BEFORE THE ENVIRONMENT COURT
AT WELLINGTON

IN THE MATTER	of appeals to the Environment Court under clause 14 of the First Schedule to the Resource Management Act 1991 (RMA)
AND	
IN THE MATTER	of the Proposed One Plan Consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu-Whanganui Region
BETWEEN	**FEDERATED FARMERS OF NEW ZEALAND (ENV-2010-WLG-000148)**
AND	**WELLINGTON FISH AND GAME COUNCIL (ENV-2010-WLG-000157)**
	Appellants
AND	**MANAWATU-WHANGANUI REGIONAL COUNCIL TRADING AS HORIZONS**
	Respondent

STATEMENT OF REBUTTAL EVIDENCE OF CHRISTOPHER HANSEN

1. QUALIFICATIONS/EXPERIENCE

1.1 My name is Christopher Adrian Hansen. I am a resource management planning consultant, and Director in Chris Hansen Consultants Ltd.

1.2 I have outlined my qualifications and experience in my evidence-in-chief.

2. SUMMARY OF REBUTTAL EVIDENCE

2.1 I have read and may comment on the following expert planner evidence. My comments are restricted to those matters of interested raised by Ravensdown in its Section 274 Notice:

(i) Policy 6-7

(ii) Policy 13-2C

(iii) Table 13.2

(iv) Rule 13-1

3. STATEMENT OF EVIDENCE OF CLARE BARTON

3.1 While I have primarily commented on matters of interest in Ms Barton's evidence in my evidence-in-chief, there are several other matters I wish to address.

3.2 I note Ms Barton includes a regulatory approach in her evidence to deal with what she describes as *"gaps in the policy and rule framework in DV – POP"*[1] This regulatory approach includes <u>further</u> amendments to Policies 6-7 and 13-2C, and Rules 13-1 and 13-1B to control existing and new dairy farming land use activities <u>even more</u> than the DV-POP. I consider this approach is too restrictive and as discussed in my evidence-in-chief, is unlikely to gain the environmental benefits sought by Ms Barton. As I also note in my evidence-in-chief, this is in fact the first plan (with the exception of the very different Taupo catchment provisions in the Waikato Regional Plan) where dairying farming in relatively average areas is being made a controlled activity, and I consider a more pragmatic, effects based approach, is appropriate and necessary.

3.3 At the planners conferencing held on April 4/5, it was agreed that 'regulation' includes permitted activity status. In my evidence-in-chief I have proposed a permitted activity rule for dairy farming land use activities (to be consistent with the DV – POP), and I acknowledge that this rule could be broadened to encapsulate other rural land uses within the scope of the appeals. I note in paragraph 133 of Ms Barton's evidence she references discussion on a permitted activity rule both in mediation and in planner caucusing, and states *"Most planners (other than Federated Farmers and Ravensdown) agreed that a permitted activity rule was inappropriate"*.

3.4 I disagree with this statement. In particular, I note the *Record of Expert Conferencing on Policy 6-7, Policy 13-2C and Rule 13-1* dated Wednesday 24 August 2011, and the *Memorandum Regarding Implementing the Mediation*

[1] Statement of Evidence of Clare Barton; 14th February 2012; para. 15; page 4881

Agreement Concerning Regulation of Dairy Farming dated 28 October 2011, both served on the Court. I attended both the expert planner conferencing and the mediation. In my view, both documents keep alive the possibility of a permitted activity rule, and have the agreement of all planners. In particular the Record of Expert Conferencing records the option of a possible permitted activity rule with a standard (paragraph 7) and assigns a planner to re-draft the rule by 16 September 2011 (paragraph 8). In addition, the first two paragraphs to the Court memorandum dated 28 October 2011 records that while matters raised by some planners had not been resolved, further discussion on a permitted activity rule would not be foreclosed. In my view, while the planners considered the draft rule put forward was inappropriate and needed more work, the records show the possibility of a permitted activity rule being adopted was maintained by the planners.

3.5 I also note Ms Barton includes a list of the reasons in paragraph 133 of her evidence for why she considers a permitted activity rule is 'problematic'. In particular she states the following issues:

(i) The level of technical compliance required to correctly run the OVERSEER® model meaning there is a difficulty demonstrating compliance through a permitted activity rule.

Comment: While Ms Barton does not elaborate further on what 'technical compliance' she is referring to, I understand from participating in mediation and planner's conferencing that there may be some concerns regarding the assumptions that can be made as part of running the OVERSEER® model. In my view, this concern is overstated. Furthermore, I have addressed this concern in paragraph 12.21 of my evidence-in-chief in relation to the PA Rule for dairy farming land use activities I propose. I also note the Record of Technical Conferencing on LUC/Best Practice (23 March 2012) and that all parties agreed that N loss estimates should use the OVERSEER® model (Point No. 10). Overall, I am of the view that a conservative approach should be adopted, and the use of the OVERSEER® model to establish a nutrient budget that meets a target figure (such as the X in my proposed PA Rule) represents such an approach. My understanding from Dr Robert's evidence is that any

variability in the use of the OVERSEER® model is very small, and any effect of such variability will be nil or very little.

(ii) The ability for interaction between the farmer and MWRC regarding how nutrient management is being addressed is frustrated by a permitted activity rule as the accountability for the resource consent mechanism is removed.

Comment: I accept that the interaction between the farmer and MWRC regarding how nutrient management is being addressed is important, particularly in the priority Water Management sub-Zones. However, I do not agree that a permitted activity rule would frustrate this interaction. I note MWRC is particularly good at preparing and circulating information and guidance to all farmers, and case in point is a fact sheet produced last year regarding Rule 13-1B (see attached). I do not consider this reason substantiates the need for controlled activity status for all dairy farming land use activities. A supportive, more collaborative approach with farmers would, in my view, achieve a much greater interaction than controlling all dairy farming land use activities.

(iii) The cost associated with monitoring and compliance would be borne by MWRC.

Comment: I note in my evidence-in-chief that I have referenced Section 150 of the Local Government Act as the provision to allow for recovery of costs. This provision is in fact repealed. The correct provision that the Council could rely upon to set rates for permitted activities in order to recover the cost of compliance and monitoring is Section 16 of the Local Government (Rating) Act 2002 (LGRA) as set out below:

> ***16 Targeted rate***
> *(1) A local authority may set a targeted rate for 1 or more activities or groups of activities if those activities or groups of activities are identified in its funding impact statement as the*

activities or groups of activities for which the targeted rate is to be set.

(2) Repealed.

(3) A targeted rate may be set in relation to—

(a) all rateable land within the local authority's district; or

(b) 1 or more categories of rateable land under section 17.

(4) A targeted rate may be set—

(a) on a uniform basis for all rateable land in respect of which the rate is set; or

(b) differentially for different categories of rateable land under section 17.

The categories of rateable land in Section 17 refer to categories defined in the local authorities funding impact statement or those set out in Schedule 2. Schedule 2, set out below, provides for a permitted activity to be a category of land that has a targeted rate.

Schedule 2

Matters that may be used to define categories of rateable land

ss 14, 17

1 The use to which the land is put.

2 The activities that are permitted, controlled, or discretionary for the area in which the land is situated, and the rules to which the land is subject under an operative district plan or regional plan under the Resource Management Act 1991.

3 The activities that are proposed to be permitted, controlled, or discretionary activities, and the proposed rules for the area in which the land is situated under a proposed district plan or proposed regional plan under the Resource Management Act 1991, but only if—

(a) no submissions in opposition have been made under clause 6 of Schedule 1 of that Act on those proposed activities or rules, and the time for making submissions has expired; or

(b) all submissions in opposition, and any appeals, have been determined, withdrawn, or dismissed.

4 The area of land within each rating unit.

5 The provision or availability to the land of a service provided by, or on behalf of, the local authority.
6 Where the land is situated.
7 The annual value of the land.
8 The capital value of the land.
9 The land value of the land.

I consider this adequately addresses Ms Barton's concerns as it would allow the Council to allocate the cost to the farmer of monitoring and compliance through a targeted rate as part of the scheme, even if it is a permitted activity, meaning the farmer is more likely to keep accurate records and their N loss down as there will be consistent monitoring.

I note this issue was briefly discussed in *Carter Holt Harvey Ltd v Waikato Regional Council*[2] at page 49. Here Federated Farmers suggested using a targeted rate under the LGRA as an option to alleviate the Council's concerns about recovering the costs of administering the rule. The Court however did not delve into the merits of this provision as they felt there was a comprehensive regime provided under section 39 of the RMA that can be applied to a controlled activity, so preferred to use that.

For completeness, I note other options suggested by Federated Farmers in that appeal were financial contribution, a permitted activity condition requiring self-monitoring and reporting and requesting the Minister of the Environment to make regulations pursuant to Section 36(1)(g) of the RMA.

(iv) The discharge of farm animal effluent onto and into land is a controlled activity under Rule 13-6, and makes sense to run together consent for discharge of farm animal effluent along with any consent for dairy farming land uses.

Comment: I do not consider this reason represents an effects based approach. I accept it may represent an efficient and acceptable approach for land uses that are in the priority Water Management sub-

[2] A123/08

Zones and that have N leaching levels above the upper Y figure and therefore are controlled activities in the PA Rule I propose. However, this is not, in my view, an appropriate proposition for dairy farming land use activities that have N leaching effects that are below the X figure.

(v) The effects of the discharge of farm animal effluent (controlled activity) are similar to the effects associated with dairy farming land uses. The integrity of the POP comes into question if one activity with similar effects requires consent and the other does not.

Comment: I note Ms Barton does not elaborate on how she considers farm animal effluent discharge effects (which are essential point source discharges) are similar to dairy farming land use effects (which are essentially non-point source discharges). In my view, the effects are quite different, and controlling farm animal effluent from dairy sheds and feedpads (Rule 13-6) can be targeted to identifiable discharges. I note conditions/standards/terms (a) refers to *"There must be no direct discharge …"* which confirms my view. However, controlling N leaching from dairy farming land use activities is not a matter of controlling direct discharge, and requires a different regulatory approach, which I propose includes a PA Rule. I do not agree that there is an integrity issue with the POP as I consider the effects of these discharges are quite different, and I see no logic in combining them.

(vi) A controlled activity approach recognises the links between the related objectives and policies which seek to have regard to the values in Schedule AB.

Comment: In my view, the PA Rule I propose is consistent with the links Ms Barton is referring to. In particular, by establishing the X and Y kg/N/ha/yr figures as proposed, the proposed PA Rule recognises the links between the objectives and policies and the values in

4. STATEMENT OF EVIDENCE OF HELEN MARR

4.1 In paragraph 127 of her evidence, Helen Marr suggests the resource consent process is relatively straight forward and her understanding of how 9 consents have been dealt with to date. In my view, Ms Marr is missing the key point of whether consent should be required in the first place, and the fact that according to the evidence of Dr Scarsbrook[3], the environmental benefits of controlling dairy farming does not seem to justify the time and cost and bureaucracy the resource user may be put through. I am also aware that at least one consent granted did not go through an easy process, and there was considerable concern about the conditions the MWRC wished to impose on the granted consent. While I accept that in that case better conditions were finally imposed, the question has to be asked whether MWRC will act consistently when imposing consent conditions in the future, and the need for all dairy farming land use activities to have to gain consent, even if their N leaching levels are well below a limit that would cause an environment al effect.

4.2 In Paragraph 184 (page 52) Ms Marr suggests amendments to Policy 6-7 that will identify an overall strategy of non-point source pollution in the Region. While it is not clear in her evidence, I assume Ms Marr is referring to the new Policy 6-X *Land use activities affecting groundwater and surface water quality* she introduces in Appendix 2 to her evidence. In principle, I support the overall intent of this new policy to define and direct a water management approach in the region.

4.3 In addition, Ms Marr makes recommended changes to Policy 6-7 *Regulation of intensive farming land use activities affecting groundwater and surface water quality* in Appendix 2 of her evidence. In relation to the amendments she proposed to (a) Nutrients, I note she recommends deletion to the natural capital and LUC class of land in (ia), and I support this proposed amendment as it is consistent with my own evidence-in-chief.

[3] Evidence of Dr Michael Robert Scarsbrook of Fonterra; 14 March 2012; paragraph 95 – 98; pages 30, 31

4.4 In paragraph Section 2.3.7.6 of her evidence (page 55), Ms Marr proposed changes to Policy 13-2C (in Appendix 2), and in particular in Policy 13-2C (a) (b) she proposes regulation for intensive farming land uses. I have no issue with the proposed policy wording (apart from the substantive matter raised in my evidence-in-chief regarding the nitrogen leaching maximums contained in Table 13.2), so long a regulation includes the opportunity for permitted activities, as discussed earlier in my rebuttal evidence. I note that the proposed amendments to Rule 13-1 included in Appendix 2 of Ms Marr's evidence does not provide for permitted activities, and I confirm the view expressed in my evidence-in-chief that a permitted activity rule is appropriate and necessary.

5. STATEMENT OF EVIDENCE OF SHAUN NEWLAND

5.1 Overall I am in general agreement with Mr Newland's evidence. Notwithstanding this, I note paragraph 76 outlines what Mr Newland understands is the agreement reached by parties as recorded in the memorandum to the Court dated 28 October 2011. Mr Newland then goes in paragraphs 77 – 79 Fonterra's view on a controlled activity regime. Mr Newland seems to give no consideration to the possibility of a permitted activity rule in Fonterra's regime. This does not seem to be consistent with paragraph 1 of the memorandum of 28 October 2011 as discussed in paragraph 3.4 above, and Mr Willis' evidence where he acknowledges as a Footnote 38 (page 34 of his evidence-in-chief) that *"… there is an argument that at least some existing dairy farms could be permitted activities provided the usual tests for using the permitted activity category can be met (these relate mainly to the absence of discretion in deciding whether permitted status applies and the low risk of adverse effect presented by the activity)"*.