BEFORE THE ENVIRONMENT COURT / I MUA I TE KOOTI TAIAO O AOTEAROA

AT AUCKLAND

UNDER the Resource Management Act 1991

A N D

IN THE MATTER of an appeal under clause 14 of Schedule 1 of the Act

BETWEEN **WAIRAKEI PASTORAL LIMITED**

(ENV – 2020 – AKL –)

Appellant

WAIKATO REGIONAL COUNCIL

Respondent

NOTICE OF APPEAL

8 JULY 2020

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TO: THE REGISTRAR
ENVIRONMENT COURT
AUCKLAND

1. **WAIRAKEI PASTORAL LIMITED (WPL**) appeals against part of the decision of Waikato Regional Council on Proposed Plan Change 1 – Waikato and Waipa River Catchments to the Waikato Regional Plan as amended by Variation 1 (**PC1**).

2. WPL:

a. Made a submission on PC1 in 2016;

b. Made a submission on Variation 1 to PC1 in 2018; and

c. Made a further submission on PC1 as amended by Variation 1 in 2018.

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

4. WPL received notice of the decision on 22 April 2020.

5. The decision made by Waikato Regional Council accepted in full the recommendations of the Independent Commissioners appointed by the Council to hear and consider all submissions and further submissions on PC1 (**Decision**).

Parts of Decision of Particular Concern to WPL

6. WPL is largely supportive of the Decision. In particular:

a. WPL strongly supports Te Ture Whaimana o Te Awa o Waikato and the need to restore and protect the permanent and intermittent waterbodies within the PC1 catchments within a generation.

b. WPL strongly supports PC1 as being an important first step towards achieving that ultimate objective.

7. The discrete parts of the Decision of concern to WPL are:

a. The confusion created by the use of the term springs without reference to the permanent or intermittent nature of the water bodies being protected by PC1, including in Objective 1, Policy 2, clause 3 of Part C of Schedule D1 and clause 2 of Part C of Schedule D2, and the need for broader application of the definition of water bodies in Schedule C, clause 5.

b. The lack of consistency when referring to contaminants which creates the potential for PC1 to be interpreted in a manner that is beyond its clear scope, particularly Policy 1(c), Policy 2(e)(i), Policy 2(f), Policy 10, clause 6 in Schedule D1, Part D, Goals 1, 2, 6, 7 and 8 and Principles 16, 18 and 20 in Schedule D2, Part D and the note below Table 3.11-2.

c. The uncertainty surrounding the role of the short-term numeric water quality values in Table 3.11-1 created by:

   i. An expectation in some provisions that the water quality values in Table 3.11-1 are something that can and should be “met” or “achieved”, including in Objective 2 and Policy 8(a);

   ii. The references in Policy 4(d) and 8(a) suggesting that it is not only the water quality values in Table 3.11-1 for the relevant sub-catchment(s) that are applicable, but also those for downstream catchments or the catchments as a whole;

   iii. The references to attribute states in Policy 16(a) and 3.11.6; and

   iv. The retention of the fourth paragraph of the Explanatory Note in 3.11.6 to the table referring to the concept of “load to come”.

d. The loss of interim permitted activity status until the relevant Application Date under Rule 3.11.4.2 when one or more standards in Schedule C cannot be met.

e. The lack of any flexibility to farm on more than one property as either a permitted or controlled activity (Rule 3.11.4.7(7A)) and the confusion as to whether doing so is considered a "collective" as per the heading, a "group" as suggested in Schedule A, clause 4(g), a "sector scheme" as envisaged in Schedule E but not referenced elsewhere or simply on a land area that does not meet the defined term.

f. The unjustified constraints in Rule 3.11.4.3 on farming within the Low Nitrogen Leaching Loss Rate (**NLLR**) category as a permitted activity that inadvertently conflict with the expectation in the Decision[1] that highly developed farming systems incorporating effective mitigation measures, such as WPL's Wairakei Estate, will be permitted activities, namely:

   i. The selection and use of 18 stock units per hectare in Policy 4(a) and Rule 3A(i);

   ii. The requirement in Condition 2 for conformance with standards 1(b), 6(a) and 9 in Schedule C;

   iii. The requirement in Condition 5 for farming to occur on only one property, and the definition of such;

   iv. The requirement in Condition 6 to meet the poorly drafted and/or overly onerous standards in clauses 1(c), 1(d), 1(f), 2(a), 2(b), 4(a), 4(b), 4(c), 5(a), 5(b), 5(d), 5(e), 6(a), 6(b), 6(c), 6(d), 7(a), 7(b), 8(b), 8(e), 9(c), and 10(a) of Schedule D1 (Part D);

   v. The requirement in Condition 7(d) for a Farm Environment Plan (**FEP**) to be provided within 6 months

[1] Paragraph 1108.

of PC1 becoming operative, negating the ability to place reliance on the Interim Permitted Activity Rule until the Application Date.

g. The unjustified constraints in Rule 3.11.4.4 on farming within the Moderate NLLR category as a controlled activity, namely:

   i. The requirement in Condition 2 for conformance with standards 1(b), 6(a) and 9 in Schedule C

   ii. The requirement in Condition 5 for farming to occur on only one property;

   iii. The requirement in Condition 6 for a FEP to be prepared under Schedule D2 (rather than D1) that must demonstrate how the goals and principles set out in Part D of D2 (**Goals and Principles**) are achieved; and

   iv. The expectation, as a consequence of Principle 9(a) and Policy 2(a), that the NLLR be reduced to the lowest practicable level.

h. The inappropriately broad scope of control reserved by Council for farming within the Moderate NLLR band categorized as a controlled activity in Rule 3.11.4.4, namely:

   i. The reference to achieving the policies and objectives in Matter (i), particularly given the wording of:

      - Policy 2(a)
      - Policy 5
      - Policy 19

   ii. The reference in Matter (iii) to demonstrating how the Goals and Principles will be achieved given the wording of Goals 1, 2, 6, 7 and 8 and Principles 9, 11, 13, 15, 16, 18 and 20.

iii. The reference in Matter (iv) to achieving the "environmental outcomes of the stock exclusion requirements in Schedule C" when there are none; and

iv. The reference in Matter (v) to cumulative effects.

i. The unworkable requirement for an applicant to provide an assessment by comparison to other farming activities, both in the same sub-catchment and downstream sub-catchments, in Policies 2(b) and 4(d) and the suggestion in Policy 8 that the assessment will be for the catchment as a whole.

j. The discretionary activity status in Rule 3.11.4.7 for farming with a Low NLLR that fails to comply with the unduly onerous standard in 1(b) of Schedule C, and the confusion created in Rule 3.11.4.4(4B) by the duplication and overlap between the standards in Schedule C and Schedule D1.

k. The discretionary activity status in Rule 3.11.4.7 for farming with a Moderate NLLR that fails to comply with the unduly onerous standards in Schedule C and Schedule D1, Part D.

l. The retrospective nature of the PC1 provisions which reference 22 October 2016 as the relevant date rather than the date on which PC1 is made operative or the Application Date, including in Policy 2(c), Rule 3.11.4.9 and Schedule A clause 4(d).

m. The blanket control imposed on changes in land use since 22 October 2016 in Rule 3.11.4.9 which requires retrospective consent to be obtained as a non-complying activity for lawful change that has already occurred, guided by policies that inappropriately restrict the opportunity to obtain consent, such as Policy 2(c) and 5, or seek to broaden the scope of PC1, such as Policy 19 with no regard to the NLLR or the effects of such land use change.

n. The workability of the rules when farming occurs at scale, across multiple sub-catchments with different Application Dates, such as WPL's Wairakei Estate, and the need for clear and consistent terminology.

o. The use of a common expiry date in Policy 7 that fails to factor in relevant considerations, such as investment in infrastructure.

p. The unduly onerous process in Schedule B, Part A for using an alternative Decision Support Tool ("**DST**") to Overseer and the inappropriate role of the Chief Executive in appointing individual Certified Farm Environment Planners and Certified Farm Nutrient Advisors.

q. The substantial improvement in water clarity now required in Table 3.11-1 for the Ohakuri sub-catchment (66) without explanation.

r. The lack of consistency in terminology and phrasing used in PC1 and/or the potential for interpretation issues to arise which could be improved with minor drafting corrections so that:

   i. The appropriate term (be it property, properties, property(s), farm(s), farming enterprise, farm system, land being farmed) is used;

   ii. The appropriate term, be it farming or farming activities, is used;

   iii. Minimum standards are complied with, conformed with or met;

   iv. Grazed hectares include areas retired from farming or forestry on an ongoing basis;

   v. Slope is able to be easily understood and calculated;

vi. A FEP is certified;

vii. The NLLR is determined using any full year from the 2015/2016 year onwards; and

viii. Unless a clear meaning is obvious, undefined terms are avoided. These include: "life of the Regional Plan", "quantities sold off farm" in Schedule B, clause 2(d); "farm scale" in Part D of Schedule D1, clause 4(c); "self-feeding areas, stock camps, wallows" in Part D of Schedule D1, clauses 6(c) and (d) and Part C of Schedule D2, Principle 11.

8. The relief sought by WPL is set out from paragraph 97 onwards. It includes any further, additional or consequential amendments required in order for PC1 to be internally coherent. For clarity:

a. This is not a "whole of plan" appeal, but is instead focused on the parts of particular concern; but

b. The relief sought is broad enough to ensure all additional or consequential amendments can be made to PC1 to ensure the operative version is coherent both internally and with the plan.

General reasons for WPL Appeal

9. The general reasons for the appeal are that the parts of the Decision referred to in paragraph 7 above:

a. Inappropriately elevate Te Ture Whaimana o Te Awa o Waikato to "pre-eminent" status[2] above the National Policy Statement – Freshwater Management (**NPS-FM**) and the Regional Policy Statement (**RPS**) as a whole, absent any conflict between these documents;

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2 Paragraphs 205 and 335.

b. Do not give effect to the current National Policy Statements (**NPS**), including the NPS-FM;

c. Do not give effect to the Regional Policy Statement (**RPS**) as a whole;

d. Go beyond the scope of PC1 in the way Te Ture Whaimana o Te Awa o Waikato is given effect to as part of the RPS;

e. Are inconsistent with the operative provisions of the Waikato Regional Plan (**WRP**);

f. Include policies and methods that are not the most appropriate method for achieving the objectives of the WRP or PC1;

g. Have not adequately considered the actual or potential effects of activities in the creation of the rule framework;

h. Have not taken into account the costs of the proposed methods;

i. Are not supported by any adequate evaluation under s32 or 32AA of the RMA;

j. Are not adequately supported by reasons;

k. Render interests in land incapable of reasonable use; and

l. Do not represent sustainable management of the natural and physical resources.

Detailed reasons for WPL Appeal

10. The detailed reasons are provided in “order of appearance” where the issue or concern first arises.

Water bodies *- Objective 1, Policies 2(d) – (f) and Schedules*

11. WPL supports the amendments made to Objective 1 in the Decision. A minor correction, however, is required to give effect to the Decision.

12. Objective 1 refers to restoring the health and wellbeing of "all springs, lakes and wetlands" within the catchments of the Waikato and Waipa Rivers. Policies 2(d) - (f), clause 3 of Schedule D1, Part C and clause 2 of Schedule D2, Part C use the phrase "streams, drains, wetlands, lakes and springs".

13. The Decision makes it abundantly clear that the PC1 provisions are not to apply to ephemeral water bodies, including ephemeral springs.[3] However, that is not currently clear from the wording of the provisions identified above. That must be rectified.

14. Clause 5 of Schedule C provides a clear definition of the water bodies to be protected under PC1. This defined term, which excludes ephemeral water bodies, should be used consistently throughout the PC1 provisions. Doing so would reflect the Decision.

Water quality values - *Objective 2, Policies 8 and 16, 3.11.6*

15. Objective 2 measures progress as the short-term numeric water quality values in Table 3.11-1 being "met" no later than 10 years after PC1 is made operative. Policy 8(a) seeks collective action to "achieve" the water quality values. Policy 16(a) also refers to achieving the water quality values, but also the "attribute states", a term used in 3.11.6.

16. The Decision anticipates substantive progress will get underway once PC1 is made operative, with the improvement required in the first stage target[4] set as 20% of the long-term goals.[5] The water

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3 Paragraphs 1677-1678 and 1897

4 Paragraph 38 and Consequential amendment to 3.2 on page 486

5 Paragraphs 18, 38, 825, 828.

quality values are what stakeholders in each sub-catchment will be aiming for, with collective action required across each sub-catchment. However, it takes time for the beneficial effects of any management improvements to eventuate after implementation. For example, the benefits of riparian fencing and planting can take many years, even decades, to eventuate. The intention is that "material steps towards improvement" will have been implemented,[6] but the benefits may not have been realized.

17. The water quality values may not be "met" or "achieved" within the 10 year timeframe. The shared and agreed goal is that mitigation measures must be put in place within the 10 year timeframe so that the water quality values will subsequently be met. The improvements in water quality will take longer than 10 years to manifest. Care must therefore be taken with describing progress towards the water quality values, and references to attribute states should be deleted.

Extent of reduction *- Policy 2(a)*

18. Policy 2(a) requires controlled activities to use land for farming to demonstrate that either the NLLR is already as low as practicable given the current land use or that the NLLR will reduce to the lowest practicable level over an appropriate specified period. Both terms carry an element of subjectivity, and hold potential for tension to occur when the FEP is reviewed. For example, there is no reference to the water quality in the relevant sub-catchment or to the level of discharge relative to other farms in the sub-catchment. In effect, there is no limitation on the Council's ability to restrict farming activity despite its controlled activity status. This requirement may be suitable for farming with a high NLLR but is inappropriate for controlled activities.

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[6] Paragraph 814.

Beyond the sub-catchments *- Policies 2(b), 4(d) and 8(a)*

19. Policy 2(b) requires applicants and the consent authority, when considering a discretionary activity to use land for farming, to have regard to whether the farming activities are making a significant or disproportionate contribution to nitrogen loading in the sub-catchment(s) "within which the land is located and/or downstream catchments". It is beyond an applicant's control to provide a comparison of its activity with others, be that in the sub-catchment or elsewhere.

20. Policy 4(d) requires all FEP, regardless of the status of the farming activity, to identify suitable mitigating actions appropriate to the water quality values specified in Table 3.11-1 for the sub-catchment(s) "within which the land is located and downstream catchments".

21. Such a consideration does not provide significant certainty to an applicant, especially when anticipating what the consent authority will consider as 'suitable'.

22. Of greater concern is the uncertainty created by the references to downstream catchments and, in Policy 8(a), to the "catchments as a whole". It is accepted that activities upstream can affect water quality downstream, that improvements upstream will, over time, result in improvements downstream and that all landowners will need to make a fair contribution to achieve water quality improvements[7] as no-one is immune[8] from needing to contribute. However, that does not make it appropriate to assess an FEP by reference to the water quality values specified for downstream catchments. Doing so creates an unacceptable risk that the robust numbers in Table 3.11-1 can be deviated from in an unspecified and unconstrained manner during consenting. This is unacceptable given the lack of any evidence on the downstream

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7 Paragraph 781(d).

8 Paragraph 859.

effect of contaminants,[9] and it degrades the core purpose of Table 3.11-1 providing clear metrics for each sub-catchment.

Off-setting and compensation *- Policy 2(c) and 5*

23. Policy 2(c), together with Policy 5, is the gateway for non-complying activities for land use change. Such activities will "generally" not be granted unless a positive contribution (as per Policy 5) can be demonstrated.

24. The sole focus of Policy 5 is on offsetting and compensation that better achieves the objectives of Te Ture Whaimana o Te Awa o Waikato. There are a number of issues with this approach:

a. Non-complying activities may justify a grant of consent on the basis of how the effects are being avoided, remedied or mitigated by the FEP;

b. It is inappropriate to elevate the test for non-complying activities to requiring a "positive contribution";

c. It is inappropriate to require all non-complying activities to provide either offsetting or compensation;

d. It is inappropriate to require non-complying activities to "better achieve" the objectives of Te Ture Whaimana o Te Awa o Waikato than other activities;

e. The concepts in 5(a) and (b) clash with the concepts of offsetting and compensation and in doing so create an unworkable policy; and

f. It fails to provide the guidance on how non-complying activities should be assessed anticipated by the Decision.[10]

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9 Paragraph 152

10 Paragraph 1637.

25. Policy 5 also has a broader role and will be applicable to the assessment of any activities requiring consent under the PC1 rules (as currently drafted). As such, it must be redrafted to enable the merits of off-setting and compensation to be considered when the effects of the diffuse discharge cannot be avoided, remedied or mitigated either on or off the land being farmed.

Contaminants of interest *- Policies 2(e)(ii), (f) and 10, Schedule D1 (Part D), Schedule D2 (Part D) and Table 3.11-2*

26. Policy 1 identifies the four contaminants of interest in PC1, being nitrogen, phosphorus, sediment and microbial pathogens,[11] and appropriately refers to reducing the diffuse discharges of "those contaminants". Policies 5, 12(c) and 13(j) adopt the same appropriate approach as do the rules.

27. By contrast, policies 2(e)(ii), 2(f) and 10 and Part D of Schedule D2 refer simply to "contaminants" and arguably therefore go beyond the scope of PC1. Part D of Schedule D1 refers to "sediment, nutrient and microbial losses". All provisions that refer to contaminants must be clear that it is only the four contaminants controlled by PC1 so as to remain within scope of the plan change.

28. It is also important that the provisions are clear that the contaminants listed in Table 3.11-2 are the priority contaminants requiring prioritized action in the FEP (under Policies 1(b) and 4(e)). It is accepted that other contaminants may still be an issue needing to be addressed in the FEP, but the existence of the note under Table 3.11-2 has the potential to cast doubt on the completeness of the table and should be deleted. It is clear without the note that the listed contaminants are the priority contaminants and that all four contaminants are to be addressed in any FEP.

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[11] Paragraphs 95 and 253.

Stocking rate *- Policy 4(a)*

29. The Decision fails to provide any rationale for the selection of 18 stock units as the most appropriate number to determine activity status in the rules beyond noting that "most" drystock/hill country farmers "typically" farm at or below 18 stock units.[12]

30. In the rules,[13] the 18 stock units trigger determining activity status is the winter stocking rate, not through-out the year. In the minimum standards,[14] the 18 stock unit control is the winter stocking rate only on steep land adjoining waterbodies, not of broader application. It is questionable whether stock units is the appropriate parameter, and if it is whether there is any merit or justification for it being set at 18. Both the minimum standard and the rule trigger need to be justified on an effects basis.

31. In any event it is not appropriate for the specific rule triggers to be referenced in the policy. Where a NLLR needs to be calculated, an appropriate DST shall be used in accordance with Schedule B. That is all the policy needs to say.

Common expiry date *- Policy 7*

32. Policy 7 introduces the concept of a common expiry date of 2035 for all consents. In doing so it ignores the clear finding in the Decision:[15]

> *We agree that if individual landowners are to be required to make fundamental changes to their farm systems, then this should not be required 'overnight'. An appropriate transition is required to recognise the investment in existing farm systems and the likely social and economic costs if immediate and drastic changes to those systems are required.*

33. The selected date of 2035 means that in many sub-catchments the term of consent will be less than 10 years, and in no sub-catchment will it be over 14 years. This is too short, failing to provide sufficient

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12 Paragraphs 1564 and 1668.

13 Rule 3.11.4.3(3A)(i) and 3.11.4.4

14 Schedule C, clause 1(b); Schedule D

15 Paragraph 1090.

certainty to enable decisions to be made on an informed basis regarding investment (including as to environmental initiatives and mitigations).

34. A common expiry date is also undesirable. The Decision records the Council would have "struggle[d]" to implement PC1 "without some significant phasing in of when the various consent applications are due".[16] It is equally true at the other end. It is not only the Council that would struggle with a common expiry date. It is in no persons interest to have all renewal applications required concurrently.

35. A consent term limit of 25 years, which would result in all consents expiring within a 5 year period, is a more appropriate approach.

Broader objectives *- Policy 19*

36. As a consequence of Rule 3.11.4.4(i), Policy 19 guides all consent decision-making to use land for farming under PC1 regardless of activity status. It requires applicants and the consent authority to "seek opportunities to advance achievement of the objectives of Te Ture Whaimana o Te Awa o Waikato" including opportunities to enhance access to and the recreational values of the rivers.

37. This goes well beyond the scope of PC1,[17] which is the first step in the restoration and protection of the rivers[18] and limited to the four contaminants: nitrogen, phosphorus, microbial pathogens and sediment.[19]

38. The Decision fails to provide any rationale for the inclusion of Policy 19 or its wording.

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16 Paragraph 1745.
17 Paragraphs 12 and 253.
18 Paragraphs 11 and 96.
19 Paragraphs 95 and 253.

Rule 3.11.4.2 *Interim Permitted Activity Rule*

39. Interim permitted activity status should be available until the relevant Application Date for all properties unless there is non-compliance with the minimum standards in Schedule C or an intended change in use classified as non-complying. That has not been achieved with the current drafting. In particular:

a. The exceptions at the start of the rule create confusion; and

b. The reference to Application Date mistakenly assumes the land is either within one sub-catchment, or a common Application Date applies across all relevant sub-catchments.

Rule 3.11.4.3 *Permitted Activity Rule - Low Intensity Farming*

40. WPL supports the formulation of the permitted activity rule for farming with a Low NLLR and the use of clear and certain drafting to define the parameters of the rule.[20]

41. The clear expectation in the Decision[21] is that highly developed farming systems incorporating effective mitigation measures, such as WPL's Wairakei Estate, will be permitted activities.

42. For drystock farming, the winter stocking rate can be no higher than 18 stock units per hectare. The defined term used to determine winter stocking rate is "grazed hectares" not simply "per hectare". To remove any confusion as to the application of the winter stocking rate rule, the reference to "per hectare" needs to be deleted. The other concerns with the use of 18 stock units are set out above.

43. There is a requirement that farming be in "conformance with" the minimum standards in Schedule C and that the minimum standards in Schedule D1 (Part D) are "met" with the FEP to show how they will be "achieved". Issues with the Schedule C

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20 Paragraphs 1721-1729.

21 Paragraph 1108.

requirements are addressed below. Regardless of the contents, the requirement as to whether they are conformed with, met or achieved should be consistent.

44. There is a requirement that the farming occurs on "one property". Issues with the defined term are addressed below. However, there is no rationale or basis for this condition. A farming operation should have flexibility to occur on part of a property (as defined) or across multiple properties (as defined). Nothing is gained from this condition, yet it imposes unnecessary costs and constraints.

45. There is a requirement that the FEP be provided to the Council within six months of PC1 being made operative. Farming activities that wish to rely on the permitted activity rule will only have 6 months benefit of the interim permitted activity status. This conflicts with clause 4 of Schedule C which gives 2 years from the chapter becoming operative to comply with the stock exclusion requirements. It also conflicts with the Application Date and the intent of the Interim Permitted Activity Rule. Care must be taken with the structure of PC1 to ensure that the rules work as a package. The FEP should be provided by the Application Date.

Rule 3.11.4.4 *Controlled Activity Rule – Moderate Intensity Farming*

46. Farming a property with a Low NLLR becomes a controlled activity, rather than a discretionary activity, if it cannot meet "Clauses 1-4 of Schedule C or one or more of the standards in Part D of Schedule D1". This creates confusion as clauses 6 – 9 in Schedule C are replicated in Part D of Schedule D1:

a. Clause 6 of Schedule C is replicated in clause 1(d) of Part D of Schedule D1;

b. Clause 7 of Schedule C is replicated in clause 1(f) of Part D of Schedule D1;

c. Clause 8 of Schedule C is replicated in clause 5(c) of Part D

of Schedule D1; and

d. Clause 9 of Schedule C is replicated in clause 8(a) of Part D of Schedule D1.

47. The duplication between Schedule C and Part D of Schedule D1 is unnecessary and creates undue confusion and complication. Controlled activity status should be available to farm a property with a Low NLLR that does not comply with any of the standards in either Schedule C or Part D of Schedule D1.

48. The FEP for controlled farming is to be prepared under Schedule D2, rather than D1, and is required to demonstrate that the Goals and Principles will be achieved. The Council has reserved control over the actions and timeframes which demonstrate how the Goals and Principles will be achieved. The issues with the Goals and Principles are discussed below under Schedule D, Part D2. At this point in the appeal, it is the requirement to use D2 rather than D1 that is of concern. The "standards" based[22] FEP of D1 is more appropriate for a controlled activity.

49. Another issue is that the control is not limited to the policies referenced in the Goals and Principles, as Council has also reserved control to "the measures to achieve the policies and objectives…to the extent they are relevant to the [other] matters." The Decision fails to appropriately identify the constrained matters over which control should be reserved for these activities and in doing so fails to reflect sound resource management practice, both now at plan-making stage and in the future at consenting stage.

50. The Council has also reserved control over the method for achieving the "environmental outcomes" of Clauses 1-4 of Schedule C. This is also reflected in Principle 13 of the Goals and Principles. Schedule C does not include any intended environmental outcomes. The condition lacks the clarity and

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22 Paragraph 1720

certainty required for controlled activities.

51. As with the permitted activity, there is a requirement that the farming occurs on "one property". This is problematic for the reasons explained above.

Rule 3.11.4.7 *Discretionary Activity – Farming in a Collective and Not Otherwise Authorised*

52. The heading is "farming in a collective" yet Rule 7A covers any farming on more than one property. There is no effects-based or policy justification for requiring discretionary activity consent when farming is carried out across more than one property.

53. Rule 7C is also the default rule capturing all farming that fails to meet the conditions of the other rules. This includes farming with a Moderate NLLR that fails to meet the minimum standards. It would be more consistent with the reasoning in the Decision[23] for such activities to be provided for as restricted discretionary activities.

54. Despite being the rule for farming on more than one property, the conditions of this rule reference "the property". This is internally inconsistent and unworkable.

55. The conditions refer to the FEP needing to demonstrate how the farming activity will achieve the Goals and Principles. Whether a FEP "achieves" the subjective nature of many of the Goals and Principles is a matter for assessment, not a condition.

Rule 3.11.4.9 *Non-complying Activity – Land Use Change*

56. It is a non-complying activity to change more than 4.1 hectares of a property from woody vegetation to farming, or from any land use to dairy farming. The area of change is measured cumulatively from the date PC1 was notified, 22 October 2016.

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[23] Paragraph 1733 – 1736.

57. The use of 22 October 2016 was appropriate in the notified version of PC1 to "halt further land use change" until PC1 was in place.[24] The moratorium[25] could only be on land use change that could not be lawfully carried out in reliance on existing rights. Where a consent or certificate of compliance was not held specifically authorizing the change, such change could not occur. This was entirely appropriate.

58. However, retaining that date in the Decision or the operative version of Rule 3.11.4.9 will catch any land use change that has been lawfully carried out in reliance on a certificate of compliance or resource consent. The retrospective nature of the rule is inappropriate. Replacing 22 October 2016 with the operative date of PC1 in the final version of the rule will be entirely consistent with the purpose and intent of the rule as notified, while removing the unlawful retrospectivity of the rule.

59. Nor is there is any justification for the land area of change. The rule is not linked to either risk or the potential for adverse effects to arise. This is compounded by the inappropriate wording of Policy 5 which will be used to assess such applications.

60. WPL supports the rationale in the Decision that "those discharging more should be under the greatest scrutiny", which translates to a more onerous activity status.[26] The non-complying activity status is the most onerous status imposed by PC1, yet the rule has no link to NLLR. Even if the NLLR is Low, the mere fact of changing more than 4.1ha triggers non-complying activity status. There is no basis for such an approach in an effects based planning instrument.

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24 Paragraph 15.
25 Paragraph 1632.
26 Paragraph 1087.

Schedule A

61. Registering the property in conformance with Schedule A is a condition of many of the PC1 rules.

62. Clause 4(d) requires a description of the land use activity or activities undertaken on the property as at 22 October 2016. For the reasons set out above, the relevant date is the date on which the chapter becomes operative.

63. Clause 4(g) refers to "more than one property being farmed as part of a group". The concept of "group" does not arise elsewhere in PC1. As noted above, care must be taken with PC1 to ensure the provisions work collectively as a package, without undue contradiction or confusion. Part of the solution is to ensure terms are used consistently.

Schedule B

64. Schedule B guides the calculation of NLLR where a property is "required to do so by any rule in Chapter 3.11". Rule 3.11.4.9 does not require a property to submit a NLLR. The exceptions in clauses 2(a)(ii) and 3(c)(ii) are therefore redundant, yet their inclusion creates potential confusion and uncertainty. The exceptions should be deleted.

65. WPL endorses the Decision[27] to enable the use of alternative models to Overseer. In particular it agrees with the findings that:

a. Overseer is not the only DST able to be used, indicating:[28]

> *"The provisions will enable any fit for purpose DST certified by a suitably qualified person."*

b. It is more effective and efficient to allow for the adoption of a suite of more inclusive and complete alternative DST;[29]

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27 Paragraph 607.

28 Paragraph 20, final bullet point and paragraph 579, final bullet point.

29 Paragraph 603

c. A general discretion to the CEO is unsatisfactory;[30]

d. The person certifying the alternative DST needs experience in the development and assessment of nutrient loss models;[31]

e. Essential criteria should be met before an alternative DST is certified for approval;[32] and

f. The choice of the DST should be left in the hands of an appropriately qualified expert who has certified that it meets specified minimum standards.[33]

66. However, clause 3 (and, in particular sub-clauses (a) and (b) and the use of Certified Farm Nutrient Advisor) mean the intended option of using an alternative model is, in reality, not available to an applicant. In particular:

a. The opening sentence uses the phrase “approved model” inferring an approval process that is not apparent from the clause;

b. The requirement in sub-clause (a) to certify the model to the Council infers a certification role on nutrient loss modelers that is beyond the status of such experts;

c. As no certification is required for the use of Overseer, sub-clause (a) introduces a higher standard for any alternative DST that is unjustified;

d. The “robust review” required by the first bullet in clause (a) is both subjective and a higher standard than applies to Overseer;

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30 Paragraph 614
31 Paragraph 615
32 Paragraph 615
33 Paragraph 1133.

e. The reference to “appropriate” documentation in the second bullet in clause (a) also introduces a level of subjectivity that puts an applicant at undue risk;

f. The third bullet in clause (a) requires the modeler to demonstrate and certify that the model can “produce comparable modelling outputs to those of Overseer”. This is subjective, uncertain and unnecessary. It also wrongly assumes that Overseer produces horizontally and vertically comparable results, which is not the case. There should be no need to compare the outputs from an alternative DST to the outputs from Overseer, as doing so defeats the purpose of allowing alternative DST to be used; and

g. Once certified by a suitably qualified and experienced nutrient loss modeler, the NLLR must be determined by a Certified Farm Nutrient Advisor. There should also be the ability for the suitably qualified and experienced nutrient loss modeler to calculate the NLLR.

67. WPL supports the provision that allows the NLLR to be calculated using the most recent farming year or any full year since the 2015/2016 year when an alternative model is used.[34] However, if Overseer is used it can only be for a full year between 2015/2016 and 2019/2020 or the most recent farming year.[35] There is no rationale for the differing approaches depending on the DST used. It appears to be an oversight, as the Decision clearly records the inherent unfairness and difficulty of specifying reference years,[36] and intended the applicant to have the flexibility to select any year.

68. If Overseer is used, records must be retained “for the life of the Regional Plan”.[37] One such record is “a map which shows property boundaries, block management areas, retired/non-productive

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34 Clause 3(c).
35 Clause 2(a).
36 Paragraph 620.
37 Clause 2(d).

areas and areas used for effluent irrigation".[38] By contrast, if an alternative model is used it is only "records relevant to the calculation and compliance auditing"[39] of the NLLR that must be retained, but similarly for the life of the Regional Plan. WPL:

a. supports the use of the phrase "records relevant to the calculation and compliance auditing" and requests it be used for both DST options; and

b. opposes the requirement to retain such records for "the life of the Regional Plan", and requests a greater level of specificity such as "for 10 years".

Schedule C

69. Schedule C sets out the minimum farming standards that all farming must comply with. The understanding recorded in the Decision was that the minimum standards are "relatively achievable."[40] The panel prepared them by adapting the evidence of submitters to be "more clear, objective and enforceable".[41]

70. The benefit of specifying clear and measurable minimum standards is accepted. However, the standards selected are arbitrary, unfounded and inappropriate. Examples of supposed "good management practice" have been imposed with no supporting rationale.

71. There are also examples of poorly drafted standards with the potential to create confusion. For example clause 1(b) requires waterbodies on land with a slope over 15 degrees to be fenced "where in any paddock adjoining the water body the number of stock units exceeds 18 per grazed hectare at any time." The defined terms are (in order of appearance):

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38 Clause 2(d)(x).
39 Clause 3(f).
40 Paragraph 1695.
41 Paragraph 1696.

a. Waterbodies;

b. Slope;

c. Stock units; and

d. Grazed hectares.

72. However, applying the defined terms to the standard leads to confusion as to what is required. This, in part, is created by the reference to "paddock" in the definition of "slope" and the calculation of grazed hectares (which is used to determine winter stocking rate). WPL supports the intent of excluding large numbers of stock from permanent and intermittent waterbodies on steeper land, but considers the current drafting problematic.

73. Clauses 6 – 9 of Schedule C are replicated in both Schedule C and Schedule D1, Part D. The standards should only occur in one location, with Schedule D1, Part D the more appropriate. Regardless of location, the requirements of clauses 6 and 9 are problematic for the reasons below.

74. Clause 6 of Schedule C limits the application rate of nitrogenous fertiliser to 30kgN/ha per dressing, as does Clause 1(d) of Part D, Schedule D1. WPL supports the targeted application of fertilizer, and the implementation of efficient fertiliser management practices.[42] However, the 30kgN/ha per dressing limit is unduly restrictive and not founded on robust and defensible science. There is no discussion of the limit in the Decision, and no reasons provided for its selection.

75. Clause 9 restricts grazing on forage crops on LUC class 6e, 7 or 8 land from 1 June to 1 September. The restriction is on cattle older than 2 years or greater than 400 lwt. The same restriction is set out in Clause 5(a) of Part D, Schedule D1. The use of LUC classes is not discussed or explained in the Decision. Instead, the only

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[42] Paragraph 1697.

explanation in the Decision is:

> *Slope is known to exacerbate the risk of contaminant run-off… Given the high risk of contaminant loss associated with the grazing of winter crops, it is considered appropriate to limit the slope of the land used for this activity.*

76. However, there is no slope factor in Clause 9. Not all LUC class 6e land is steep. To be consistent with the reasoning in the Decision, clause 9 (if retained) should restrict winter grazing on forage crops on steep land rather than on LUC class 6e, 7 or 8 land. The use of the LUC class maps should be deleted from all standards.

Schedule D1, Part D

77. Schedule D1 guides the development of FEP for Low Intensity permitted activity farming. Part D sets out the minimum standards the FEP must confirm are met on each property.

78. The duplication with clauses 6 – 9 of Schedule C is addressed above.

79. The requirement in clause 2(a) for a tool or model to be approved by a person who the Council is satisfied is suitably qualified is addressed above.

80. In terms of content of the other minimum standards:

a. 1(c) requires that nitrogen fertilizer is applied to pasture in response to future feed deficit;

b. 1(d) restricts the application rate of nitrogen fertilizer to pasture to 30kg/N/ha per dressing;

c. 2(b) limits annual purchased N surplus to 150kg/N/ha/yr;

d. 4(a) requires prioritisation of critical source areas which are “near” waterbodies;

e. A variety of restrictions are placed on the use of LUC class 6e, 7 or 8 land:

   i. No cattle older than 2 years or greater than 400kg lwt can be grazed from 1 June to 1 September (clause 4(b));

   ii. No cattle older than 2 years or greater than 400kg lwt can be grazed on forage crops from 1 June to 1 September (clause 5(a));

   iii. The number of cattle grazed on forage crops from 1 June to 1 September cannot exceed 30 in an individually-fenced area (clause 5(b)); and

   iv. No cultivation (clause 7(a));

f. 4(c) requires “farm scale erosion risks” to be mapped;

g. 6(a) and 6(b) treat culverts in the same manner as races, laneways and bridges and require them to be designed and maintained to prevent ponding and direct runoff to vegetated areas;

h. 6(b) provides only 3 years for all existing races, laneways, culverts and bridges to be upgraded to meet standard 6(a);

i. 6(c) requires new gateways, water troughs, and undefined features “self-feeding areas, stock camps and wallows”, to be located “to minimise the risks to surface water quality”. In Principle 11 of the Goals and Principles the FEP is to locate and manage these features to “minimize effects on water quality”;

j. 6(d) provides only 3 years for all such existing features to be re-located and to meet the same standard;

k. 8(b) requires effluent ponds to be managed to ensure a minimum of 75% working volume is available between 1 March and 1 May; and

l. 8(e) requires yard areas to be managed to "ensure runoff to water does not occur" and all sealed yards must have an effluent system.

81. The minimum standards in Schedule D:

a. Are unnecessarily restrictive and not supported by robust and defensible science;

b. Fail to meet the intent of the Decision to take a risk-based approach to management;[43]

c. Contradict the intent of the Decision that "farmers with reasonably standardized systems, on reasonably flat country… and with no other unusual environmental, geographical or other features" will be able to easily comply;[44]

d. Are not the most efficient methods to achieve the PC1 objectives; and

e. Were not prepared in accordance with the rules of natural justice (procedural fairness) as not all submitters were invited to the workshops to revise Schedule D.[45]

Schedule D2

82. Schedule D2 guides the development of FEP for all farming that requires a consent, regardless of activity status.

83. The requirements were intended to be "as 'simple' and efficient as possible, with the minimum amount of regulatory intervention."[46]

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43 Paragraph 1138
44 Paragraph 1732.
45 Paragraph 1749.
46 Paragraph 1719.

That has not yet been achieved.

84. The purpose of a D2 FEP is to:

a. Achieve consistency with the Goals and Principles;[47] and

b. Adopt actions that will result in the greatest reduction in diffuse discharges as practicable.[48]

85. WPL's concerns stem from the facts that:

a. Many of the Goals and Principles are worded in a way that it will be inherently difficult to establish "consistency" has been "achieved";

b. Requiring the "greatest reduction" "as practicable", especially for controlled activities, is both unreasonable and unjustified.

86. Goal 1 is to manage farming activities in a way that "minimises the loss of contaminants that potentially affect water quality". Goal 2 refers to "nutrient losses" while Goals 6, 7 and 8 refer to contaminant losses and Principles 18 and 20 refer to contaminants. It is beyond the scope of PC1 to control contaminants other than nitrogen, phosphorus, sediment and microbial pathogens.

87. Principle 9 requires farmers to farm in a manner that "achieves the nutrient loss reductions required in Policy 2". The cross reference to Policy 2 creates unnecessary circularity within the PC1 provisions. Combined with the purpose of the FEP[49], the reference to Policy 2 inappropriately requires controlled activities to reduce the NLLR to the lowest practicable level.

88. Principle 15 suggests that all land in LUC classes 6e, 7 and 8 is erosion prone land to be retired. The concerns with the unjustified use of LUC classes is addressed above.

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47 Part B, cl 1; Part C, cl 2(i), 3(a), (b), (c) and (e).
48 Part B, cl 2.
49 Part B, cl 2.

Table 3.11-1

89. In sub-catchment 66 (Waikato at Ohakuri), the notified version of PC1 indicated that no improvement in water clarity was required. The Decision requires substantial improvement in this sub-catchment. There is no discussion of or any rationale for this change in the Decision.

Definitions

Certified Farm Environment Planner

Certified Farm Nutrient Advisor

90. Both of these definitions require a suitably qualified and experienced individual to be separately approved by the Council's Chief Executive before being capable of undertaking the defined roles.

91. That is both inappropriate and unnecessary. Nor is it supported by the reasoning in the Decision.[50]

Diffuse Discharges

92. The defined term "diffuse discharges" is generally but not always accompanied by a reference to the four contaminants being controlled by PC1. The defined term may operate effectively without any reference to contaminants, but if it is to include reference to "contaminants" then it must be to the four contaminants being controlled by PC1, namely nitrogen, phosphorus, sediment and microbial pathogens.

Farming

93. The Decision Version amended the defined term from "farming activities" to "farming" resulting in a different term used in Chapter 3.11 to the rest of the plan. The change has not been carried

[50] Paragraph 1763 and 1771.

through to the wording used throughout the provisions. Nor is any justification provided for having a different definition for farming in Chapter 3.11 to the definition that applies across the rest of the plan.

Grazed hectares

94. Any land previously used for grazing that has been retired from all farming or forestry activities can be included in the land area used to calculate "grazed hectares", but only for 10 years after it is retired. The Decision suggests this "recognizes those farmers who have already retired land."[51] With respect, it does not. There is no justification for limiting the inclusion of retired land in the calculation for a 10 year term. Land set aside for environmental initiatives must be capable of being factored into the calculations going forward, and on a continuing basis so as not to undermine the benefits provided or inadvertently change the outcome of the calculations as the years pass.

Property

95. The definition of Property in the Decision Version of PC1 is a combination of the two defined terms – Property and Enterprise – in the Notified Version. The addition of "and is a single operating unit for the purpose of management" from the Enterprise definition adds nothing but confusion and the risk of properties not otherwise meeting the definition.

Slope

96. The steepness of the land surface within 20 metres of a permanent or intermittent waterbody is measured in degrees and "averaged for the paddock" to determine whether the water body must be fenced to exclude stock. This is a cumbersome and uncertain approach which may not lead to the intended environmental outcomes. Once the intent of the definition is clear, the more

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[51] Footnote 438 to paragraph 1554.

appropriate method is to amend the existing definition in the plan rather than to have two definitions.

Relief sought

General

97. WPL seeks:

a. the relief specified below, or similar to respond to the reasons above;

b. any further, additional or consequential amendments required in order for PC1 to be internally coherent; and

c. costs.

Specific

98. Amend Objective 1 as follows:

> In relation to the effects of nitrogen, phosphorus, sediment and microbial pathogens on water quality, the health and wellbeing of the Waikato and Waipā Rivers, including all ~~springs, lakes and wetlands~~ waterbodies within their catchments, is both restored over time and protected, with the result that in particular, they are safe for people to swim in and take food from at the latest by 2096.

99. Amend Objective 2 as follows:

> Progress is made over the life of this Plan towards the restoration and protection of the health and wellbeing of the Waikato and Waipā River catchments in relation to nitrogen, phosphorus, sediment and microbial pathogens ~~by the short-term numeric water quality values in Table 3.11-1 being met no later than 10 years after Chapter 3.11 of this Plan is operative~~.

100. Amend Policy 1(c) as follows:

> Enabling, through permitted activity rules, low intensity farming and horticultural activities (not including commercial vegetable production), with low risk of diffuse discharge of those contaminants to water bodies, and requiring resource consents for all other activities

101. Amend Policy 2(a) as follows:

> Requiring farming activities with a Nitrogen Leaching Loss Rate within the Moderate Nitrogen Leaching Loss range set out in Schedule B Table 1 to obtain a resource consent~~, and to demonstrate that either the Nitrogen Leaching Loss Rate is already as low as practicable given the current land use or that the Nitrogen Leaching Loss Rate will reduce to the lowest practicable level over an appropriate specified period~~;

102. Delete Policy 2(b), third bullet point.

103. Delete Policy 2(c).

104. Amend Policy 2 (d) – (f) as follows:

(d) Generally excluding farmed cattle, horses, deer and pigs from ~~rivers, streams, drains, wetlands, lakes and springs~~ waterbodies; and

(e) Where farmed cattle, horses, deer and pigs are not excluded from ~~rivers, streams, drains, wetlands, lakes and springs~~ waterbodies:

…

(ii) imposing consent conditions to require mitigation measures to address any damage to aquatic habitat ~~and discharge of contaminants~~ resulting from stock access to those waterbodies; and

(f) Encouraging creation of riparian buffers (with appropriate riparian vegetation where necessary) adjacent to ~~rivers, streams, drains, wetlands, lakes and springs~~ waterbodies to reduce overland flow of ~~contaminants~~ phosphorus, sediment and microbial pathogens and improve freshwater habitat quality.

105. Amend Policy 4(a) as follows:

~~If a property is used for dairy farming, commercial vegetable production, or has a stocking rate of more than 18 stock units per hectare and/or more than 5% in arable cropping,~~ use an appropriate decision support tool in accordance with Schedule B of this Chapter, to quantify the Nitrogen Leaching Loss Rate for the property;

106. Amend Policy 4(d) as follows:

Identify suitable mitigating actions appropriate to the land, its use, risk assessment and the short-term numeric water quality values specified in Table 3.11-1 for the sub-catchment(s) within which the land is located ~~and downstream catchments~~;

107. Delete Policy 5 and replace it with the following:

Provide consent applicants opportunities to offset or compensate residual adverse effects by:

a. A like for like offset to achieve the water quality objectives of Te Ture Whaimana o Te Awa o Waikato when:

   i. There is no net increase in a contaminant set out in Table 3.11.2 as a priority for reduction in the sub-catchment in which the property being farmed or land use change is located; and

   ii. The measures provide a reduction of the same contaminant.

b. Compensation to achieve the water quality objectives of Te Ture Whaimana o Te Awa o Waikato when:

   i. The measures provide a reduction in the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens in the Waikato and Waipā river catchment(s); and

ii. The measures provide positive benefits to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers.

c. Compensation in the form of methods to advance achievement of the broader objectives of Te Ture Whaimana o Te Awa o Waikato including but not limited to:

i. Opportunities to enhance biodiversity and the functioning of ecosystems; and

ii. Opportunities to enhance access to and recreational values of the Waikato and Waipā Rivers.

d. Other compensation to provide significant positive benefits to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers.

108. Delete Policy 7 and replace it with a policy that requires the duration of consent to reflect the investment in infrastructure, the quality and effectiveness of the consent holder's FEP, the progress towards the short-term numeric water quality values and the possibility of a replacement plan and/or a new allocation regime.

109. Amend Policy 8(a) as follows:

> People and communities will need to collectively change practices and activities ~~so as to contribute to achieving the short-term numeric water quality values in Table 3.11-1 for the catchments as a whole~~;

110. Amend Policy 10 to clearly identify which of the four contaminants controlled by PC1 the preparation required relates to, potentially by reference to Table 3.11-2 or by limiting the information able to be collected from farmers to the four contaminants controlled by PC1.

111. Delete Policy 16(a).

112. Delete Policy 19.

113. Amend Rule 3.11.4.2 to:

a. Remove the cross-references to the other rules;

b. Extend the time period to the latter Application Date where the use of land is across sub-catchments with different Application Dates; and

c. Delete the Note.

114. Amend Rule 3.11.4.3 to:

a. Increase the permitted winter stocking rate in 3A(i) to a higher limit that still reflects best practice, or replace the “stock units per hectare” parameter with a more appropriate measure;

b. Replace condition 2 with:

> The minimum farming standards in Schedule C are met.

c. Delete condition 5;

d. Replace “achieved” with “met” in condition 7(b); and

e. Require the FEP to be provided by the Application Date in condition 7(d), and where the use of land is across sub-catchments with different Application Dates the latter of those dates.

115. Amend Rule 3.11.4.4 to:

a. Increase the winter stocking rate in 4A(i) and 4B(i) to a higher limit that still reflects best practice, or replace the “stock units per hectare” parameter with a more appropriate measure;

b. Classify the use of land for farming on a property with a Low NLLR as a controlled activity in 4B(ii) where the standards in Schedule C or Part D of Schedule D1 are not met;

c. Exclude 4B from condition 2;

d. Delete condition 5;

e. Amend condition 6 to enable the FEP to be:

i. prepared in conformance with Schedule D1;

ii. certified by a Certified Farm Environment Planner; and

iii. provided on the latter date where the use of land is across sub-catchments with different Application Dates.

f. Delete matters of control (i), (iii) and (iv).

116. Introduce a new restricted discretionary activity rule for the use of land for farming on a property with a Moderate NLLR where the standards in Schedule C or Part D of Schedule D1 are not met.

117. Amend Rule 3.11.4.7 to:

a. Reword 7A as farming in a collective or sector scheme;

b. Delete condition 2; and

c. Amend condition 4 as follows:

A Farm Environment Plan:
a. has been prepared in conformance with Schedule D2; and
b. has been ~~approved~~ certified by a Certified Farm Environment Planner as:
   i. being in conformance with Schedule D2; and
   ~~ii.~~ providing evidence to demonstrate the Nitrogen Leaching Loss Rate for the property in conformance with Schedule B; and
   ~~iii. showing actions and mitigations that demonstrate how the farming activity will achieve the goals and principles set out in Part D of Schedule D2; and~~
c. is provided to the Waikato Regional Council by the latter of any relevant Application Date(s) specified in Table 3.11-3; and

118. Delete Rule 3.11.4.9(2) and introduce a new discretionary activity rule as follows (with consequential amendments to the grammar in Rule 3.11.4.9):

Any change in the use of more than 20ha of land from:
a. Woody vegetation to farming; or
b. Any land use to dairy farming
measured as a cumulative net total from that which was occurring on the property on [the date this rule is made operative].

119. Amend Schedule A to:

a. Replace the date referenced in 4(d) with the date the Schedule is made operative; and

b. Amend 4(g) as follows:

> If more than one property is farmed ~~as part of a group~~, the addresses and owners of the other properties and the name of ~~that group~~ any applicable sector scheme.

120. Amend Schedule B as follows:

a. In 2(a), delete “to the 2019/20 year” and item (ii);

b. In 2(d), amend as follows:

> The following records (where relevant to the calculation and auditing of the Nitrogen Leaching Loss Rate) must be retained for ~~the life of the Regional Plan~~ 10 years and/or the duration of the relevant consent~~, whichever is longer,~~ and provided to Waikato Regional Council at its request

c. In 3:

i. Amend the title to “A Nitrogen Leaching Loss Rate established via alternative model(s) to Overseer;

ii. Delete 3(a) and (b) and replace with:

> An alternative Decision Support Tool may be used provided a suitably qualified and experienced nutrient loss modeler confirms to WRC that the model is fit for purpose.

iii. Amend 3(c) to add the ability for the NLLR to be determined by the suitably qualified and experienced nutrient loss modeler;

iv. Delete 3(c)(ii) and 3(d); and

v. Amend 3(f) in the same manner as 2(f).

121. Amend Schedule C as follows:

a. Amend clause 1(b) to remove the use of the undefined term “paddock”, remove the use of the defined term “grazed hectares” and clarify the number of stock in a way that does not require a mathematical calculation and reflects good management practice;

b. Delete clause 5, retaining only the exclusions, and move the

content of the clause to a new definition of **Water bodies** for the purpose of Chapter 3.11 amended to clarify it captures farmed animals only consistent with the Decision;[52] and

c. Delete clauses 6 to 9, or (in the event clause 9 is retained) delete reference to LUC classes and replace with reference to slope over 25°.

122. Amend Schedule D1, Part C, clause 3(e) as follows:

> The location (and for named waterbodies, the names) of any ~~permanently or intermittently flowing~~ waterbodies on the property ~~including rivers, streams, drains, wetlands, lakes and springs,~~ specifically identifying any waterbodies that meet the criteria for stock exclusion in Schedule C;

123. Amend Schedule D1, Part D as follows:

a. Delete clauses 1(c), 1(d), 2, 8(b) and 8(e);

b. Amend clause 4(a) as follows:

> Actions to minimise sediment loss from critical source areas <u>to waterbodies are prioritized in a plan</u> ~~undertaken as soon as possible in accordance with a plan which prioritises those which are near Schedule C Clause 5 waterbodies~~.

c. Delete clauses 4(b), 5(a) and (b) or replace references to LUC class 6e, 7 or 8 with references to land where slope exceeds 25°;

d. In clause 4(c) delete “farm scale”;

e. In clauses 6(a) and (b), delete “culverts”;

f. Replace clause 6(b) with a requirement the FEP have a plan to upgrade all existing races, laneways, (culverts, if retained) and bridges within a timeframe that is achievable taking into account the scale of the farming operation and investment required;

g. Amend clauses 6(c) and (d) as follows:

> New gateways, water troughs~~, self-feeding areas, stock camps, wallows~~ and other sources of sediment, ~~nutrient~~ <u>phosphorus</u> and

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52 Paragraph 1670.

microbial pathogen loss are located ~~to minimise the risks to surface water quality~~ away from waterbodies.

Existing gateways, water troughs~~, self-feeding areas, stock camps, wallows~~ and other sources of sediment, ~~nutrient~~ phosphorus and microbial pathogen loss near waterbodies are re-located to minimise the risks to surface water quality within three years after this chapter becomes operative or an alternative timeframe if required taking into account the scale of the farm and level of investment required.

h. Amend clause 7(a) as follows:

No cultivation of ~~LUC class 6e, 7 or 8 land, or of~~ any land where slope exceeds ~~20~~ 25 degrees.

124. Amend Schedule D2, Part B, clause 2(b) as follows:

Where appropriate, identify and record the specific, time bound actions and mitigations that will be adopted to ensure the farming activities are consistent with the goals and principles set out in Part D of this schedule~~, that will result in the greatest reduction in diffuse discharges as practicable~~.

125. Amend Schedule D2, Part C, clause 2(e) as follows:

The location (and for named waterbodies, the names) of any ~~permanently or intermittently flowing~~ waterbodies on the property ~~including rivers, streams, drains, wetlands, lakes and springs,~~ and specifically identifying any waterbodies that meet the criteria for stock exclusion in Schedule C;

126. Amend Schedule D2, Part D as follows:

a. Amend Goal 1:

To manage farming activities in a way that minimises ~~the loss of contaminants~~ losses of nitrogen, phosphorus, sediment and microbial pathogens that potentially affect water quality~~, from the farm~~.

b. Amend Goal 2:

To minimise ~~nutrient losses~~ losses of nitrogen and phosphorus to water and avoid inefficient ~~nutrient~~ use.

c. Delete Principle 9

d. Amend Principle 11:

Locate and manage farm tracks, gateways, water troughs, ~~self-feeding areas, stock camps, wallows~~ and other critical source areas ~~of runoff~~ to minimise effects on water quality

e. Amend Principle 13:

Achieve ~~the intended~~ equivalent environmental outcomes ~~of~~ to Schedule C through an alternative approach.

f. Amend Goal 6:

To minimise ~~contaminant~~ losses of phosphorus, sediment and microbial pathogens to waterways from soil disturbance and erosion.

g. Amend Principle 15:

Minimise soil losses by either retiring steep erosion prone land~~, and in particular LUC classes 6e, 7 and 8,~~ or by adopting appropriate soil conservation measures and practices.

h. Amend Principle 16:

Select ~~paddocks~~ areas for growing crops and intensive grazing which minimise possible nitrogen and phosphorus, ~~faecal~~ microbial pathogens, and sediment loss from critical source areas and avoid exacerbating erosion.

i. Amend Principle 18:

Maintain or improve the physical and biological condition of soils in order to minimise the movement of sediment, phosphorus and ~~other contaminants~~ microbial pathogens into waterways.

j. Amend Goal 7:

To minimise ~~contaminant~~ losses of microbial pathogens to waterways from farm animal effluent.

k. Amend Principle 20:

Have sufficient storage available for farm animal effluent and wastewater and actively manage effluent storage levels to ensure no discharge of ~~contaminants~~ untreated effluent to waterways at all times.

l. Amend Goal 8 to specify the contaminants of interest.

127. Amend 3.11.6 to:

a. remove all references to “attribute states”;

b. clarify that progress is to be made towards achieving the water quality values rather than the water quality values being achieved within the 10 year timeframe; and

c. delete the reference to the nitrogen “load to come”.

128. Amend Table 3.11-1(a) for sub-catchment 66 (Waikato at Ohakuri) to remove the unfounded requirement to improve the clarity.

129. Delete the note below Table 3.11-2.

130. Delete the first sentence under the heading for Table 3.11-3.

131. In the Glossary:

a. Amend Certified Farm Environment Planner and Certified Farm Nutrient Advisor as follows:

> …is a person who ~~has been approved by the Chief Executive of the Waikato Regional Council to~~ provide<u>s</u>…

b. Amend the definition of Diffuse Discharges to delete the phrase “of contaminants” or to amend the definition to refer to the four contaminants controlled by PC1;

c. Amend the definition of Grazed Hectares to delete “for a period of 10 years from the date the land is retired”;

d. Amend the definition of Property to delete reference to “and is a single operating unit for the purpose of management” or such other relief that better reflects how farming actually occurs on multiple land areas;

e. Amend the definition of slope to address the concerns outlined above; and

f. Add a definition of waterbodies using Clause 5 of Schedule C that continues to exclude ephemeral waterbodies.

132. Through-out PC1 consistently use the defined terms when appropriate to do so, including but not limited to farming rather than farming activities.

WAIRAKEI PASTORAL LIMITED, by its counsel:

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TO: Registrar, Environment Court, Auckland

AND TO: Respondent

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, by 29 September 2020:

- File an electronic copy of a notice of your wish to be a party to the proceedings (in form 33) by email to the Court's dedicated email address at WRC.PC1appeals@justice.govt.nz, **or** file a signed hard copy with the Court;
- Serve an electronic copy of your notice by email on the appellant at their address for service and on the Waikato Regional Council at PC1Appeals@waikatoregion.govt.nz.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.