

**BEFORE THE**

Waikato Regional Council Hearing  
Commissioners

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Waikato Regional Proposed Plan Change 1 –  
Waikato and Waipā River Catchments

---

**STATEMENT OF JANEEN ANNE KYDD-SMITH  
ON BEHALF OF THE WAIKATO AND WAIPA RIVER IWI  
(Submitter No. 74035)**

**HEARING BLOCK 2**

**3 MAY 2019**

---

---

**KAHUI**  
LEGAL

PO Box 1654

Telephone: (04) 495 9999

Facsimile: (04) 495 9990

Counsel: J P Ferguson / M Wikaira

Email: [Jamie@kahuilegal.co.nz](mailto:Jamie@kahuilegal.co.nz) / [Maia@whaialegal.co.nz](mailto:Maia@whaialegal.co.nz)

**WELLINGTON**

## **INTRODUCTION**

1. My name is Janeen Anne Kydd-Smith. I am a Director and Principal Planner of Sage Planning HB Limited, in Napier.

### **Qualifications and Experience**

2. My qualifications and experience are set out in my evidence, presented in relation to Block 1 of the hearing (dated 15 February 2019).
3. I have been engaged by the Waikato and Waipā River Iwi (**River Iwi**) to prepare and present planning evidence in relation to their submissions and further submissions on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments (**PC1**), including Variation 1 to PC1.
4. I am familiar with the PC1 documents (as notified) and I was also initially engaged by the River Iwi to assist them with the preparation of their submissions and further submissions.

## **EXPERT WITNESS CODE OF CONDUCT**

5. I confirm that I have read the 'Expert Witnesses Code of Conduct' contained in the Environment Court of New Zealand Practice Note 2014. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **PURPOSE AND SCOPE OF EVIDENCE**

6. This evidence provides a response to the Waikato Regional Council's Reporting Officers' (**the Officers**) Section 42A Report – Block 2: Parts C1-C6: Policies, Rules and Schedules (most) (**Officers' Report**).
7. In preparing my evidence I have reviewed the following:
  - (a) relevant sections of PC1 (including Variation 1);

- (b) relevant sections of the River Iwi's submissions and further submissions;
- (c) the section 42A Officers' Report, particularly in relation to the relevant parts of River Iwi's submissions and further submissions;
- (d) the National Policy Statement for Freshwater Management 2014 (**NPS-FM**); and
- (e) the Vision and Strategy for Waikato River / Te Ture Whaimana o Te Awa o Waikato (**Vision and Strategy**).<sup>1</sup>

### **EXECUTIVE SUMMARY**

8. For the reasons given by the Reporting Officers in their section 42A report, I concur with the Officers' recommendations to:
- (a) Merge elements of Policies 1, 2 and 6 to overcome potential conflict or overlap between them;
  - (b) With respect to Policy 1:
    - i. include a reference to "catchment-wide and sub-catchment diffuse discharges";
    - ii. add of new clause a1.; and
    - iii. make other recommended amendments to Policy 1, except those I refer to below.
  - (c) Amend Policy 2, insofar as the policy is refocussed to provide clarity and direction in relation to Farm Environment Plans (**FEPs**) and the words "catchment-wide" are added;
  - (d) Signal the deletion of Method 3.11.4.2 and insertion of new Policy 3A;
  - (e) Amend Policy 4, insofar as removing overlap with Policy 1 and recognising that future regional plan changes or regional rules are likely to require all farming activities to make further reductions in

---

<sup>1</sup> Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Schedule 2; Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, Schedule 1 and Nga Wai o Maniapoto (Waipa River) Act 2012, Schedule 1.

the diffuse discharge of the four contaminants in order to achieve Objective 1;

- (f) Delete clauses a. – c. of Policy 8;
  - (g) Amend Policy 11, insofar as making it clear that the Best Practicable Option is the ‘minimum’ required and deleting the words “at the time a resource consent application is decided”;
  - (h) Retain Policy 16, as consideration of this policy is integral to land use change provisions for Maori land;
  - (i) Delete Rule 3.11.5.1;
  - (j) Add new Rule 3.11.5.2A;
  - (k) Delete Rule 3.11.5.3;
  - (l) Separate Controlled Activity Rule 3.11.5.4 into a new permitted activity Rule 3.11.5.1A that works alongside Restricted Discretionary Rule 3.11.5.4 and Discretionary Rule 3.11.5.6A;
  - (m) Delete Rule 3.11.5.6;
  - (n) Add new Rule 3.11.5.6A;
  - (o) Retain the Non-Complying Activity status of Rule 3.11.5.7; and
  - (p) Delete definition of ‘Restoration’.
9. With respect to Policy 1 (and Policy 2), I consider that the words “manage and reduce” should be retained as they better reflect the wording in Policy 8 (which refers to “prioritise the management” of diffuse discharges) and align with Policy 4 (which signals further reductions may be required as part of future plan changes).
10. I note that the current wording in clause a2. of Policy 1 could be interpreted as suggesting that the need to establish the Nitrogen Reference Point (**NRP**) is optional. As such, I consider that the words “where possible” should be deleted from clause a2., provided that Schedule B is also amended to include a contingency staged process to enable the NRP to still be calculated when the required standard of data is not available (as discussed in the evidence of Hamish Lowe). I

also consider that clause b4. of Policy 1 should be amended to include the words “will be achieved”.

11. With respect to Policy 2, I recommend a minor amendment to the wording in clause b. and the insertion of a new clause b3. That refers to the need for FEPs to collect and provide information to support a (future) accounting system and monitoring for diffuse discharges of the four contaminants.
12. In response to the Officers’ option of adding a new paragraph to Policy 4, in relation to considering granting land use consents with a longer consent duration, I consider that a potential issue that could occur from separating land-use and discharge rules, is for land use consents to be granted with long-term consent durations (greater than 10 years) based on existing farm operations which could then allow for the continued legitimate discharge of contaminants without having to make further reductions in the diffuse discharges of the four contaminants signalled through Policies 4 and 7. I therefore consider that it would be more appropriate if the new wording referred to granting resource consents that authorise farming activities for a limited duration that will enable further reductions in contaminants losses to be implemented through replacement consents.
13. While I generally concur with the Officer’s recommended amendments to Policy 5, I consider that clause a. should be amended to refer to “All land use activities’, and clause c. should be amended so that it refers to staging “over 80 years”. I also support Hamish Lowe’s recommendation to insert a new clause b1. that refers to the need to identify and make changes to farming systems, data gathering and reporting over time to reflect the availability of current industry resourcing.
14. As many of the dairy farms and Commercial Vegetable Production (**CVP**) are likely to be located in Priority 1 sub-catchments, and the catchments of lakes are already captured in Table 3.11-2, I consider that the Officer’s recommended option to include the words “commercial vegetable production, dairy farming and the catchments of lakes” in Policy 8 should not be adopted, and that there is a full stop inserted after “Table 3.11-2” on the second line of the policy.

15. I recommend that Policy 10 is amended to clarify that consideration also needs to be given to the matters to be considered in Policies 11-13 (relating to point source discharges).
16. With respect to Policy 11, I consider that it is not appropriate to replace the word “may” with “it is encouraged that an offset measure be proposed”, as the utilisation of an offset should be the last option after the full range of on-site mitigations have been exhausted. I therefore consider that the word “may” be retained as notified. I also consider that, if offsets for point source discharges are to be provided for, it is important that a method is developed for recording and linking those offsets to the accounting framework. Otherwise, there is a potential risk of future point source discharge applications being assessed without proper account being taken of the effects of existing consented offsets particularly in considering whether the water quality attribute states in Table 3.11-1 will be achieved.
17. While I generally support the Officer’s recommended amendments to Policy 12 (for the reasons given by the Officers), I consider that Policy 12 should be amended to refer to “Freshwater Management Unit and sub-catchment loads”, as the freshwater objectives in PC1 are set at the sub-catchment, Freshwater Management Unit (**FMU**) and catchment scales. An understanding of contaminant loads at the FMU scale is also required for the Freshwater Accounting System to be prepared under Policy CC1 of the NPS-FM.
18. I consider that the Officers’ recommended amendments to Policy 13 address the matters raised in the River Iwi Submission. However, the wording of clause a. of the policy is not consistent with the optional wording recommended by the Officers for Policy 4. I therefore consider that Policy 13 should be amended as follows:

*“When determining an appropriate duration for any point source discharge consent granted, consider the following matters:*

- a. *The appropriateness of a longer consent duration where the applicant demonstrates clear and enduring ongoing reductions in the discharge of contaminants beyond those imposed in response to short-term ~~that the discharge is consistent with achieving the water quality attributes states set-out in Table 3.11-1;~~ and the discharge is not in a Priority 1 sub-catchment; and”*

19. While there is a reference in Policy 1 to require farmers with an NRP between the 50<sup>th</sup> and 75<sup>th</sup> percentile to demonstrate real and enduring reductions of nitrogen leaching, I consider that the matters that WRC reserves control over in Rule 3.11.5.2A and the matters WRC restricts its discretion to in Rules 3.11.5.3 and 3.11.5.4 should be amended to include the following new matter:

*“Where the Nitrogen Reference Point exceeds the 50<sup>th</sup> percentile and is less than the 75<sup>th</sup> percentile nitrogen leaching value, demonstrate clear and enduring reductions of nitrogen leaching, with anticipated reductions set, and practices to achieve those reductions and timeframes detailed.”*

20. I concur with the Officers that there are advantages in clarifying which rules are ‘land-use’ rules and ‘discharge’ rules, to overcome the potential for discharge consents to be transferred under section 137 of the RMA. However, a potential issue in doing this is for land use consents to be granted with long-term consent durations based on existing farm operations. I therefore consider that there is value in amending Policy 4 to address the consent duration issue.
21. With regard to the Officers’ recommendation to delete of the ‘end date’ of 1 July 2026 from Rule 3.11.5.7, I consider that the end date can and should be retained, as it is important for sending a clear signal to the Regional community that Rule 3.11.5.7 is an interim measure and must be replaced with a new regulatory framework.
22. While I generally concur with the Officers’ recommendations to amend the definition of ‘Farming Activities’ (including renaming it ‘Farming’), I refer to Hamish Lowe’s evidence that the exclusion of ‘planted production forest’ would mean that areas of production forest on farms would be excluded from any NRP assessment, which would omit and exclude a key mitigation tool available for use on many farms to lower the nutrient losses. I therefore consider that clause a. of the definition of ‘Farming’ should be amended so that it refers to ‘small forests and plantations for land stabilisation and nutrient loss mitigation’ in addition to ‘planted production forest’.

## **EVIDENCE**

### **C1. DIFFUSE DISCHARGE MANAGEMENT**

#### **C1.1.16 Implications for the definition of Nitrogen Reference Point**

23. Given that Schedule B already gives some definition to the NRP, Officers consider that it may be useful to retain an NRP definition in the Glossary to allow quick reference, but consider that there is some overlap of the Glossary definition with elements in Schedule B that should be removed. The Officers therefore recommend that the definition of NRP in the Glossary be amended.
24. In his evidence, Hamish Lowe notes that the notified definition the NRP was linked to a 'Property' or an 'Enterprise' but that has been changed in the amended definition of NRP so that it is now linked to a 'Farm' (for which there is no definition). Schedule A still refers to 'Property' and 'Enterprise'. Mr Lowe therefore recommends that either 'Property' and 'Enterprise' be reinserted into the definition of NRP, or 'Property' and 'Enterprise' in Schedule A is replaced with 'Farm'.<sup>2</sup>
25. I consider that if Mr Lowe's latter option is adopted, a new definition of 'Farm' should be included in the Glossary.

#### **C1.2 Policy 1 and the overall rule framework**

26. The Officers recommend the merging of elements of Policy 1, Policy 2 and Policy 6 to overcome potential conflict or overlap between them and provide more appropriate guidance for consideration of resource consents and a single overriding policy that provides the management framework for diffuse discharges of N, P, sediment and microbial contaminants<sup>3</sup>. This includes a recommendation to delete Policy 6. I support these recommendations for the reasons given by the Officers.

#### Policy 1

27. In their submission, the River Iwi requested that the wording of Policy 1 be retained. They considered that the term 'manage' in the policy directs

---

<sup>2</sup> Paragraphs 134-135 of Hamish Lowe's primary evidence for the Block 2 hearing.

<sup>3</sup> Paragraph 285 of the Block 2 s42A report.

WRC to actively reduce the discharge of the four contaminants from land use within the Waikato and Waipā River catchments.

28. The Officers' Report refers to the Department of Conservation (**DoC**) submission<sup>4</sup>, which seeks that the words "manage and require reductions" are replaced with "reduce" to provide clearer direction to plan users of the desired outcomes. The Officers' Block 2 "Tracked Changes" Recommendations accept DoC's request, although I note that it is recommended that the title of Policy 1 retains a reference to "management".
29. I consider that retaining the reference to "manage" is appropriate, as changes to how land is managed (i.e. actions put in place on farm<sup>5</sup> and achieving long-term behaviour change), including the adoption of Good Farming Practice (**GFP**), are the key methods under PC1 to achieving reductions in the four contaminants to achieve Objective 3. As such, I consider that the sole focus of the policy should not be to "reduce" but instead to "Manage and reduce". This also better reflects the wording in Policy 8, which refers to "Prioritise the management" of diffuse discharges and has alignment with Policy 4 which signals further reductions may be required in future plan changes.
30. I therefore also support the recommended addition of new clause a1. to Policy 1, which refers to "*Requiring all farming activities to operate at Good Farming Practice, or better*". In my opinion, the addition of the words "or better" is important and should be retained, as the adoption of GFP on its own may not be sufficient to achieve the required reductions and should be the minimum required for all farmers.
31. The Officers recommend that Policy 1 be amended to refer to "catchment-wide and sub-catchment diffuse discharges". I consider that this amendment is appropriate for the reasons given by the Officers<sup>6</sup>, but also note that the amendment also appropriately reflects the Officers' recommendation (as part of the Block 1 s42A report<sup>7</sup>) to insert

---

<sup>4</sup> Submission #71759.

<sup>5</sup> Refer to page 10 of the DairyNZ submission #74050.

<sup>6</sup> Paragraph 295 of the Block 2 s42A report.

<sup>7</sup> Paragraph 557 of the Block 1 s42A report.

a new column into Table 3.11-1 to identify the number of the catchment each site within the FMU relates to.

32. I support the Officers' recommendation to amend Policy 1 to refer to "diffuse" discharges of nitrogen, phosphorus, sediment and microbial pathogens, as this reflects the title and subject of Policy 1, and it helps to better distinguish the policy from those policies relating specifically to point source discharges (i.e. Policies 10-13).
33. With respect to new clause a2., I understand that the words "where possible" recognise that establishing an NRP may not be possible in some cases. However, I consider that the wording in clause a2. could be interpreted as suggesting that the need to establish the NRP is optional.
34. Hamish Lowe notes in his evidence<sup>8</sup> that it is possible that an NRP cannot be completed to the required standard under Schedule B of PC1 if the information needed does not exist. This situation may arise for low intensive sheep and beef properties. He suggests that this issue could be overcome if Schedule B is amended to include a contingency for when the required data is not available, such that the NRP could be submitted in two steps: Step 1 being the best estimate based on available data; and Step 2 being a re-submitted NRP some 6-12 months later using more relevant and appropriate data<sup>9</sup>.
35. I therefore consider that if Schedule B is amended as suggested by Mr Lowe, then the words "where possible" should be deleted from new clause a2., as it will be possible for an NRP to be calculated in every case (even if it is a best estimate) potentially using different methodologies. I support the Officers' other recommended amendments to Policy 1, for the reasons given by the Officers. This includes new clause b1., which requires farmers with a NRP between the 50<sup>th</sup> and 75<sup>th</sup> percentile to demonstrate real and enduring reductions of nitrogen leaching, as farmers that fall above the 50<sup>th</sup> percentile, but below the 75<sup>th</sup> percentile, should also be encouraged to "demonstrate *real* and

---

<sup>8</sup> Paragraphs 113-114 of Hamish Lowe's primary evidence for the Block 2 hearing.

<sup>9</sup> Paragraph 89 of Hamish Lowe's primary evidence for the Block 2 hearing.

enduring losses” year on year until 2026 where they can<sup>10</sup>. This is in addition to requiring farmers with an NRP greater than the 75<sup>th</sup> percentile to reduce nitrogen loss below the 75<sup>th</sup> percentile, which I consider is important to achieving the short term and long-term water quality objectives and the Vision and Strategy.

36. However, I note that while there is a reference in Policy 1 to require farmers with an NRP between the 50<sup>th</sup> and 75<sup>th</sup> percentile to demonstrate real and enduring reductions of nitrogen leaching, there is nothing within the rule framework to implement new clause b1. Therefore, I consider that the matters that WRC reserves control over in Rule 3.11.5.2A, and the matters WRC restricts its discretion to in Rules 3.11.5.3 and 3.11.5.4, should be amended to include the following new matter (which is supported in the evidence of Mr Hamish Lowe<sup>11</sup>):

*“Where the Nitrogen Reference Point exceeds the 50<sup>th</sup> percentile and is less than the 75<sup>th</sup> percentile nitrogen leaching value, demonstrate clear and enduring reductions of nitrogen leaching, with anticipated reductions set, and practices to achieve those reductions and timeframes detailed.”*

37. With respect to the words “demonstrate clear and enduring” in new clause b4. of Policy 1, in their submission the River Iwi requested that those words in Policy 6 be changed to “identified and sustained”. The Officers consider that the recommended words have plain-English dictionary definitions and it is not evident from the reasoning within the River Iwi’s submission how the term “identified” rather than “clear” adds further clarity to the policy.<sup>12</sup>
38. In my opinion, the words recommended by the Officers are appropriate, for the reasons given by the Officers.
39. There is, however, inconsistency in the wording of recommended new clause b1. in Policy 1, whereby clause b1. uses the words “demonstrate real and enduring”. I consider that the wording should be replaced with the words “demonstrate clear and enduring”, to be consistent with the wording used in clauses b3. and b4. of Policy 1 (as well as in Policy 4).

---

<sup>10</sup> Paragraph 408 of the Block 2 s42A report. However, refer to my proposal to replace the term ‘real’ with ‘clear’ in paragraph 39.

<sup>11</sup> Paragraph 63 of Hamish Lowe’s primary evidence for Block 2 hearing.

<sup>12</sup> Paragraph 493 of the Block 2 s42A report.,

40. In addition to the above, I consider that new clause b4. should be amended to include the words “will be achieved”, so that the clause reads as follows:

*“Except as provided for in Policies [1(a) and] Policy 16, generally not granting land use consent applications that involve a change in the use of the land, or an increase in the intensity of the use of land, unless the application demonstrates clear and enduring reductions in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens will be achieved, and”*

### Rule Structure

41. The Officers refer to the uncertainty that is created with the current combination of permitted and controlled activities in one rule and the combination of land use and discharge controls in some rules (i.e. ‘hybrid’ rules under both section 9 and section 15 of the Resource Management Act 1991 (**RMA**)).
42. As such, the Officers recommend that the section 9 RMA ‘land-use’ rules be separated from the section 15 RMA ‘discharges’ rules. This is achieved by clarifying the wording of Rules 3.11.5.1 to 3.11.5.7, so they relate to the ‘use of land’, and by inserting two new rules relating specifically to diffuse discharges from land (i.e. Permitted Activity Rule 3.11.5.8 and Non-Complying Activity Rule 3.11.5.9). The Officers’ consider that the amendments will ensure that resource consents authorising land use, and any associated elements including the conditions and requirement for a FEP, will ‘attach to the land’ and will not be able to be transferred from site to site.<sup>13</sup>
43. New Rule 3.11.5.8 clarifies that the diffuse discharge of the four contaminants from farming onto or into land (in circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA) is a permitted activity provided that it meets Condition 1 (requiring that the land use associated with the discharge is authorised under Rules 3.11.5.1 to 3.11.5.7), and Condition 2 of the rule

---

<sup>13</sup> Paragraphs 298 - 299 of the Block 2 s42A report.

(requiring that the discharge does not give rise to any of the listed effects on receiving waters after reasonable mixing).

44. I concur with the Officers that there are advantages in clarifying which rules are 'land-use' rules and 'discharge' rules, to overcome the potential for discharge consents to be transferred under section 137 of the RMA such that farms may then not be able to comply with their FEPs or be able to continue to discharge some or all of the four contaminants.
45. However, a potential issue that I consider could occur from separating land-use and discharge rules, is for land use consents to be granted with long-term consent durations (greater than 10 years) based on existing farm operations which could then allow for the continued legitimate discharge of contaminants without having to make further reductions in the diffuse discharges of the four contaminants signalled through Policies 4 and 7.
46. In that regard, I support the Officers' recommendation to amend Policy 4 to recognise that future regional plan changes or regional plans are likely to require all farming activities to make further reductions in the diffuse discharges of the four contaminants in order to achieve Objective 1. To the extent that it reflects aligning consent terms with the preceding objective, I consider there is value also in amending Policy 4 to address the consent duration issue. I discuss my opinion on amending Policy 4 later in my evidence.
47. With respect to Controlled Activity Rule 3.11.5.4<sup>14</sup>, the Officers note that it contains both a permitted activity (for the interim period) and a controlled activity (following a particular date). The Officers recommend<sup>15</sup> that the rule be separated into a permitted activity rule (i.e. new Rule 3.11.5.1A) and a separate rule that sets an activity status following that date (i.e. Restricted Discretionary Activity Rule 3.11.5.4, or Discretionary Activity Rule 3.11.5.6A if it does not meet one or more of Conditions (1) to (6) of Rule 3.11.5.4). I concur with the Officers that separating the rule will avoid confusion and misinterpretation.

---

<sup>14</sup> The Officers have incorrectly referred to the rule being Rule 3.11.5.3 in paragraph 300 of the Block 2 s42A report.

<sup>15</sup> Paragraph 300 of the Block 2 s42A report.

48. In response to the submission from Waikato Regional Council, which requests that Rule 3.11.5.2(4)(b)(ii) be amended so that the nitrogen threshold (15 kg N/ha/yr) is deleted and replaced with a suitable land use intensity proxy, the Officers consider that a stocking rate of 10 stock units per hectare would be roughly equivalent to a leaching rate of 15 kg N/ha/yr, and a stocking rate of 10 stock units or less would generally be considered a low impact farming system<sup>16</sup>. It is on this basis that the Officers recommend amending Permitted Activity Rule 3.11.5.2, so that it relates to 'low intensity farming'.
49. Mr Hamish Lowe supports replacing the 15 kg N/ha/yr limit with a stocking rate limit (stock units per hectare) for less intensive / low loss farming systems, as the ability for them to demonstrate clear and enduring reductions (as described using OVERSEER® will be problematic<sup>17</sup>. However, he considers that while the Glossary in PC1 provides a definition of 'Stock Unit' it does not include a definition of 'Stocking Rate', which should be defined. Also, for clarity and consistency, he considers that the period or date over which the Stocking Rate is calculated should be defined<sup>18</sup>.
50. The Officers recommend that Permitted Activity Rule 3.11.5.1 (relating to 'small and low intensity farming activities' be deleted in the *Officer's Block 2 "Tracked Changes" Recommendations* provided with the s42A report, although I have been unable to find anywhere in the s42A report specific mention of, or reasons for, deleting the rule. It appears to me, that the reason is likely to be that the rule is no longer necessary, because of the Officers' recommended amendments to Permitted Activity Rule 3.11.5.2 (to permit farming on all properties less than or equal to 20 hectares, or on properties greater than 20 hectares, subject to compliance with conditions specified under the rule). Therefore, on this basis of the recommended amendments to Rule 3.11.5.2, I support the deletion of Rule 3.11.5.1.
51. The Officers note that PC1 as notified identifies that the majority of farming activities that are unable to comply with the permitted activity

---

<sup>16</sup> Paragraphs 160 – 161 of the Block 2 s42A report.

<sup>17</sup> Paragraphs 52-58 of Hamish Lowe's primary evidence for the Block 2 hearing.

<sup>18</sup> Paragraphs 130-133 of Hamish Lowe's primary evidence for the Block 2 hearing.

rules, but are not intensifying (as they are able to comply with the historic NRP) would be a Controlled Activity (i.e. under notified Rule 3.11.5.4, and subject to conditions requiring registration under Schedule A, producing an NRP for the property in conformance with Schedule B, preparation of a FEP in conformance with Schedule 1, and excluding cattle, horses, deer and pigs from water bodies in conformance with Schedule C). The Officers have included an option for a Controlled Activity rule (Rule 3.11.5.2A) for Medium Intensity Farming, for what they consider to be lower risk farming activities. The Officers have invited evidence at the hearing on the robustness of the optional rule's thresholds<sup>19</sup>.

52. I note that the River Iwi's submission on Permitted Activity Rule 3.11.5.2 in relation to 'Other farming activities' requested that, if the monitoring of plan effectiveness demonstrated that the contribution of these properties was proportionately high, Rule 3.11.5.2 for other farming activities should be a Controlled Activity<sup>20</sup>. I consider that adding new Rule 3.11.5.2A would be consistent with the River Iwi's request. The evidence of Mr Hamish Lowe has also confirmed that the recommended stocking rate limit process under Rule 3.11.5.2A is appropriate<sup>21</sup>. I therefore concur with the Officers that a new Controlled Activity Rule 3.11.5.2A should be added to PC1.
53. While not specifically addressed in the s42A report, the Officers recommend that Restricted Discretionary Activity Rule 3.11.5.6 be deleted, which logically appears to be a consequence of their recommendations to amend the activity status of Rules 3.11.5.3 and 3.11.5.4. As such, I consider that with the proposed amendments to Rules 3.11.5.3 and 3.11.5.4, it is appropriate to delete Rule 3.11.5.6 as it is no longer required.
54. The Officers have also recommended the insertion of new Discretionary Activity Rule 3.11.5.6A, which specifies that the use of land for farming which does not meet one or more of conditions (1) to (6) of Rule 3.11.5.4 (being conditions which require the property to be registered under

---

<sup>19</sup> Paragraph 298 of the Block 2 s42A report.

<sup>20</sup> Paragraph 216 of the River Iwi submission.

<sup>21</sup> Paragraph 58 of Hamish Lowe's primary evidence for the Block 2 hearing.

Schedule A, and produce an NRP for the property, etc.) is a Discretionary Activity. The Officers consider that the new rule (in combination with the recommended amendments to clause c. of Schedule B relating to the default model of OVERSEER®) will enable any person who is unable to calculate a NRP, or seeks a different NRP because of their particular circumstances, to establish one through a Discretionary Activity resource consent process<sup>22</sup>.

55. I consider that if Schedule B is amended to include a contingency (i.e. a two-step process) for persons unable to calculate an NRP because they do not have the necessary data available, then the number of persons requiring a Discretionary Activity resource consent under Rule 3.11.5.6A will be significantly reduced. On that basis, I consider that a Discretionary Activity resource consent process is appropriate for land uses that will not meet one or more of the other relevant conditions under Rule 3.11.5.4.

### **C1.3 Policy 2 and Farm Environment Plans**

56. In their submission, the River Iwi requested that the wording of Policy 2 be retained insofar as the WRC must manage and require reductions in the diffuse discharge of the four contaminants from farming activities within a sub-catchment and commercial vegetable production systems.
57. I support the Officers' recommended amendments to Policy 2, insofar as the policy is refocused to provide clarity and direction in relation to FEPs.
58. For the reasons I have given above, in relation to Policy 1, I consider that the word "Reduce" in Policy 2 should be replaced with the words "Manage and reduce" and I support the addition of the words "catchment-wide".
59. With respect to clause b. I consider that the amended wording should be further refined as follows, so that its intention is clearer:

---

<sup>22</sup> Paragraph 303 of the Block 2 s42A report.

*“Undergo the same level of rigour in developing, monitoring and auditing ~~set out in a~~ each Farm Environment Plan, whether the consent holder is a member of a Certified Sector Scheme or not; and”*

60. I note that PC1 Method 3.11.4.10 states that WRC will establish and operate a publicly available accounting system and monitoring in each FMU, including an information and accounting system for the diffuse discharges from properties and enterprises that supports the management of the four contaminant diffuse discharges at the enterprise or property scale. This is in accordance with Objective CC1 and Policy CC1 of the NPS-FM.
61. As discussed in the evidence of Hamish Lowe<sup>23</sup>, FEPs are an important means of collecting information that is likely to feed into the accounting framework. While the accounting framework is still to be developed, it is not appropriate for WRC to wait 10 years or defer collecting information through FEPs until the framework is in place. Instead, it is important that the essential information is collected now, recognising that it can be added to over time. I consider this approach is important in giving effect to Policy CC1 of the NPS-FM.
62. It is therefore important that thought is given now to the type of essential information that should be provided with, and gathered from, FEPs over the next 10 years. This may mean that the provision of information from FEPs is staged, based on relative priority to the accounting framework.
63. I understand that the Implementation Methods in Section 3.11.4 and Schedule 1 of PC1 will be addressed as part of the Block 3 hearing. However, I consider that Policy 2 should be amended to include a reference to the need for FEPs to collect and provide information to support an accounting system and monitoring for the diffuse discharges of the four contaminants, by adding the following new clause b3.:

*“b3. Identify the information that is required to be recorded to support an accounting system for each Freshwater Management Unit for the diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens.”*

---

<sup>23</sup> Paragraph 41 of Hamish Lowe’s primary evidence for the Block 2 hearing.

### **C1.5.8 Rule 3.11.5.7 Activity Status**

64. The River Iwi requested in their submission that the wording of Non-Complying Activity Rule 3.11.5.7 be retained, as they supported the 'hold the line' approach that was advanced and designed by the CSG. The River Iwi also supported in their submission the expiry date of 1 July 2026 as it sends a clear signal to the Regional community that Rule 3.11.5.7 [and indeed PC1] is an interim measure and must be replaced with a new regulatory framework that is developed hand-in-hand with the River Iwi, the WRC and Regional stakeholders.
65. The Officers recommend (at this stage of the hearing) that the Non-Complying Activity status be retained under Rule 3.11.5.7, given the clear policy direction in the Vision and Strategy to focus on cumulative effects and that there be no further decline in water quality, along with the clear direction of the NPS-FM regarding over-allocated catchments.<sup>24</sup> I support retaining the Non-Complying Activity status for the reasons given by the Officers, as each resource consent application can be considered on its merits provided that the effects are no more than minor and/or the proposal is not contrary to the objectives and policies of PC1.
66. The Officers also refer to the potential for Rule 3.11.5.7 to inadvertently capture 'within farm' movement of activities that do not correspond to an actual increase in contaminant losses (e.g. commercial vegetable growers moving their enterprise, or parts of it, from block to block, or where farmers grow maize on different parts of their property or fell a farm-forestry block and graze the land for a short while before replanting). The Officers recommended that Rule 3.11.5.7 applies to cumulative changes which exceed a net total of 4.1 hectares, measured since 1 October 2016, to make it clear that the 4.1 ha is to be measured as a cumulative total, so that the net change is relevant, and shifting activities within a mixed farming operation will not become a Non-Complying Activity<sup>25</sup> (i.e. where the use of land for farming does not comply with recommended new Condition 7 under Rule 3.11.5.4).

---

<sup>24</sup> Paragraph 509 of the Block 2 s42A report.

<sup>25</sup> Paragraphs 514 and 519-520 of the Block 2 s42A report.

67. Rule 3.11.5.7 as notified, ceases to have effect from 1 July 2026. The Officers have recommended the deletion of the end date, as they are concerned that a fixed end date is problematic and could lead to the need for a future plan change, just to remove the date<sup>26</sup>.

68. The end date in Rule 3.11.5.7 was intended to make it clear that PC1 represents a transition into a future allocation for diffuse and point source contaminants and to commit the WRC to putting out a new plan before the 'end date'. The section 32 report for PC1 states the following<sup>27</sup>:

*“A key factor in the acceptability of this policy and rule is its interim nature, which foresees that these provisions will be replaced by future plan changes. It was judged to be unacceptable to lock in current land uses indefinitely without this specified timeframe. Therefore, an important part of the non-complying activity rule for land use change is the end date of 2026.*

*If the land use rule no longer has effect from the date specified in the rule, then the change of land use will no longer require resource consent. Specifying an 'end date' means that the adverse effects of any land use change after that date are only covered by the remaining rules. The intention is to commit the Waikato Regional Council to establishing new rule(s).”*

69. With the Officers' recommended amendments to the rule framework (i.e. new Rule 3.11.5.2A and its associated condition 6, new condition 5b. to Rule 3.11.5.3, and new condition 7 to Rule 3.11.5.4, the use of land for farming that does not comply with these conditions is not permitted and requires resource consent. In my opinion, if the end date is retained in Rule 3.11.5.7 and if, after that date, there is no other relevant rule included in the Regional Plan to replace it, then activities under the Non-complying Activity rule (and which are also not Permitted, Controlled or Restricted Discretionary Activities) would default to being a Discretionary Activity under section 87B(1) of the RMA, which states the following:

***“87B Certain activities to be treated as discretionary activities or prohibited activities***

***(1) An application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if—***

---

<sup>26</sup> Paragraph 532 of the Block 2 s42A report.

<sup>27</sup> Section E4.5.3 on page 188 of the section 32 report for PC1.

- (a) *Part 3 requires a resource consent to be obtained for the activity and there is no plan or proposed plan, or no relevant rule in a plan or proposed plan; or*
- (b) *a plan or proposed plan requires a resource consent to be obtained for the activity, but does not classify the activity as controlled, restricted discretionary, discretionary, or non-complying under section 77A; or*
- (c) *a rule in a proposed plan describes the activity as a prohibited activity and the rule has not become operative”.*

70. While such activities would not be subject to the ‘gateway test’ under section 104D of the RMA, the Council would still have full discretion to consider applications under s104 of the RMA and to decline them under section 104B of the RMA.
71. I therefore do not concur with the Officers’ recommendation (and associated reasons) to delete the end date from Rule 3.11.5.7. I consider that the end date can and should be retained, as it is important for sending a clear signal to the Regional community that Rule 3.11.5.7 is an interim measure and must be replaced with a new regulatory framework.
72. I support the Officers’ recommendation to delete the Notification note under Rule 3.11.5.7 for the reasons given by the Officers.

#### **C1.6.1 Policy 4**

73. The River Iwi requested in their submission that the wording of Policy 4 be retained.
74. The Officers recognise that there is significant overlap between Policy 1 and Policy 4<sup>28</sup>, where there is a duplication between the first part of Policy 4 and Policy 1. The Officers recommend that this part of Policy 4 be deleted, and that Policy 1 be solely relied on. I concur with this recommendation, as it will overcome the issue of duplication.
75. As I have already mentioned, I also support the Officers’ recommendation to amend Policy 4 to recognise that future regional plan changes are likely to require all farming activities to make further reductions in the diffuse discharges of the four contaminants, rather than

---

<sup>28</sup> Paragraphs 549 and 553 of the Block 2 s42A report.

singling out low discharging activities, in order to meet Objective 1 of PC1<sup>29</sup>.

76. In response to submitters requesting that PC1 should provide clarity that resource consents for farming activities will be granted for a long duration or for short durations, the Officers provide optional wording in their recommended amendments to Policy 4 which they consider will provide for farming activities where reduction in losses above that anticipated by PC1, potentially staged into the future, could be considered as justification for granting a longer consent duration.<sup>30</sup>
77. As I have mentioned above, I consider that the granting of longer-term land use consents is potentially problematic, as it points to a grandparenting regime by locking contaminant reductions in to a consent duration which may not be consistent with future regional plans or plan changes to achieve reductions in contaminant losses. The approach is also not consistent with a staged approach to achieving the water quality attribute targets in Table 3.11-1 supported by Policy 5, or the future allocation regime referred to in Policy 7.
78. I therefore consider that it would be more appropriate if wording is added to Policy 4 which refers to granting resource consents that authorise farming activities for a limited duration (e.g. 12 years, and with common expiry dates in sub-catchments to align with the regional plan life span) that will enable further reductions in contaminant losses to be implemented through replacement consents.

### **C1.6.2 Policy 5**

79. The River Iwi requested in their submission that the wording of Policy 5 be retained, recognising that the measures set out in PC1 are the first, important steps to assist with achieving the long-term objectives set out in Te Ture Whaimana.
80. I concur with the Officers<sup>31</sup>, that it is not appropriate to amend Policy 5 to include methods that look at land use capability, natural capital as the basis for nitrogen management, land based allocation regimes, adaptive

---

<sup>29</sup> Paragraphs 554 and 555 of the Block 2 s42A report.

<sup>30</sup> Paragraph 557 of the Block 2 s42A report.

<sup>31</sup> Paragraph 581 of the Block 2 s42A report.

management approaches and BPOs (as requested by other submitters), as Policy 5 recognises why achievement of the Vision and Strategy will need to occur over 80 years. I note that Policy 7 already deals with providing for allocation in the future and it is part of the Block 3 hearings. I also generally concur with the recommended amendments to Policy 5, for the reasons given by the Officers.

81. However, while I recognise that the words “All farmers, businesses and communities” in new clause a. is intended to recognise that the staged approach includes all contributing parties, such as urban and industrial contamination, I consider that the recommended words do not appropriately reflect that. In my opinion, it would be better to use the words “All urban and rural land use activities” or “All land use activities”, as it is land use activities that will need to contribute to achieving the water quality attribute states in Table 3.11-1, rather than individual people (farmers) and businesses, or groups of people (communities).
82. New clause c. in the recommended revised wording for Policy 5 states that the rate of change will need to be “staged over the coming decades”. In my opinion, this is too open /loose as it does not reflect Policy 5 as notified (which refers to staging over “80 years”) and is inconsistent with the Vision and Strategy and Objective 1. I therefore consider that the words “staged over the coming decades” should be replaced with “staged over 80 years”.
83. New clause c. also refers to minimising “social, economic and cultural disruption”. I consider that this wording is appropriate, but the word “spiritual” should also be added, which would better reflect Objective 2 of PC1 (as requested to be amended by the River Iwi) and which is used in Objectives 3(b), (c) and (d) of the Vision and Strategy when describing the restoration and protection of the relationships of Waikato-Tainui, all River Iwi and the Waikato Region’s communities with the Waikato and Waipā Rivers (refer to paragraph 53 of the *Synopsis of Legal Submissions on Behalf of the Waikato and Waipā River Iwi* presented at the Block 1 hearing on 13 March 2019)<sup>32</sup>.

---

<sup>32</sup> Although my Block 1 primary evidence accepted that reference to ‘spiritual’ in Objective 2 was not necessary based on the more limited RMA section 5 justification offered by the Block 1 Section 42A Report, after considering the submissions from

84. I note that Mr Hamish Lowe recommends in his evidence<sup>33</sup> that the following new clause b1. be added to Policy 5 to refer to the need to identify and make changes to farming systems, data gathering and reporting over to time to reflect the availability of current industry resourcing, which I consider to be appropriate:

“b1. Development of management, recording and reporting systems will need to be progressively implemented over time to ensure effective changes are made as system knowledge and industry resourcing allows; and”

### **C1.6.3 Policy 8**

85. The River Iwi requested in their submission that the wording of Policy 8 be retained, as they support WRC prioritising the sequencing for when properties and enterprises are required to undertake actions to give effect to the methods in PC1, including requiring land uses in sub-catchments with the highest load of the four contaminants to put in place and implement sufficient mitigation measures in the first instance. This is consistent with the CSG designed values for the Waikato and Waipā River catchments.
86. The Officers recommend that prioritised implementation should be retained because it is necessary to spread the FEP development and consenting process over several years. In addition to the prioritisation of areas set out in Table 3.11-2, they recommend that prioritising lake catchments, CVP and dairy farming would assist with achieving the necessary reductions in contaminant losses in the shortest time<sup>34</sup>.
87. I concur with the Officers that clauses a. – c. of Policy 8 should be deleted, as the prioritisation of areas is already set out in Table 3.11-2 and there is no need to include references to Objective 1 and Table 3.11-1<sup>35</sup>.
88. However, as noted by the Officers, many of the dairy farms will be in Priority 1 sub-catchments in any event. I would expect that to be the

---

the River Iwi’s Counsel with respect to the broader reference in Te Ture Whaimana, I advised the Hearings Panel at the Block 1 hearing that I considered ‘spiritual’ should be included.

<sup>33</sup> Paragraphs 71-73 of Hamish Lowe’s primary evidence for the Block 2 hearing.

<sup>34</sup> Paragraph 598 of the Block 2 s42A report.

<sup>35</sup> Paragraphs 598 and 602 of the Block 2 s42A report.

case for CVP also. Given this, and the fact that the catchments of lakes are already captured in Table 3.11-2, I consider that the recommended amendments to Policy 8 should exclude the words “commercial vegetable production, dairy farming and the catchments of lakes”, and that a full stop should be inserted after “Table 3.11-2” on the second line of the policy.

#### **C1.6.11 Farming Activities**

89. The Officers recommend that the definition of ‘Farming Activities’ should be amended, such that it refers only to ‘Farming’, so that the definition applies to Chapter 3.11 only and is not confused with the definition of farming activities in the Waikato Regional Plan. Officers also recommend that two new clauses be added to exclude the ‘production of growing of produce undertaken entirely within a building’ and ‘production or growing produce for consumption by the occupier of the property or their family’<sup>36</sup>.
90. I generally concur with the Officers’ recommendations, for the reasons given by the Officers. However, in his evidence, Hamish Lowe<sup>37</sup> considers that the exclusion of ‘planted production forest’ would mean that areas of production forest on farms would be excluded from any NRP assessment. As a consequence, this omits and excludes a key mitigation tool available to be used on many farms to lower the nutrient losses. Mr Lowe recommends that if the intention is to exempt large-scale forestry from farm operations, then the definition should also be amended to exclude ‘small forests and plantations for land stabilisation and nutrient loss mitigation’ from the definition of farming.
91. On the basis of Hamish Lowe’s evidence, I consider that the definition of ‘farming’ should be amended, by amending clause a. as follows:

***“Farming:*** *For the purposes of Chapter 3.11, the grazing of animals or the growing of produce, including crops, commercial vegetable production and orchard produce, but does not include:*

- a. *planted production forest, except for small forests and plantations for land stabilisation and nutrient loss mitigation; or*
- b. *the growing of crops on land irrigated by consented municipal wastewater discharges; or*

---

<sup>36</sup> Paragraphs 673 – 679 of the Block 2 s42A report.

<sup>37</sup> Paragraphs 136-137 of Hamish Lowe’s primary evidence for Block 2 hearing.

- c. *production or growing of produce undertaken entirely within a building; or*
- d. *production or growing of produce for consumption by the occupier of the property or their family.*

### **C1.6.13 Restoration**

The PC1 Glossary (as notified) includes a definition of 'Restoration'. The Officers are concerned that the definition is inconsistent with its use in the Vision and Strategy and potentially some uses in PC1, as the defined term is limited to ecosystems. The Officers therefore recommend deleting the definition and relying on the plain and ordinary meaning<sup>38</sup>. I consider that deleting the definition is appropriate for the reasons given by the Officers.

### **C3. CERTIFIED INDUSTRY SCHEMES**

92. The Officers recommend changing the name of 'Certified Industry Scheme/s' to 'Certified Sector Scheme/s' (**CSS**) and to amend the definition as follows:

***"Certified Industry Sector Scheme/s: is a scheme group or organisation responsible for preparing and assisting with the implementation of Farm Environment Plans that has been certified by the Chief Executive Officer of Waikato Regional Council and listed on the Waikato Regional Council website as meeting the standards assessment criteria and requirements set out in Schedule 2 of Chapter 3.11."***

93. I note in the evidence of Hamish Lowe<sup>39</sup>, that he considers the name change to be appropriate.
94. In their submission, the River Iwi conditionally support the concept of CSS, but express concern about the potential for poorly resourced and badly run CSSs and that the WRC would have limited ability to enforce compliance for non-compliant farming activities (with Certified Sector Scheme FEPs) that are deemed to be a Permitted Activity under Rule 3.11.5.3. The River Iwi also request in their submission, amendments to Method 3.11.4.2 and Schedule 2, and if the Permitted Activity status under Rule 3.11.5.3 is to be retained, they submit that it is essential that the certification process and criteria in Schedule 2 is robust and transparent and there are processes in place to deal with serial non-compliance at the Scheme-level and for individual Scheme members.

<sup>38</sup> Paragraphs 694-696 of the Block 2 s42A report.

<sup>39</sup> Paragraph 119 of Hamish Lowe's primary evidence for the Block 2 hearing.

This includes ensuring that appropriate governance arrangements, management systems, procedures and resources are in place to achieve the water quality targets set out in Objective 3 in 10-years<sup>40</sup>.

95. If the requested amendments to Schedule 2 are not adopted, the River Iwi submit that Rule 3.11.5.3 be a Controlled Activity, such that applications would be assessed against the amended criteria in Schedule 2 (as previously requested by the River Iwi). This is to ensure that mitigation actions from FEPs (through the CSS) can be articulated into conditions of resource consents that can then be monitored, reviewed and if necessary, enforced by the WRC.
96. The Officers are concerned that Rule 3.11.5.3 may not comply with section 70(1) of the RMA, because of uncertainty about effects occurring on individual properties (including cumulatively if the assumed very large number of properties are within the CSS framework) and the effectiveness of mitigation measures in place or proposed through the FEPs to address those effects. Without confidence that the minimum actions for FEPs are sufficient to avoid the types of effects outlined in section 70(1) and adverse cumulative effects, and a lack of clear accountability and responsibility under the notified framework, the Officers consider that there is a high risk that Rule 3.11.5.3 may not give effect to the Vision and Strategy or the NPS-FM, or that the plan's objectives will not be achieved<sup>41</sup>.
97. Given this, the Officers recommend that the existing policy framework for CSS be retained (i.e. Policy 2 and Policy 3), but that the activity status be changed from Permitted to Restricted Discretionary. They consider that this would ensure a 'level playing field' for all farming activities and strengthen WRC's ability to monitor these activities through consent conditions, as well as address issues raised regarding compliance with section 70(1). However, given their recommendation to amend Rule 3.11.5.4 to be a Restricted Discretionary Activity, the Officers consider that there may be little if any benefit in retaining Rule 3.11.5.3 if it is also amended to be a Restricted Discretionary Activity, particularly as there

---

<sup>40</sup> Paragraphs 219 – 225 of the River Iwi submission on PC1.

<sup>41</sup> Paragraphs 800-804 of the Block 2 s42A report.

would be no regulatory incentive for farmers to have CSS membership. As such, the Officers favour deleting Rule 3.11.5.3<sup>42</sup>.

98. I concur with the issues that the Officers have identified around retaining Rule 3.11.5.3 as notified, and agree that it is not appropriate to retain the Permitted Activity status of the rule, given the high risk that it may not give effect to the Vision and Strategy, NPS-FM, or achieve the plan's objectives.
99. I also consider that, if the activity status of Rule 3.11.5.3 is changed to Restricted Discretionary, then there is nothing to distinguish Rule 3.11.5.3 from Rule 3.11.5.4 (as it is recommended to be amended by the Officers) and it should be deleted. This then begs the question of whether there is any advantage in retaining the CSS instrument in PC1?
100. The Officers recognise that one of the primary features of CSS was to prepare and oversee the implementation of FEPs and that consideration will need to be given to the role CSS would play in approving and auditing FEPs and how any actual or perceived conflicts of interest would be managed<sup>43</sup>.
101. In his evidence, Hamish Lowe<sup>44</sup> considers that, from a property owners' perspective, with the change in the Rule requirements there is no consenting benefit for CSS. However, he recognises that there may be potential benefits in having CSS as a non-regulatory tool for providing a catchment focus for the coordination of FEPs, as having multiple CSS operating in the same catchment would be inefficient. He suggests that properties could work together through CSS to achieve consistency and provide benefit to achieving the water quality attribute states in Table 3.11-1 for a catchment.
102. The Officers recommend that Method 3.11.4.2 be deleted, having noted that it is not clear whether the formal agreements it refers to relate to a contractual agreement between CSS and their members or between CSS and WRC. Instead, the Officers recommend that a new Policy 3A be inserted into Section 3.11.3 which sets out the purpose and scope of

---

<sup>42</sup> Paragraph 810 of the Block 2 s42A report.

<sup>43</sup> Paragraphs 833 and 852 of the Block 2 s42A report.

<sup>44</sup> Paragraphs 119-125 of Hamish Lowe's primary evidence for the Block 2 hearing.

CSS, to provide a clearer policy framework for approval and use of CSS in the rest of PC1.<sup>45</sup>

103. I note that Hamish Lowe<sup>46</sup> considers that the new policy is beneficial in setting out the establishment of CSS, but it does not address the issue of farms having the ability to join and/or leave a CSS, or for there to be multiple schemes operating in a single catchment. He considers that it would be simpler if CSS approval was catchment based and there was a compulsion for farms to either elect to be in or out of a specific, single catchment CSS.
104. In conjunction with the above recommendations, the Officers recommend<sup>47</sup> amending Schedule 2 to include 'minimum standards' (rather than criteria for approving CSS) for governance and management, preparation and implementation of FEPs, and an annual audit process to be conducted by an independent body in relation to assessing performance of the CSS against agreed actions in FEPs at an individual property level and the performance of any personnel employed or contracted to the Scheme to prepare, certify and audit implementation of FEPs.
105. I note that Hamish Lowe<sup>48</sup> considers that Schedule 2 is still a mixture of certification requirements (process) and a definition of being certified (attainment) and it would be clearer if Schedule 2 is amended so the standards are clearly separated from the certification process within the Schedule.

## **C6. URBAN / POINT SOURCE DISCHARGES**

### **C6.5 Policy 10**

106. In their submission, the River Iwi request that Policy 10 be amended to read:

*“...applications for point source discharges of nitrogen, phosphorus, sediment and microbial pathogens to water or onto or into land ~~provide for the~~ have regard to the continued operation of:*

---

<sup>45</sup> Paragraphs 833 – 836 of the Block 2 s42A report.

<sup>46</sup> Paragraphs 70 and 119-120 of Hamish Lowe's primary evidence for the Block 2 hearing.

<sup>47</sup> Paragraphs 837 – 841 of the Block 2 s42A report.

<sup>48</sup> Paragraph 128-129 of Hamish Lowe's primary evidence for the Block 2 hearing.

- a. ~~Continued operation of regionally significant infrastructure; and~~
- b. ~~Continued operation of regionally significant industry.~~

107. The River Iwi's submission also requests the deletion of the words "provide for" as they consider it could create a situation where the WRC must decide whether to grant resource consent for the continued operation of regionally significant infrastructure and regionally significant industry, irrespective of whether the targets for the four contaminants would be achieved. The River Iwi submitted that the words "have regard to" would better reflect that the WRC has discretion to make a balanced decision on resource consent applications on a case-by-case basis

108. In my opinion, the term 'provide for' does not mean that the Council's discretion is restricted, or that the continued operation of regionally significant infrastructure and regionally significant industry must be provided for above all else - particularly as Policy 10 needs to be read in conjunction with other matters to be considered under Policies 11-13 (also relating to point source discharges). This could be clarified by amending the wording of Policy 10 as follows:

*"When deciding resource consent applications for point source discharges of nitrogen, phosphorus, sediment and microbial pathogens to water or onto or into land, provide for the:*

- a. *Continued operation of regionally significant infrastructure; and*
- b. *Continued operation of regionally significant industry,*

*subject to consideration of the matters set out in Policies 11 to 13.*"

## **C6.6 Policy 11**

109. The River Iwi requested in their submission that Policy 11 be amended by deleting the words "at the time a resource consent application is decided", inserting the word "net" before "positive effects on the environment", and replacing the words "lessen any" with the words "by offsetting". The River Iwi supported the requirement for point source discharges to adopt the Best Practicable Option (**BPO**) and where the full range of mitigations have been exhausted, to provide the ability to put in place and implement mitigations to offset the adverse effects of a point source discharge.

110. The Officers consider that it can be difficult to reconcile the BPO with the direction set in the Vision and Strategy, as the BPO might only

require a certain level of mitigation because of the prohibitive costs of undertaking greater mitigation, but an applicant may need to choose to either pay these costs or undertake a different activity to achieve the Vision and Strategy. The Officers therefore recommend that Policy 11 should be amended to make it clear that the BPO is the “minimum” required<sup>49</sup>. I concur with the Officer’s recommendation.

111. The Officers recommend<sup>50</sup> that it is appropriate to delete “at the time a resource consent application is decided”, as the policy may also be applied when conditions of a consent are reviewed. I concur with this recommendation.
112. In relation to the request that the policy more explicitly state that offset measures must result in a “net” decrease in contaminants or net improvement in water quality, the Officers consider that the most relevant consideration is how the discharge and any offset contributes to the achievement of PC1’s limits and targets. They consider that Policy 11 must be read in conjunction with Policy 12 when considering the appropriateness of any offset measure<sup>51</sup>. Policy 12 requires, when deciding a resource consent application, consideration to be given to the contribution made by a point source discharge to the four contaminants catchment loads and the impact of that contribution on the achievement of the short term water quality attribute states in Table 3.11-1 or the progression towards the 80-year water quality attribute states in Table 3.11-1, taking into account the matters set out in the clauses Policy 12. I concur with the Officers’ recommendation in this regard, noting the proposed amendment to Policy 12 requested by the River Iwi submission.
113. In response to the submission from DoC, which seeks to retain the policy with amendments to ensure that avoidance and then mitigation of adverse effects from point source discharges are achieved as far as reasonably practicable before offsetting is considered, the Officers consider that the hierarchy approach is appropriate<sup>52</sup>. I concur that this is the appropriate approach, as the requirement should be to avoid or

---

<sup>49</sup> Paragraph 1108 of the Block 2 s42A report.

<sup>50</sup> Paragraph 1126 of the Block 2 s42A report.

<sup>51</sup> Paragraph 1120 of the Block 2 s42A report.

<sup>52</sup> Paragraph 1110 of the Block 2 s42A report

mitigate effects first, and then to consider proposed offset measures which could allow a consent to be granted that may otherwise be declined.

114. However, I consider that replacing the word “may” with “it is encouraged that” an offset measure be proposed, is not appropriate in my opinion, as the utilisation of an offset should be the last option after the full range of on-site mitigations have been exhausted. I therefore consider that it is sufficient for Policy 11 to simply recognise that offsetting “may” be proposed and considered in relation to the matters set out under clauses a-d of Policy 11 and Policy 12.
115. The River Iwi’s submission on Policy 11 also referred to the need for reductions of one or more contaminants from point source discharges from offset mitigations to be recorded through the accounting framework and attributed against the point source discharge<sup>53</sup>.
116. I consider that if offsets for point source discharges are to be provided for, it is important that a method is developed for recording and linking those offsets to the accounting framework. Otherwise, there is the potential risk of future point source discharge applications being assessed without proper account being taken of the effects of existing consented offsets particularly in considering whether the water quality attribute states in Table 3.11-1 will be achieved.

### **C6.7 Policy 12**

117. In their submission, the River Iwi requested that Policy 12 be amended to read:

*“Consider the contribution made by a point source discharge to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads within a sub-catchment and the impact of that contribution on the ~~likely~~ achievement of the [...]*

*~~d. The diminishing return on investment in treatment plant upgrades in respect of any resultant reduction in nitrogen, phosphorus, sediment and microbial pathogens when treatment plant processes are already achieving a high level of contaminant reduction through the application of the Best Practicable Option.”~~*

---

<sup>53</sup> Paragraph 119 of the River Iwi submission on PC1.

118. The River Iwi submission notes that Policy 12 must be read in the context of assisting decision-makers to determine the appropriate reduction of contaminants from point source discharges within a sub-catchment and the timing/staging of when reductions will occur. The River Iwi consider that Policy 12 must not be used by the operators of point source infrastructure to avoid upgrading that infrastructure (and/or putting in place and implementing offset mitigations) that would reduce contaminants commensurate to achieving Objectives 1 and 3. They consider that there is a risk that clause d. of Policy 12 could be used by the operators of point source infrastructure to avoid making meaningful reductions of the four contaminants because of diminishing returns on investment, irrespective of the relative contribution of the point source discharge in the sub-catchment.
119. The Officers consider that it is appropriate to delete the word ‘likely’ and to delete clause d., as clause d. implies that application of the BPO (which includes financial considerations) is sufficient, whereas the application of the BPO alone may not be enough to achieve the outcomes sought in PC1<sup>54</sup>.
120. With respect the catchment versus sub-catchment approach, the Officers consider that the Vision and Strategy and the NPS-FM encourage a catchment wide view, and that while sub-catchment level management of the four contaminants is important, equally, if not more important, is the catchment wide view of achieving the water quality outcomes in the whole catchment. This is the reasoning Officers applied to their consideration of submissions on Policy 1 and Policy 2 (refer to above)<sup>55</sup>. As such, the Officers recommend that the word “catchment” in Policy 12 be retained.
121. While I generally support the Officers’ recommended amendments to Policy 12, for the reasons given by the Officers, I consider that Policy 12 should be amended, as follows, so that it refers to “Freshwater Management Unit and sub-catchment loads”:

*“When deciding a resource consent application, Consider the contribution made by a point source discharge to the nitrogen,*

---

<sup>54</sup> Paragraph 1140 of the Block 2 s42A report.

<sup>55</sup> Paragraph 295 of the Block 2 s42A report.

*phosphorus, sediment and microbial pathogen sub-catchment, catchment and Freshwater Management Unit loads and the impact of that contribution on the likely achievement of the [...]*

122. I consider that the above changes are appropriate as the numerical freshwater objectives in PC1 are set at the sub-catchment, FMU and catchment scales. It therefore seems logical that where a point source discharge does not cause freshwater objectives in a sub-catchment scale to be exceeded, but freshwater objectives are exceeded at the FMU or catchment scale (e.g. in the mainstem), it may still require some reduction in contaminant loads. An FMU may also meet its freshwater objective/target for a given contaminant, but the objective/target may be exceeded at the sub-catchment scale and would therefore require a reduction. An understanding of contaminant loads at the FMU scale is also required for the Freshwater Accounting System under Policy CC1 of the NPS-FM.

### **C6.8 Policy 13**

123. The River Iwi submitted that Policy 13 should be amended by deleting the words in clause a. of the policy “*A consent term exceeding 25 years, where*”, as a consent duration greater than 25 years may be appropriate in some situations, but should not be the mandatory starting point as signalled in clause a. They submitted that the consent duration should be considered on a case-by-case basis, particularly where a degree of uncertainty exists about the potential effectiveness of proposed off-set measures and monitoring will be required to confirm anticipated effects.
124. The Officers recommend that clause a. in Policy 13 be amended so that the focus is on considering the appropriateness of a longer consent duration where it can be demonstrated that the point source discharge is consistent with achieving the water quality attribute states in Table 3.11-1<sup>56</sup>.
125. While I consider that the recommended amendments address the matters raised in the River Iwi submission, I note that the wording of clause a. is not consistent with the optional wording recommended by

---

<sup>56</sup> Paragraph 1178 of the Block 2 s42A report.

the Officers to be added to Policy 4. I therefore consider that clause a. of Policy 13 should be amended as follows:

*“When determining an appropriate duration for any point source discharge consent granted, consider the following matters:*

*a. The appropriateness of a longer consent duration where the applicant demonstrates clear and enduring ongoing reductions in the discharge of contaminants beyond those imposed in response to short-term that the discharge is consistent with achieving the water quality attributes states set-out in Table 3.11-1; and the discharge is not in a Priority 1 sub-catchment; and”*

126. I make this recommendation on the basis that the optional wording uses the term “beyond” rather than “achieves”, when referring to the need to demonstrate clear and enduring reductions in the discharge of contaminants relative to PC1, which is a more appropriate standard when considering application of longer consent durations under clause a. of Policy 13.

## **C5. MĀORI TREATY SETTLEMENT LAND**

127. The River Iwi requested in their submission that the wording of Policy 16 be retained, noting that the health and wellbeing of the Waikato River remains the primary concern of the River Iwi and any development of Multiple owned Māori land to further economic aspirations of the River Iwi must occur within the context and framework of the Vision and Strategy. Their submission notes that, while the introduction of non-complying activity Rule 3.11.5.7 is reasonably necessary to ‘hold the line’ on land use change, it places another barrier to the development of Multiple owner Māori land and Treaty Settlement lands. The River Iwi consider that Policy 16 provides a limited pathway for the owners of Multiple owned Māori land and Treaty Settlement land to pursue opportunities for developing their lands.

128. The Officers recognise that including provisions for flexibility of use of Maori land to give effect to the Vision and Strategy (particularly Objectives B, C, D and J) is important. However, they note that PC1’s Objective 5 and Policy 16 are not intended to fully enable the use and development of Maori land – rather, Policy 16 is intended to provide guidance on how to manage Maori land consent applications instead of being a provision which enables Maori land to be developed without consideration of contaminant loads. The Officers therefore recommend

that Policy 16 be retained, as consideration of this policy is integral to land use change consents for Maori land<sup>57</sup>.

129. I concur with the Officers' recommendation, and particularly the point they make, that land use change of Māori land is not authorised through Objective 5 and Policy 16. Land use change of Māori land under Rule 3.11.5.7 requires a non-complying activity resource consent in the same way that other landowners require a non-complying activity resource consent.
130. The effect of Objective 5 and Policy 16 is to enable consideration to be given to applications under Rule 3.11.5.7 which relate to the development of tangata whenua ancestral lands, in terms of how they will provide for the relationship of tangata whenua with their ancestral lands, the exercise of kaitiakitanga and the creation of positive economic, social and cultural benefits for tangata whenua now and into the future. This may assist such applications to pass the 'gateway test' under section 104D of the Resource Management Act 1991. However, consideration must still be given to all of the other relevant objectives and policies in PC1, including the ability to achieve the short-term water quality attribute states in Objective 3, and effects of the proposal on the environment.



Janeen Kydd-Smith

3 May 2019

---

<sup>57</sup> Paragraphs 954 – 964 of the Block 2 s42A report.