

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**ENV-2020-AKL-**

**IN THE MATTER** of the Resource Management Act 1991 (RMA)

**AND**

**IN THE MATTER** of an appeal under Clause 14 of Schedule 1 of the Resource Management Act 1991 against the decision of the Waikato Regional Council on Proposed Plan Change 1 and Waikato Regional Plan

**BETWEEN** **LOCHIEL FARMLANDS LIMITED**

**Appellant**

**AND** **WAIKATO REGIONAL COUNCIL**

**Respondent**

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**NOTICE OF APPEAL AGAINST DECISION ON PROPOSED PLAN CHANGE  
1 TO THE WAIKATO REGIONAL PLAN**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON  
PROPOSED PLAN CHANGE 1 TO THE WAIKATO REGIONAL PLAN**

*Clause 14(1) of First Schedule, Resource Management Act 1991*

**To:** The Registrar  
Environment Court  
Auckland

**INTRODUCTION**

- 1 LOCHIEL FARMLANDS LIMITED (**LFL**) appeals against parts of the decision of the Waikato Regional Council (**WRC**) on Proposed Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments (**PC1**).
- 2 **LFL** made a submission on PC1.
- 3 **LFL** is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
- 4 **LFL** received notice of the decision on 22 April 2020.
- 5 The decision subject to appeal was made by WRC.
- 6 The decision appealed is identified above. LFL appeals against parts of the decision. Reasons for appeal and relief sought are set out below.

**PARTS OF THE DECISION BEING APPEALED**

- 7 The specific parts of the decision that LFL is appealing are:
  - (a) Implementation method 3.11.3.6 – management and control of pest species including Koi carp;
  - (b) Rule 3.11.4.4 – Controlled Activity Rule;
  - (c) Schedule C - Minimum farming standards:
    - (i) 1(b) - Stock exclusion: which requires water bodies to be fenced to exclude stock if the water bodies are on land with a slope over 15 degrees and the number of stock units exceeds 18 per grazed hectare at any time.

- (ii) 5(a) - Water bodies: which requires stock to be excluded from water bodies including any water body that is permanently or **intermittently** flowing.
- (d) Schedule D1 - Requirements for Farm Environment Plans for farming as a permitted activity:
  - (i) Part C, 3(b): the requirement for the Farm Environment Plan to contain a map(s) or aerial photo at a scale that clearly shows the Land Use Capability (LUC) classes.
  - (ii) Part D 4(b): 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.
  - (iii) Part D 6(b): the requirements for existing races, laneways, culverts and bridges to meet standard 6(a) within 3 years of Chapter 3.11 becoming operative.
  - (iv) Part D 6(d): the requirements to re-locate existing gateways, water troughs, self-feeding areas, stock camps, wallows and other sources of sediment, nutrient and microbial loss to minimise the risks to surface water quality within 3 years of Chapter 3.11.becoming operative.
- (e) The references to LUC classes without including a linked reference to Land Capability Use.

## REASONS FOR APPEAL

- 8 LFL owns a 3,567 hectare property and runs approximately 42000stock units (at 30<sup>th</sup>June). LFL has been farming for 31 years during which time it has entered and been successful in the Balance Environment awards, winning the PPCS (Primary Producers Co-Operative Society Ltd, now called Silver Fern Farms) Livestock Farm Award in 2007. LFL was a founding member of the Green Tick project. LFL recognises the importance of sustainability of the environment in PC1, however it is also concerned with PC1's overly restrictive regulatory approach to dry stock farming which doesn't allow for farming practicalities, particularly on large farms.
- 9 LFL operates a low intensity dry stock farming operation that has a winter stocking rate of less than 18 stock units per hectare and a Low Nitrogen

Leaching Loss Rate. However, LFL will not comply with all of the standards for a permitted activity in Schedules C and D1.

*General reasons for appeal*

- 10 The general reasons for the appeal are that the decision, in parts:
- (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA and is contrary to Part 2 and other provisions of the RMA;
  - (b) will increase and add significant costs to farming activities;
  - (c) are ambiguous or unclear which may result in inefficiencies or unintended outcomes; and
  - (d) do not enable the social, economic, and cultural wellbeing of the Waikato community and LFL in particular.

*Particular reasons for appeal*

- 11 The reasons for the appeal are as follows:
- (a) The measurement and approach in relation to management control of Koi carp under **rule 3.11.3.4** insufficiently recognise the environmental impact on freshwater caused by Koi carp.
  - (b) **Rule 3.11.4.4B** applies to dry stock farming with a winter stocking rate of less than 18 stock units per hectare and a Low Nitrogen Leaching Loss Rate. The rule provides that any farming activities under Rule 3.11.4.3 which are not able to meet schedule C **or** Schedule D1 to be a Controlled Activity. This rule is uncertain in the sense that the word “**or**” suggests that rule 3.11.4.4 may not capture the situation where farming activities are not able to meet one or more standards in both schedule C and Schedule D1. Therefore, the word “**or**” should be replaced with “**and/or**”.
  - (c) The stock exclusion requirements in **Schedule C 1(b)** do not take into account farming practicalities for large hill country farms where stocking rates are already low during winter months. Hill country farmers already maintain very low winter stocking rates to protect their farms from erosion and to ensure no pollution of waterways. The requirement to fence water bodies with a slope greater than 15 degrees where the stock units are more than 18 per hectare at any time will be impractical and significantly increase fencing costs for

farmers such as LFL. This is because the rule applies to the stocking rate in any given paddock and at any time. 18 stock units is less than 3 beef cows per hectare. During non-winter months, that stocking rate will be exceeded on the LFL farm in some paddocks. The farm covers over 3,567 hectares and operates a 'rotational grazing' practice whereby cattle will be moved from paddock to paddock on a rotational basis. Although there may be up to 35 stock units on a particular paddock in non-winter months that is only for a 2-3 day period and then that paddock is rested for 33 days before animals return to that paddock. A fairer rule would allow for an averaged stocking rate to apply across the entire farm or for an annualised rate.

Rotational grazing has been a fundamental system of grazing management on all farms since the 1950's for most of the year. Under a rotational grazing regime it will not be possible (under the current wording of the stock exclusion rule) to limit the number of cattle in any paddock at any time to a density of less than 18 stock units. It is important to note that the average stock unit density on the farm will be well under 18 at all times, because of the number of paddocks that will not have animals and have plenty of time for pasture recovery in non-winter months.

- (d) The stock exclusion standard in **Schedule C 1(b)** applies to the farming of cattle, horses, deer and pigs. That standard will apply to LFL. It is not clear, however, whether any stock units attributed to sheep should also be counted when calculating the stock units for exclusion of cattle (and other animals). The definition of Stock Unit in the Glossary assigns varying stock unit rates to sheep depending on their age. If it is intended that the standard in Schedule C 1(b) must apply a total stock unit calculation including from sheep, that should be explicit to avoid uncertainty.
- (e) LFL is concerned about the inclusion of the word 'intermittently flowing' in **Schedule C 5(a)**. This provision is disproportionately restrictive and would add unnecessary costs to farming activities as farmers would be required to fence waterbodies that flow only intermittently. LFL has modelled the length of intermittent water bodies on the farm. It is estimated that more than 100 km would then

need to have fencing on both sides together with crossings to allow stock to move from one slope to another.

- (f) **Schedule D1 Part C.3(b)** requires the mapping of “Land Use Capability (LUC) classes” in the context of a Farm Environment Plan. That process will be difficult to achieve. The information is not currently available for many farms including LFL and where there has been some mapping of LUC classes this does not necessarily correspond with accurate Land Use Capability assessment. The requirement for Land Use Capability (LUC) class mapping should be deleted.
- (g) LFL considers the standards in **Schedule D1 Part D 4(b)** are unduly restrictive. It will have a significant effect on the red meat sector in Waikato, which has cattle as an integral part of farming systems, particularly where a farm has a large area of LUC Class 6 land (LFL has only 550 hectares out of 3567 hectares that are less than LUC Class 6). Managing the risk of larger animals on more vulnerable landscapes is more appropriately addressed through the intensity of the stocking rate and management of erosion-prone land and critical source areas. The identification of age, weight and number of cattle does not address the risk of those animals being held on land that is vulnerable and those requirements are unnecessary.
- (h) The requirement for an existing farm to comply with **Schedule D1 Part D.6(b) and 6(d)** is unduly onerous particularly for large farms and it is unclear how these timeframes fit with the Application Dates in Table 3.11.3.
- (i) In LFL’s view, the reference to LUC classes should be deleted throughout the Plan Change except where specially linked to the term “Land Use Capability” in order to maintain that focus on land use capability. For example Schedule D1 Part D 4b, 5a and 5b, 7a, and Schedule D2 Part C 2(b), Part D 15 apply to LUC classes without referring to Land Use Capability.

## RELIEF SOUGHT

- 12 LFL seeks the amendments to PC1 in the manner described in Appendix 1.

- 13 Such other consequential or alternative relief by way of amendments to the provisions of PC1 that address the grounds pleaded in the appeal.

#### **ATTACHMENTS**

- 14 The following documents are attached to this notice:
- (a) Appendix 1 setting out the relief sought.
- 15 In accordance with the Environment Court's decision issued on 15 May 2020<sup>1</sup>, the following documents are not attached to the notice of appeal:
- (a) A copy of WRC's decision;
  - (b) A copy of LFL's submissions; and
  - (c) A list of parties to be served with a copy of the notice of appeal.

**DATED** at Hamilton this 17<sup>th</sup> day of August 2020



Dr J B Forret

Counsel for LOCHIEL FARMLANDS LIMITED

#### **Address for service of Person wishing to be a Party**

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<sup>1</sup> Decision No. [2020] NZEnvC 063.





## **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.

The Environment Court has extended the period within which to file a s 274 notice is extended from 15 working days to 30 working days. The 30 working days will start from the end of extended appeal period granted to those submitters that are individual farmers or growers as set out at [86] (a) of decision [2020] NZEnvC 051. For clarity, all s 274 notices are to be filed with the Court by **29 September 2020**.

Any person seeking to join an appeal as a s 274 party may file an electronic copy of any s 274 notices by email to the Court's dedicated email address at [WRC.PC1appeals@justice.govt.nz](mailto:WRC.PC1appeals@justice.govt.nz) which may be signed or unsigned, in which case no hard copy need be filed with the Court.

For those persons who decide to file a hard copy of their s 274 notices with the Court, the requirement to file an extra copy of the notice is waived. The requirement to lodge a signed original and 1 copy of any s 274 notice with the Court is waived. The requirement to file a copy of the appellant's submission and/or further submission, a copy of the Council's decision and a list of the parties to be served with the s 274 notices is waived.

An electronic copy of any s 274 notice must be served by email on the Appellant at their address for service and on the Council at [PC1Appeals@waikatoregion.govt.nz](mailto:PC1Appeals@waikatoregion.govt.nz).

The requirement to serve a copy of any s 274 notice on "all other parties" is waived. Instead, service of s 274 notices on "all other parties" will be effected by the Court uploading copies of s 274 notices received to the Environment Court's website.

### *Advice*

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

# APPENDIX 1

Provision appealed	Reasons for appeal	Relief sought (Strikethrough means deletion, underlining means addition.)
<p><b>3.11.3.6 Koi carp and Canada geese</b></p>	<p>The measurement and approach in relation to management control of Koi carp insufficiently recognise the environmental impact on the freshwater cause by Koi carp.</p>	<p>The following are to be added to 3.11.3.6:</p> <p>Waikato Regional Council will:</p> <p>a. Continue to work with, provide support to, and strongly encourage the relevant agencies (such as Department of Conservation, Fish &amp; Game and the Ministry for Primary Industries), as well as the community and landowners, to take a coordinated approach to the management, surveillance, control and eradication, of pest species including: Koi carp, brown bullhead catfish, gambusia, rudd and tench; and any new pest species; and to control, as far as practicable, advisory animals including Canada geese. In the context of Chapter 3.11 a focus should be placed on the management and control of Canada geese, <u>and the eradication of Koi Carp;</u> and</p>
<p><b>Rule 3.11.4.4B– Controlled Activity Rule – Moderate intensity farming</b></p>	<p>Rule 3.11.4.4B provides that any farming activities under Rule 3.11.4.3 which are not able to meet schedule C <del>or</del> Schedule D1 to be a controlled activity rule, are to be Controlled</p>	<p>Amend rule 3.11.4.4. 4 B to read as follows:</p> <p>4B The use of land for farming, including any associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens into water or onto</p>

	<p>Activity. The word “or” suggests that rule 3.11.4.4 may not capture the situation where farming activities are not able to meet both schedule C and Schedule D1. Therefore, the word “or” should be replaced with “<b>and/or</b>”.</p>	<p>or into land in circumstances which may result in those contaminants entering water, where:</p> <ul style="list-style-type: none"> <li>i. For drystock farming the winter stocking rate is equal to or less than 18 stock units per hectare.</li> <li>ii. For all other farming, the Nitrogen Leaching Loss Rate for the property is Low in conformance with Table 1 in Schedule B; but which cannot meet the stock exclusion standards in Clauses 1-4 of Schedule C <u>and/or</u> one or more of the standards in Part D of Schedule D1;</li> </ul>
<p><b>Schedule C 1(b)</b></p>	<p>1(b) applies a maximum grazing intensity of 18 stock units per hectare based on a slope criterion greater than 15 degrees to be applied on an “any paddock” basis. This threshold is very low given current rotational grazing practice and is therefore disproportionately restrictive and likely to be impracticable for many dry stock farmers to comply with.</p>	<p>Amend Schedule C, clause 1(b) to read as follows:</p> <p>“...with a slope over 15 degrees where <del>in any paddock</del> joining the water body, the number of stock units exceeds 18 grazed hectare <del>at any time</del>, measured <u>on a whole of farm basis.</u>”</p>
	<p>The stock exclusion standard in Schedule C 1(b) applies to the farming of cattle, horses, deer and pigs. That standard will apply to LFL. It is not clear, however, whether any stock units attributed to sheep should also be counted when</p>	<p>The intention of the standard (to include or exclude sheep from the stock unit calculation) should be clarified and explicit.</p>

	calculating the stock units for exclusion of cattle (and other animals). The definition of Stock Unit in the Glossary assigns varying stock unit rates to sheep depending on their age. If it is intended that the standard in Schedule C 1(b) must apply a total stock unit calculation including from sheep, that should be explicit to avoid uncertainty.	
<b>Schedule C 5(a)</b>	The inclusion of a farming standard in respect of rivers that flow intermittently will have a disproportionate effect on the drystock farm, particularly in the hill country that has not been, or has insufficiently been, considered in a s 32 and substantive sense.	Water bodies from which cattle, horses, deer and pigs must be excluded:  a. The bed of a river (including any spring, stream and modified river or stream), or artificial watercourse that is permanently <del>or intermittently</del> flowing; and
<b>Schedule D1 Part C 3(b)</b>	The requirement for a map that shows the Land Use Capability (LUC) classes on the property. This is impractical to achieve and any current databases are unreliable and do not necessarily align with the Land Use Capability assessment for farms.	Delete paragraph 3b  A map(s) or aerial photo at a scale that clearly shows: <del>b. Land Use Capability (LUC) classes;</del>

<p><b>Schedule D1 Part D 4b</b></p>	<p>LFL considers the standards in Schedule D1 Part D4(b) are unduly restrictive. It will have a significant effect on the red meat sector in Waikato, which has cattle as an integral part of farming systems, particularly where a farm has large area of LUC Class 6 land (LFL has only 550 hectares out of 3567 hectares that are not LUC Class 6).</p> <p>Managing the risk of larger animals on more vulnerable landscapes is more appropriately addressed through the intensity of the stocking rate and management of erosion prone land and critical source areas. The identification of age, weight and number of cattle do not address the risk of those animals being held on land that is vulnerable and are unnecessary.</p>	<p>Delete paragraph 4b</p> <p><del>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.</del></p>
<p><b>Schedule D1 Part D 6b</b></p>	<p>The requirement in paragraph 6b for existing races, laneways, culverts and bridges to meet the same standards within 3 years of Chapter 3.11 becoming operative. It is considered that this requirement for existing infrastructure be unreasonably onerous and extremely costly for farmers.</p>	<p>Delete paragraph 6b</p> <p><del>Existing races, laneways, culverts and bridges which were established before this chapter becomes operative shall meet standard 6(a) within three years after this chapter becomes operative.</del></p>

<p><b>Schedule D1 Part D 6d</b></p>	<p>The requirement in paragraph 6d for existing gateways, water troughs, self-feeding areas, stock camps, wallows and other sources of sediment, nutrient and microbial loss to be located to minimise the risks to surface water quality within three years of Chapter 3.11 becoming operative. It is submitted that such requirement to be unduly onerous for farmers in both time and money with limited environmental impact.</p>	<p>Delete paragraph 6d</p> <p><del>Existing gateways, water troughs, self-feeding areas, stock camps, wallows and other sources of sediment, nutrient and microbial loss are re-located to minimise the risks to surface water quality within three years after this chapter becomes operative.</del></p>
<p><b>General</b></p>	<p>Remove any reference to LUC classes where there is no corresponding link to Land Use Capability assessment throughout the Plan Change 1 in order to maintain that focus on land use capability.</p> <p>For example, Schedule D1 Part D 4b, 5a and 5b, 7a, Schedule D2 Part C 2(b), Part D 15.</p> <p>The correct reference should be “Land Use Capability”.</p>	<p>Deleting all the references to <b>LUC classes</b> throughout the Plan Change 1 except where specifically linked to the term “Land Use Capability.”</p>