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| **BEFORE THE ENVIRONMENT COURT** | | **ENVC-2020 -** |
| | **UNDER** | the Resource Management Act 1991 (the Act) |
| | **IN THE MATTER** | of an appeal pursuant to clause 14(1) of Schedule 1 of the Act against Waikato Regional Council's decision on proposed Plan Change 1 to the Waikato Regional Plan: Waikato and Waipa River Catchments |
| | **BETWEEN** | **Ballance Agri-Nutrients Limited** (Appellant) |
| | **AND** | **Waikato Regional Council** (Respondent) |

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**NOTICE OF APPEAL**

**DATED 7 July 2020**

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To: The Registrar

Environment Court

AUCKLAND

1. **Ballance Agri-Nutrients Limited** (BAN) (Appellant) appeals against decisions of the Waikato Regional Council (WRC) (Respondent) on Proposed Plan Change 1 to the Waikato Regional Plan: Waikato and Waipa River Catchments (the proposed Plan Change).

2. The Appellant made submissions and further submissions on the Plan Change and presented evidence at the Block 1 and 2 hearings.

3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.

4. The Appellant received notice of the decision on the 22nd of April 2020.

5. The decision was made by the Respondent.

**Parts of the decision that BAN is appealing**

6. The Appellant is appealing parts of the decision that relate to:

   (a) Schedule B – Nitrogen Leaching Loss Rate for Freshwater Management Units;

   (b) Schedule C – Minimum Farming Standards, specifically: Nitrogenous Fertiliser restrictions (Clauses 6 & 7);

   (c) Schedule D1, Schedule D2 & Table 3.11-3. Sub-catchment Application Date

**Reasons for the appeal**

7. The reasons for the appeal are as follows:

***Schedule B -Nitrogen Leaching Loss Rate for Freshwater Management Units (FMUs)***

   (a) The Appellant previously submitted on Schedule B (Nitrogen Reference Point) and presented evidence at the Block 2 hearing on the development of a Nitrogen Reference Point (NRP), information required, and timeframes involved.

   (b) The use of the NRP has been replaced in the decision version of the proposed Plan Change by the Nitrogen Loss Leaching Rate (NLLR). This is highlighted in Policy 2 as well as Schedule B. Table 1 in Schedule B provides the defined maximum NLLR values for different river freshwater

management units, below which farmers will be able to operate as a permitted activity.

(c) While the Appellant supports the use of NLLR, it is noted that output NLLR values for farms will likely change with updated versions of Overseer. This has the potential to impact where a farm falls within the proposed bands identified in Table 1 of Schedule B (Nitrogen Leaching Loss Rate levels). The Appellant is concerned that farms at the margins of a NLLR band could, with a new version of Overseer, be pushed into a different band without having altered their farming system.

(d) While the Appellant supports the ability to use approved alternatives to Overseer, the Appellant considers that Schedule B, Clause 3, does not provide enough detail on how equity and data consistency for outputs between models will be ensured. Being a science-based organisation, the Appellant seeks clarification on what "*appropriate supporting documentation*" and "*comparable modelling outputs*" represent.

**Relief sought**

(e) That clarification is provided in Schedule B for addressing potential impacts of changes in NLLR number for farms due to new versions of Overseer.

(f) That clarification is provided in Schedule B on the approval process for Overseer alternatives to ensure consistency of outputs between different models.

***Schedule C - Nitrogenous fertiliser cap of 30kgN/ha per dressing – Clause 6.***

(g) The Appellant lodged submissions to Schedule C. The decision version of Schedule C – Minimum Farming Standards within the proposed Plan Change introduces new standards that were not previously part of the proposed Plan Change. Clause 6 requires that "*Nitrogenous fertiliser is not applied at rates greater than 30kgN/ha per dressing*"

(h) Volume 1 of the Hearing Panel's Recommendation Report as notified on the 22nd of April 2020 states, at paragraph 1697, that: "*This standard has been adopted from Fonterra's evidence which states "Nitrogen fertiliser application rates to pasture are no greater than 30 units of N per dressing*". The Appellant understands that Fonterra's evidence, as referred to, related to the proposed outline contents of a farm plan and was not proposed by Fonterra as a suitable figure for a fertiliser cap. There is no scientific or other

reasoning provided as to why the figure of 30kg of nitrogen per hectare was selected by the Hearing Panel above any other.

(i) If a nitrogen cap is to be retained then the Appellant considers that the cap should be raised from 30kgN/ha to 50 kgN/ha as a mean rate. The use of a mean rate is considered necessary to enable the use of variable rate fertiliser application technology (for ground and aerial spreading).

(j) There is established scientific research[1] that identifies rates of up to 50kg of nitrogen per hectare as the agronomically optimal application rate with a reasonably linear response for pasture growth up to that figure.

(k) Independent modelling[2] shows how changing release of the nitrogen via a slow release fertiliser that releases over 40 days can dramatically reduce nitrogen leaching.

(l) The Appellant considers that total nitrogen outputs should form the basis for assessing on-farm losses rather than solely focusing on one input being fertiliser. Use of supplementary feed for stock can lead to greater use of imported feed which would result in a similar nitrogen loss impact. Thus Appellant notes that focusing on reducing fertiliser application may not provide the desired reduction in leaching. The Appellant also questions the practicality of verification and auditing of the nitrogen cap.

**Relief sought**

(m) That the 30kgN/ha per dressing cap is removed from the proposed Plan Change and a focus is placed on total nitrogen outputs on-farm. Should the proposed Plan Change continue to require a nitrogen cap, that Clause 6 is amended as follows:

*Nitrogen fertiliser is not applied at rates greater than ~~30~~ 50kgN/ha per dressing as a mean value.*

***Schedule C - No nitrogenous fertiliser applied during June and July – Clause 7***

(n) As already noted, the decision version of Schedule C – Minimum Farming Standards within the proposed Plan Change introduce new standards that were not previously part of the proposed Plan Change. Clause 7 requires that "*No nitrogenous fertiliser is applied during the months of June and July*

[1] Anon. 2009. Fertiliser use on New Zealand Dairy Farms. Fertiliser Association New Zealand booklet, p48; Ledgard, S.F. 1986. Nitrogen Fertiliser use on Pastures and Crops. Ministry of Agriculture and Fisheries booklet, p5, Figure 3.
[2] Anon. 2014. Modelling the potential effects of slow-release urea fertiliser on plant growth and direct N losses from some New Zealand soils. Agresearch, Figure 5.

*in any year unless the temperature is tested and found to be greater than 10 degrees Celsius within the root zone.*"

(o) With regard to Clause 7, Volume 1 of the Hearing Panel's Recommendation Report as notified on the 22nd of April 2020 states, at paragraph 1698, that: "*This standard has been adapted from the evidence of DairyNZ which states "Soil temperature, moisture levels and the weather forecast are assessed before applying fertiliser. No nitrogen fertiliser is applied during [specified months, potentially May- June] no P fertiliser is applied during [specified months, potentially June-July]*".

(p) The Code of Practice for Nutrient Management (CoP), referenced in Schedule D1, Part D of the proposed Plan Change states (under Timing of Application) that "*Nitrogen is not applied when the 10cm soil temperature at 9am is less than 6ºC and falling*"

(q) There does not appear to be scientific justification for the 10°C figure stipulated in Clause 7 and departure from the established CoP. There is also no clear method provided or referenced for determining the soil temperature.

(r) The Appellant is concerned that if, in the Waikato, the figure of 10 degrees is audited against, data from NIWA[3] illustrates that for Taupo this could equate to a 5 month period, and for Hamilton a 3 month period when temperatures are below 10 degrees and so, if those 3 or 5 months include significant rainfall, it could be argued that nitrogenous fertiliser should not be used during those longer periods. This would have significant impacts on stock feed production potentially leading to greater use of imported feed which would result in a similar N loss impact.

**Relief sought**

(s) That Schedule C, Clause 7 is amended to reflect the established CoP, as follows:

*During the months of June and July, no nitrogenous fertiliser is applied <u>when the 10cm soil temperature at 9am is less than 6ºC and falling as per the Code of Practice for Nutrient Management</u> ~~during the months of June and July in any year unless the temperature is tested and found to be greater than 10 degrees Celsius within the root zone.~~*

[3] Chappell, P.R. 2013. The Climate and Weather of Waikato. NIWA Science and Technology Series 61, Table 13.

***Schedule D1, Schedule D2 & Table 3.11-3. Sub-catchment Application Date***

(t) The Appellant previously submitted on Schedule 1 (now Schedules D1 and D2) (Requirements for FEPs) and Schedule B (NRP), providing evidence at the Block 2 hearing regarding the capability and capacity limitations associated with certifying FEPs in relation to specified timeframes.

(u) Table 3.11-3 indicates the timeframes for FEP development for farms under Rules 3.11.4.4 to 3.11.4.8 and the appellant supports the staggered approach. However, as the scheme for Certified Farm Environment Planners (CFEPs) is still in the process of being established, the Appellant considers that timescales for developing FEPs should be correlated to the available capability and capacity of CFEPs.

(v) The Appellant considers that the focus should be on securing FEPs for high risk operations first to make the greatest gains towards the plans' intent of halting degradation.

**Relief sought**

(w) That timeframes for providing FEPs be reconsidered to focus firstly on priority areas and operations where the greatest gains can be achieved and reflect the practical capacity and capability of CFEP resources.

**Further Relief Sought**

8. Further to the points detailed above, the Appellant seeks the following relief:

(a) Such other relief as the Court considers appropriate having regard to the Appellant's submission and the reasons for this appeal;

(b) Any consequential amendments to the proposed Plan Change which arise from the reasons for appeal or the relief sought.

**Signature:** 

Dominic Adams
Environmental Manager
Ballance Agri-Nutrients Limited

**Date:** 7 July 2020