

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Plan Change 1 (and Variation 1) to the Waikato Regional Plan

BY **FEDERATED FARMERS OF NEW ZEALAND INC,
FEDERATED FARMERS OF NEW ZEALAND
(WAIKATO REGION) 1999 INCORPORATED,
FEDERATED FARMERS OF NEW ZEALAND –
ROTORUA TAUPO PROVINCE INCORPORATED,
FEDERATED FARMERS OF NEW ZEALAND
(AUCKLAND PROVINCE) INCORPORATED**

(“FEDERATED FARMERS”)

Submitter with ID: 74191

To **WAIKATO REGIONAL COUNCIL**

CLOSING STATEMENT ON BEHALF OF FEDERATED FARMERS

26 September 2019



**FEDERATED
FARMERS**
OF NEW ZEALAND

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INTRODUCTION

1. This Closing Statement explains FFNZ's final views on PC1 and its position on certain outstanding issues. FFNZ relies on the track change amendments to PC1 attached to Mr Eccles' various statements of evidence, save where he has made further amendments (those amended provisions are attached to this closing statement and supersede his earlier evidence).
2. The Hearing Panel's task is to decide whether the PC1 provisions meet the mandatory requirements in the RMA and achieve the PC1 objectives in the most efficient, effective and least restrictive manner (and, if not, any amendments needed to achieve this).¹ The objective against which the provisions ought to be assessed is the short term targets i.e. 10% of the journey.²
3. FFNZ's position is that the short term targets will be achieved with the amendments proposed by FFNZ, and without the more restrictive provisions proposed in the s42A report, such as the more onerous stock exclusion and setback standards or the more restrictive activity status for FEPs.
4. It is submitted that the stock exclusion and setback standards recommended in the s42A report are inefficient when compared to FFNZ's proposal and a "one size fits all" approach will be less effective and efficient compared with tailored actions contained in a FEP.
5. The changes proposed in the s42A report also pose significant implementation risks that are a relevant consideration in the s32 assessment. For example, the proposed more stringent activity status for FEPs creates a real risk that PC1 will not be able to be implemented – Council will simply not be able to process 5-6,000 consents, nor will industry be able to prepare that many FEPs within the proposed timeframes.³

¹ Legal submissions on behalf of FFNZ dated 21 March 2019 at [13].

² Statement of primary evidence of Grant Eccles on Topic 2 dated 10 May 2019.

³ Statement of primary evidence of Grant Eccles on Topic 2 dated 10 May 2019 at [22] – [29].

6. It is submitted that a permitted activity status is appropriate for FEPs prepared under a Certified Sector Scheme (**CSS**).⁴ For FEPs not prepared under a CSS or captured by the permitted activity rule for low intensity drystock farms, a controlled activity status is the most appropriate status.⁵

REVIEW AND GRADING OF FEPs

7. In principle, FFNZ supports the risk based review and grading approach for monitoring FEPs that is proposed by officers in the s42A report. For clarity, FFNZ also supports the s128 consent review approach, with initial consent conditions stating that the farming activity must be undertaken generally in accordance with the FEP (as opposed to the detailed actions in a FEP forming a condition of consent).⁶ FFNZ also considers that conditions relating to consent duration ought to take into account the fact that farms are multi-million dollar businesses, just as consent conditions for other activities do.
8. There was some potential confusion in the s42A report about the review and audit system because these terms were used interchangeably.⁷ FFNZ understands that a review will be undertaken by the CFEP in accordance with a review manual (with farmers receiving a grade based on a risk assessment and the grade determining the frequency of review). The review is one piece of information that will inform Council's decision making, with Council retaining discretion to enforce compliance or to undertake an audit of compliance with FEPs at any time.⁸
9. The permitted activity standards or consent conditions will set the review frequency, with the review being of actions on farm against the contents of the FEP. An audit, on the other hand, can be carried out by Council at any

⁴ Statement of primary evidence of Mr Millner dated 5 July at [3.60] to [3.64] and Legal submissions on behalf of Federated Farmers on Topic 3 dated 16 September 2019.

⁵ Legal submissions on Topic 2 dated 15 July 2019 at [62] – [74].

⁶ FFNZ and relies on the evidence filed at the Block 3 hearing, including Mr Eccles and Mr Millner's power point presentation and discussion.

⁷ For example, page 42 of the s42A report refers to an audit process and audit manual, page 5 of Mr Dragten's report refers to a review process and review manual.

⁸ See Mr Eccles' flow diagram in slide 13 of his and Mr Millner's power point presentation - <https://www.waikatoregion.govt.nz/assets/Day-56-Item-3-15123676.pdf>

time – it could audit the contents of the FEP against the relevant schedule (Schedule 1 or 1A) or the actions on farm against the contents of the FEP.

10. FFNZ considers that the review and grading proposal recognises the nature of farming activities, provides some clarity for farmers as to how they are likely to be monitored, acknowledges the size of the job (i.e. 5-6,000 FEPs) and at the same time maintains Council's enforcement discretion.⁹
11. The proposal is also consistent with approaches being developed in other regions and with recognition by other councils of the issues associated with monitoring and enforcing farm plans, and how they differ from a traditional approach to monitoring and compliance (in terms of volume of FEPs, types of actions and inherent uncertainties in a farming context).
12. In Rotorua, Bay of Plenty Regional Council is proposing a farm performance monitoring risk matrix approach (which involves identifying high risk and low risk activities, monitoring high risk activities more frequently than low risk, and assessing the significance of any non compliance when determining the appropriate response). This information is contained in a draft compliance document, which sits outside Plan Change 10. The Council advises that it intends to finalise the compliance plan once there is a final decision on the PC10 provisions.
13. The compliance plan has been developed in accordance with Method LR M5(a), which requires council to develop a Rule Implementation Plan to ensure accurate and consistent interpretation and implementation by Council and the public.¹⁰ The detail of that implementation plan (in particular the farm performance monitoring risk matrix) is not referred to in PC10.
14. An issue that arose during the PC1 hearings is whether the review manual documenting the review and grading process should sit outside PC1 (as proposed by the officers). FFNZ's initial view was that it could or should sit

⁹ As Mr Dragten's report identified at page 8, the water quality objectives will not be achieved by a "one size fits all" rule or standard or by every farmer obtaining a FEP. What is instead required is a process of iterative improvement and ongoing review. This is consistent with farmer evidence, including Mr Bailey and Mr Garland about their learnings over time and how they learnt from the unintended consequences of certain mitigations.

¹⁰ Page 8 of Plan Change 10 - <https://cdn.boprc.govt.nz/media/657170/appendix-4-panel-recommendations-on-plan-change-10-clean-copy-version-dated-29-june-2017-pdf.pdf>

inside the plan and Mr Eccles had intended to provide a draft method with these closing submissions. On reflection, FFNZ considers that it is likely to be more appropriate for the review manual to sit outside PC1 and, accordingly, Mr Eccles has not considered it necessary to draft a method. However, Mr Eccles has made some changes to Rules 3.11.5.3 and 3.11.5.4, as well as Schedule 1 (attached to these submissions as **Annexure A**) to provide greater clarity.

15. The relevant provisions and/or additional amendments are:
 - a. Mr Eccles has proposed amendments to Rule 3.11.5.3(7) to refer to the review process in part D of Schedule 1A.
 - b. Rule 3.11.5.4 gives WRC control over compliance with and auditing of FEPs, reporting and information requirements to assist with monitoring, and procedures for reviewing FEPs. This enables WRC to retain discretion over consent conditions relating to frequency of reviews and procedures.
 - c. Part D of Schedule 1 has been amended to clarify that the CFEP review is of the farm actions against the FEP (not the FEP against Schedule 1).
 - d. Part D of Schedule 1A is consistent with the above.
16. It is submitted that there is scope to provide for the review and grading proposal. It is part of the process of how the Council monitors FEPs to manage the four contaminants and is therefore within the ambit of PC1.¹¹
17. FFNZ understands that the Panel's concern with scope is in respect of the vires to provide relief for matters raised in submissions and in the notified plan. The test is whether any amendment made to the proposed Plan as notified goes beyond what is fairly and reasonably raised in submissions¹² or the proposed Plan as notified, or is somewhere in between. Scope of the

¹¹ The legal submissions on behalf of FFNZ dated 16 September 2019 at [24] set out the scope or ambit of PC1.

¹² *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC) at [171].

decision-maker is on a spectrum with the notified provision at the one end and the relief sought in a submission at the other.¹³

18. The relief sought in FFNZ's submission on Variation 1 included provision for flexibility in the monitoring and enforcement of FEPs and consents (to recognise the inherent uncertainties in farming and to provide for unexpected events like drought).¹⁴ FFNZ sought new policies (Policies 2A and 2B), and amendments to matters of control in the rules and to Schedule 1.¹⁵ This is similar in nature to the risk based proposal for review and grading. The s42A report also records many other submitters seeking clarity around monitoring and enforcement.¹⁶ In these circumstances, it is submitted that there is scope within submissions to consider the review and grading proposal.
19. It also submitted that the proposed amendments do not act to fetter Council's enforcement discretion so as to fall foul of the High Court's findings in *Forest and Bird v Canterbury Regional Council*¹⁷ (where an advice note effectively deemed certain activities not to a breach of a land use change rule) or the Environment Court's findings in *Fish & Game v Manawatu-Wanganui Regional Council*¹⁸ (where Council passed a resolution detailing how restricted discretionary activity consents would be granted).
20. In *Forest and Bird* case, the High Court set out when an advice note will unlawfully fetter the Council's enforcement discretion. It also set out statements that would be lawful, such as identifying priorities for enforcement or factors that would be taken into account in determining the appropriate enforcement action in any particular case (such as a risk analysis of likely environmental effects).¹⁹ It is submitted that the review and grading proposal falls within the type of guidance that the Court considered to be lawful.

¹³ *Re Vivid Holdings Limited* [1999] NZRMA 468 at [19].

¹⁴ At 4.17 a – e, V1PC1-175, Variation 1 summary of submissions

¹⁵ At 4.18. Also see more detailed summary at Variation 1 summary of submissions at V1PC-778, V1PC1-499, V1PC1 – 570 and V1PC1-468.

¹⁶ S42A Report on Block 3 summarises submitter points at [186], [191], [192], [198], [199], [201], [202] and [203].

¹⁷ *Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* [2019] NZHC 2223.

¹⁸ *Fish & Game v Manawatu-Wanganui Regional Council* [2017] NZ EnvC 37.

¹⁹ *Royal Forest and Bird v Canterbury Regional Council* [2019] NZHC 2223 at [68].

21. It is important that the review and grading process is not determining how FEPs will be enforced or consents granted. It is instead information that will likely inform Council's decision making. At all times Council retains discretion to audit compliance with FEPs and to take enforcement action.

SUB-CATCHMENT PROFILE POLICY

22. During the Block 3 hearing, Commissioner Robinson asked Mr Eccles to provide an example of a sub-catchment characteristic that would be taken into account in preparing FEPs. Mr Eccles provided the example of sediment and explained that if that was the major issue the FEP would prioritise actions to reduce sediment loss as opposed to say nitrogen loss (notwithstanding that if there were opportunities to reduce nitrogen that should be considered).
23. Commissioner Robinson raised the issue of whether a policy overlay was required to achieve that. Mr Eccles' view was that there was no need for a policy overlay setting out the sub-catchments and characteristics because FFNZ proposes a new Method 3.11.4.5A to require Council to prepare catchment profiles. The Panel will recall Dr McLay's evidence during the Block 2 hearings was that Council is creating catchment profiles to assist farmers to understand what they need to address in their FEPs.²⁰
24. Mr Eccles did however see merit in providing a policy about the catchment profiles and undertook to provide additional wording. Included in **Annexure A** are track changes to Policy 2 which provide for a new paragraph c about catchment profiles. For ease of reference, Mr Eccles' proposed Method 3.11.4.5A (attached to his Block 2 evidence) is also included.

SCHEDULE 1

25. FFNZ considers that Schedule 1 (as amended in **Annexure A**) ought to be retained for FEPs granted with consents because it provides for tailoring of FEPs. This is more likely to address the concerns about tailoring mitigations raised by many farmers, particularly hill country drystock farmers, whilst at the same time achieving the desired water quality outcomes. This is not

²⁰ Statement of Evidence of Grant Robert Eccles for Block 3 dated 5 July 2019 at [3.7].

about farmers continuing to do what they have always done (as some submitters have suggested). It is instead about recognising that a “one size fits all” approach does not work in a catchment as diverse as the Waikato.

26. FFNZ’s view remains that the objectives should not be retained in Schedule 1 (they do not add anything to the principles). However, Mr Eccles has retained them in his track changes so that the Panel can see his recommended wording if the Panel was to decide they should remain.
27. Mr Eccles has amended Schedule 1 to reflect his discussion with the Panel about “manage and/or reduce.” Mr Eccles’ view was that, given that most of the objectives or principles start with or include the word “manage,” it was redundant to repeat that word. Mr Eccles remains of the view that “reducing” is less than “minimising,” and “reduce” will more appropriately take into account contextual guidance about the extent of the reduction required e.g. the 10 year journey, sub-catchment profiles etc.
28. There was some discussion about whether minimise ought to be defined, and Commissioner Robinson’s suggestion was that it could mean “reduce to the lowest practicable level.” It is submitted that such a definition would unreasonably raise the bar and would not recognise that PC1 is about the first 10 year journey and 10% of the progress towards the Vision & Strategy. Whilst some individuals may make significantly greater reductions than 10%, at a catchment scale 10% is the target.
29. Dr Doole has modelled the PC1 policy mix (not a reduction of any or all contaminants “to the lowest extent possible”). It is submitted that there is insufficient evidence of the costs, risks and benefits before the Panel to impose a greater standard of reductions than Dr Doole modelled. In addition, there is some evidence that such a requirement would not meet a s32 assessment because it would significantly increase the economic and social costs for uncertain environmental benefit.²¹

²¹ For example, Dr Doole’s modelling for CSG concluded that the PC1 policy mix would overshoot the 10 year targets and would impose significant cost on the regional and national economy. His reports also concluded that the costs of mitigations increased significantly as greater mitigation was required. This is consistent with various submitter

30. Mr Millner was asked about what minimum standards he would support. He explained that his view was that the focus ought to be on a robust process for carrying out a risk assessment as opposed to adopting rigid minimum standards for actions or infrastructure responses. Paragraphs 3 and 4 of Schedule 1 have been amended to reflect his views.

SCHEDULE 1A

31. Following the Block 3 hearing, there have been further discussions among experts for FFNZ, Fonterra, Miraka and DairyNZ about an alternative Schedule 1A for FEPs prepared as a permitted activity.
32. Included in **Annexure A** is Fonterra's final version of Schedule 1A.²² The remaining changes that FFNZ considers necessary (but which have not been agreed) are shown as track changes. The key points of difference are:
- a. FFNZ considers that Schedule 1A should only apply to FEPs prepared as a permitted activity (and only if the Panel decides that Schedule 1 is not appropriate for this purpose). Schedule 1A could apply to a resource consent if an applicant sought consent solely in respect of the matter contained in Schedule 1A that did not apply.²³ FFNZ's view is that this would only apply to a small number of applicants and for the vast majority Schedule 1 will be more appropriate.
 - b. FFNZ has concerns that many of the timeframes proposed by Fonterra are not reasonable or realistic. Accordingly, changes have been tracked to ensure a trajectory of improvement and specific timeframes are provided for but that they are practical and reasonable.²⁴ FFNZ is

evidence during the hearing, including evidence from Dairy NZ as to nitrogen cost abatement curves (and exponential cost increases), hill country farmers as to costs of stock exclusion, Dr le Miere's evidence about increasing costs of setbacks, and many other individual farmers as to the costs of infrastructure and other mitigations such as feed pads.

²² There may be minor editing changes between this version and the final attached to Fonterra's closing submissions but FFNZ understands there are no substantive changes.

²³ For this reason, Fonterra's provision for the review of an FEP under a consent in Part D has not been amended.

²⁴ For example, paragraph 2(a) under Part C has been amended to provide a 10 year period to reduce to the 75th percentile but with staged reductions every three years.

concerned that without appropriate timeframes, Schedule 1A is unlikely to achieve the objective of reducing the consenting burden.²⁵

- c. FFNZ considers that provision ought to be made for updates to the Code of Practice for Nutrient Management and a specific version should not be locked into this plan change.²⁶ This is consistent with Plan Change 10, which provides for fertiliser to be applied with the Code of Practice for Nutrient Management 2013 “or as updated.”²⁷
- d. FFNZ considers that clarity is needed that it is Schedule C waterways that certain actions apply to (particularly given the large differences in the opinions of experts during the hearings about definitions for and identification of ephemeral, intermittent and other waterways).

ADDITIONAL ATTRIBUTES

- 33. During Mr Eccles’ presentation of his Block 3 evidence, Commissioner Ryder had questions about whether it is appropriate to consider additional water quality attributes for PC1. This was in the context of the TLG process to select attributes being limited to the NOF framework contained in the NPS-FM 2014 (with further limitations relating to matters like scope and available data),²⁸ and additional attributes proposed in the science JWS and in the recently notification of the draft NPS-FM. The Panel requested that any response to these issues was addressed in closing submissions.
- 34. It is submitted that in addition to scope issues (which have been well traversed), there are no grounds to adopt additional attributes in PC1.

²⁵ For example, there is a real risk that those farmers who are required to reduce to the 75th percentile (and who will not know of this obligation until all NRPs are lodged with Council and the 75th percentiles calculated), will be required to make significant farm systems changes. FFNZ considers that these will not be possible in the four years Fonterra proposes. On the basis of Fonterra’s proposal, that could mean that Schedule 1A is not suitable for 25% of farmers (or 625 of Fonterra’s farmers). FFNZ seeks a timeframe that is within the life of the plan and shows a downward trajectory, to ensure a reasonable pathway for these farmers.

²⁶ Paragraph 1a of Part C of Schedule 1A.

²⁷ Clause 5(f) of Schedule LR Six - <https://cdn.boprc.govt.nz/media/657170/appendix-4-panel-recommendations-on-plan-change-10-clean-copy-version-dated-29-june-2017-pdf.pdf>

²⁸ Mr Eccles explains the process TLG followed to select attributes at paragraphs 3.2 to 3.6 of his statement of evidence on the science JWS dated 12 July 2019 (the consideration of attributes by the science JWS was not subject to any of these limitations).

35. As Mr Eccles explains in his statement of evidence dated 12 July 2019, PC1 was not intended to give effect to the Vision & Strategy or NPS-FM in full. The intention is to address the biggest issues and to finish giving effect to these higher order documents over time.
36. The draft NES and NPS-FM are subject to consultation and carry no legal or statutory weight. If these statements are finalised, the Council will need to consider whether further plan changes are necessary to give effect to them.
37. As Mr Eccles explains in his evidence,²⁹ there has been no s32 assessment of the additional attributes in the context of the PC1 catchment. In the context of the draft NPS, the limited work that has been done to date suggests that the costs are likely to be very high and need to be fully evaluated.³⁰ This work indicates that there would be significant additional cost if the DIN or DRP attributes were applied in the Waikato, for example.
38. In these circumstances, it is submitted that including additional attributes would not satisfy a s32 assessment (and there is insufficient evidence before the Panel in terms of a s32AA assessment).



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²⁹ Statement of Grant Robert Eccles dated 12 July 2019 at [6.1] to [6.7].

³⁰ The Local Government New Zealand Regional Sector Water Subgroup considered some case studies in the Waikato in undertaking a preliminary assessment of the implications of adding new DIN and DRP bottom lines. That has indicated that dairy farm area would fall by 13% (profits fall by 7%), drystock farming area would fall by 68% (profits fall by 40%) and forestry land area would increase by 160% (profits increase by 190%). Associated with this would be estimated transition costs of \$84 million, and combining transition costs and loss in profits, the cost for the Waikato catchment of meeting the DIN and DRP attributes would be around \$100 million per annum, or 11% of total profits derived for these land uses in the Waikato catchment. <https://www.lgnz.co.nz/assets/bcbc3efa29/RSWS-Advisory-Report-10-September-2019.pdf> pages 4 and 20-23.

ANNEXURE A FFNZ FURTHER AMENDMENTS TO PC1 PROVISIONS

Policy 2: Farm Environment Plans ~~Tailored approach to reducing diffuse discharges from farming activities/~~ **Te Kaupapa Here 2: He huarahi ka āta whakahāngaihia hei whakaiti i ngā rukenga roha i ngā mahinga pāmu**

~~Reduce Manage and require reductions in~~¹ catchment-wide and² sub-catchment-wide³ diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens from farming activities on properties and enterprises, through Farm Environment Plans⁴ that:

- a1. Set out clear, specific and time framed ~~minimum standards actions and practices~~ for Good Farming Practice; and⁵
 - a. ~~Take~~ Taking a tailored, risk based approach to define mitigation actions on the land that will reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens, ~~with the mitigation actions to be specified in a Farm Environment Plan either associated with a resource consent, or in specific requirements established by participation in a Certified Industry Scheme~~⁶; and
 - b. ~~Undergo~~ Requiring the same level of rigour in developing, monitoring and auditing ~~of mitigation actions on the land that is~~ set out in a Farm Environment Plans, whether the Farm Environment Plan is prepared under consent holder is a member of a Certified Sector Scheme or not it is ~~established with a resource consent or through Certified Industry Schemes~~⁷; and
 - b2. Are flexible and able to be updated so that continuous improvement, new technologies and mitigation practices can be adopted, such that diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens further reduce over time.⁸
 - c. Recognise the characteristics of sub-catchments and take into account the sub-catchment characteristics, as detailed in the Catchment Profiles prepared pursuant to Method 3.11.4.5A, when describing actions in Farm Environment Plans, including the timing and prioritisation of actions.
 - c. ~~Establishing a Nitrogen Reference Point for the property or enterprise; and~~⁹
 - d. ~~Requiring the degree of reduction in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to be proportionate to the amount of current discharge (those discharging~~

¹ DoC PC1-10643

² WRC V1PC1-1497

³ Consequential to WRC V1PC1-1497

⁴ Federated Farmers V1PC1-172

⁵ Ballance PC1-6862, FANZ PC1-9712

⁶ South Waikato District Council PC1-12522

⁷ Huirimu Farms Ltd PC1-5909, Ata Rangi PC1-6244, Southern Pastures Limited Partnership PC1-11197

⁸ Federated Farmers V1PC1 -175

⁹ Hort NZ PC1-10051, Hira Bhana and Co Ltd PC1-4020 (shifted to Pol 1 with modifications)

more are expected to make greater reductions), and proportionate to the scale of water quality improvement required in the sub-catchment; and¹⁰

- e. ~~Requiring stock exclusion to be completed within 3 years following the dates by which a Farm Environment Plan must be provided to the Council, or in any case no later than 1 July 2026.~~¹¹

Method 3.11.4.5A Catchment Profiles

Waikato Regional Council will develop Catchment Profiles for the sub-catchments listed in Table 3.11-2. Each Catchment Profile shall be developed and made publicly available a minimum of two years before the Farm Environment Plans in the sub-catchment(s) to which it relates are required to be provided to the Waikato Regional Council.

A Catchment Profile shall contain all of the information relevant to water quality in a sub-catchment(s), including but not limited to:

- a. Sub-catchment targets and the current state for each contaminant in each sub-catchment.
- b. Sector and other (including pest and natural sources of contaminants) contributions toward sub-catchment targets.
- c. Consented discharges and takes in the sub-catchment.
- d. Any operative sub-catchment management plans.
- e. Information about adjoining/related catchments, relationships between sub-catchments or opportunities to coordinate with related sub-catchments.
- f. Any zones that the sub-catchment is divided into to represent farming systems or land uses (including activities generating point source discharges) of a consistent type (in terms of contaminant loss).
- f. Information about hot spots or critical source areas within the sub-catchment including geophysical and climate characteristics e.g. rainfall or soil type, or historical events e.g. landslips.
- g. Freshwater accounting system, monitoring plan and any other information generated pursuant to Methods 3.11.4.7 or 3.11.4.10.

¹⁰ Beef and Lamb PC1-12711 (shifted to Pol 1 with modifications)

¹¹ G and J Jeffries PC1-12802

3.11.5.3 ~~Permitted Restricted Discretionary~~ Permitted Activity Rule – Farming activities with a Farm Environment Plan under a Certified ~~Industry Sector Scheme~~/Te Ture mō ngā Mahi e Whakaaetia ana – Ngā mahi i runga pāmu kua whai Mahere Taiao ā-Pāmu i raro i te Kaupapa ā-Ahumahi kua Whai Tohu

Rule 3.11.5.3 - ~~Permitted Restricted Discretionary~~ Permitted Activity Rule – Farming activities with a Farm Environment Plan under a Certified ~~Industry Sector Scheme~~

~~Except as provided for in Rule 3.11.5.1 and Rule 3.11.5.2, the use of land for farming activities (excluding commercial vegetable production) where the land use is registered to a Certified ~~Industry Sector Scheme~~, and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto or into land in circumstances which may result in those contaminants entering water is a ~~permitted~~ ~~restricted discretionary~~ ~~permitted~~ activity subject to the following conditions:~~

1. The property is registered with the Waikato Regional Council in conformance with Schedule A; and
 2. A Nitrogen Reference Point is produced for the property or enterprise in conformance with Schedule B; and
 3. Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C; and
 4. The Certified ~~Industry Sector Scheme~~ ~~meets the criteria set out in Schedule 2~~ and has been approved by the Chief Executive Officer of ~~the~~ Waikato Regional Council ~~as meeting the standards set out in Schedule 2~~; and
 5. A Farm Environment Plan which has been prepared in accordance with Schedule 1A and has been ~~certified approved~~ by a Certified Farm Environment Planner, and is provided to the Waikato Regional Council ~~at the time the resource consent application is lodged; and~~ as follows:
as follows:
 - a. Two years from the date on which this plan change becomes operative for properties or enterprises within Priority 1 sub-catchments listed in Table 3.11-2, and properties or enterprises with a Nitrogen Reference Point greater than the 75th percentile nitrogen leaching value;
 - b. Three years from the date on which this plan change becomes operative for properties or enterprises within Priority 2 sub-catchments listed in Table 3.11-2;
 - c. Four years from the date on which this plan change becomes operative for properties or enterprises within Priority 3 sub-catchments listed in Table 3.11-2; and
- ~~a. By 1 July 2020 1 March 2022 for properties or enterprises within Priority 1 sub-catchments listed in Table 3.11-2, and all properties or enterprises with a Nitrogen Reference Point greater than the 75th percentile nitrogen leaching value;~~

- b. ~~By 1 July 2023 1 March 2025~~ for properties or enterprises within Priority 2 sub-catchments listed in Table 3.11-2;
- c. ~~By 1 July 2026 for properties or enterprises within Priority 3 sub-catchments listed in Table 3.11-2; and~~
- 5a. Full electronic access to Overseer or any other software or system that records farm data and models or records diffuse contaminant losses for the farming land use authorised by this rule is granted to the Waikato Regional Council; and
- 5b. There have been less than a cumulative net total of 4.1 hectares of change in the use of land from that which was occurring at 22 October 2016 within a property or enterprise from:
1. Woody vegetation to farming activities; or
 2. Any farming activity other than dairy farming to dairy farming; or
 3. Any farming activity to Commercial Vegetable Production
6. ~~The use of land shall be undertaken in accordance with the actions and timeframes specified in the Farm Environment Plan; and~~
7. ~~The Farm Environment Plan provided under Condition 5 may be amended in accordance with the procedure set out in Schedule 1 and the use of land shall thereafter be undertaken in accordance with the amended plan; and~~
8. ~~A copy of the Farm Environment Plan amended in accordance with condition (7) shall be provided to the Waikato Regional Council within 30 working days of the date of its amendment.~~
6. The use of land shall be undertaken in accordance with the actions and timeframes specified in the Farm Environment Plan.
7. The Farm Environment Plan provided under Condition 6 shall be reviewed in accordance with Part D of Schedule 1A.
8. The Farm Environment Plan provided under Condition 6 may be amended in accordance with the procedure set out in Schedule 1A and the use of land shall thereafter be undertaken in accordance with the amended plan; and
9. A copy of the Farm Environment Plan amended in accordance with Condition 8 shall be provided to the Waikato Regional Council within 30 working days of the date of its amendment

Waikato Regional Council restricts its discretion to the following matters:

- i. The content, compliance with and auditing of the Farm Environment Plan.

- ~~ii. The actions and timeframes to achieve Good Farming Practices or better in order to reduce the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or to land where they may enter water.~~
- ~~iii. The effects, including cumulatively, of diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens, particularly where the activity may lead to an increase in the discharge of one or more contaminants.~~
- ~~iv. For enterprises, the procedures and limitations, including Nitrogen Reference Points, to be applied to land that enters or leaves the enterprise.~~
- ~~v. Where the Nitrogen Reference Point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2026.~~
- ~~vi. The term of the resource consent.~~
- ~~vii. The timeframe and circumstances under which the consent conditions may be reviewed.~~
- ~~viii. Procedures for reviewing, amending and re-approving the Farm Environment Plan.~~

3.11.5.4 ~~Controlled~~ ~~Restricted Discretionary~~ ~~Controlled~~ Activity Rule – Farming activities with a Farm Environment Plan ~~not under a Certified Industry Scheme~~/Te Ture mō ngā Mahi ka āta Whakahaerehia – Ngā mahi i runga pāmu kua whai Mahere Taiao ā-Pāmu kāore i raro i te Kaupapa ā-Ahumahi kua Whai Tohu

Rule 3.11.5.4 – ~~Controlled~~ ~~Restricted Discretionary~~ ~~Controlled~~ Activity Rule – Farming activities with a Farm Environment Plan ~~not under a Certified Industry Scheme~~

Except as provided for in Rule 3.11.5.1 and Rule 3.11.5.2 ~~†~~ The use of land for farming activities (excluding commercial vegetable production) where that land use is not registered to a Certified Industry Scheme, and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto or into land in circumstances which may result in those contaminants entering water, which is not a permitted activity under Rules 3.11.5.1A to 3.11.5.23, or six months after the date on which the applicant is formally notified by Council of the need to apply for consent under this rule as a result of non-compliance with a standard in Rule 3.11.5.3, is a Restricted Discretionary permitted¹² controlled activity until:

1. ~~1 January 2020~~ 1 September 2021 for properties or enterprises in Priority 1 sub-catchments listed in Table 3.11-2
2. ~~1 January 2023~~ 1 September 2024 for properties or enterprises in Priority 2 sub-catchments listed in Table 3.11-2;
3. ~~1 January 2026~~ for properties or enterprises in Priority 3 sub-catchments listed in Table 3.11-2;¹³

subject to the following conditions:

1. The property is registered with the Waikato Regional Council in conformance with Schedule A; and
2. A Nitrogen Reference Point is produced for the property or enterprise in conformance with Schedule B; and
3. No commercial vegetable production occurs; and
4. A Farm Environment Plan has been prepared in conformance with Schedule 1 and has been approved certified by a Certified Farm Environment Planner, or prepared under a Certified Sector Scheme, and is provided to the Council at the time the resource consent application is lodged; and¹⁴
5. ~~Cattle, horses, deer and pigs are excluded from water bodies in accordance with Schedule C;~~ and¹⁵

¹² H G and S J Brooks PC1-86, Denzie, B PC1-3617

¹³ Fonterra V1PC1-757, Waipa DC PC1-3249, Waitomo DC PC1-10312

¹⁴ Previously part of rule (condition a) with addition of Certified Sector Schemes.

¹⁵ Previously part of rule (condition d)

6. Full electronic access to Overseer or any other software or system that models or records diffuse contaminant losses for the farming land use authorised by this rule is granted to the Waikato Regional Council; and¹⁶
7. There have been less than a cumulative net total of 4.1 hectares of change in the use of land from that which was occurring at 22 October 2016 within a property or enterprise from:
 1. Woody vegetation to farming activities; or
 2. Any farming activity other than dairy farming to dairy farming; or
 3. Any farming activity to Commercial Vegetable Production¹⁷

After the dates set out in 1), 2) and 3) above the use of land shall be a controlled activity (requiring resource consent), subject to the following standards and terms:

- a. ~~A Farm Environment Plan has been prepared in conformance with Schedule 1 and has been approved by a Certified Farm Environment Planner, and is provided to the Waikato Regional Council at the time the resource consent application is lodged by the dates specified in I-III below; and~~
- b. ~~The property is registered with the Waikato Regional Council in conformance with Schedule A; and~~
- c. ~~A Nitrogen Reference Point is produced for the property or enterprise in conformance with Schedule B and is provided to the Waikato Regional Council at the time the resource consent application is lodged; and~~
- d. ~~Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C.~~

Matters of Control

Waikato Regional Council ~~restricts its discretion to reserves control over~~ the following matters:

~~Matters of Control~~

~~Waikato Regional Council reserves control over the following matters:~~

- i. ~~The content, compliance with and auditing of the Farm Environment Plan, in accordance with Schedule 1, except for any activity requiring consent under this Rule as a result of non-compliance with a standard in Rule 3.11.5.3, in which case control shall only be reserved over the content of the Farm Environment Plan that relates to the subject matter of the standard infringed.~~
- ii. ~~The actions and timeframes to achieve Good Farming Practices, in accordance with Schedule 1, or better in order to for undertaking mitigation actions that maintain or reduce the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or to land where they may enter water, except for any activity requiring consent under this Rule as a result of non-compliance with a standard in Rule 3.11.5.3, in which case control shall only be reserved over the actions and timeframes that relate to the subject matter of the standard infringed.~~

¹⁶ WRC V1PC1-218

¹⁷ Fonterra PC1-10644

- ii. The effects, including cumulatively, of diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens, particularly where the activity may lead to an increase in the discharge of one or more contaminants.
- iii. For enterprises, the procedures and limitations, including Nitrogen Reference Points, to be applied to land that enters or leaves the enterprise.
- iii. ~~The actions, timeframes and other measures to ensure that the diffuse discharge of nitrogen from the property or enterprise, as measured by the five-year rolling average annual nitrogen loss as determined by the use of the current version of OVERSEER®, does not increase beyond the property or enterprise's Nitrogen Reference Point, unless other suitable mitigations are specified.~~
- iv. Where the Nitrogen Reference Point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2026 as at 10 years after the date this plan change becomes operative.
- v. The term of the resource consent.
- vi. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent to demonstrate and/or monitor the use of land generally in accordance compliance with the Farm Environment Plan.
- vii. The timeframe and circumstances under which the consent conditions may be reviewed ~~or the Farm Environment Plan shall be amended.~~
- viii. Procedures for reviewing, amending and re-approving the Farm Environment Plan.
- ix. Information to be provided to show that the property is being managed in a way that would not cause an increase in loss of contaminants, which may include annual Overseer modelling for the property or enterprise, or information on matters such as stocking rate, fertiliser application, imported feed and cropping

Dates:

- I. ~~For Priority 1 sub-catchments, and properties with a Nitrogen Reference Point of greater than 75th percentile nitrogen leaching value, by 1 July 2020~~
- II. ~~For Priority 2 sub-catchments, by 1 July 2023~~
- III. ~~For Priority 3 sub-catchments, by 1 July 2026~~

Notification:

~~Consent applications will be considered without notification, and without the need to obtain written approval of affected persons.~~¹⁸

¹⁸ Forest and Bird PC1-8208

Schedule 1 - Requirements for Farm Environment Plans/Te Āpitiwhanga 1: Ngā Herenga i ngā Mahere Taiao ā-Pāmu

The Farm Environment Plan (FEP) will be prepared in accordance with Parts A, B and ~~B C~~ below, reviewed in accordance with Part ~~GD~~, and changed in accordance with Part ~~DE~~ and ~~disputes managed in accordance with Part F.~~

PART A – PROVISION OF FEP

An FEP must be submitted to Waikato Regional Council (the council) using ~~either:~~

- ~~1. A council digital FEP tool including the matters set out in Part B below to the extent relevant;~~
~~OR~~
- ~~2. An industry prepared FEP that:
 - ~~a) includes the following minimum components:
 - ~~i. the matters set out in Parts B below to the extent relevant; and~~
 - ~~ii. performance measures that are capable of being reviewed as set out in Part C below~~~~
 - ~~b) has been approved by the Chief Executive of Waikato Regional Council as meeting the criteria in (a) and capable of providing FEPs in a digital format, consistent with the council data exchange specifications.~~~~

The Waikato Regional Council data exchange specifications will set out the standards and detail of the data exchange process to be used by external industry parties in the provision of FEPs.

PART B – PURPOSE OF A FARM ENVIRONMENT PLAN

The purpose of a Farm Environment Plan is to assess the farm enterprise against good farming practice for the management of diffuse discharges of nitrogen, phosphorous, sediment and microbial pathogens. Where the farm enterprise is not consistent with good farming practice, the Farm Environment Plan is to identify the actions and mitigations to manage the diffuse discharge of nitrogen, phosphorous, sediment and microbial pathogens from the farm enterprise to achieve good farming practice.

In identifying actions and mitigations, the Farm Environment Plan is to identify the nature, combination, priority and timing of actions to manage the diffuse discharge of nitrogen, phosphorous, sediment and microbial pathogens from the farm enterprise in a way that:

1. Recognises and provides for the characteristics of the sub-catchment within which the subject farming enterprise is located as set out in the relevant Sub-catchment Management Plan and Catchment Profile produced by Waikato Regional Council; and
2. Corresponds to the scale and significance of the risk from the discharge of each contaminant from the farm enterprise to the likely achievement of the short term targets[^] in Objective 3 or the progression towards the outcomes anticipated by the Vision & Strategy and values[^] referred to in Objective 1; and
3. Takes account of the relative contribution of the industry sector within which the farm enterprise belongs to the likely achievement of the short term targets[^] in Objective 3 or the

progression towards the outcomes anticipated by the Vision & Strategy referred to in Objective 1; and

4. Takes account of the resources reasonably available to the farm enterprise

PART BC – FEP CONTENT

The FEP shall contain as a minimum:

1. The property or enterprise details:
 - a) Full name, address and contact details (including email addresses and telephone numbers) of the person responsible for the land use activities;
 - b) Legal description of the land and any relevant farm identifiers such as dairy supply number.
2. A map(s) at a scale that clearly shows:
 - a) The boundaries of the property or land areas being farmed;
 - b) The boundaries of the main land management units or land uses on the property or within the farm enterprise (including all land that may be cultivated);
 - c) The location of any Schedule C waterbodies;
 - d) The location of riparian vegetation and fences adjacent to Schedule C water bodies;
 - e) The location on any Schedule C waterbodies waterways where stock have access or there are stock crossings;
 - f) The location of any critical source areas and hotspots for contaminant loss to groundwater or surface water; and
 - g) The location(s) of any required actions to support the achievement of the objectives and principles listed in section 3.
3. A description of the whole farm management practices and general requirements, including a description of the key characteristics of the farm system, including all inputs, outputs and management practices.
4. Based on 3 above, an overall assessment of the risks to water quality associated with the farming activity by identifying and assessing all sources of sediment, nitrogen, phosphorous and microbial pathogens from the farming activity and, for any risk of contaminant loss on the farm that would not be managed by the actions developed in the FEP, a description of any additional practices and actions that may be required to address that risk.
5. An assessment of whether farming practices are consistent with each of the following objectives and principles; and
 - a. a description of those farming practices that will continue to be undertaken in a manner consistent with the objectives and principles;
 - b. A description of those farming practices that are not consistent with the objectives or principles, and a description of the time bound actions or practices that will be adopted to ensure the objectives or principles are met.

3a – Management area: Whole farm

Objective 1

To manage farming activities according to good farming practice, and in a way that **minimises reduces** the loss of contaminants from the farm.

Principles

1. Identify the characteristics of the farm system, the risks that the farm system poses to water quality, and the good farming practices that **minimise reduce** the losses of sediment, microbial pathogens, phosphorus and nitrogen.
2. Maintain accurate and auditable records of annual farm inputs, outputs and management practices.
3. Manage farming operations to **minimise reduce** losses of sediment, microbial pathogens, phosphorus and nitrogen to water, and maintain or enhance soil structure **where agronomically appropriate.**

3b – Management Area: Nutrient management

Objective 2

To minimise nutrient losses to water while maximising nutrient use efficiency.

Principles

4. Monitor soil phosphorus levels and maintain them at or below the agronomic optimum for the farm system.
5. Manage the amount and timing of fertiliser inputs, taking account of all sources of nitrogen and phosphorus, to match plant requirements and **minimise reduce** risk of losses.
6. Store and load fertiliser to **minimise reduce** risk of spillage, leaching and loss into waterbodies.
7. Ensure equipment for spreading fertilisers is well maintained and calibrated.
8. Store, transport and distribute feed to **minimise reduce** wastage, leachate and soil damage.

Objective 3

To farm in accordance with the nitrogen management requirements of PC1

Principles

9a. *Either, where the property's NRP is $\leq 75^{\text{th}}$ percentile:*

9. Farm in a manner that does not result in farm nitrogen losses exceeding the farm's NRP;

9b. *Or, where the property's NRP is $>$ than the 75^{th} percentile*

9. Farm in a manner that does not result in farm nitrogen losses exceeding the 75^{th} percentile for the FMU **from 10 years after this plan becomes operative; or**

3c – Management Area: Waterways

Objective 4

To minimise reduce losses of sediment, microbial pathogens, phosphorus and nitrogen to waterways.

Principles

10. Identify risk of overland flow of phosphorus, sediment and microbial pathogens on the property and implement measures to minimise reduce losses transport of these to waterbodies.
11. Locate and manage farm tracks, gateways, water troughs, self-feeding areas, stock camps, wallows and other sources of run-off to minimise reduce risks to water quality.

Objective 5

To exclude stock from waterbodies and minimise reduce stock damage to the beds and margins of wetlands and riparian areas.

Principles

12. Exclude stock from waterbodies to the extent that it is compatible with land form, stock class and stock intensity. Where exclusion is not possible practicable, mitigate impacts on waterways.
- ~~13. Exclude stock in a manner consistent with the requirements of schedule C.~~

3d – Management Area: Land and soil

Objective 6

To minimise reduce contaminant losses to waterways from soil disturbance and erosion.

Principles

14. Manage periods of exposed soil between crops/pasture to reduce risk of erosion, overland flow and leaching.
15. Manage or retire erosion-prone land to minimise reduce soil losses through appropriate measures and practices.
16. Select appropriate paddocks for growing crops and intensive grazing, recognising and mitigating possible nitrogen and phosphorus, faecal, and sediment loss from critical source areas.
17. Manage grazing and crops to minimise reduce losses from critical source areas.

3e – Management Area: Effluent

Objective 7

To minimise contaminant losses to waterways from farm animal effluent.

Principles

18. Ensure the effluent system meets industry-specific Code of Practice or equivalent standard.

19. Have sufficient storage available for farm effluent and wastewater and actively manage effluent storage levels.
20. Ensure equipment for spreading effluent and other organic manures is well maintained and calibrated.
21. Apply effluent to pasture and crops at depths, rates and times to match plant requirements and soil water holding capacity.

3f – Management Area: Water and irrigation

Objective 8

To operate irrigation systems efficiently and ensuring that the actual use of water is monitored and is efficient.

Principles

22. Manage the amount and timing of irrigation inputs to meet plant demands and **minimise reduce** risk of leaching and run off.
 23. Design, check and operate irrigation systems to minimise the amount of water needed to meet production objectives.
6. The FEP shall include for each objective and principle in section 3 above:
- a) Detail and content that reflects the scale of environmental risk posed by the activity;
 - b) A defined and auditable description of the actions and practices to be undertaken to farm in accordance with the objectives and principles in Part **BC**;
 - c) The records and evidence that must be kept that demonstrate performance and the achievement of an objective or principle listed in Part **BC**.

PART **CD – FEP REVIEW REQUIREMENTS**

The FEP shall be reviewed by a Certified Farm Environment Planner **for consistency with this schedule as follows:**

- ~~1. Prior to lodging a land use consent application with the Council under rule 3.11.5.34 – 3.11.5.5 of PC1; and~~
- ~~2. Within 12 months of the granting of that consent application; and~~
- ~~3. In accordance with the review intervals set out in the conditions of that resource consent.~~

1. Within 12 months of the granting of any resource consent requiring an FEP to be prepared pursuant to this Schedule, and thereafter at intervals of no more than 3 years or more frequently as required by the resource consent (whichever is more frequent); and

2. If the farmer wishes to make a material change to their farming system such that any existing FEP is required to be amended.

The purpose of the review is to provide an expert opinion whether the farming activities on the property are being undertaken in a manner consistent with the **actions specified in the FEP.**

objectives and principles set out in Part B of this schedule. This review shall be undertaken in accordance with the review process set out in the Waikato Regional Council's FEP Independent Review manual

The review shall be undertaken by a Certified Farm Environment Planner who holds a reviewing endorsement (issued by WRC), and must be undertaken in accordance with the review process set out the Waikato Regional Councils FEP Independent Review manual.

The review shall be undertaken by re-assessing the FEP in accordance with the requirements set out in this schedule.

The results of the review shall be provided to the Waikato Regional Council, within 20 working days of the review due date.

PART DE – FEP CHANGES

Unless otherwise required by the Waikato Regional Council in accordance with any conditions of the resource consent, changes can be made to the FEP without triggering the need for review by a CFEP, provided:

1. The farming activity remains consistent with Part B C of this schedule
2. The change to the FEP does not contravene any mandatory requirement of the resource consent, or any requirement of the Regional Plan that is not already authorised.
3. The nature of the change is documented in writing and made available to any CFEP undertaking a review, or to the Waikato Regional Council, on request.

PART F – DISPUTE RESOLUTION

Any dispute or difference arising out of or in relating the approval of or amendments to or auditing of a Farm Environment Plan may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties.

Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances.

The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc."

The mediation shall be terminated by –

- (a) The signing of a settlement agreement by the parties; or

(b) Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or

(c) Notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or

(d) The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

If no mediation is agreed to or if the mediation should be terminated as provided in (b), (c) or (d), any dispute or difference arising out of or relating to the approval of or amendments to a Farm Environment Plan, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

~~A Farm Environment Plan shall be prepared in accordance with the requirements of A below. The Farm Environment Plan shall be certified as meeting the requirements of A by a Certified Farm Environment Planner.~~

~~The Farm Environment Plan shall identify all sources of sediment, nitrogen, phosphorus and microbial pathogens, and identify actions, and timeframes for those actions to be completed, in order to reduce the diffuse discharges of these contaminants.~~

~~The Farm Environment Plan must clearly identify how specified minimum standards will be complied with.~~

~~The requirements set out in A apply to all Farm Environment Plans, including those prepared within a Certified Industry Scheme.~~

~~This schedule applies to all farming activities, but it is acknowledged that some provisions will not be relevant to every farming activity.~~

~~A. Farm Environment Plans shall contain as a minimum:~~

~~1. The property or enterprise details:~~

~~(a) Full name, address and contact details (including email addresses and telephone numbers) of the person responsible for the property or enterprise.~~

~~(b) Trading name (if applicable, where the owner is a company or other entity).~~

~~(c) A list of land parcels which constitute the property or enterprise:~~

~~(i) the physical address and ownership of each parcel of land (if different from the person responsible for the property or enterprise) and any relevant farm identifiers such as the dairy supply number, Agribase identification number, valuation reference; and~~

~~(ii) The legal description of each parcel of land.~~

~~2. An assessment of the risk of diffuse discharge of sediment, nitrogen, phosphorus and microbial pathogens associated with the farming activities on the property, and the priority of those~~

identified risks, having regard to sub-catchment targets in Table 3.11-1 and the priority of lakes within the sub-catchment. As a minimum, the risk assessment shall include (where relevant to the particular land use):

- ~~(a) A description of where and how stock shall be excluded from water bodies for stock exclusion including:
 - ~~(i) the provision of fencing and livestock crossing structures to achieve compliance with Schedule C; and~~
 - ~~(ii) for areas with a slope exceeding 25° and where stream fencing is impracticable, the provision of alternative mitigation measures.~~~~

- ~~(b) A description of setbacks and riparian management, including:
 - ~~(i) The management of water body margins including how damage to the bed and margins of water bodies, and the direct input of contaminants will be avoided, and how riparian margin settling and filtering will be provided for; and~~
 - ~~(ii) Where practicable the provision of minimum grazing setbacks from water bodies for stock exclusion of 1 metre for land with a slope of less than 15° and 3 metres for land with a slope between 15° and 25°; and~~
 - ~~(iii) The provision of minimum cultivation setbacks of 5 metres.~~~~

- ~~(c) A description of the critical source areas from which sediment, nitrogen, phosphorus and microbial pathogens are lost, including:
 - ~~(i) the identification of intermittent waterways, overland flow paths and areas prone to flooding and ponding, and an assessment of opportunities to minimise losses from these areas through appropriate stocking policy, stock exclusion and/or measures to detain floodwaters and settle out or otherwise remove sediment, nitrogen, phosphorus and microbial pathogens (e.g. detention bunds, sediment traps, natural and constructed wetlands); and~~

 - ~~(ii) the identification of actively eroding areas, erosion prone areas, and areas of bare soil and appropriate measures for erosion and sediment control and re-vegetation; and~~

 - ~~(iii) an assessment of the risk of diffuse discharge of sediment, nitrogen, phosphorus and microbial pathogens from tracks and races and livestock crossing structures to waterways, and the identification of appropriate measures to minimise these discharges (e.g. cut-off drains, and shaping); and~~

 - ~~(iv) the identification of areas where effluent accumulates including yards, races, livestock crossing structures, underpasses, stock camps, and feed-out areas, and appropriate measures to minimise the risk of diffuse discharges of contaminants from these areas to groundwater or surface water; and~~

 - ~~(v) the identification of other 'hotspots' such as fertiliser, silage, compost, or effluent storage facilities, wash water facilities, offal or refuse disposal pits, and feeding or stock holding areas, and the appropriate measures to minimise the risk of diffuse discharges of contaminants from these areas to groundwater or surface water.~~~~

- ~~(d) An assessment of appropriate land use and grazing management for specific areas on the farm in order to maintain and improve the physical and biological condition of soils and minimise the diffuse discharge of sediment, nitrogen, phosphorus and microbial pathogens to water bodies, including:

 - ~~(i) matching land use to land capability; and~~
 - ~~(ii) identifying areas not suitable for grazing; and~~
 - ~~(iii) stocking policy to maintain soil condition and pasture cover; and~~
 - ~~(iv) the appropriate location and management of winter forage crops; and~~
 - ~~(v) suitable management practices for strip grazing.~~~~
- ~~(e) A description of nutrient management practices including a nutrient budget for the farm enterprise calculated using the model OVERSEER® in accordance with the OVERSEER® use protocols, or using any other model or method approved by the Chief Executive Officer of Waikato Regional Council.~~
- ~~(f) A description of cultivation management, including:

 - ~~(i) The identification of slopes over 15° and how cultivation on them will be avoided; unless contaminant discharges to water bodies from that cultivation can be avoided; and~~
 - ~~(ii) How the adverse effects of cultivation on slopes of less than 15° will be mitigated through appropriate erosion and sediment controls for each paddock that will be cultivated including by:

 - ~~(a) assessing where overland flows enters and exits the paddock in rainfall events; and~~
 - ~~(b) identifying appropriate measures to divert overland flows from entering the cultivated paddock; and~~
 - ~~(c) identifying measures to trap sediment leaving the cultivated paddock in overland flows; and~~
 - ~~(d) maintaining appropriate buffers between cultivated areas and water bodies (minimum 5m setback).~~
 - ~~(e) A description of collected animal effluent management including how the risks associated with the operation of effluent systems will be managed to minimise contaminant discharges to groundwater or surface water.~~
 - ~~(f) A description of freshwater irrigation management including how contaminant loss arising from the irrigation system to groundwater or surface water will be minimised.~~~~~~

3. ~~A spatial risk map(s) at a scale that clearly shows:~~

- ~~(a) The boundaries of the property; and~~
- ~~(b) The locations of the main land uses¹⁹ that occur on the property; and~~

¹⁹ For dairy farms this might be the OVERSEER® blocks, for drystock farms this might be Land Use Capability blocks.

- ~~(c) The locations of existing and future mitigation actions to manage contaminant diffuse discharges; and~~
- ~~(d) Any relevant internal property boundaries that relate to risks and mitigation actions described in this plan; and~~
- ~~(e) The location of continually flowing rivers, streams, and drains and permanent lakes, ponds and wetlands; and~~
- ~~(f) The location of riparian vegetation and fences adjacent to water bodies; and~~
- ~~(g) The location of critical source areas for contaminants, as identified in 2 (c) above.~~

~~4. A description of the actions that will be undertaken in response to the risks identified in the risk assessment in 2 above (having regard to their relative priority) as well as where the mandatory time bound actions will be undertaken, and when and to what standard they will be completed.~~

~~5. A description of the following:~~

- ~~(a) Actions, timeframes and other measures to ensure that the diffuse discharge of nitrogen from the property or enterprise, as measured by the five-year rolling average annual nitrogen loss as determined by the use of the current version of OVERSEER®, does not increase beyond the property or enterprise's Nitrogen Reference Point, unless other suitable mitigations are specified; or~~
- ~~(b) Where the Nitrogen Reference Point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2026, except in the case of Rule 3.11.5.5.~~

Vegetable growing minimum standards

Farm environment plans required under Rule 3.11.5.5 shall, in addition to the matters set out above, ensure the following matters are addressed.

1	Nitrogen, Phosphorus	Annual soil testing regime, fertiliser recommendations by block and by crop
2	Nitrogen, Phosphorus	Tailored fertiliser plans by block and by crop
3	Nitrogen, Phosphorus	Both (1) and (2) prepared by an appropriately qualified person

4	Nitrogen, Phosphorus	Annual calibration of fertiliser delivering systems through an approved programme such as Spreadmark/Fertspread
5	Soil/Phosphorus	As a minimum by block: an approved erosion and sediment control plan constructed in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production June 2014
6	Nitrogen, Phosphorus	Documentation available for proof of fertiliser placement according to recommended instruction
7	Nitrogen, Phosphorus	Adoption and use of improved fertiliser products proved effective and available such as formulated prills, coatings and slow release mechanisms
8	Nitrogen, Phosphorus	Evidence available to demonstrate split applications by block/crop following expert approved practice relating to: <ul style="list-style-type: none"> ○ form of fertiliser applied ○ rate of application ○ placement of fertiliser ○ timing of application²⁰

²⁰ J and A Anderson PC1-4261, Beef and Lamb PC1-11508, Federated Farmers V1PC1-766, Horticulture NZ PC1-12435, S and A Kelton PC1-7855, Maniapoto Maori Trust Board PC1-9366

SCHEDULE 1A – REQUIREMENTS FOR FARM ENVIRONMENT PLANS

FFNZ changes to Fonterra proposal shown as green track changes

The Farm Environment Plans (FEP) prepared under Rules 3.11.5.2 or 3.11.5.3 will be prepared and provided in accordance with Parts A-C below. Progress with implementation will be reviewed and reported on in accordance with Part D). Any change to an FEP must be made in accordance with Part E.

Note: *A person seeking to operate in accordance with permitted activity Rules 3.11.5.2 or 3.11.5.3 must have an FEP consistent with all parts of this Schedule, and must undertake the actions described in the FEP. A farming activity that has an FEP that does not comply with this schedule, or which is undertaken in a manner that does not comply with the FEP will not meet the conditions of the permitted activity rule and an application for resource consent will be required.*

PART A – PROVISION OF FEP

An FEP that has been certified as meeting the requirements of B below by a Certified Farm Environment Planner (CFEP), must be submitted to Waikato Regional Council (the council) using either:

1. A council digital FEP tool that includes the matters set out in Part B below to the extent relevant; OR
2. An industry digital FEP tool, capable of recording information consistent with the council data exchange specifications that includes the matters set out in Part B below to the extent relevant.

The Waikato Regional Council data exchange specifications will set out the standards and detail of the data exchange process to be used by external industry parties in the provision of FEPs.

PART B – CONTENT OF AN FEP

The FEP shall contain:

7. The property or enterprise details:
 - c) Full name, address and contact details (including email addresses and telephone numbers) of the person responsible for the land use activities;
 - d) Legal description of the land and any relevant farm identifiers such as dairy supply number.

8. A map(s) at a scale that clearly shows:
 - h) The boundaries of the property or land areas being farmed;
 - i) The boundaries of the main land management units or land uses on the property or within the farm enterprise (including all land that may be cultivated);
 - j) The location of any Schedule C waterbodies;
 - k) The location of riparian vegetation and fences adjacent to Schedule C water bodies;
 - l) The location on any Schedule C waterways where stock have access or there are stock crossings;
 - m) The location of any critical source areas and hotspots for contaminant loss to groundwater or surface water; and
 - n) The location(s) of described actions and practices to be undertaken.

9. Description of whole farm management practices and general requirements
 - a) Identification and description of the key characteristics of the farm system including all inputs, outputs and management practices

10. Based on 3 above, and on an identification and assessment of all sources of sediment, nitrogen, phosphorus and microbial pathogens, a description of:
 - a) the farming practices (including the management actions for critical source areas) that are consistent with the standards and requirements as set out in Part C and a commitment to continue those practices and actions;
 - b) the farming practices (including the management actions for critical source areas) that are not consistent with the standards and requirements as set out in Part C and a commitment to adopt the required practices and actions as soon as practicable (with specific timeframes provided for the practices and actions) and in no instance shall that exceed 4 years from the date the FEP is required by this plan or 2026, whichever is earlier.
 - c) any risk of contaminant loss on the farm that would not be managed by the standards and requirements as set out in Part C and any additional practices and actions that may be required to address that risk.

PART C – STANDARDS AND REQUIREMENTS

1. Nutrient management

- a) Monitor soil phosphorus (P) levels and maintain them at agronomic optimum as set out in the relevant Code of Practice for Nutrient Management sector specific on-farm practice booklets dated [date], or as updated.
<http://www.fertiliser.org.nz/Site/resources/booklets.aspx>
- b) Where soil P levels are above optimum there will be a managed reduction plan to reach GO optimum levels in accordance with the Code of Practice referred to in paragraph 1a above.
- c) Nitrogen (N) fertiliser is applied to pasture in response to a future feed deficit identified using a formal feed budgeting tool that documents the decision-making process .
- d) Nitrogen fertiliser application rates to pasture are no greater than 30 units of N per dressing.
- e) Nitrogen fertiliser is applied to crops in accordance with the *Code of Practice for Nutrient Management* referred to in paragraph 1a above. Where a relevant industry crop model is used to support the decision making process the practice will be consistent with the guidance of contained in the *Code of Practice for Nutrient Management* and the decision process will be documented with records retained for 3 years.
- f) Nitrogen fertiliser is not applied when soil temperature (as provided by either soil temperature monitoring or by reference to a catchment specific daily soil temp site) is below 10 degrees at 9am at a depth of 10cm.
- g) Stored fertiliser is covered or roofed with impermeable material. The storage area will be walled or bunded so no contaminated runoff or leaching from the storage site occurs.
- h) Equipment for spreading fertiliser is calibrated at least annually in conformance with manufacturers' recommendations or in the absence of any manufacturers' recommendation in accordance with any industry best practice and a record kept of that calibration process.
- i) Contractors used for fertiliser spreading are Spreadmark certified.

2. Farming in accordance with the nitrogen management requirements

- a) Where the N leaching rate is greater than the 75th%ile for the relevant FMU, action must be taken to decrease nitrogen leaching rate below the 75th%ile. This action

must ensure the property has reduced nitrogen leaching to at least the required level, and is to be achieved by no later than 10 years after the date PC1 becomes operative, with staged reductions of 1/3 of the required reduction to be achieved at least every three years, implemented within 3 years of the relevant FEP provision date. This must be demonstrated by the inclusion in the FEP of an Overseer modelled scenario of projected future nitrogen leaching rate under revised management practices and a commitment to adopt those revised practices.

- b) Where the applicable NRP is less than or equal to the relevant 75th%ile N leaching rate, efficiency opportunities will be identified and described with associated actions
- c) An objective whole farm nitrogen risk assessment, using a tool or model approved as fit for purpose by the Chief Executive of the Waikato Regional Council, shall be carried out as part of the FEP development process. Annually key farm data will be entered to the same approved tool or model so as to demonstrate that whole farm ~~N~~ N loss risk ratings have not increased over the previous year. This report and supporting data will be provided to the Waikato Regional Council on request.
- d) Where purchased N surplus is greater than 150kg N/ha/yr practice change is made to decrease purchased N surplus such that the 150kg N/ha/yr threshold is not exceeded.

Note: 'purchased N surplus' is calculated as the difference between the N brought onto a farm in fertiliser and imported animal feed, less the amount of N exported from the farm in product. It is to be calculated using the on-line calculator located on the Waikato Regional Council website or, alternatively, it is an automated output of the Nitrogen Risk Scorecard.

3. Waterways management

- a) Stock are excluded from waterways in conformance with Schedule C
- b) Where Schedule C does not require exclusion, effective temporary exclusion with a minimum 1.5m setback is to be achieved when:
 - i. stock are being intensively grazed using break or block feeding with electric fencing in any paddock with a Schedule C waterway; or
 - ii. stock are being grazed next to a Schedule C waterway and ~~the~~ paddock stocking rate is greater than 18 SU/ha.
- c) Critical source areas for nitrogen, phosphorus, sediment and pathogens that are close to, or closely linked with a Schedule C waterway are prioritised for action whereby those critical source areas closest to or most directly linked to a Schedule C waterway are prioritised first with those further away or less closely connected prioritised later. All critical source areas should be addressed within the timeframes

identified clause 4(b) above, and the management actions for critical source areas are those required to be specified in clause 4(a) and (b) above.

- d) Any new or replacement stock exclusion fencing of a Schedule C waterway has an average setback from the waterway bank of 3m with no point having less than a 1.5m setback.

4. Land and soil

- a) All land of class 6e, 7 or 8 (as determined using the Land Use Capability (LUC) Survey Handbook) is identified on the farm maps, or, if a suitably qualified soils expert does not consider that the LUC maps accurately characterise the soils on the property, as identified by a property scale LUC assessment carried out by that expert.
- b) No cattle older than 2 years or greater than 400kg lwt are grazed on LUC class 6e, 7 or 8 land from June 1 to September 1.
- c) Farm scale erosion risks (type of erosion occurring / areas of the property at risk / specific location of major erosion sites) are mapped.

Note: On properties with identified large scale erosion risks an erosion plan must be developed in conjunction with the regional council. The FEP must include an action to develop the erosion plan and, once prepared, include reference to such a plan, however, council supported erosion plans (that may be at more than a single property scale) do not have to be duplicated within the property FEP.

5. Winter grazing of forage crops

- a) No cattle older than 2 years or greater than 400kg lwt are grazed on forage crops on LUC class 6e, 7 or 8 land from June 1 to September 1.
- b) No winter grazing of forage crops occurs on LUC Class 6e, 7 or 8 land from June 1 to September 1 where the number of cattle grazed exceeds 30 in a single mob
- c) No winter grazing of fodder crops (from June 1 to September 1) occurs within 3m of any Schedule C water body. An ungrazed, vegetated buffer of at least 3m is provided between a winter grazed block and any Schedule C water body.
- d) Break feeding is managed so that animals are grazed down the slope or flow paths. Ephemeral waterways that are not permanently fenced that have water in them during grazing are temporarily fenced to exclude stock.

6. Races, laneways, bridges

- a) Races, laneways, culverts and bridges will be designed (including, in the case of races and laneways, through surface contouring and surface drainage channels) and maintained to prevent ponding and to direct race runoff in to vegetated areas. Direct

race runoff to surface water, ie where there is no filtering effect as a result of contact with vegetation, must not occur.

7. Cropping

- a) No cultivation of LUC class 6e, 7 or 8 land, or of any land where slope exceeds 20 degrees, other than minimum tillage or direct drilling.
- b) On land less than 10 degree slope cultivation setbacks from any Schedule C waterway are 3m minimum.
- c) On land greater than 10 degrees (but not including class 6e, 7 or 8 land ~~and above~~) cultivation setbacks are 5m minimum.

8. Effluent management

- a) Effluent storage consistent with a 90% (or greater) conformance with the Dairy Effluent Storage Calculator (DESC) is in place within 3 years of the date that the FEP is required.
https://www.dairynz.co.nz/media/3223285/Using_the_Dairy_Effluent_Storage_Calculator_DNZ40_114.pdf
- b) Effluent ponds are managed so as to ensure there is a minimum of 75% working volume available between 1 March and 1 May each year.
- c) The effluent block is sized to ensure nitrogen applications from applied effluent are less than 150kgN /ha/ year.
- d) The effluent system is designed and operated to ensure that the standards of rule 3.5.5.1 are met all times, unless a specific consent has been sought under rule 3.5.5.2 to 3.5.5.5 to depart from the standards in rule 3.5.5.1 in which case the conditions of that consent shall be met at all times:
- e) Yard areas (drystock and dairy) to be managed to ensure runoff to water does not occur. Where yards are sealed and washed down effluent must be collected into an effluent system and managed as set out in a) to d) above.

9. Irrigation

- a) Irrigation scheduling – soil moisture tapes, soil moisture probes and/or a soil moisture budget are used to inform irrigation decisions.
- b) A deficit irrigation system is operated. Fixed depth and return irrigation systems must be replaced with a deficit irrigation approach within 3 years of the date that the FEP is required.
- c) An assessment of the irrigation system must be undertaken every second year to determine application depths and uniformity. Where test results fall outside of

manufacturers' specifications for the system an action must be included to address this within 12 months.

10. Water Takes

- a) All farms will have in place all necessary authorisations for water takes. The conditions that apply to the particular takes on the property must be described in the FEP.

11. Record keeping requirements

- a) Accurate and auditable records of annual farm inputs, outputs and management practices are maintained.
- b) Information described in a above is provided to the Waikato [Regional](#) Council on request.

PART D – REVIEWING AN FEP

Whether required by resource consent or as a permitted activity standard, an FEP shall be reviewed by a Certified Farm Environment Planner as follows:

- (a) Within 12 months of the granting of any resource consent requiring an FEP [be prepared pursuant to this Schedule](#), and thereafter at intervals of no more than 3 years or more frequently as required by the resource consent; or
- (b) Within 12 months of the FEP being certified by the Certified Farm Environment Planner, and thereafter at intervals of not more 3 years or more frequently as required by a Certified Industry Scheme; and
- (c) In either case of (a) and (b) above, an FEP shall also be reviewed if a farmer wishes to make a material change to their farming system such that any existing FEP is required to be amended.

Note: *if a farmer is no longer able to comply with the requirements of an FEP, then if the FEP is required pursuant to a permitted activity rule then a resource consent may be required; or if the FEP is required pursuant to a resource consent, then, depending on the nature and extent of the changes a variation to that consent may be required.*

The purpose of the review is to provide an expert opinion whether the farming activities on the property are being undertaken in a manner consistent with actions specified in the FEP. This review shall be undertaken in accordance with the review process set out in the Waikato Regional Council's FEP Independent Review manual

The results of the review, including any amended FEP, shall be provided to the Waikato Regional Council within 20 working days of the review date.

Note: *The requirement for monitoring and reporting would need to extend to FEPs required as a condition of permitted activities should PC1 provide for farming activities to be permitted without a Certified Industry Scheme. Such requirements are not specified here because the Fonterra proposal only contemplates farming activities being permitted activities when part of a certified industry scheme.*

PART E – AMENDING AN FEP

Unless otherwise required by the Waikato Regional Council in accordance with any conditions of any resource consent or any permitted activity standard (as applicable), changes can be made to an FEP, provided:

- a) The amended FEP is certified by a Certified Farm Environment Planner as continuing to comply with the requirements of this schedule.
- b) The change to the FEP does not contravene any mandatory requirement of any resource consent held in respect of the property, or any requirement of the Regional Plan that is not already authorised.
- c) The change to the FEP is documented as an amended FEP and provided to the regional council as though it were a new FEP in a manner consistent with Part A of this Schedule.