

**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**

**TOPIC 3**

**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  
(“WRC”)**

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**STATEMENT OF REBUTTAL EVIDENCE OF GRANT ROBERT ECCLES  
FOR FEDERATED FARMERS**

**19 July 2019**

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## 1. INTRODUCTION

- 1.1 My full name is Grant Robert Eccles. I am a principal planner for Tonkin and Taylor based in Hamilton.
- 1.2 My qualifications and experience as a planning expert is set out in my statement of evidence for Hearing Topic 1 dated 15 February 2019.
- 1.3 I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2014, and I agree to comply with it. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 1.4 This planning evidence relates to my response to evidence filed for Block 3. I have focused my evidence on the main topic areas I wish to respond to as follows:
  - a. Schedule 1.
  - b. Phasing of resource consents.
  - c. Commercial vegetable production.

## 2. SCHEDULE 1

- 2.1 There have been a variety of approaches to Schedule 1 in the Block 3 evidence. My review of the evidence is that the broad approaches or proposals are as follows:
  - a. Ms Marr (for Fish & Game) proposes to remove much of the discretion given to CFEPs, with a focus on trying to quantify the assessments and remove the qualitative elements.<sup>1</sup> This is through proposals such as specifying that language like "where appropriate" or "when practicable" cannot be used and by defining "minimise" as the reduction needed to achieve Table 3.11-1. Ms Marr also proposes "minimum standards" for various GFP principles. My primary concerns with these proposals are that in striving for certainty, there is a loss of flexibility (and further uncertainties are potentially created).
  - b. Ms Kissick (for DOC) proposes similar amendments to Ms Marr,<sup>2</sup> in that she seeks linkages between on farm discharges and Table 3.11-1, additional

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<sup>1</sup> Appendix 2 to Ms Marr's Block 3 evidence.

<sup>2</sup> Schedule 1 of Ms Kissick's track changes set out in Appendix 1 of her Block 3 evidence.

minimum standards for various principles and appears to seek the reinstatement of the previous wording of Schedule 1 (with amendment), which the s42A officers considered was process not outcome focused (and field testing showed it was overly focused on infrastructure).<sup>3</sup> My concerns with this proposal are the same (or similar) as my concerns with Ms Marr's proposal, and I also share the s42A officers' concerns about the previous wording of Schedule 1.

- c. Mr Connell-McKay (for Wairakei Pastoral Limited) proposes to reinsert large parts of the notified version of Schedule 1 (similar to Ms Kissick) but also proposes amendments to require assessments of vulnerable land and to provide for sub-catchment scale consents. For the reasons explained above, I consider that Schedule 1 ought to focus on GFPs (and outcomes) as opposed to process (and address critical source areas through GFPs as opposed to Schedule 1 determining "vulnerable land" and required actions). While I agree in principle that there is merit in retaining all options for managing farms to achieve the desired targets, I consider it premature to provide for sub-catchment scale consents if they are intended to effectively allocate attribute states in Table 3.11-1 (and short term targets) at a sub-catchment level. As I explain below, this is not what Table 3.11-1 was intended to be used for and is not the objective of PC1.
- d. Mr Edlin (for WRC as submitter) does not propose specific amendments to Schedule 1 (and this is not addressed in Mr Mayhew's planning evidence) but he raises concerns about the use of GFP principles and proposes that minimum standards should be adopted for key high risk activities.<sup>4</sup> The minimum standards he proposes are all in the nature of setback distances. I rely on Mr Millner's Block 3 rebuttal evidence about the issues with these standards from a farm planning perspective and I also rely on the evidence summarised by Mr Millner at paragraphs 3.21 to 3.24 of his Block 3 rebuttal evidence regarding the costs and benefits. My concerns with Mr Edlin's proposal is that the minimum standards may not achieve the certainty of outcome sought and will likely impose significant cost. They would therefore not appear to be efficient or effective.
- e. Mr Gasquoine (for WRC as proponent) supports the s42A amendments to Schedule 1 as addressing the issues he identifies at paragraph 12 of his Block 3 evidence, which became apparent when they tested the notified version of

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<sup>3</sup> This is explained in paragraph 12 of Mr Gasquoine's Block 3 evidence.

<sup>4</sup> Paragraphs 62 to 67 of Mr Edlin's Block 3 evidence.

Schedule 1 in the field. His proposal regarding practices for the principles appears to be to provide a non-exhaustive list of practices for the principles and I assume (but it is not clear from paragraph 8 of his evidence) that this would be collated in a document (Mr Dragten refers to this as a “FEP review guide”) which sits outside PC1. This is similar to approaches adopted in other regional plans, such as the Canterbury Matrix of Good Management practices that sits outside the regional plan. It would provide flexibility for innovation and for the practices to be updated over time, as well as greater consistency or certainty for CFEPs (and Council) in preparation of FEPs.

- f. Mr Willis (for Fonterra) proposes that a new Schedule 1 is adopted which removes the objectives and principles, and instead lists the practices for each land management area.<sup>5</sup> The intention appears to be that Schedule 1 contain no discretionary judgement and that it is used for all FEPs – if an FEP meets the table it is a permitted activity and if it does not, it is a controlled activity with control restricted to that standard which the FEP does not comply with. It is not clear which activities the restricted discretionary activity rule would apply to (but Mr Willis’ paragraph 8.4 suggests that it might be to FEPs not subject to a CIS because he states that the permitted/controlled status is justified for FEPs prepared under a CIS). While the approach may have merit for a permitted activity (subject to refinement of the practices), my concern is that in striving for certainty we risk pushing farmers to a restricted discretionary activity regime if this is the only schedule guiding the preparation of FEPs (I explain this in more detail below).
- g. Ms Young (for Dairy NZ) attaches to her evidence a new Schedule 1A for permitted activities that is largely based on the schedule contained in my Block 3 evidence. The substantive difference is to the purpose section. My concern is that in removing the context for the FEP (e.g. the Catchment Profiles), there is no context for the CFEP assessment which may be important if there are competing actions (which may still be relevant in the context of a much more prescriptive FEP assessment).
- h. My proposal for two separate schedules – Schedule 1 for controlled activity consents, Schedule 1A (with greater prescription regarding practices) for a permitted activity.

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<sup>5</sup> Attachment A to Mr Willis’ Block 3 evidence.

- i. Ms Hardy (for Miraka) proposes to respond thorough rebuttal evidence but raises concerns at paragraph 6.10 about the need to develop a framework that can be equitably applied to a range of land tenure and management structures. In my view this is a further variation across the Catchment (in addition to those which I discuss below), which is also a reason not to adopt rigid minimum standards or attempt to engineer a “one size fits all” approach.
- 2.2 The above proposals have partly been in response to concerns raised by the Hearing Panel about a need for certainty, particularly in the context of FEPs prepared as part of a permitted activity. They have also partly been in response to significant changes in the s42A report to the structure and focus of FEPs. In my view, the above proposals are not necessarily mutually exclusive and there may be elements of all of them that the Panel could take to craft Schedule 1. This could be addressed through expert conferencing.
- 2.3 As identified in my Block 3 evidence, my proposed Schedule 1A is not a “finished product” and would likely benefit from specific and directed conferencing by experts with experience in the FEP area. Several other witnesses have expressed similar views in their evidence.

### **Certainty**

- 2.4 My concern is that FEPs and the issues the Hearing Panel is grappling with are not black and white but are instead within grey areas. In my view, it will not be possible to remove all subjectivity and discretion or to provide 100% certainty. The risk with pursuing certainty is that in doing so FEPs lose flexibility (which is needed to tailor actions and mitigations to the particular situation and to adjust, adapt or respond to the likely changes and challenges farmers will face).
- 2.5 I agree with comments by Ms Young at paragraphs 11 and 14 of her Block 3 evidence, about the need to strike an appropriate balance between flexibility for farmers to tailor actions to their farm and public certainty that progress is being made.
- 2.6 I do not agree with comments by Ms Marr at paragraphs 2.16 of her Block 3 evidence, that coupling principles with a list of minimum standards that must be complied with achieves a more appropriate balance between flexibility and certainty. In my view, her changes do not provide appropriate flexibility. They also may not provide greater certainty in light of Mr Millner’s concerns (in his Block 3 rebuttal evidence) about greater precision or more specific wording (he refers to the

examples of defining slope and stocking rate) creating greater uncertainties or implementation and enforcement issues for Council.

2.7 From a water quality in the river point of view, I understand the desire from parties to put in place rigid standards in an attempt to maximise environmental gains and guarantee farmer performance. However, this must necessarily be tempered by the tests set out in s32.

2.8 In my view, amendments to Schedule 1 (and how to achieve the certainty/flexibility balance) need to be considered in the context of the s32 (or s32AA) assessment i.e. the costs, risks and benefits together with effectiveness, efficiency and achieving a regime that imposes the least intervention to achieve the desired outcome. Parts of this assessment have been raised at various points and by various witnesses but in my view, a helpful summary is:

- a. The objective of PC1 is to achieve 10% of the journey as represented by the short term targets. The key on farm mechanisms to achieve this are the FEPs, stock exclusion standards and the NRP (with reductions from those above the 75<sup>th</sup> percentile). The overwhelming farmer evidence has been that the benefit from FEPs is from tailored actions in the context of a catchment with varied farm systems, farm types, landscape and climate.
- b. Dr Doole's modelling is that the policy mix will significantly overshoot the 10 year targets. This is not a situation where achieving the short term targets is marginal (which would suggest that greater control, specification or precision is justified to ensure we do not fall short of the targets).
- c. The economic costs of PC1 are significant. At a national scale, Dr Doole's modelling concluded that the economic costs in the first ten years are \$193 million (and a loss of 1,880 jobs).<sup>6</sup> At a farm scale, the Baker Ag and Ag First reports have estimated significant costs of stock exclusion (particularly for hill country farms when water reticulation and stock crossings are considered) and modest costs for obtaining FEPs (with costs of implementing them escalating depending on whether management or infrastructure responses are required).<sup>7</sup>

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<sup>6</sup> This is under the scenario of no Maori land development, Table 6 of Dr Doole's report - <https://www.waikatoregion.govt.nz/assets/WRC/Services/publications/technical-reports/HRWO-trs/TR201855.pdf>

<sup>7</sup> The Baker Ag report is attached to Mr Beetham's Block 1 evidence for the Hill Country Famers' Group and the Ag First report is attached to Mr McGiven's Block 2 evidence for Federated Farmers.

- d. The implementation costs and issues are of concern to farmers, industry and Council. Council has itself raised serious concerns about the capacity and capability to process 5,000 to 6,000 resource consents.<sup>8</sup> The farm planning industry has raised concerns about capacity to prepare and certify 5,000 to 6,000 FEPs.<sup>9</sup> In addition, there are the costs to farmers in preparing applications for consents and associated assessments of environmental effects (“AEE”) (particularly for a restricted discretionary activity).<sup>10</sup>
- e. The social costs typically follow economic costs. While I have not seen any modelling or quantitative analysis, the Hearing Panel has heard evidence from many farmer submitters explaining the social impacts on them and their community. This has included factors such as succession planning (with parents saying they had planned for their children to take over the farm but are now not sure they want to burden them), school roles and bus routes, community services and groups, and the social demographic (for example, the Te Aroha branch of Federated Farmers gave evidence of the social implications for employment, the local school and community as a result of conversion of large areas of land in Ruatoria to forestry). There is also very little opportunity for rural-residential subdivision (apart from in areas zoned for such development) in the relevant District Plans in the PC1 catchment – this means that there is little opportunity for lifestyleurs to fill the social void that may be left if farms become unviable.
- f. From a cultural perspective, improvements in water quality will undoubtedly generate benefits. Costs would appear to be limited to the complicated issue of opportunity costs for underdeveloped Maori land (however that is defined).
- g. There is mixed and variable evidence of environmental benefits of various mitigations. Dr Doole’s report is the only modelling of environmental benefits that I am aware of. Many of the other mitigations or minimum standards proposed (such as riparian setbacks) appear to rely on reviews of literature which are “varied and equivocal.”<sup>11</sup>

2.9 My concern is that within this context, there does not appear to be a justification to force everyone into a situation where they are asked to prepare FEPs in accordance with rigid standards in order to achieve certainty. The likely outcome will be that

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<sup>8</sup> For example, Dr McLay and Mr Sinclair’s Block 2 evidence.

<sup>9</sup> For example, Mr Matheson’s Block 1 evidence for NZIPIM.

<sup>10</sup> Dr le Miere discusses this in his Block 2 evidence for Federated Farmers.

<sup>11</sup> Ms McArthur’s Block 2 evidence for DOC at paras 38 and 39.

many farmers will need to apply for restricted discretionary activity consents, which will be accompanied with cost, delay and significant implementation issues for WRC.

- 2.10 In my opinion, a more measured approach is justified and is what I attempted to achieve through my amendments to Schedule 1 and in the proposed new Schedule 1A. After reviewing the submitter evidence, my view remains that if the Hearing Panel considers that Schedule 1 contains too much discretion to be used as a permitted activity, it may be appropriate to adopt a more prescriptive schedule for those FEPs.
- 2.11 My view also remains that an appropriate consenting pathway ought to be provided for tailored FEPs that provide for tailoring of stock exclusion standards, for example. My view is that these farms should not be pushed into a restricted discretionary activity consenting pathway for the sake of applying defined minimum standards across the catchment (which by their nature are not tailored).

## **Regulation**

- 2.12 Mr Lynch for WRC as submitter has raised issues that relate to Schedule 1 (and the associated rule or consenting framework), from a regulatory point of view. I agree that it is important to consider the enforcement and compliance issues associated with any planning framework.
- 2.13 The nature of the discharge and the activities that are to be managed in PC1 will present a challenge for Council. They are different from and more complex than the types of discharges and activities it has managed in the past. While this is not a new issue for councils nationally, it is a new issue in terms of the number of FEPs to be prepared, the number and nature of issues to be addressed in an FEP (e.g. four contaminants not just N or P) and the degree of variation in farm types, farm systems, geography and climate across the Catchment (and, as Ms Hardy for Miraka identifies, farm ownership structures). This will likely require some re-thinking of the Council's compliance and enforcement theory (and, based on Mr Dragten's report and proposed amendments to Schedule 1, it appears that this is something Council is thinking about and attempting to proactively address).
- 2.14 Mr Lynch's discussion of Overseer, GFPs and minimum standards at paragraphs 12 to 18 of his evidence is understandable from a regulator's point of view. In general, the more certainty and the more specificity that exists the easier things are to regulate. However, I reiterate my views that it will not be possible to remove all subjectivity because the issues with enforcing compliance with FEPs are not black

and white. I also agree with Mr Millner's views that attempting to adopt clear and specific minimum standards may inadvertently create implementation and enforcement issues (he discusses at paragraphs 4.3 to 4.6 of his evidence, the potential issues with defining slope).

- 2.15 At paragraphs 19 to 21 of his evidence, Mr Lynch sets out the reasons for his view that a permitted activity regime should be reserved for very low risk activities. In my view, this reflects how planning frameworks have traditionally been approached but does not reflect the nature of the issues associated with FEPs.
- 2.16 As explained in Mr Millner's Block 2 and Block 3 evidence, there are additional benefits from the CIS regime that will not be present in a consenting regime (this includes industry pressure and contractual obligations, scrutiny from financing institutions, peer pressure, consistency and quality of FEPs etc). This is also further explained in the evidence for Miraka and Fonterra. In my opinion, these need to be factored in when weighing an FEP to be provided as a permitted vs consented activity.
- 2.17 I also do not agree with Mr Lynch that in a permitted activity regime, as proposed for PC1, there would be no need to engage with the regulator. Farmers will be required to register and submit a NRP. They will be required to prepare a FEP, have it certified by a CFEP (where the FEP was not prepared by a CFEP in the first place) and submit it to Council. For farmers under the CIS it may be the scheme that does this. However, there will still be regulatory oversight and farmer engagement. This is very different from the typical permitted activity framework whereby landowners carry on their activity with no engagement with Council (or anyone) unless their activity breaches standards or there are complaints.

### **Minimum standards**

- 2.18 As identified above, various parties have proposed amendments to Schedule 1 (or elsewhere in PC1) to adopt minimum standards (e.g. Ms Marr and Ms Kissick propose changes to Schedule 1 to include minimum standards for various GFP principles). My concern with adopting minimum standards is that it is an attempt to apply a "one size fits all" approach to a very diverse Catchment (in terms of farm types, systems, landscape and climate).
- 2.19 In a planning context, minimum standards are typically adopted for matters such as permitted activity rules for buildings. In tandem with that, a zone approach is also typically adopted to reflect that the standards will be different for different activities

in different locations. Accordingly, the height of buildings might be different in a coastal zone compared with a rural zone (to address issues like landscape values). Building setback distances might be different in high density urban zones compared with rural zones (to address issues like amenity). Car parking and manoeuvring standards will also differ by zones to address matters like amenity and traffic safety. The objective of these standards is to anticipate and provide for the majority of activities that are occurring in the various zones and to ensure that only exceptional cases, or situations requiring a closer review or control, require consent.

- 2.20 My concerns with minimum standards for PC1 are that we are attempting to develop a single set of standards to apply to all circumstances. This is not realistic and will mean that the vast majority of activities will likely require restricted discretionary activity consents. We are also not dealing with matters that are easy to measure, describe and define (unlike building height, for example). We are dealing with diffuse discharges that are not directly measurable (or cannot be easily measured), changing environmental and other conditions, and uncertainties regarding linking of actions and mitigations with outcomes.
- 2.21 In my view, a more appropriate response is to set reasonable minimum standards for stock exclusion and setbacks, and to provide an appropriate pathway for the tailoring of those standards, where appropriate.

### **3. Table 3.11-1**

- 3.1 In her amendments to Schedule 1, Ms Marr proposes to define “minimise” by reference to reductions in contaminants to achieve the water quality states and goals in Table 3.11-1. She proposes that the CFEP assess the level of on farm reduction in contaminants required as a proportion of reductions required to achieve sub-catchment water quality targets. My concern with this is that the CFEP is effectively determining the reduction in contaminants at a property scale, and therefore the contaminant allocation. This is different from the CFEP assessing appropriate actions to achieve GFP and to address critical source areas.
- 3.2 In my amendments to Schedule 1, I propose a new Part B, which sets the purpose of FEPs and context for the assessment. This includes reference to Catchment Profiles (which are to contain information such as the short term targets and information on sector contributions to contaminants), and other important considerations (such as resources reasonably available to the farmer). My intention is to provide context for the CFEP in choosing the appropriate actions and assessing the timing and priority of actions.

- 3.3 For example, a CFEP might identify several mitigations or actions to address E coli, sediment and/or nitrogen that are mutually exclusive or that are expensive. It would likely assist the CFEP to select the appropriate action, coordinate actions and prioritise them if they were able to look at Table 3.11-1 and see that the sub-catchment is further from E coli targets than nitrogen targets, for example. This does not involve the assessment of the reductions needed on the property to achieve the short term targets (and in my view such an assessment is likely to be impossible in isolation because it depends on other discharges and the reductions they are making, as well as consideration of contaminant pathways and attenuation).
- 3.4 I consider that my proposal is different from what Ms Marr proposes. The focus of Ms Marr's proposal is on assessing property scale contaminant reductions whereas the focus of my proposal is on actions to achieve GFP and address critical source areas.
- 3.5 As explained in my evidence on the science JWS, my view is that the scope of PC1 is on adopting on farm actions to reduce the four contaminants and the intention of Table 3.11-1 is to monitor the progress in the first ten years (as opposed to allocating contaminants to a property or sub-catchment level). I consider my proposal is consistent with this but Ms Marr's is not and leans too far toward allocation.

#### **4. PHASING OF CONSENTS**

- 4.1 Mr Sinclair, in his Block 3 evidence for WRC as submitter, has again raised the significant implementation issues posed by PC1. He proposes to address this by phasing the consents to provide sufficient time for Council to process at least 2,500 consents (and possibly up to 5,700) as well as time for those farms to prepare an FEP and apply for consent.
- 4.2 At paragraph 16 of his Block 3 evidence, Mr Sinclair states that the resource consent requirements should be spread across the period of the plan (i.e. up to 10 years) and in Appendix One to his evidence he provides a detailed timeline for that. I agree that implementation ought to be phased. The FEPs are the critical method by which PC1 will be implemented and it is critical that we do not set this up to fail. WRC will have the best idea of how many consents it could reasonably process in a year and my view is that it is important this is reflected in the timeframes adopted.
- 4.3 I also agree with Mr Sinclair's 10 year timeframe. This is consistent with the views I expressed in my Block 2 evidence about the issues that were being created by a focus on precise dates as opposed to a timeframe.

4.4 One reservation I have about Mr Sinclair's timeframe is that time does not appear to have been factored in for registration of properties and submission of the NRP. This will be important to ensure that the 75<sup>th</sup> percentile is able to be calculated and the timing of this is important to ensure that sufficient time is provided for farms to identify whether or not they are in the 75<sup>th</sup> percentile and to then prepare an FEP and application for consent before Mr Sinclair's timeframes for processing such consents. This is even more important because any backlog at the start of Mr Sinclair's timeframes will compound year on year and impact on WRC's ability to meet its targets of processing around 500-600 consents per year.

## 5. COMMERCIAL VEGETABLE PRODUCTION

5.1 In its submission on Variation 1, Federated Farmers proposed amendments to the commercial vegetable production rule 3.11.5.5 and I attended the expert conferencing on this rule. I did not address this rule in my Block 3 evidence because I did not think I could do it justice in the time available and I considered that horticultural submitters were best placed to respond to the proposed amendments.

5.2 I have briefly reviewed the evidence of Mr Mayhew for WRC as submitter and Mr Hodgson for Horticulture New Zealand. I do not consider that I can advance matters any further than they have. In my view, as long as a rule can be achieved that is workable for horticultural farmers and achieves equity or consistency in approach (i.e. everyone is adopting GFP and making progress to achieve 10% of the required reductions in the first 10 years) then that will likely be an appropriate outcome for a nationally significant sector.

*G.R. Eccles*

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G R Eccles