID 351

³ Submitter ID 319

⁴ Submitter ID 318

⁵ Submitter ID 292

- 9.2 Industry is often treated differently to other uses, which is justified where the effects of the activity are materially different. The proposed change would **only** apply where the industrial activity can prove a neutral or positive water balance. It is not a blanket exclusion from the transfer reduction requirements for industry.
- 9.3 The reference to community water supply and drinking water is a separate consideration. It is not considered that a discrete exclusion for industrial takes with neutral or positive water balances will impact the use or availability of water for community supply or drinking water. An industrial use will never meet the community water supply standards, as they are different uses, with different effects.

Relief sought

10 As outlined in the submission, the relief sought by Synlait would result in water transfers **for an industrial purpose that results in a natural or positive water balance** be allowed without reduction.

11 We repeat the relief sought in the submission below for ease of reference:

*Note: Synlait's proposed changes are shown in **bold green** tracked changes to the Reporting Officer's Consolidated Recommended Changes to PC7 dated 10 July 2020, which show the recommended changes following submissions and Council consideration in red text.*

Transfers of Water Permits:

14.4.13 Assist with phasing out over-allocation of freshwater resources by implementing region-wide Policy 4.50 and in addition:

- a. by only ~~authorising the granting a permit to~~ transfer of water from one site to another where the water permit has previously been exercised and the maximum rate and/or volume to be transferred is determined as efficient based on records of past use; and
- b. requiring in over-allocated surface water catchments and ~~g~~Groundwater ~~a~~Allocation ~~z~~Zones, ~~and~~ except where the water is to be used for community supply or stock drinking water, or where the transfer is to take and use water for industrial or trade processes and the use will result in a neutral or positive water balance, that a portion of water to be transferred is surrendered that is proportionate to the status of over-allocation in the catchment, ~~up to a maximum of 75%; and~~
- ~~c. not granting any application to transfer a water permit from the Temuka Freshwater Management Unit.~~

14.5.12 The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of water relates and where the location of the take and use of water does not change) of a water permit to take and use surface water or groundwater, is to be treated as if it is a restricted discretionary activity provided the following conditions are met:

[1 – 4 as proposed by the Officer's Report]

5. Unless the transfer is for a community water supply or a stock drinking water supply, or where the transfer is to take and use water for industrial or trade processes and the use will result in a neutral or positive water balance:
 - a. the take will comply with the applicable environmental flow and allocation regimes set out in Tables 14.4(h) to 14.4(zb); and
 - b. if the proposed transfer is located within an over-allocated surface water catchment or Groundwater Allocation Zone, the resource consent application includes a percentage of water to be surrendered, ~~up to a maximum of 75%~~, that matches the extent to which the surface water catchment or Groundwater Allocation Zone is over-allocated, except where the water taken under the water permit is in the AA, BA or Kakahu allocation blocks, in which case there shall be no surrender requirement; and

[6 – 8 as proposed by the Officer's Report]

Nutrient Loading

- 12 As outlined in the evidence of Mr Ensor and Mr Bull, Synlait discharges whey to various properties. Under PC7 rules, there are two requirements for nutrient discharge reduction within the Rangitata Orton and Levels Plain and High Nitrogen Concentration Areas:
 - 12.1 a 30% reduction below current consented rates by 2035 for the industrial activity; and
 - 12.2 a reduction before GMP Baseline in accordance with Table 14(zc) for farming activities.
- 13 On the current wording, where Synlait discharges whey (an industrial point source discharge) to farm land within a High Nitrogen Concentration Area, both reductions apply.

- 14 Synlait is not disputing the requirement for nutrient loss reductions. Rather, it is seeking a policy and rule framework which allows an industry and a farmer, where industrial waste is discharged to farmland, to work together to ensure the best approach for reduction is achieved.
- 15 Mr Ensor has covered Synlait's concerns in detail with the proposed wording, and in particular outlined the lack of flexibility that PC7 currently offers. I refer to his evidence for the issues with the wording included in the Reporting Officer's Consolidated Recommended Changes to PC7 dated 10 July 2020, and support his suggested amendment to the policy wording.



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