FEEDBACK ON PROPOSED ACTION FOR HEALTHY WATERWAYS: A DISCUSSION DOCUMENT ON NATIONAL DIRECTION FOR OUR ESSENTIAL FRESHWATER

To Ministry for the Environment

by email: consultation.freshwater@mfe.govt.nz

Name of submitter: Dairy Holdings Limited (DHL)

SUMMARY OF KEY POINTS

Dairy Holdings Limited (DHL) is New Zealand’s largest closely-held dairy farming business. All of its farming operations are based in the South Island in the Tasman, West Coast, Canterbury, Otago and Southland Regions.

DHL is supportive of a number of aspects of the “Action for healthy waterways: A discussion document on national direction for our essential freshwater” (the Discussion Document) but is also concerned with other aspects.

The key matters of interest to DHL relate to:

Existing regional planning frameworks

- The presence of existing robust and defensible Regional planning frameworks in (in particular) the Canterbury and Southland areas and the proposal to exclude such areas from the immediate actions set out in the Discussion Document. This is supported by DHL and appears consistent with the observation (from page 70 of the Discussion Document) that:

Regions and catchments that have rules or proposed rules to reduce nitrogen leaching through an allocation regime or a good management practice-based cap are excluded from this interim proposal. Those excluded are Canterbury, Otago, Tukituki catchment (Hawke’s Bay), Manawatu and the Waikato/Waipa catchment (Waikato).13

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13 Plans in these catchments are expected to deliver reductions in nitrogen leaching. For example in the Hinds catchment (Canterbury), properties with a nitrogen baseline exceeding 20kg/ha/yr must reduce nitrogen losses 15 per cent by 2025, 25 per cent by 2030, and 36 per cent by 2035.
• DHL considers the above should also be extended to the Southland Region (noting it is likely to have an operative Regional Plan in place following the determination of appeals which are currently before the Environment Court).

**Attributes under the pNPS-FM**

• DHL is not necessarily opposed to the use of attribute states to manage ecosystem health, however, it has serious concerns in particular with the bottom lines set for dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorous (DRP) in the pNESF. As currently proposed, DHL is very concerned that the stated attributed states will be impossible to achieve at a national scale.

• DHL shares DairyNZ’s views (which are supported by research of their own) on the various attributes contained in the pNESF. It supports the relief sought by DairyNZ to amend the national bottom lines for DIN and DRP.

**Existing resource consent and applications**

• With particular reference to the pNESF (but also applying to the wider Discussion Document and National Direction Documents), it is not clear what is intended in relation to:
  - o consented activities where the relevant consented activity has not been fully implemented; and
  - o resource consent application being processed when the pNESF commences.

• DHL seeks that existing resource consents (whether implemented or not) and resource consent applications (especially those obtained against robust and defensible planning frameworks) are protected and prevail over the pNESF (as per section 43B(6) of the Resource Management Act 1991) until such time as those consents expire and the relevant regional planning framework is updated to accord with the pNPS-FM.

**Intensification provisions in the pNESF**

• DHL understands that the intention of the provisions on intensification is to carve out a default regime for regions that have not yet implemented robust nutrient management regimes. However, it considers it should be made clearer who the provisions restricting further intensification will apply to. DHL recommends that the regions that are already ‘fully implementing’ the National Policy Statement for Freshwater Management 2014 (as amended 2017) and including Southland as per above, should be listed in the provisions for intensification.

• DHL recommends that the provisions relating to intensive winter grazing in the intensification subpart should refer to a baseline nitrogen loss figure as oppose to an increased area of annual forage crops. This is because there will be circumstances where intensification of intensive winter grazing does not result in an increase in nutrient leaching. In such circumstances, DHL considers intensification should be permitted.
• DHL seeks that the provisions relating to intensification of irrigated farming should clearly exclude existing resource consents to irrigate that have not yet been fully implemented. DHL does not consider these should be captured as ‘intensification.’

Farm plans and resourcing

• DHL is fully supportive of managing and improving farming practices through good management practice and farm plans. DHL anticipates that in a few years all of its farms and operations will have farm plans. These will (and already do) include information on freshwater contained in the proposed ‘freshwater module of farm plans’ provisions in the pNESF.

• However, DHL is extremely concerned with the apparent lack of sufficient regard in the National Direction Documents to the enormity of the task of requiring all farms to have farm plans before 2025. DHL does not consider New Zealand currently has anywhere near the resources required to implement this in the timeframes.

• DHL is aware of a number of regional councils who are currently struggling to implement current measures as a result of a lack of resources. DHL considers that significant investment would be required into regional councils, the primary sector, and various other service providers in order to achieve the intended outcomes of these provisions.

• DHL also considers there is a lack of resourcing available to be able to properly implement the proposal to mandating direct electronic transmission of data from consumptive water takes to regional councils.

Immediate action to reduce nitrogen loss

• Noting its concerns on resourcing above, DHL considers that option 3 (farm plan-based reductions) is the best option for achieving immediate action to reduce nitrogen loss. DHL considers this option will enable the most effective nitrogen reductions through targets specifically catered to each farm and each waterbody within a particular catchment.

• DHL has serious concerns about the effectiveness of the other two options. In particular, DHL does not consider the proposed wording of option 1 included in part 3, subpart 4 of the pNESF is particularly well thought through. A lot more work would be required around this to ensure the intention of the provisions would in fact be achieved.

Excluding stock from waterways

• DHL is opposed to an average setback of five metres and is supportive of DairyNZ’s position that the average setback should be three metres from waterways greater than one metre wide.

• DHL notes that there is no one appropriate setback distance to exclude stock from waterways. It considers that stock exclusion would be best achieved on a case by case basis through farm plans.

• There will be little value in requiring the re-fencing of waterways where a minimum width of one metre between the fence and the waterbody is already achieved. DHL
considers any regulations around stock exclusion should include a carve out to this effect.

**Stock holding and intensive winter grazing**

- DHL recommends that measures such as slope, area, vegetated strips (for example) should not be prescribed nationally but considers these are best dealt with in farm plans where the characteristics of that particular farm and its particular waterways within a certain catchment can be tailored. However, DHL does acknowledge that some nationally-set standards might be useful for defining good practice expectations in relation to winter grazing.

- There are a number of provisions that have the potential of imposing more than one activity standard (for example clauses 30 and 33 pNESF). DHL considers it should be made abundantly clear what activity standards apply to a certain activity.

**Wetlands**

- DHL is concerned that the proposed provisions on wetlands may also apply to areas which are subject to orthodox drainage in pasture areas (such as tile and overflow drainage). DHL is keen to ensure that such drainage does not fall within the definition of “constructed wetland” in the National Direction Documents.

- DHL considers the activity standard rules relating to wetlands should only apply where the activity would affect the functioning of that particular wetland.

DHL would welcome any opportunity to further discuss any of the issues raised in its feedback with the Ministry should any further consultation be undertaken in developing any of the National Direction Documents.

Signed for and on behalf of Dairy Holdings Limited by its solicitors and authorised agents Chapman Tripp

[Signature]

Ben Williams
Partner
31 October 2019

Personal details removed
PART A - OVERVIEW

1 Dairy Holdings Limited (DHL) is supportive of a number of aspects of the "Action for healthy waterways: A discussion document on national direction for our essential freshwater" (the Discussion Document).

2 It is however of the view that the stated outcomes around improved water quality are in some cases unrealistic or could be much more effectively achieved without incurring the potentially significant social and economic implications that will arise for all New Zealanders including farmers (and Regional Councils and stakeholders alike) under the changes currently proposed to the:

2.1 proposed National Environment Standard for Freshwater (pNESF);

2.2 proposed National Policy Statement for Freshwater Management (pNPS-FM);

2.3 draft Stock Exclusion Section 360 Regulations (draft Stock Exclusion Regulations);

together, the National Direction Documents.

3 Within this part (being Part A) of its feedback document DHL provides an outline of operations and its approach to the questions set out. In Part B, DHL provides responses to questions posed in the Discussion Document with some specific relief on the core matters raised in relation to the relevant parts of the Nation Direction Documents. In Part C, DHL provides some suggested wording to some of the key provisions of the National Direction Documents.

4 Parts A, B and C all need to be read together and in their entirety.

DAIRY HOLDINGS LIMITED

5 DHL is a New Zealand registered company with 100% of its farming assets in the South Island of New Zealand and is the largest closely-held dairy farming business in the country.

6 DHL is currently operating 59 dairy farms and milking 50,000 cows to produce around 17 million kilograms of milk solids per year (for the 2019/20 season).

7 In addition, DHL owns or leases 15 self-contained support farms that provide around 12,000 in-calf heifer replacements each year and provide wintering support operations. A bull unit supplies around 1,200 service bulls to the dairy farms.

8 These farms are located in the Tasman, West Coast, Canterbury, Otago and Southland Regions.

9 DHL has been focusing on environmental sustainability for some time. This includes using a relatively low input farm system (based on research conducted through
Ruakura and more recently the Lincoln University Dairy Farm) that provides a focus on sustainable pasture-based operations. This system has:

9.1 a reduced reliance on supplementary feed being brought on to farm. No Palm Kernel Expeller is used and the total bought in feed to dairy farms is less than 20 kg/cow/year, compared with a national average of 756 kg dry matter per cow according to the DairyBase analysis for the 2018/19 season. This means DHL farms have a significantly lower emissions footprint and farming intensity when compared to similar farms in the same area;

9.2 centralised wintering of non-lactating cows and replacement young stock raising. This allows DHL to focus on fewer wintering blocks and ensure best practice is applied across all of its wintering operations;

9.3 careful nutrient budgeting and fertiliser applications that are aimed at optimising sustainable pasture production (with minimum nutrient being ‘lost’ from the soil). No nitrogen fertiliser is applied in the high risk winter months and phosphate applications are also scheduled at low risk times of the year; and

9.4 lower overall stocking rates (on a per hectare basis) due to low or no purchased supplement, but a higher comparable stocking rate (in terms of the stocking rate relative to pasture grown) than those which might typically be seen on other farms.

10 Alongside being a simple and profitable farm system in terms of recognising the international competitive position of the New Zealand dairy industry (where seasonal spring calving has been successfully matched with the natural pasture growth curve), DHL has also recognised the improved environmental sustainability that arises from a low input system.

11 In recent years it has reduced its purchased feed and is reducing its nitrogen fertiliser applications. It has also been very active in terms of fencing waterways and improving inefficient irrigation systems. Around 140 centre pivot irrigators have replaced border dyke and rotorainer irrigation in the last 7 years. This has allowed water usage to reduce by up to 60% and resulted in reduced nitrogen loss from farms by up to 100kg of nitrogen per hectare. While this is a significant improvement, the unintended consequence is that nitrogen concentrations in drainage below the plant root zone have increased, which is why other mitigation measures such as managed aquifer recharge in catchments (for example in Hinds, Canterbury) are so important.

12 Further efforts, that are more unique to DHL, are enabling sustainable farming operations. This includes:

12.1 obtaining ‘farm enterprise’ or ‘nutrient user’ consents in a number of areas. These consents are in effect global discharge or land use consents that restrict nutrient loss and enables the sharing of nutrients between properties within a catchment provided. This has enabled DHL to be more proactive at achieving both improved efficiencies and reductions in nutrient losses over its farms within particular catchments; and
12.2 establishing water user groups in between properties that are in the same surface water catchment or groundwater area – again driving resource use efficiency, reducing groundwater abstraction in favour of surface water, and achieving enhanced environmental sustainability.

For those properties where DHL does not hold resource consent for nitrogen discharge or land use consents, most farms are located within irrigation schemes that hold their own resource consents that similarly provide for the management of nutrients on an aggregated basis. These consenting arrangements are complex but DHL is keen to ensure they are contemplated and accounted for in the National Direction Documents.

APPROACH TO SUBMISSION

In terms of the approach taken in this feedback document it is noted that while the specific consultation questions provided in the Discussion Document are useful, DHL has opted in some areas to provide more focused comments on the various themes set out across a number of questions (to avoid what would otherwise be significant duplication on some aspects).

Given the approach taken it is emphasised that all parts of this submission need to be read together. Points raised in relation to one question will have relevance to other questions (and the scope of this feedback document accordingly needs to be looked at in its entirety).

DHL would like to note its support of the feedback provided by DairyNZ Limited (DairyNZ), Fonterra, and Irrigation New Zealand (Irrigation NZ) on the Discussion Document and National Direction Documents. Further, DHL commends DairyNZ for having undertaken a comprehensive economic analysis of the proposed National Direction Documents and mirrors its concerns regarding the results of that report.
## PART B – RESPONSES TO QUESTIONS IN THE DISCUSSION DOCUMENT

### Overview – the health of our nation depends on the health of our freshwater

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<tr>
<th>Reference to Discussion Document</th>
<th>Question</th>
<th>Comment</th>
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<tr>
<td>1.6 (1) – (3) &amp; (6)</td>
<td>1. Do you think the proposals set out in this document will stop further degradation of New Zealand’s freshwater resources, with water quality materially improving within five years?</td>
<td>DHL notes that significant progress has already been made by a number of Councils in relation to improving water quality.</td>
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<td>2. Do you think the proposals will bring New Zealand’s freshwater resources, waterways and ecosystems to a healthy state within a generation?</td>
<td>In relation to DHL’s operations examples include:</td>
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<td>3. What difference do you think these proposals would make to your local waterways, and your contact with them?</td>
<td>• the Canterbury Region where the Land and Water Regional Plan and a number of plan changes involving ‘sub-regional sections’ are operative; and</td>
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<td>• Southland where the proposed Land and Water Regional Plan is currently before the Environment Court.</td>
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<td>6. Can you think of any unintended consequences from these policies that would get in the way of protection and/or restoration of ecosystem health?</td>
<td>In both cases these are robust and defensible planning regimes that are focused on good management practice and (where required) significant nutrient reductions over time. Each has been determined with reference to the National Policy Statement for Freshwater, as applied at the time.</td>
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<td>These efforts must inevitably lead to improvements in water quality.</td>
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<td>Achieving desired water quality outcomes will however take time. In some cases improvements can be identified quite quickly. In other areas long lag times in (for example) groundwater systems means that historic effects will continue for some time. Within this DHL strongly believes successful water quality outcomes will only be achieved with the support of the farming sector and only if the rate of required change is sustainable economically, socially, culturally and environmentally in the long term. If outcomes are not economically achievable, at best farmers will be ‘lost on the journey’ to making improvement, and at worst farm businesses, industry and communities will be unviable.</td>
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In terms of the core National Direction Documents:

- DHL is generally supportive of a number of the proposals set out in the pNESF although also emphasises much of what is proposed it is either doing already or duplicates what is already included in the Regional Planning frameworks (at least for Regional such as Canterbury and Southland that have been pro-active in terms of managing water resources); and

- the use of science to inform the pNPS-FM is also supported but it appears difficult to apply at a national scale. Care needs to be taken to ensure that it provides sufficient guidance to RMA decision makers while at the same time allowing for individual catchment circumstances and wider socio-economic considerations to be taken into account. As currently proposed, DHL is very concerned that for example the stated attribute states will be impossible to achieve at a national scale.

The consequence of moving too quickly is potentially significant financial and economic implications for the farming and wider rural sector. Many of the proposals in the National Direction Documents are dependent upon investment from the rural sector. That investment will only occur to the extent that farming continues to be enabled.

The extent to which improved water quality will be achieved will also depend on the extent to which they are able implemented. The required investment needs to extend to Regional Councils and various service providers to ensure (for example) appropriate water management regimes and farm plans are in place. As discussed throughout this feedback document, DHL has significant concerns around the absence of trained people and the inability to have experienced people in place within the timeframes indicated within the National Direction Documents.

| 1.6 (4) | 4. What actions do you think you, your business, or your organisation would take in response to the proposed measures? | DHL is already taking extensive measures to address water quality and improve sustainability. A number of these were touched on in Part A of this feedback document (and should be read as applying here). |
For its Canterbury, Southland and Otago operations in particular, DHL is already taking (either voluntarily or as required by the relevant Regional Planning frameworks) a number of steps to address nutrient loss.

This includes:

- developing and implementing farm plans (noting that DHL is in the process of implementing farm plans for all its farming operations);
- achieving good management practice (as defined in various industry documents);
- working towards nutrient reduction targets in specified at risk catchments. Examples include the Hinds Plains area and the Waimakariri area (both Canterbury) where nutrient reduction requirements are included in either operative or proposed sub-regional plans;
- fencing of waterways;
- a sustainable lower input dairy system that does not (for example) have the same reliance on fertiliser and supplementary feed inputs, with lower overall stocking rates; and
- investment in highly efficient irrigation systems including soil moisture monitoring that allows for accurate scheduling; and
- carefully managed wintering support operations based on industry best practice.

Overall DHL is doing many of the practical measures that are identified in the National Direction Documents. Further restrictions and reduction requirements would in a number of cases fundamentally undermine the viability of the relevant farming operations.

1.6 (5) 5. What support or information could the Government provide to help you, your business, or your organisation to implement the proposals?

As set out, DHL has already invested considerably in many of the practical measures that have been identified.
The core concern that DHL has (which is touched on in a number of contexts throughout this feedback document – see for example in response to questions 8.9 (54) – (57) below) is the current lack of skilled and experienced people (in both Regional Councils and the primary sector) to, for example:

- develop, implement and audit farm plans;
- develop and implement water management regimes (including in some cases considerable investment in new Regional Plans); and
- more generally support farmers in achieving the requirements sought.

DHL has significant concerns around the ability to implement the proposals.

DHL understands that in Canterbury just under 8,000 farm plans are required to be completed and audited every year. The National Direction Documents require all farms throughout the country to adopt these same processes, across more than 50,000 properties by 2025. This will require massive resourcing. For the 2019/20 season, Fonterra is celebrating extra resource in place to complete up to 1,000 new farm plans. At this rate it will take more than 20 years to achieve the target set down for 2025. Put simply, there is a lack of availability of people with sufficient expertise and the timeframes to achieve the required training of the new recruits are unrealistic.

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<th>1.6 (8)</th>
<th>8. Do you have any other comments?</th>
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<td>With particular reference to the pNESF (but also applying to the wider Discussion Document), it is not clear as to what is intended in relation to:</td>
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<td>- consented activities where the relevant consented activity has not been fully implemented. These would normally be regarded as forming part of the ‘environment’ in consenting processes and planning frameworks in accordance with a long line of case law in this area (but this is not expressly recorded anywhere in the National Direction Documents);¹ and</td>
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<td>- resource consent applications being processed when the pNESF commences. In some cases this will extend to applications which might have been in process for some time (and in</td>
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¹ See for example Queenstown Lakes District Council v Hawthorn Estate Ltd [2006] NZRMA 424 (Court of Appeal).
circumstances where applicants may have expended considerable money and resource in making such applications).

DHL seeks that existing resource consents and resource consent applications (especially those which have been obtained against robust and defensible planning frameworks) are protected and prevail over the pNESF (as per section 43B(6) of the Resource Management Act 1991) until such time as those consents expire and the relevant regional planning framework is updated to accord with the pNPS-FM.

In this context, it is also DHL’s understanding that until the pNPS-FM is fully implemented (as set out in clause 31(2)(b) pNESF), regional council rules will prevail over the new rules in the pNESF (even where these are more lenient) apart from those clauses in part 3, subpart 2.

DHL is of the view that this should be set out expressly in the pNESF (as per section 43B(3) of the Resource Management Act 1991). Otherwise, when the pNESF comes into effect there will be:

- a number of regional council planning documents that may no longer apply; but

- a set of new rules in the pNESF that would have little effect or which would need to be applied in a ‘vacuum’ (considering the pNPS-FM will not have been implemented in many regions).
### Setting and clarifying policy direction

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<td>4.7 (17)</td>
<td><strong>New planning process for freshwater</strong>&lt;br&gt;17. Do you support the proposal for a faster freshwater planning process? Note that there will be opportunity to comment on this proposal in detail through the select committee process on the Resource Management Amendment Bill later this year.</td>
<td>DHL supports the proposal for faster freshwater planning processes but also emphasises that in the context of the Canterbury and Southland Regions in particular it has expended considerable resource and time in robust planning processes that have been determined against the NPS-FM, as applied at the time. It is very keen to ensure that Regional Councils and stakeholders are not unnecessarily put through further planning processes in circumstances where the relevant catchments and areas are already ‘on the road’ to improved water quality.</td>
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### Raising the bar on ecosystem health

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<th>Reference to Discussion Document</th>
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<tr>
<td>5.13 (20) – (21) &amp; (30) – (35)</td>
<td><strong>Attributes</strong>&lt;br&gt;20. Do you think the proposed attributes and management approach will contribute to improving ecosystem health? Why/why not?&lt;br&gt;21. If we are managing for macroinvertebrates, fish, and periphyton, do we also need to have attributes for nutrients that have been developed based on relationships with aquatic life?</td>
<td>Conceptually DHL is not opposed to use of attribute states to manage ecosystem health. DHL is however concerned at the specific attributes as set out (in particular) in the pNPS-FM and the extent to which they are realistically achievable. DHL accordingly adopts the submission of DairyNZ on the appropriateness of the attribute states. DHL also shares DairyNZ’s view that a better measure for freshwater health is through measuring ecosystem responses (namely, periphyton and macroinvertebrates) and taking an adaptive management approach where outcomes are not met.</td>
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30. Do you support introducing new bottom lines for nitrogen and phosphorus? Why/why not?

31. If this proposal was implemented, what would you have to do differently?

32. Do you have a view on the STAG’s recommendation to remove the ‘productive class’ definition for the periphyton attribute?

33. For deposited sediment, should there be a rule that if, after a period (say five years), the amount of sediment being deposited in an estuary is not significantly reducing, then the regional council must implement further measures each and every year? If so, what should the rule say?

34. Do you have any comments on the proposed suspended sediment attribute?

35. If this proposal was implemented, what would you have to do differently?

The proposed attributes for suspended fine sediment are overly complex and have resulted in proposed national bottom lines that are well below any peer-reviewed effects-based levels of turbidity.

DHL provides the following additional specific comments on the pNPS-FM:

**Dissolved inorganic nitrogen and dissolved reactive phosphorous attributes (Tables 5 and 6, Appendix 2 pNPS-FM)**

Without limiting its concerns set out elsewhere in this feedback, DHL has grave and significant concerns in relation to the proposed bottom lines for dissolved inorganic nitrogen (DIN) or dissolved reactive phosphorous (DRP). DHL does not support the proposed DIN and DRP attributes.

The Discussion Document recognises that “the impact on waterways is a complex interaction between land use, soil types, climates, and crop physiology.” DHL agrees with DairyNZ that the proposed attributes fail to take into account the current scientific understanding of the complexity of stream health.

DIN concentrations vary considerably across the whole of New Zealand and within individual catchments. For example, in Canterbury there are water bodies in the foothills, above intensive farming areas that exceed the proposed DIN national bottom line. While these water bodies might well fall within the ‘naturally occurring processes’ exception above, DHL is concerned that downstream connected waterbodies would be subject to the national bottom line (even where the water flowing into that waterbody could not meet the national bottom lines as a result of naturally occurring processes).

Requiring farmers to reduce their nutrient loads in order to meet national bottom lines that cannot in fact be achieved is not appropriate.

Overall, each water body should be assessed individually in the context of the land uses surrounding it, any naturally occurring processes, and with regard to the water quality of connected waterbodies to be able to set realistic, achievable, and ecologically feasible targets and bottom lines.
The national bottom line for DIN as currently set out in the pNPS-FM would eventually preclude many pastoral, arable, and horticultural activities (perhaps even forestry) in the future.

DHL is very concerned that the national bottom lines are at levels that, in time, will be devastating to all economic activity in (for example) provincial Canterbury. This is reflected in the attendance and interest that has been shown in various rural community meetings on the National Direction Documents across New Zealand.

DHL supports the relief sought by Irrigation NZ that DIN and DRP attribute indicators should be maintained at current levels or improved until regionally site-specific levels are put in place. DHL also supports the relief sought by DairyNZ to amend the national bottom lines for DIN and DRP.

**Ammonia (toxicity) and nitrate (toxicity) attributes (Tables 7 and 8, Appendix 2A pNPS-FM)**

DHL is also not sure why Tables 7 and 8 of Appendix 2A provide a national bottom line for ammonia and nitrate toxicity in rivers that is higher than the DIN national bottom line.

DIN will inevitably include both the sum of ammonia and nitrate (as well as nitrite) and therefore to provide toxicity levels for ammonia and nitrate that are higher than the DIN bottom line renders them useless as the DIN bottom line would never be met even where the ammonia and nitrate toxicity bottom lines were.

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<th>5.13 (23) &amp; (24)</th>
<th>23. Do you support the proposed fish passage requirements? Why/why not?</th>
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<td><strong>24. Should fish passage requirements also apply to existing instream structures that are potentially barriers to fish passage, and if so, how long would it take for these to structures to be modified and/or consented?</strong></td>
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<td>DHL recognises fish passage as being essential to maintaining a healthy freshwater system.</td>
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<td>It is however concerned to ensure that the fish passage requirements only apply to natural water courses. In many cases the artificial water courses that form part of irrigation and stockwater networks (and drainage schemes) will carry some ecological values. In such cases the presence of structures will be appropriate despite the presence of ecological values.</td>
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<td>DHL is of the view that fish passage requirements to structures should not be retrospective. The possible cost and time implications of retrospective requirements of this kind are simply too unknown and might not be possible to implement.</td>
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For completeness it is also noted that DHL has a number of culverts in natural rivers across its properties and has some concerns with the permitted activity ‘culvert span’ condition as set out in clause 21(1)(d) of the pNESF:

- the clause as it stands would preclude the construction of multiple culverts from permitted activity status. DHL notes that it is more cost effective and better from an engineering perspective to have a number of smaller culverts and to let the river flow overtop when it floods. This is in fact safer in terms of flooding than only having one culvert (and to this extent DHL respectfully suggests that structural engineers are consulted in the drafting of the relevant clauses);

- to enable multiple culverts would still be in line with the intention of the fish passage clauses in the National Direction Documents (provided the culverts are large enough to ensure water velocity does not increase materially); and

- DHL also considers it should be made clearer that the measurement of the “bankfull width” is taken from the point along the river where the culvert will be constructed, and not based on an average or maximum width of a river. The definition of river “bed” in this subpart of the pNESF has the same meaning as in the Resource Management Act 1991. DHL notes that a recent Court of Appeal decision² has clarified the definition of a “river bed” under the Act and that this should not be departed from.

DHL is supportive of preventing any further degradation and loss to New Zealand’s wetlands. DHL is, however, concerned that the various definitions of “wetland” in the pNESF (and also in the pNPS-FM) are too vague.

In particular:

- DHL is concerned that the proposed rules and policies on wetlands may also apply to areas which are subject to orthodox drainage in pasture areas (such as tile and overflow drainage) – which is common in (in particular) the Southland and Tasman/West Coast areas. DHL is

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keen to ensure that such drainage does not fall within the currently proposed definition of a “constructed wetland;”

- It is also noted that some regional councils have already been pro-active in this area. The Canterbury Regional Council has already largely mapped the wetlands and likely/potential wetland habitats in the Canterbury region through both ground and aerial surveys and incorporated them into the relevant Regional planning frameworks. The protection of wetlands is already being achieved;

- DHL also supports the exclusion of constructed wetlands in the draft Stock Exclusion Regulation, however notes that it may be beneficial to have the same definitions across all National Direction Documents.

DHL considers that some of the provisions around wetlands included in the pNPS-FM (for example clauses 7 to 8, and 10 to 13) might be unworkable in some circumstances and recommends the activity standards in these clauses only apply where the activity would affect the functioning of the particular wetland.

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<th>5.13 (37)</th>
<th>Minimum flows</th>
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<td>37. Is any further direction, information, or support needed for regional council management of ecological flows and levels?</td>
<td></td>
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<tr>
<td>Reporting water use</td>
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</table>

| DHL supports the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 which require consumptive water permit holders with takes over 5 litres per second to (among other things) install a water meter and provide records of water use to regional councils. |
| The Discussion Document proposes to amend the regulations to mandate direct electronic transmission of data to regional authorities. |
| DHL repeats its concerns set out in response to questions 1.6 (5) above and 8.9 (54) – (57) below on the resourcing of regional authorities to be capable to manage or make use of this significant amount of data. As set out in response to questions 8.9 (54) – (57) below, a number of regional |

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3 **constructed wetland** means a wetland constructed by artificial means that:

- **a)** Supports an ecosystem of plants that are suited to wet conditions; and
- **b)** Is conducted for a specific purpose in a place where a natural wetland does not already exist.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>38. Do you have any comment on proposed telemetry requirements?</td>
<td>councils are already struggling to ensure compliance with these regulations, with a number of consent holders not being followed up despite not having water meters in place.</td>
</tr>
<tr>
<td>5.13 (40) - (42)</td>
<td>DHL is supportive of some aspects of the pNPS-FM and notes that a number of regional councils have already implemented similar regimes across the country. While DHL is supportive of some aspects, it is particularly concerned that the regional authorities simply do not have the resources or the personnel to implement what is currently in the pNPS-FM. As set out at in response to questions 8.9 (54) – (57) below, DHL notes the difficulties in resourcing already experienced by some of the larger regional councils such as Canterbury and Waikato. ‘Smaller’ regional councils will be incapable of fully implementing these changes if they are not provided with substantial financial resourcing to assist. DHL provides the following additional specific comments on the pNPS-FM: <strong>The National Objectives Framework (Part 3, subpart 2 pNPS-FM)</strong> DHL supports the setting of environmental flows and levels for waterbodies. It however notes that a number of regions across New Zealand have already undergone extensive planning processes around minimum flows (a key example being in the Canterbury Region). <strong>Naturally occurring processes exception (Part 3, subpart 4 pNPS-FM)</strong> With particular reference to Part 3, subpart 4 pNPS-FM, DHL supports an exception being made for naturally occurring processes but considers that the definition of ‘naturally occurring processes’ under clause 3.23(3) being ”processes that could have occurred in New Zealand before the arrival of humans” is too narrow. Such as definition has the potential to exclude naturally occurring processes from (for example) natural nitrogen fixation by an introduced plant species (for example lupines and clovers). Such plants were introduced to New Zealand by humans but have spread without human interference and form a core part of the New Zealand environment. DHL seeks that they are also appropriately accounted for.</td>
</tr>
<tr>
<td>40. Are the purpose, requirements, and process of the National Objectives Framework clearer now? Are some components still unclear?</td>
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<tr>
<td>41. What are your thoughts on the proposed technical definitions and parameters of the proposed regulations? Please refer to the specific policy in your response.</td>
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<tr>
<td>42. What are your thoughts on the timeframes incorporated in the proposed regulations? Please refer to the specific policy in your response.</td>
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</table>
## 8 Improving farm practices

<table>
<thead>
<tr>
<th>Reference to Discussion Document</th>
<th>Question</th>
<th>Comment</th>
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</table>
| 8.9 (51)                         | 51. Do you support interim controls on intensification, until councils have implemented the new NPS-FM? Why/why not? | With primary reference to Part 3, Subpart 2 of the pNESF, DHL in principle supports the notion that further intensification of rural land use should be restricted to some extent in order to ‘hold the line’ while regional authorities fully implement the National Direction Documents.  

However it is emphasised that its position on this issue is informed by the understanding this subpart is to apply only to regions and freshwater management units that have not yet implemented a robust nutrient management scheme. I.e. it is intended to be a default regime for regions which might not otherwise have a nutrient regime in place.  

DHL does not consider that clause 31 of the pNESF makes it clear enough that the subpart is in fact a default regime and does not provide enough guidance as to what applies and when.  

DHL consider it would be useful to list the regions that already ‘fully implement’ the National Policy Statement for Freshwater Management 2014 (as amended 2017) as to avoid any doubt and give a reference point. DHL would expect that at the very least Canterbury and Southland regions would be included in this list.  

**Duration of consents (clause 32 pNESF)**

DHL considers that the effect and intent of this clause is very unclear.  

DHL understands that the likely intention behind this clause is to ensure there is a reasonable ‘sunset date’ on resource consents for intensive winter grazing, irrigated farming, high-risk land use changes, and land use change to commercial vegetable production that were consented in the absence of a nutrient management scheme. |
Under the pNPS-FM, regional authorities will have until 2025 to publically notify final decisions on any changes to policy statements and plans that are necessary to give effect to the National Policy Statement. DHL therefore questions the need for clause 32(2). Arguably subpart 2 will not apply to any freshwater management units after 31 December 2030 (if not earlier) if the pNPS-FM timing is in fact adhered to.

DHL would also like to warn of the possible effects of any rule that requires consents to expire after 1 year of the date which it is granted. DHL does not consider that regional authorities currently have the resources to be capable of granting the same resource consent on a yearly basis for everyone who might fall within this category. It would also be extremely burdensome on a number of farmers to require them to go through the consenting process again and again.

Finally, DHL refers to its comments set out below in response to questions 8.9 (76) – (78) regarding the two possible ways of consenting various farming activities (i.e. through either a land use or a discharge consent). DHL considers that this clause 32 should clearly set out that:

- both discharge and land use consents that enable activities under this subpart will continue to enable those activities until 31 December 2030; and
- where an activity under this subpart has already been consented through a discharge consent, the consent holder will not be required to also obtain a land use resource consent for the purposes of clauses 33, 34, 35, or 36 (and vice versa).

**Intensive winter grazing within certain areas (clause 33 pNESF)**

DHL supports clause 33(1) which states that clause 33 will not apply until 1 January 2021. This will provide farmers with the ability to manage and plan their future intensive winter grazing.

DHL does not consider that the baseline in clause 33(2) of the “highest total area in annual forage crop in any farm year between 2013/14 and 2018/19” is appropriate. DHL considers there will be freshwater management units where intensification is possible and the default scheme should not prevent this.
<p>| | |</p>
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<tr>
<td>DHL considers that a better baseline for this clause might be with reference to the farm’s ‘baseline nitrogen loss figure’ (see below in response to questions 8.9 (76) – (78) as to how this is defined). This is because it is quite conceivable that under the proposed wording a farmer might be prevented from intensifying a certain part of their operation even where they have made reductions elsewhere to their nutrient load which would result in an overall reduction of nutrient loss even after intensification.</td>
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<tr>
<td>DHL is also unclear on how one would quantify sediment and microbial pathogen discharges as required under clause 33(3)(c) and considers that these should be removed from this clause (and clause 34(3)(c)) if there are no robust methods of quantification to accompany them.</td>
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<tr>
<td>These comments apply equally to clause 30(2)(b).</td>
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<tr>
<td><strong>Irrigated farming (clause 34 (and 35) pNESF)</strong></td>
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<tr>
<td>DHL seeks that this clause 34 (and also clause 35) should also only apply from 1 January 2021 as is set out in clause 33(1) in order to give farmers the opportunity to manage and plan their future activities. It is not clear why this timeframe would only apply to intensive winter grazing and not the other activities within this subpart.</td>
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<tr>
<td>It is also not clear how this clause would apply to irrigation schemes and more generally (in relation to this entire subpart) how these clauses apply to resource consents that are granted but not yet implemented.</td>
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<tr>
<td>In these instances, DHL considers that where land which was not previously irrigated is subsequently irrigated under an existing resource consent that has not yet been fully exercised (such as is the case with irrigation schemes), that should not be captured by clause 34 as intensification of irrigated farming. Often, the expansion will not necessarily increase the nutrient load (for example where existing farm land is being converted to spray irrigation).</td>
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<tr>
<td>DHL provides some suggested wording addressing its concerns on these key provisions of the pNESF in <strong>Part C</strong>.</td>
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</table>
**Farm plan options**

54. Do you prefer mandatory or voluntary farm plans (acknowledging that farm plans may be required by councils or under other parts of the proposed Freshwater NES?) What are your reasons for this?

55. What are your thoughts on the proposed minimum content requirements for the freshwater module of farm plans?

56. What are your thoughts on the proposed priorities and timeframes for roll out of farm plans, as set out in the proposed Freshwater NES?

57. Do you have any comment on what would be required to ensure this proposal could be effectively implemented, including options for meeting the cost of preparing, certifying and auditing of farm plans; and on financing options for other on-the-ground investments to improve water quality?

DHL is fully supportive of managing and improving farming practices through good management practice and farm plans.

DHL notes that it already has farm plans for all of its farms in the Canterbury Region as required by the Canterbury Land and Water Regional Plan. It is also in the process of completing farm plans for its Southland farms following decisions (under appeal) on the Southland Water and Land Plan.

DHL is also in the process of preparing farm plans for its Tasman and West Coast properties despite there being no requirement on it to do so.

DHL does not currently have farm plans for all of its Otago farms. However, it is currently in the process of a resource consent application for a farm enterprise consent for its farms which will more likely than not require that all of its farms have farm plans as a condition of consent. Its North Otago irrigated properties do have farm plans and have had these in place for more than five years.

Given the above, DHL anticipates that in a few years all of its farms and operations will have a farm plan.

All of DHL’s current farm plans already contain all of the information on freshwater listed in the proposed content for the freshwater module under clause 38 pNESF. Further, all of DHL’s farm plans are certified and audited.

DHL is concerned, however, that the pNESF will require some 50,000 farm plans to be prepared, certified, and audited every 1-3 years (depending on audit grades). DHL does not consider that New Zealand currently has anywhere near the resources available to implement this.

From its experience in Canterbury, DHL struggled to find sufficient resources to complete farm plans consistently with appropriately experienced people – and Canterbury is only one of a few regions that have required certain farms to have a farm plan.

Accordingly, and despite being fully supportive of them, DHL considers that requiring all farms to have a farm plan by 2025 is simply not possible (at least without significant investment into resources and
the training/upskilling of appropriate people – which seems very difficult to contemplate in the 5 year timeframe that would be available).

DHL does not consider that the Discussion Document, nor the National Direction Documents have had sufficient regard to the absolute enormity of the task.

To give an example, Fonterra set itself a goal of preparing 1,000 farm plans by 31 July 2018 to assist its farmers. This was heralded as a big step and achievement. Fonterra completed its 1,000 farm plans in 2018, but it became clear that demand far outweighed supply and that there was a lot more work to be done. Those 1,000 farm plans are just one fiftieth of what will be required currently under the pNESF.

DHL is also aware for the likes of Waikato (which has a farm environment regime and nutrient budgets), the regional council has recently written to all consent holders that they do not have the resources to process all of the farming files from the last few years. While most farmers have undergone the expense of preparing and implementing farm plans, the regional council is simply not in a position to monitor these and is therefore moving on, having reserved its position.

Similarly, in Canterbury, following the implementation of the deemed water metering requirements there are still a number of consent holders with no water meters in place that Environment Canterbury (ECan) has not yet followed up on. Resourcing required to monitor water metering is insignificant compared to the resources required for a farm plan regime.

Further, with farm plans in Canterbury, ECan has consistently stepped back and handed it to the irrigation schemes to complete and audit their farm plans on a farm level. Those schemes are delivering on this, however, there is fierce competition between the schemes for the human resource in preparing these.

As a result of a lack of resources, DHL is also concerned that it is very likely that as the demand for farm plans and appropriately experienced persons to prepare and audit them increases, so too will the cost of farm plans. DHL anticipates that this will significantly increase the existing ~$3,500 it costs to develop a farm plan.
DHL respectfully asks that greater thought is put around the implementation of the pNESF ‘on the ground’ and considers that requiring all farms to have farm plans by 2025 must be accompanied with a significant investment into resources around that. DHL does not consider it useful for the pNESF to provide for a nationwide farm planning scheme if it simply cannot be implemented or monitored effectively.

### Immediate action to reduce nitrogen loss

**58. Which of the options (or combination of them) would best reduce excessive nitrogen leaching in high nitrate-nitrogen catchments? Why?**

**59. If you are in a high nitrate-nitrogen catchment, what would you have to do differently under these options?**

**60. In addition to those already identified, are there other high nitrate-nitrogen catchments that should be subject to these options?**

**61. Do you think the action already underway in five regions (identified in section 8.4) will be effective in reducing excessive nitrogen leaching in those high nitrate-nitrogen catchments?**

...  

**63. What alternative or additional policies could contribute to reducing nitrogen loss?**

With reference to Part 3, Subpart 4 pNESF and the three options to implement immediate action to reduce nitrogen loss, DHL’s preferred option is Option 3 (farm plan-based reductions) which is already provided for in Part 3, Subpart 3 of the pNESF (noting, however, DHL’s concerns expressed above on resourcing). DHL considers this option will enable the most effective nitrogen reductions through targets specifically catered to each farm within a certain catchment.

As set out elsewhere in this feedback document, in the case of Canterbury (with which DHL is most experienced) it is DHL’s view that the measures in place will be effective in reducing excessive nitrogen leaching. DHL also notes that Southland is likely to get an effective regime in place following decisions on appeals on the Southland Land and Water Regional Plan and on that basis it should be included in those regions where action is already underway (identified in section 8.4 of the Discussion Document).

DHL otherwise repeats its concerns in relation to resourcing.

DHL considers that Option 2 (a national nitrogen fertiliser cap) might also be a feasible option. It would provide certainty to farmers as to the amount of fertiliser to apply. However, it has concerns over the uncertainty of what this cap would be set at and that the one figure would not necessarily be the correct figure for the whole of New Zealand. Further, nitrogen fertiliser is only one way which nitrogen leaching occurs, therefore the expected freshwater quality outcomes of such a cap are questionable. A nitrogen fertiliser cap would not reward efficiency as it would not encourage farmers to implement other practices to reduce nutrient losses. DHL therefore would still prefer Option 3.

DHL has significant concerns with Option 1 (nitrogen-loss cap in high nitrate-nitrogen catchments) and with the clauses in subpart 4. DHL considers that this option has the potential to effectively wipe

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4 At pages 70 to 73 of the Discussion Document.
<table>
<thead>
<tr>
<th>64. Do you have any comment on what would be required to ensure this proposal could be effectively implemented?</th>
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<tr>
<td>out the dairy industry in regions such as Canterbury and Waikato without any significant environmental gain.</td>
</tr>
<tr>
<td>DHL provides the following comments on the Part 3, Subpart 4 pNESF in relation to Option 1:</td>
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**Nitrogen cap – Controlled activity (clause 44 pNESF)**

DHL is concerned with the wording of the condition in clause 44(4)(a) pNESF. DHL does not understand why the reduction expressed as a percentage is between the baseline nitrogen loss figure and not the current nitrogen loss figure of the farm (which is exceeding the threshold value).

DHL notes that as it is currently worded, clause 44(4)(a) would only require reductions from those farms with the highest nitrogen loss figures in the 70-90th percentile. Farms whose baseline were under the threshold value but have subsequently exceeded the threshold value would not be required to make reductions because the percentage would be in the negative.

Further, DHL would like to express concern over the tightness of the timeframes proposed for reducing a farm’s nitrogen loss in this clause.

**Nitrogen cap – Discretionary activity (clause 45 pNESF)**

The same comments made for the “Controlled activity” above will apply in relation to clause 45. In addition, the difference between the application of the activity standards in clauses 44 and 45 is not clear. DHL considers there will be instances, particularly early on in the implementation of the pNESF where both clause 44 and 45 might apply to an activity.

DHL seeks that there is a clear difference between the activities intended to be captured by both of these clauses to avoid the application of two activity standards.

**Nitrogen cap – Regional council to calculate threshold values (clause 47 pNESF)**

DHL considers that should option 1 be adopted, it would be appropriate to set the threshold value at the 90th percentile (being the highest 10 per cent of farmers would have to reduce nitrogen losses to reach the threshold). DHL notes that the current wording of clause 47(2) is confusing.
As a general comment, DHL would also like it to be made clear that existing resource consents for dairy farming (both land use and discharge consents) will continue to apply despite subpart 4 until the expiry of those consents.

<table>
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<tr>
<th>8.9 (65) – (68)</th>
<th><strong>Excluding stock from waterways</strong></th>
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<tbody>
<tr>
<td>65. Do you support excluding stock from waterways? Why/why not?</td>
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<tr>
<td>66. Do you have any comment on the proposed different approach for larger and smaller waterbodies?</td>
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<tr>
<td>67. Do you have any comment on the proposed five metre setback, or where it should be measured from?</td>
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<tr>
<td>68. Are there any circumstances that are appropriate for allowing exemptions to the stock exclusion regulations? If so, please give examples.</td>
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<tr>
<td>DHL fully supports the exclusion of stock from waterways and that the most efficient means of doing this is through fenced setbacks from waterways.</td>
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<tr>
<td>DHL notes that currently all of its dairy farms have their more notable waterways fenced with a setback varying (typically) between one and three metres (depending on the rules applying to the region).</td>
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<tr>
<td>DHL supports the setback as being averaged across the property with a minimum width of one metre. This is practical and in line with current farming practices.</td>
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<tr>
<td>DHL understands there is some leniency around the timing of the Regulation where setbacks are already in place and considers this reasonable. DHL is of the view, however, that requiring the re-fencing of waterways to meet the draft Stock Exclusion Regulations is of little value should the minimum width of one metre be complied with. DHL considers there should be a ‘carve out’ in the draft Stock Exclusion Regulations to this effect.</td>
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<tr>
<td>DHL is opposed to an average five metre setback and is supportive of DairyNZ’s position that this average setback should be three metres from wetlands, rivers and lakes greater than one metre wide. In saying this, DHL notes that there is no one appropriate setback distance for all waterways. DHL is of the view that stock exclusion from waterways is best managed on a case by case basis, tailored to each farm and each waterway, and implemented through farm plans.</td>
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<tr>
<td>DHL strongly supports the exclusion of ephemeral streams in the definition of “river” in the draft Stock Exclusion Regulations. To include ephemeral waterways would be extremely burdensome to</td>
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</table>
farmers and significantly increase the anticipated costs associated with fencing waterways under the draft Stock Exclusion Regulations. It also not clear that it would provide any improved outcomes in terms of water quality.

DHL would also like to repeat its comments in response to questions 5.13 (23) & (24) above regarding the definition of river ‘bed’ as will be relevant to the definition of “setback” in the draft Stock Exclusion Regulations.

With regards to the “low-slope” and “non-low-slope” land categories, DHL considers that the distinction should be drawn at 10 degrees (being that “low-slope” land should be land with a mean slope of less than or equal to 10 degrees).

Again, DHL reiterates that it would prefer that stock exclusion is implemented through farm plans on a farm by farm basis. For example, it considers that for some “non-low-slope” farms a setback of 20 metres might well be reasonable to maintain freshwater quality.

Stock exclusion on “non-low-slope” land in the draft Stock Exclusion Regulations is triggered based on a stock unit per hectare measurement (su/ha). This, however, takes into account the stocking rate across the entire property - this could result in (for example) a mob of 500 beef cows on a very large property falling outside of the stock exclusion requirements and having access to waterways. DHL considers a more effective way to require stock exclusion in “non-low-slope” land might be with reference to mob size as oppose to stock units.

In addition DHL notes that in relation to clause 30(1)(e) pNESF, clarity around whether this ‘vegetated strip’ would include the stock exclusion setback is required. As the wording currently is “between the grazed area and any water body...” it has been assumed that this measure would include the stock exclusion setback. As per the comments on the draft Stock Exclusion Regulation above, while DHL would prefer that setbacks and vegetated strips be managed through farm plans, it would not be opposed to a three metre vegetated strip (being the same as the stock exclusion setback). However, DHL considers that this policy should include the same proviso as the draft Stock Exclusion Regulation that the three metres is “on average across the property (with a minimum width of 1m).”
Further, DHL considers that any wetland area protected should contribute to the average width of setbacks under the draft Stock Exclusion Regulations.

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<th>8.9 (69) – (70)</th>
<th><strong>Controlling intensive winter grazing</strong></th>
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<tr>
<td>69. Do you prefer Option 1: Nationally-set standards or Option 2: Industry-set standards? Why?</td>
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<tr>
<td>70. For the proposed nationally-set standards, which options do you prefer for the area threshold, slope, setback, and pugging depth components of the policy?</td>
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DHL is relatively neutral to either Option 1 or Option 2, but acknowledges that nationally-set standards may be useful for defining good practice expectations in relation to winter grazing.

DHL is particularly interested in any clauses relating to intensive winter grazing that provide activity standards to be imposed in regional plans. DHL has been heavily involved in various Council processes establishing similar rules at a regional scale and is worried that the extensive consultation conducted around these might be undone.

**Intensive winter grazing – Permitted activity rule (clause 30 pNESF)**

In relation to clause 30(1)(a) pNESF, DHL does not consider the degree of slope on land for intensive winter grazing should be prescribed. Rather, it considers that what can be done on any particular property should be determined on a case by case basis through the farm plan process which will inevitably take into consideration the specific slope and terrain of a particular property. If (in the alternative) slope was to be prescribed, DHL considers 20 degrees would be appropriate, as consistent with the decisions (under appeal) of the Southland Water and Land Plan.

Conversely, DHL considers a prescribed slope of 10 degrees would be arbitrary and cumbersome. Such a rule would require a significant number of winter grazing properties to acquire resource consents. Again, the comments made above in response to questions 8.9 (54) – (57) about resourcing will apply.

Clause 30(1)(b) pNESF applies another arbitrary limit on the area of a farm able to be intensively winter grazed. These limits should also be provided for and governed within a farm plan. The need for farmers to intensively winter graze varies across the country due to a number of factors (including climate).

Should (in the alternative), a limit on the area of annual forage crops be prescribed, 20% of the area of the farm would be appropriate.
DHL is fully supportive of clauses 30(c) and (d) pNESF and notes that these are common farming best practices that are already well established in the dairying community. See for example, DairyNZ's "Wintering on crop and pasture: A guide for successful wintering in Southland and South Otago."

Clause 30(1)(e) pNESF has already been addressed above in response to questions 8.9 (65) – (68). DHL seeks clarity around whether the 'vegetated strip' would include the stock exclusion setback. While DHL again considers this would best be achieved through farm plans, in the alternative, it considers three metres would be an appropriate minimum. DHL considers that this policy should include the same proviso as the draft Stock Exclusion Regulation that the three metres is "on average across the property (with a minimum width of 1m)."

In relation to clause 30(1)(f) pNESF, DHL would like to note re-sowing a paddock within one month after the end of grazing will more often than not be impracticable due to general ground conditions in the winter. Sowing too early after grazing can also contribute to further erosion of the paddock. DHL therefore considers it would be more appropriate to make reference to 'the beginning of the next growing season.'

In relation to clause 30(1)(g) pNESF, DHL does not consider that an average measurement across a percentage of a paddock is a practicable measure for pugging depth. In addition, DHL does not consider that pugging should be a matter that forms part of the National Direction Documents. Excess pugging, provided other mitigation measures are in place, does not automatically materially increase the loss of nutrients or sediments. The issue of pugging is largely one that relates to animal welfare and which is already safeguarded by other legislation and regulations.

Intensive winter grazing - Restricted discretionary activity rule (clause 30 pNESF)
DHL has already provided comment on this rule when discussing intensification (Part 3, Subpart 2 pNESF), see in response to question 89 (51) above.

DHL considers that the reference to clause 31 in clause 30(2)(b) will have the effect of imposing two different activity standards for the same activity. For example, after 1 January 2021 where an application to intensively winter graze falls under clause 33(2) as a discretionary activity, it will also

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be a restricted discretionary activity under clause 30(2) where one or more of the permitted activity standards in clause 30(1) cannot be met.

DHL recognises that there is an information note at the end of clause 30 which provides:

*Intensive winter grazing in certain areas that is not a permitted activity or a restricted discretionary activity may be a discretionary activity.*

This suggests it is intended that the activity standards in clause 30 prevail over those in clause 33. This could result in the situation where a farm is looking to intensify its winter grazing activity through an increased area total area of annual forage crop (exceeding the highest total area between 2013/14 and 2018/19) will be a permitted activity provided it complies with clause 30(1).

DHL does not consider this is how the intensification provisions in Part 3, Subpart 2 pNESF were intended to apply and notes that great care and consideration should be given to the practical implementation of these rules.

In relation to clause 30(5) DHL notes that clause 30 does not include a discretionary activity rule, and therefore it is not clear what "the discretionary activity" is referring to. It is likely this is a drafting error and that reference should have been made to "the restricted discretionary activity" as per clause 30(4).

Finally, DHL notes that it is not clear at all what happens where a winter grazing activity falls outside of clauses 30 and 33. What activity status would an activity to winter graze that does not comply with the permitted activity rules and does not exceed the highest total area of annual forage crop have? Arguably, regional councils could prescribe any activity status of their choosing here.

| 8.9 (72) – (75) | **Reducing pollution from stock holding areas**  
72. Do you support the proposal relating to stock holding areas? Why/why not? |
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<tbody>
<tr>
<td></td>
<td>Again, DHL considers that such setbacks would be best managed on a case by case basis through farm plans which will take into account specific on site characteristics of the property.</td>
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<tr>
<td>73. Do you think sacrifice paddocks should be included?</td>
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<td>---------------------------------------------------------</td>
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<td>74. What would you have to do differently if this proposal was implemented?</td>
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<tr>
<td>75. Do you have any comment on what would be required to ensure this proposal could be effectively implemented?</td>
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With specific reference to Part 3, Subpart 1 pNESF, DHL considers that requiring sacrifice paddocks to be located 50 metres from waterbodies, water abstraction bores, drainage ditches, and coastal marine areas will be excessive in some situations.

DHL would also like to point out that there is little difference between a sacrifice paddock and a winter crop paddock. The two paddocks are essentially left in the same state at the end of winter and therefore DHL considers that the rules for sacrifice paddocks and intensive winter grazing should be aligned and mirror each other to some extent.

Clause 28(1) pNESF provides the following definition of "sacrifice paddock":

> means a paddock used temporarily to hold stock in such a way that the pasture is likely to be severely damaged and will require pasture renovation.

It is noted that this definition as it is currently proposed is likely to capture both 'other stock holding' and 'intensive winter grazing' paddocks which are covered by clause 29 and 30 pNESF respectively. DHL considers that it should be made abundantly clear that the rules relating to sacrifice paddocks do not apply to 'other stock holding' areas as set out in clause 29 or intensive winter grazing.

In relation to other stock holding areas, DHL similarly seeks that it is made clear that the rules provided for other stockholding areas do not apply to sacrifice paddocks, or paddocks that are intensively winter grazed.

As for sacrifice paddocks and paddocks that are intensively winter grazed, there should be a permitted activity standard for 'other stockholding areas.'

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### Draft proposed National Environmental Standards for Freshwater

76. Are the definitions used in the policies accurate, and if not, how do you suggest improving them?

Significant mention has been made of the pNESF throughout this feedback document (and in the interests of duplication, DHL does not repeat those comments in this section – but they should be read as applying).

DHL makes the following further specific comments.
| 77. What are your thoughts on the proposed technical definitions and parameters of the proposed regulations? Please refer to the specific policy in your response. | **Definitions for subpart 4**

DHL does not consider it is clear what the difference between the “baseline nitrogen loss figure,” “nitrogen loss figure,” and “threshold value” is.

Currently the definition of “baseline nitrogen loss figure” by reference to clause 47 is very ambiguous as clause 47 does not in fact provide a calculation for a nitrogen loss figure. DHL considers that the “baseline nitrogen loss figure” should be that figure as calculated under clause 46(2).

**Framework for plans is not clear**

DHL is concerned with the lack of appreciation in the pNESF that there are multiple ways of consenting the same farming activities (and that the approach to consenting currently varies significantly across the country).

For example, in one region a person can currently apply for a resource consent to farm through a requirement for a land use consent (with a separate rule making the discharge permitted). Conversely, in another region a person might apply for a discharge consent (with the associated land use aspect being permitted).

There is a need within the pNESF to ensure:

- The relationship with existing consented activities is clear; and
- there is clarity on the types of consent(s) that are required for a particular activity.

DHL considers that this point must be addressed in order for the pNESF to be properly able to be implemented. |

| 78. What are your thoughts on the timeframes incorporated in the proposed regulations? Please refer to the specific policy in your response. |  

Currently the definition of “baseline nitrogen loss figure” by reference to clause 47 is very ambiguous as clause 47 does not in fact provide a calculation for a nitrogen loss figure. DHL considers that the “baseline nitrogen loss figure” should be that figure as calculated under clause 46(2). |

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DHL considers that this point must be addressed in order for the pNESF to be properly able to be implemented. |
PART C

DHL’s suggested wording on a few key provisions in the pNESF is provided below – noting DHL has also provided actual wording or identified required amendments for other provisions in Part B (both need to be read together).

26 Application of Part 3

Nothing in this Part applies to the following:

a) pastoral farms of less than 20 hectares;

b) arable farms of less than 20 hectares;

c) horticultural farms of less than 5 hectares;

d) resource consents (whether fully implemented or not) for any activities to which this Part relates applied for or granted before the commencement date until such time as the resource consent expires.

31 Geographic application of subpart 2

(1) The requirements of this subpart do not apply only in the Canterbury, Otago, Southland Regions, the Tukituki catchment in Hawke’s Bay, the Manawatu and the Waikato/Waipa catchments in Waikato, or in freshwater management units where national policy statements for freshwater management have not been fully implemented.

(2) For the purposes of subclause (1), full implementation by a regional council means, in relation to a freshwater management unit, that:

a) in relation to the National Policy Statement for Freshwater Management 2014 (as amended 2017), the regional council has:

i. defined limits for the defined attributes and included them in rules in the regional plan; and

ii. included any required objectives and policies in the regional policy statement or plan; or

b) in relation to the National Policy Statement for Freshwater Management 2019, the regional council has:

i. defined limits and action plans for the defined attributes and included them in the regional plan; and

ii. included any required objectives and policies in the regional policy statement or plan; and

iii. published all required action plans.
33  **Intensive winter grazing within certain areas**

(1)  This clause does not apply until 1 January 2021.

*Permitted Activity*

(2)  An increase in the area intensively winter grazed on a farm is a permitted activity if the increase does not result in any increase in nutrient loss [or baseline nitrogen loss figure].

*Discretionary activity*

(3)  Intensive winter grazing is a discretionary activity if an increase in the area intensively winter grazed on a farm exceeds the farm’s nutrient loss [or baseline nitrogen loss figure], the total area within a farm in annual forage crop exceeds the highest total area in annual forage crop in any farm year between 2013/14 and 2018/19.

(4)  Any resource consent granted for the discretionary activity must include at least the following conditions:

a)  the applicant has a certified FW-FP; and

b)  the FW-FP includes actions to avoid, remedy, or mitigate the adverse effects of the activity’s contaminant discharges into freshwater, or into land in circumstances that may result in the contamination entering water; and

c)  the nitrogen, and phosphorus, sediment, or microbial pathogen discharges of the farm that will result from the increased land used will not exceed the average discharges of those contaminants from the farm during the farm year 2017/2018.

(5)  An application for a resource consent for the discretionary activity must include a certified FW-FP for the farm to which the application relates.

34  **Irrigated farming**

(1)  This clause does not apply until 1 January 2021.

*Permitted activity*

(2)  An increase in the amount of land used on a farm (where no relevant resource consent is held) for irrigated production (other than production from effluent...
irrigation) is a permitted activity if the increase since the commencement date is 10 ha or less; or

(3) An increase in the amount of land used on a farm (where no relevant consent is held) for irrigated production (other than production from effluent irrigation) is a permitted activity if the increase in irrigated area does not result in any increase in nutrient loss [or baseline nitrogen loss figure].

Discretionary activity

(24) An increase in the amount of land used on a farm for irrigated production is a discretionary activity if the increase since the commencement date is more than 10 ha.

(35) Any resource consent granted for the discretionary activity must include at least the following conditions:

a) the applicant has a certified FW-FP; and

b) the FW-FP includes actions to avoid, remedy, or mitigate the adverse effects of the activity’s contaminant discharges into freshwater, or into land in circumstances that may result in the contamination entering water; and

(46) An application for a resource consent for the discretionary activity must include a certified FW-FP for the farm to which the application relates.