

**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

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**REBUTTAL STATEMENT OF HAMISH LOWE  
ON BEHALF OF THE WAIKATO AND WAIPĀ RIVER IWI IN RELATION TO  
THE HEARING TOPICS FOR HEARING BLOCK 3  
(Submitter No. 74035)**

**26 July 2019**

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**WELLINGTON**

## **INTRODUCTION**

1. My name is Hamish Timothy Lowe.
2. I am an Environmental Scientist with Lowe Environmental Impact Limited.
3. My evidence is given in relation to matters in Plan Change 1 (**PC1**) that relate to the interpretation and implementation of Policies and Rules, and their associated schedules, which impact on farming systems.
4. I have previously provided the following statements of evidence:
  - (a) Block 2 Evidence in Chief (**EIC**) – 3 May 2019;
  - (b) Block 2 Rebuttal Statement – 10 May 2019; and
  - (c) Block 3 EIC – 5 July 2019.
5. I confirm the qualifications and experience set out in my EIC.

## **EXPERT WITNESS CODE OF CONDUCT**

6. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014. In the same way as I would if appearing in the Court, my evidence has been prepared in compliance with that Code. 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.

## **SCOPE OF EVIDENCE**

7. This statement of rebuttal evidence is based on a review of evidence prepared by the following persons for the Block 3 hearing:
  - (a) Dr Merrin Whatley (Beef and Lamb NZ Limited);
  - (b) Richard Parkes (Beef and Lamb NZ Limited);
  - (c) Gerard Willis (Fonterra Co-Operative Group Ltd);
  - (d) Richard Allen (Fonterra Co-Operative Group Ltd);
  - (e) Dr Gavin Sheath (Miraka Limited);

- (f) Grant Jackson (Miraka Limited);
  - (g) Kim Hardy (Miraka Limited);
  - (h) Dr Hugh Robertson (Director General of Conservation);
  - (i) Deborah Kissick (Director General of Conservation);
  - (j) Grant Eccles (Federated Farmers);
  - (k) Paul le Miere (Federated Farmers); and
  - (l) Ian Millner (Federated Farmers).
8. As noted in my Block 2 evidence, due to the significant issues being traversed in both Block 2 and Block 3, the number of submitters, quantum of the evidence and time to prepare this rebuttal statement, I have not had the opportunity to review all of the evidence and fully address all issues.
9. My rebuttal evidence focuses on what I consider the most significant issues in the evidence I have read. This includes the following issues:
- (a) Farm Environment Plans (**FEPS**) and their relationship with activity status;
  - (b) Schedule 1 Approach; and
  - (c) Response to the Panel's questions.

#### **FEPS AND THEIR RELATIONSHIP WITH ACTIVITY STATUS**

10. Many of the briefs of evidence reviewed discuss the relevance of FEPS. Most consider that they are a good idea and provide a means of developing environmental solutions for an individual farm. I support this view. There is however, debate about the process for FEPS to be developed, approved and maintained, particularly whether this can be undertaken as a Permitted Activity not requiring resource consent. I consider the discussion of activity status of FEPS is outside the scope of Block 3, and I do not comment on this evidence.

## SCHEDULE 1 APPROACH

11. As noted in my Block 3 EIC<sup>1</sup>, there are two routes for prescribing FEP details:
  - (a) a nominated specific detail approach; or
  - (b) a more generic 'objective and principles' approach.
12. Many submitters offer alternative views on this, preferring one or the other<sup>2,3,4</sup>. As noted in my Block 3 EIC<sup>5</sup>, Policy 2 requires standards to be developed. I believe the requirements of Schedule 1 should be a balance<sup>6</sup> of specific standards and reporting requirements that provide the opportunity to tailor content by satisfying a range of objectives, similar to that set out in the amended Officers' s42A report. These objectives could potentially be expanded further to reflect a range of contaminant risks and mitigation opportunities for a greater range of land uses and landforms, with only those objectives relevant in the particular case applied when preparing an FEP. For example, objectives that relate to intensive dairy farming may not apply to extensive hill country sheep farms.

## RESPONSE TO PANEL QUESTIONS

### Forestry Question

13. The Hearing Panel asked: *"Is there an intermediate position where a forestry block is converted to a low intensity sheep and beef farm within 3.11.5.2 where there might be an increase but clearly at a smaller scale? Are the standard 'land use intensification non-complying activities' missing from Rule 3.11.5.2?"*
14. Mr McCallum-Clark has identified a gap in the rule framework and suggested a remedy. However, what has not been addressed are limitations created by the current rule framework for on-farm forestry to be

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<sup>1</sup> Lowe Block 3 EIC paragraph 14

<sup>2</sup> Allen Block 3 EIC paragraph 3.1

<sup>3</sup> Milner Block 3 EIC paragraph 3.6

<sup>4</sup> Parkes Block 3 EIC paragraph 16

<sup>5</sup> Lowe Block 3 EIC paragraph 44

<sup>6</sup> Lowe Block 3 EIC paragraphs 18 and 19

used as a mitigation tool. I raised this issue in my Block 2 EIC<sup>7</sup> and noted that the definition of farming excluded 'production forests'. It is unclear if a remedy has been suggested to provide for what I consider to be a common and practical mitigation solution. Therefore, in order to address my concerns, and as discussed with the Panel during the Waikato and Waipā River Iwi presentation, I suggest a definition of planted production forest as follows:

*Planted production forest:*

*Planted production forest means land used solely for commercial forestry operations and is not part of a farming enterprise that contains a small forest or plantations for land stabilisation and nutrient loss mitigation.*

### **Stocking rate**

15. The Hearing Panel asked: *“How would stocking rate be defined? The Panel would find it helpful if there was a definition of stocking rate or amendment in each rule to determine per hectare of what? Are different tests required for different purposes (eg erosion protection cf to stock exclusion)?”*
16. Mr Palmer and McCallum-Clark provide a detailed and full discussion on Stock Units and Stocking Rates. I support the analysis they have provided. However, there is limited detail on the issue of stocking rate that I identified in my EIC<sup>8</sup>. They do note in paragraph 90 of their memo *“Officers consider ‘stocking rate’ is the stock units per hectare averaged for the year and for the property.”* While this is a slight deviation to the conventional definition of 'winter stock units' (as they have also noted)<sup>9</sup>, I support this averaging approach. It is also consistent with OverseerFM's monthly calculation of stocking rate. However, I note that the stocking rate calculation used in OverseerFM is based on the user's nominated year, which may not start on 1 July.

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<sup>7</sup> Lowe Block 2 EIC paragraphs 136 and 137

<sup>8</sup> Lowe Block 2 EIC paragraphs 130 to 133

<sup>9</sup> Officers memo response to Panel questions paragraph 78

17. The Officers note<sup>10</sup> that “*Appropriate definitions and clarity where ‘stock units’ or ‘stocking rate’ is used in the rules will be included in the final recommendations from the Officers.*” I believe clarity should be provided now for parties to comment on. To assist this process a stocking rate definition could be:

*Stocking rate – is defined as the annual average of monthly stock units on a property over a 12-month period.*

### **Timing**

18. The Hearing Panel asked: “*At what point in time would the information be able to be made available to derive the number for the 75th percentile? How do the dates for the 75th percentile, the NRP and the staging of the priority sub-catchments align?*”
19. At Appendix E in the Officer’s Memo a series of timelines is provided that indicate milestone dates for various tasks. These timelines are very useful and provide clarity, especially with regard to the evolution of thinking. A noticeable feature is that the end date for many activities (being Stock Exclusion from Priority 2 and 3 catchments and reduction of the 75<sup>th</sup> percentile leaching) has not changed and remains at 1 July 2026. While this provides certainty in terms of locking in the 2026 date it creates two logistical challenges, being:
- (a) Capacity – in my Block 2 EIC<sup>11</sup> I discussed in detail the industry capacity to produce FEPs, expressing a concern that resourcing may be limited. Should this plan change be appealed, it may not become operative until mid-2022<sup>12</sup>. This effectively pushes out the start date, but at the same time the end date has not changed. This means the delivery of the much needed guidance of Nitrogen Reference Points, 75th percentile calculation, FEP development and stock exclusion is condensed into four years (June 2011 to July 2026) and not the initial six years (2019 to July 2026) as proposed in the notified plan. As I did in my Block 2

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<sup>10</sup> Officers memo response to Panel questions paragraph 90

<sup>11</sup> Lowe Block 2 EIC paragraphs 87, 88 and 144

<sup>12</sup> Officers’ memo response to Panel questions, Appendix E page 40

EIC<sup>13</sup>, I question the capacity of the rural professional industry to provide the necessary resources. In my Block 3 EIC<sup>14</sup> I discussed the requirements and clarity around Schedule 1, and in particular who was to be preparing and approving the FEP. I noted that more or less work may be required depending on the scope of the Certified Farm Environment Planner (CFEP)<sup>15</sup>. Should 'less' work be required then it is more likely that the Memo's Appendix E dates will be met. However, if more work is required it is less likely that the reporting and deliverable dates will be met. The reality is that the ability to deliver the necessary reporting, particularly certified FEPs, by the nominated dates will hinge on the content and requirements of Schedule 1. It is apparent from the evidence submitted on Schedule 1 that there are contrasting views on an objective type approach vs a standards type approach. In summary, the ability to provide resourcing to meet the reporting requirement and deadlines will be dependent on Schedule 1 content.

- (b) Meeting 75th percentile limit – the pushing out of the date for the plan becoming operative (and a later date of publishing a catchment 75th percentile) will mean farms have only three years from identification of the 75th percentile to reduce below the 75th percentile. For farms well over the 75th percentile there are potentially significant changes needed, which will require changes to farming operations and considerable financial resourcing. I question if it is realistic and practical to expect the targeted reduction to the 75th percentile within a three-year period.

- 20. There could be an argument that farmers could start making changes early, however the scope of what they change, and how change is managed, will be largely based on the certification of the FEP, of which the content and standards are yet to be confirmed. Some farmers may want to see certainty in the standards before they start making changes,

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<sup>13</sup> Lowe Block 2 EIC paragraph 41

<sup>14</sup> Lowe Block 3 EIC paragraphs 14 to 19

<sup>15</sup> Lowe Block 3 EIC paragraphs 25 to 27

especially where the changes require alternative land uses to be considered.

21. I am of the view that because of a later date for the plan becoming operative more time might be needed to: 1) spread the load of the rural professionals providing guidance, and 2) allow mitigation measures to be put in place to allow for reductions in nitrogen loss to meet the 75th percentile. The requirement for this additional time might be reduced if there is a lesser work load for CFEPs assisting with FEPs, as may be clarified through the Schedule 1 standard specification and the associated FEP approval process.
22. Rather than a fixed date of 1 July 2026, it may be more practical to consider a 10-year period from the date that the plan becomes operative. Such an approach is suggested by Janeen Kydd-Smith in her Block 3 Rebuttal Statement<sup>16</sup> in reference to Rule 3.11.5.7. I agree with this approach as it will have the effect of smoothing out the sequencing and delivery of each of the steps set out in the timeline contained in Appendix E of the Officer's Memo.

Hamish Lowe

26 July 2019

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<sup>16</sup> Kydd-Smith Block 3 rebuttal paragraph 61