IN THE ENVIRONMENT COURT

ENV-2020-

IN THE MATTER	of an appeal under clause 14(1) of the First Schedule to the Resource Management Act 1991
BETWEEN	**LANDCORP FARMING LIMITED**
	Appellant
AND	**WAIKATO REGIONAL COUNCIL**
	Respondent

Notice of appeal by Landcorp Farming relating to Plan Change 1

17 August 2020

TO: The Registrar
Environment Court
Auckland

1. Landcorp Farming Limited (**Pāmu**), appeals against part of a decision of Waikato Regional Council (**Council**) on Proposed Plan Change 1 – Waikato and Waipa River Catchments to the Waikato Regional Plan Variation 1 (**PC1**).

2. Pāmu made a submission on PC1 in 2016.

3. Pāmu made a further submission on PC1 in 2018.

4. Pāmu is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).

5. Pāmu received notice of the decision on 22 April 2020.

6. The decision was made by the Council.

7. The parts of the decision that Pāmu is appealing, the reasons for the appeal, and the relief sought is set out below.

8. In general terms, the reasons for the appeal are that granting the relief sought would:

   (a) promote the sustainable management purpose of the RMA;

   (b) achieve consistency with the matters in Part 2 of the RMA;

   (c) achieve consistency with relevant planning instruments; and

   (d) represent the most appropriate means of exercising the Council's statutory functions, having regard to the efficacy of other available options available under section 32 of the RMA.

9. In addition, and without derogating from the generality of the points above, other specific reasons for the appeal are set out below.

POLICIES

10. **Policy 2**: The intent of this policy is to allow farming to occur with options ranked on an emissions based scale (RSU or N loss). This policy sets out the requirements for reductions in Nitrogen Leaching Loss Rates. The issue

for Pāmu is the ambiguous narrative descriptors for the degree of N loss reduction required.

10.1 The terminology used in the policy, particularly but not limited to subparagraphs a) and b) is so unclear as to make the requirements ambiguous. The terms 'significant', 'significant reduction' and 'low as possible' are not defined glossary terms in PC1 or the operative Waikato Regional Plan. Given the ambiguous terminology used, plan users (applicants) will have no certainty as to how this policy will be applied on farm or what the expectations are, therefore making it ineffective and inefficient.

10.2 **Relief sought:** Clearer specific guidance and definition of terms is required throughout the policy, or remove Policy 2 in its entirety.

11. **Policy 9:** The intent of this policy is to enable multiparty, multi-site consents.

11.1 Pāmu supports the intent of this policy, however the issue for Pāmu is that it is not clear how a collective consent could be let based on a catchment water quality objective, and also when actions of each holder, or others, may result in non-compliance and liability under the plan. In order for Pāmu to make clear business decisions in the future more clarity is required to provide certainty.

11.2 Policy 9 is ineffective and inefficient and has unclear enforcement mechanisms and requires greater certainty as to the benefits, or otherwise, of collectives to address catchment quality.

11.3 **Relief sought:** Amend Policy 9 to clarify roles, responsibilities and risks for multi-site consents.

RULES

12. **Rule 3.11.4.3:** The intent of this rule is to permit low intensity farming (NLLR LOW or <18WinterSR Livestock) where, among other things, the requirements in Schedule C (minimum farming standards) and a Schedule D1 (Farm Environment Plan) are met.

12.1 The primary issues with this rule for Pāmu is the lack of clarity in Schedules C and D1, and the technical basis for the 18 stock units per hectare winter stocking rate requirement. Many Pāmu farms may fit under this rule and it should be clear, correct and be easily interpreted in the Plan.

12.2 The rule lacks clarity in Schedules C and D1 matters, and the technical basis for the 18 stock units per hectare winter stocking rate requirement. In addition, Rule 3.11.4.3 is not appropriately clear in waterbodies criteria and implementation timeframe to enable Low NLLR farms and others, to be eligible.

12.3 **Relief sought**: Amend the structure of this rule or provide greater clarity for low emission farming. In part, appropriate relief is also contingent on appropriately clarifying Schedule C implementation requirements and timing and Schedule D1 issues (each of which is referred to elsewhere in this appeal).

GLOSSARY TERMS

13. **Commercial Vegetable Production:**

13.1 The issue for Pāmu is with the term "commercial", which is not clearly defined to exclude some pastoral farming activities. If pastoral farms are not clearly excluded as *Commercial Vegetable Production* growing the listed species, then this definition and consequent rules may apply to Pāmu in unintended circumstances, and requiring significant consent processes. The definition needs to clearly exclude pastoral farming activities.

13.2 **Relief sought**: Amend to exclude any possibility of pastoral faming crop activities. Define "for commercial purposes" to capture supply for human use, and clearly excluding pastoral pasture and fodder crop growing as part of any commercial operation.

14. **Property:**

14.1 The definition and its use in the rules is insufficiently clear to accommodate catchment farming practices. Pāmu may later be disadvantaged in its business decisions by the lack of clarity in the definition. The Property/Enterprise topic has not been adequately resolved to potentially allow dispersed properties to be grouped for consents. The definition does not allow for grouping of operations across sites.

14.2 **Relief sought**: Amend definition to cover farming across a mix of land ownership and leases, and multi-site farm management operations with respect to the matters covered by the plan.

15. **Slope:**

15.1 This term is used to determine significant stock exclusion and cropping provisions in the plan, including in respect of permitted activity status rules and so needs to be clear and concise. The present wording is unclear and appears potentially 'adaptable' by use of fenceline creation and averaging interpretation. Either way, a clearer definition will assist Pāmu's significant capital exposure with respect to implementing this on principally Livestock operations.

15.2 **Relief sought**: Amend the definition to give sufficient clarity with respect to paddock size and the in-field use of the criteria and averaging, to better inform Schedules B, C, D1 and D2.

SCHEDULE D1

16. **Schedule D1, Part D, clauses (1) d and (1) f:** These clauses relate to standards in Farm Environmental Plans.

16.1 Clause d) requires that nitrogenous fertiliser is not applied at rates greater than 30kgN/ha per dressing. The Nitrogenous fertiliser definition in the operative plan captures a wide variety of organicN, vermicast, soil amendments and synthetic fertilisers as well as whey and FDE. Foliar N application does not seem to be envisaged and would be inappropriately captured by the rule. The intent of this clause therefore has questionable scientific merit.

16.2 Clause f) requires that no nitrogenous fertiliser is applied 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. This rule lacks scientific rigour and does not promote sustainable management, because temperature response is dependent on crop/specific pasture and its particular soil temperature response profile.

16.3 **Relief sought**: Amend these clauses in a way to better align with good science, avoid unintended consequences, and to promote sustainable management.

17. **Schedule D1, Part D, clause 2(b):** This clause requires that annual purchased N surplus shall not exceed 150kg N/ha/yr.

17.1 This clause has the effect of grand parenting an imported N cap. The method for calculating this is specific to certain models and the environmental outcome of the rule is unclear. There is no provision within this calculation for downstream effects attenuation to be applied.

17.2 **Relief sought**: Amend rule to achieve the intended outcomes via an effects based and technically defendable limit.

18. **Schedule D1, Part D, clause 4(b)**: This clause requires that on land of LUC class 6e, 7 or 8 no cattle older than 2 years or greater than 400kg lwt are grazed from 1 June to 1 September.

18.1 This clause does not envisage the limited potential for effects where particular Class 6e land is of flat topography and has a contaminant risk profile that can be mitigated compared to 6e steep land. Pasture grazing of certain low slope or flat 6e land, may be of little risk in any season.

18.2 **Relief sought**: Amend the rule to make it risk based and to accommodate possible site specific risk mitigations which could safely accommodate the activity.

19. **Schedule D1, Part D, clause 5b:** This clause requires that no winter grazing of forage crops occurs on LUC Class 6e, 7 or 8 land from 1 June to 1 September where the number of cattle grazed exceeds 30 in an individually-fenced area.

19.1 The term *individually fenced* is uncertain in its application to foraging practices. It is also unclear what the basis is for 30 cattle per area.

19.2 **Relief sought**: Amend the provision with non-arbitrary guidance to better achieve the outcomes sought.

SCHEDULE D2

20. **Schedule D2, Part D, Principle 9a:** The ability to comply with this principle is contingent on Policy 2 definitions being adequately resolved first (as sought above).

20.1 **Relief Sought**: Amend Policy 2, as sought above, to enable 9a compliance.

21. **Schedule D2, Part D, Principle 22**: This principle relates to applying effluent to pasture and crops at depths, rates and times to match plant requirements

and soil water holding capacity without pooling or running off.

21.1 The rule is incongruent with Schedule C requirements, and is also a higher test than, and inconsistent with, operative permitted activity rules in the plan (Rules 3.5.5.1 and 3.5.5.2 and Schedule D1). Temporal and soil temperature constraints may combine to negate the use of the DESC. The standards of outcome between permitted activities and consented sites should be aligned.

21.2 **Relief sought**: Amend Principle 22 (with consequential amendment to Principle 19), and align schedule D2 requirements with the operative permitted activity rules for equal outcome or amend operative effluent application rules.

DATED this 17th day of August 2020

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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,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 and (*or* or) the decision (*or* part of 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.