

IN THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2020-AKL-000098

I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU

IN THE MATTER of the Resource Management Act 1991

A N D

IN THE MATTER of an appeal pursuant to clause 14(1) of the First
Schedule of the Act

BETWEEN WAIRAKEI PASTORAL LIMITED

Appellant

A N D WAIKATO REGIONAL COUNCIL

Respondent

NOTICE OF PERSON'S WISH TO BE PARTY TO PROCEEDINGS

Section 274 Resource Management Act 1991

29 September 2020



**FEDERATED
FARMERS**
OF NEW ZEALAND

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To: The Registrar
Environment Court
Auckland

Federated Farmers of New Zealand Inc ("**Federated Farmers**") wishes to be a party to the following proceedings:

Wairakei Pastoral Limited v Waikato Regional Council
ENV-2020-AKL-000098

Federated Farmers made a submission about the subject matter of the proceedings.

Federated Farmers is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.

Federated Farmers is interested in all of the proceedings.

1. Federated Farmers represents farmers in the Waikato and Waipā Rivers Catchment.
2. Federated Farmers has appealed the decision to on Proposed Waikato Regional Council Plan Change 1 – Waikato and Waipā River Catchments ("**Plan Change 1**"), as amended by the Hearing Panel, in its entirety, i.e. the decision as it relates to the introduction and all of the objectives, policies, methods, rules, definitions and schedules.
3. Federated Farmers supports sustainable management of resources and the use of regulatory and non-regulatory measures to maintain or enhance water quality, and to restore and protect the health and wellbeing of the Waikato and Waipā Rivers. However, Federated Farmers considers that the regulatory and non-regulatory methods proposed in Plan Change 1 do not appropriately give effect to the relevant higher order documents, have not appropriately balanced environmental, economic, social and cultural considerations, and are not the most efficient and effective means of achieving the objective of the plan change.
4. Federated Farmers is interested in all the issues raised by the Appellant.

5. Federated Farmers supports in part and opposes in part the relief sought by the Appellant.
6. Without limiting the generality of the above, an explanation of the issues that Federated Farmers has particular interest in is set out in **Appendix A**.
7. Federated Farmers agrees to participate in mediation or other alternative dispute resolution of the proceedings.



N J Edwards / L F Jeffries

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APPENDIX A

Provision Appealed	Reasons for Appeal	Relief Sought by Appellant	Support/Oppose	Reason
Objectives				
Objective 1	<p>The Appellant supports the amendments made to Objective 1 in the Decision. A minor correction, however, is required to give effect to the Decision.</p> <p>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</p> <p>The Decision makes it abundantly clear that the PC1 provisions are not to apply to ephemeral water bodies, including ephemeral springs. However, that is not currently clear from the wording of the provisions identified above. That must be rectified.</p> <p>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.</p>	<p>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 <u>waterbodies</u> 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.</p>	Support in part	Federated Farmers supports the use of consistent terminology and agrees defining the term “water bodies within Waikato and Waipā River catchments”. Federated Farmers has concerns that defining this term should not change the application or meaning of provisions with PC1 and therefore would oppose the change if it did.
Objective 2	Objective 2 measures progress as the short-term numeric water quality values in Table 3.11-1 being “met” no later than 10	<p>Amend Objective 2 as follows: Progress is made over the life of this Plan towards the restoration and protection of the health and</p>	Support in part Oppose in part	Federated Farmers is interested in this appeal point so as to ensure that any outcomes are consistent with the

	<p>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.</p> <p>The Decision anticipates substantive progress will get underway once PC1 is made operative, with the improvement required in the first stage target set as 20% of the long-term goals. The water 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, but the benefits may not have been realized.</p> <p>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</p>	<p>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.</p>		<p>outcomes sought in Federated Farmers’ appeal.</p>
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	manifest. Care must therefore be taken with describing progress towards the water quality values, and references to attribute states should be deleted.			
Policies				
Policy 1		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 <u>those</u> contaminants to water bodies, and requiring resource consents for all other activities.	Support	Federated Farmers supports the relief sought as it appropriately refers to reducing the diffuse discharges of “those contaminants” being the four contaminants of interest in PC1, being nitrogen, phosphorus, sediment and microbial pathogens.
Policy 2	<p>Extent of reduction 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.</p> <p>Beyond the sub-catchments</p>	<p>Amend Policy 2 as follows: ...</p> <p>a. 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;</p> <p>b. Requiring farming activities with a High Nitrogen Leaching Loss Rate as set out in Schedule B Table 1 to:</p> <p>i. Make significant reductions to their Nitrogen Leaching Loss Rate; or</p> <p>ii. Demonstrate why significant reductions to their Nitrogen Leaching Loss Rate should either not be required; or</p>	Support in part Oppose in part	<p>End of reduction In principle, Federated Farmers supports a policy containing guidance for resource consents and providing a framework for considering actions required in FEPs. However, Federated Farmers agrees with the Appellant that Policy 2 does not contain sufficient guidance to a consenting officer and plan users about how different consents will be processed, how consistency will be achieved and what will be required by farmers. In particular Federated Farmers is concerned that no certainty is provided to plan users or consenting officers about whether N leaching is “as low as practicable” or whether a “significant reduction to nitrogen” is proposed.</p> <p>Beyond the sub-catchments Federated Farmers considers that the policy should provide for a consenting approach that recognises and provide for the characteristics of the sub-catchment within which the farm is located and not be dependent on other sub-catchments.</p>

	<p>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.</p> <p>Contaminants of interest - Policy 1 identifies the four contaminants of interest in PC1, being nitrogen, phosphorus, sediment and microbial pathogens, 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.</p> <p>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.</p>	<p>iii. Demonstrate why significant reductions to their Nitrogen Leaching Loss Rate should only be required over an extended timeframe to provide an appropriate transition period for conversion to lower nitrogen leaching land use(s); having regard to:</p> <ul style="list-style-type: none"> • The accuracy of the modelled Nitrogen Leaching Loss Rate, including whether it captures the benefits of existing contaminant mitigation steps that have been put in place; • The relative vulnerability of the land to nitrogen leaching, as established by an expert analysis of, among other considerations: <ul style="list-style-type: none"> o The rainfall, topography and soil characteristics of the property(s); and o The distance of the property(s) to surface waterways within the same groundwater sub-catchment; and o Subject to data availability, the depth of groundwater under the land, the chemical characteristics of that groundwater, the speed that groundwater transmits nitrate nitrogen leached below the root zone to surface waterways and the likely attenuation of nitrate nitrogen between the root zone and any surface waterway; • Whether the farming activities are making a significant or 		<p>Contaminants of interests Federated Farmers agrees that it is important that the provisions are clear that the contaminants listed in Table 3.11-2 are the priority contaminants requiring prioritised action in the FEP</p>
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	<p>It is also important that the provisions are clear that the contaminants listed in Table 3.11-2 are the priority contaminants requiring prioritised 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.</p>	<p>disproportionate contribution to nitrogen loading in the sub-catchment(s) within which the land is located and/or downstream catchments; and</p> <p>a. How it is proposed to reduce the Nitrogen Leaching Loss Rate, including how quickly and to what extent it will be reduced; and</p> <p>c. Generally not granting land use consent applications for changes in land use that involve a material increase in the intensity of the use of land compared to the land uses as at 22 October 2016, unless it can be demonstrated that this would result in a positive contribution to the health and wellbeing of the Waikato and Waipā river catchments in accordance with Policy 5; and</p> <p>d. Generally excluding farmed cattle, horses, deer and pigs from rivers, streams, drains, wetlands, lakes and springs <u>waterbodies</u>; and</p> <p>e. Where farmed cattle, horses, deer and pigs are not excluded from rivers, streams, drains, wetlands, lakes and springs <u>waterbodies</u>:</p> <p>i. Ensuring adverse effects of stock on waterbodies are minimised, including by the identification and management of critical source areas, ensuring that access of stock to waterbodies does not cause conspicuous pugging and exacerbated erosion; and</p>		
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		<p>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</p> <p>f. Encouraging creation of riparian buffers (with appropriate riparian vegetation where necessary) adjacent to rivers, streams, drains, wetlands, lakes and springs <u>waterbodies</u> to reduce overland flow of contaminants phosphorus, sediment and microbial pathogens and improve freshwater habitat quality.</p>		
<p>Policy 4</p>	<p>Beyond the sub-catchments 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”.</p> <p>Such a consideration does not provide significant certainty to an applicant, especially when anticipating what the consent authority will consider as ‘suitable’.</p> <p>Stocking rate 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.</p>	<p>Amend Policy 4 as follows: ... a-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; and ... d. 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; and</p>	<p>Support in part Oppose in part</p>	<p>Beyond the sub-catchments Federated Farmers considers that the policy should provide for a consenting approach that recognises and provide for the characteristics of the sub-catchment within which the farm is located and not be dependent on other sub-catchments.</p> <p>Stocking rate Federated Farmers considers that an appropriate stock unit number needs to be adopted to set a reasonable threshold and would support a different number from the Decisions Version of PC1 if that more appropriately achieved sustainable management.</p>

	<p>In the rules, the 18 stock units trigger determining activity status is the winter stocking rate, not through-out the year. In the minimum standards, 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.</p> <p>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.</p>			
<p>Policy 5</p>	<p>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.</p> <p>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:</p>	<p>Delete Policy 5 and replace it with the following: <u>Provide consent applicants opportunities to offset or compensate residual adverse effects by:</u> <u>a. A like for like offset to achieve the water quality objectives of Te Ture Whaimana o Te Awa o Waikato when:</u> <u>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</u></p>	<p>Support in part Oppose in part</p>	<p>In principle, Federated Farmers supports a policy that allows for offsetting and compensation because that potentially provides greater flexibility for how environmental benefits will be achieved and helps to reduce the costs. However, Federated Farmers considers that amendments are needed to Policy 5 to provide some the context for this assessment using a framework to establish key parameters.</p> <p>Federated Farmers considers that Policy 5 should be deleted and replaced with a more appropriate framework for considering achievement of the Vision & Strategy by focusing on the</p>

	<p>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;</p> <p>b. It is inappropriate to elevate the test for non-complying activities to requiring a “positive contribution”;</p> <p>c. It is inappropriate to require all non-complying activities to provide either offsetting or compensation;</p> <p>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;</p> <p>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</p> <p>f. It fails to provide the guidance on how non-complying activities should be assessed anticipated by the Decision.</p>	<p><u>ii. The measures provide a reduction of the same contaminant.</u></p> <p><u>b. Compensation to achieve the water quality objectives of Te Ture Whaimana o Te Awa o Waikato when:</u></p> <p><u>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</u></p> <p><u>ii. The measures provide positive benefits to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers.</u></p> <p><u>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:</u></p> <p><u>i. Opportunities to enhance biodiversity and the functioning of ecosystems; and</u></p> <p><u>ii. Opportunities to enhance access to and recreational values of the Waikato and Waipā Rivers.</u></p> <p><u>d. Other compensation to provide significant positive benefits to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers.</u></p>		<p>contaminants of greatest issue in a particular sub-catchment (and the contribution to those issues of sector, that the farming activity belongs to) and not on reducing all contaminants everywhere.</p> <p>Federated Farmers supports the intention of the Appellants redraft and would support further redrafting to ensure an appropriate framework is put in place.</p>
<p>Policy 7</p>	<p>Common expiry date 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:</p> <p><i>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</i></p>	<p>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.</p>	<p>Support in part Oppose in part</p>	<p>Federated Farmers does not support the imposition of a 2035 maximum duration on resource consents. Federated Farmers is concerned that 15 years (from 2020) is not appropriate to recognise the investments some farmers may be making through what is proposed in their FEPs and that delays to resolution of Environment Court appeals may mean that this time period is very short (particularly for those farms that do not have to obtain</p>

	<p><i>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.</i></p> <p>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 certainty to enable decisions to be made on an informed basis regarding investment (including as to environmental initiatives and mitigations).</p> <p>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”. 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.</p> <p>A consent term limit of 25 years, which would result in all consents expiring within a 5 year period, is a more appropriate approach.</p>			<p>resource consent until five years after PC1 becomes operative).</p> <p>Providing a reasonable consent duration would provide an incentive, as well as certainty, for farmers to invest in mitigations that would likely otherwise not be pursued because of the uncertainty as to whether consent will be renewed or what additional costs may be imposed on them (should all consents expire in 2035).</p> <p>Having a common expiry date for WRC would also likely present a significant implementation challenge at the time the consents expire as there would be around 5-6,000 consents that would all need to be processed at the same time. Federated Farmers is concerned that this could lead to regulatory failure. While this could be managed to some degree by Council staging expiry dates prior to 2035, that would result in even shorter term consents and greater uncertainty for farmers.</p> <p>Federated Farmers does not support however support specifying future reductions and allocations in this plan change. Federated Farmers considers that needs to be part of consideration during a community process and in the context of better information and science. It is not appropriate for this plan change to bind future plan changes in that way.</p>
Policy 8	Of greater concern is the uncertainty created by the references to downstream	Amend Policy 8 as follows: a. People and communities will need to collectively change practices and	Support in part Oppose in part	In principle, Federated Farmers supports the intent of Policy 8 in terms of acknowledging that people and

	<p>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 as no-one is immune 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 effect of contaminants, and it degrades the core purpose of Table 3.11-1 providing clear metrics for each sub-catchment.</p> <p>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.</p>	<p>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; and</p>		<p>communities (not just individual farm properties) need to change, that change will be ongoing but that adverse effects need to be minimised.</p> <p>Federated Farmers considers that this should be achieved through a catchment approach via its catchment management plans, as proposed in the Federated Farmers’ appeals, rather than on a regional scale.</p>
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<p>Policy 10</p>	<p>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.</p>	<p>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</p>	<p>Support</p>	<p>Federated Farmers agrees that it is important that the policy clearly identifies the four contaminants controlled by PC1.</p>
<p>Policy 16</p>	<p>There is uncertainty surrounding the role of the short-term numeric water quality values in Table 3.11-1 created by The references to attribute states in Policy 16(a) and 3.11.6.</p>	<p>Amend Policy 16 as follows: Contribute to restoration and protection of the Whangamarino Wetland by the reduction of both diffuse and point source discharge of nitrogen, phosphorus, sediment or microbial pathogens entering the wetland system to: a. Achieve the numeric water quality values and attribute states in Table 3.11-1 for Whangamarino Wetland Catchment area sub-catchments shown in Map 3.11.3</p>	<p>Support</p>	<p>Federated Farmers considers that the focus should be on actions to assist with achieving water quality targets as opposed to requiring the targets or specific numbers themselves to be achieved (over which there is no control).</p>
<p>Policy 19</p>	<p>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.</p> <p>This goes well beyond the scope of PC1, which is the first step in the restoration and protection of the rivers and limited to the four contaminants:</p>	<p>Delete Policy 19</p>	<p>Support</p>	<p>Federated Farmers considers that the matters addressed in Policy 19 are outside the scope of the plan change.</p>

	nitrogen, phosphorus, microbial pathogens and sediment. The Decision fails to provide any rationale for the inclusion of Policy 19 or its wording.			
Rules				
Rule 3.11.4.2 Interim Permitted Activity Rule	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.	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.	Support in part Oppose in part	Federated Farmers considers the wording of Rule 3.11.4.2 is confusing and should amended to provide greater clarity.
Rule 3.11.4.3 Permitted Activity Rule - Low Intensity Farming	The Appellant 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. The clear expectation in the Decision is that highly developed farming systems incorporating effective mitigation measures, such as the Appellants's Wairakei Estate, will be permitted activities.	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: <u>The minimum farming standards in Schedule C are met.</u> c. Delete condition 5 as follows: <u>5. The use of land for farming occurs on one property; and</u>	Support in part Oppose in part	Appeal point (a) Federated Farmers considers that an appropriate stock unit number needs to be adopted to set a reasonable threshold and would support a different number from the Decisions Version of PC1 if that more appropriately achieved sustainable management. Appeal point (b) Federated Farmers considers the wording sought by the Appellant to be clearer than the Decisions Version. Appeal point (c)

	<p>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.</p> <p>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 requirements are addressed below. Regardless of the contents, the requirement as to whether they are conformed with, met or achieved should be consistent.</p> <p>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.</p>	<p>d. Replace “achieved” with “met” in condition 7(b) as follows: 7. A Farm Environment Plan: ... b. shows actions and mitigations that demonstrate how the minimum standards set out in Schedule D1 will be achieved met; and</p> <p>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.</p>		<p>Federated Farmers supports the deletion of paragraph 5 of Rule 3.11.4.3 and the adoption of an “farm enterprise” approach (with appropriate amendment to definitions, policies and rules to achieve this) for the reasons outlined in the Federated Farmers’ appeal.</p> <p>Appeal point (d) Federated Farmers supports the wording proposed by the Appellant.</p> <p>Appeal point (e) Federated Farmer considers the time period in paragraph d ought to be extended to ensure that sufficient time is provided for farmers to prepare a FEP and obtain any advice necessary in the preparation of the FEP or in understanding the application of the rule and their obligations and would support the timeframe put forward by the Appellant.</p>
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	<p>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.</p>			
<p>Rule 3.11.4.4 Controlled Activity Rule – Moderate Intensity Farming</p>	<p>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:</p> <p>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</p>	<p>Amend Rule 3.11.4.4 to:</p> <p>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;</p> <p>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;</p> <p>c. Exclude 4B from condition 2;</p> <p>d. Delete condition 5 as follows: 5. The use of land for farming occurs on one property; and</p>	<p>Support in part Oppose in part</p>	<p>Appeal point (a) Federated Farmers considers that an appropriate stock unit number needs to be adopted to set a reasonable threshold and would support a different number from the Decisions Version of PC1 if that more appropriately achieved sustainable management.</p> <p>Appeal point (b) and (c) Federated Farmers has several concerns with the drafting and application of Rule 3.11.4.4 and agrees that in places the drafting is unclear and confusing for the reasoning outlined by the Appellant. Federated Farmers supports the relief sought by the Appellant to ensure clarity.</p> <p>Appeal point (d)</p>

	<p>standards in either Schedule C or Part D of Schedule D1.</p> <p>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 FEP of D1 is more appropriate for a controlled activity.</p> <p>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.</p> <p>The Council has also reserved control over the method for achieving the “environmental outcomes” of Clauses 1-4 of</p>	<p>e. Amend condition 6 to enable the FEP to be:</p> <ul style="list-style-type: none"> 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. <p>f. Delete matters of control (i), (iii) and (iv) as follows:</p> <ul style="list-style-type: none"> i. The measures to achieve the policies and objectives of Chapter 3.11 to the extent that they are relevant to the matters in ii—xi below. ... iii. The actions and timeframes which demonstrate how the farming activity will achieve the goals and principles set out in Part D of Schedule D2. iv. The method by which the environmental outcomes of the stock exclusion requirements in Schedule C are achieved. 		<p>Federated Farmers supports the deletion of paragraph 5 of Rule 3.11.4.a and the adoption of an “farm enterprise” approach (with appropriate amendment to definitions, policies and rules to achieve this) for the reasons outlined in the Federated Farmers’ appeal.</p> <p>Appeal point (e) Federated Farmers considers that a reasonable, practicable and affordable FEP framework needs to be provided, that provides for tailored solutions.</p> <p>Federated Farmers supports changes to Paragraph 6 to enable farmers who need consent under Rule 3.11.3.4 because they cannot meet one or more of the standards in Rule 3.11.3.3 to be able to prepare a FEP in accordance with Schedule D1, except that a tailored option is proposed for the standard not met (it could be a standard in Schedule C or D1, for example).</p> <p>Appeal point (f) Federated Farmers accepts that WRC has the ability to specify within a controlled activity rule, matters over which it has reserved control in relation to an activity. However, Federated Farmers considers that such controls must be clear and appropriate to the circumstances.</p> <p>Federated Farmers supports the deletion of the matters of control sought by the Appellant.</p>
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	<p>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 certainty required for controlled activities.</p> <p>As with the permitted activity, there is a requirement that the farming occurs on “one property”. This is problematic for the reasons explained above.</p>			
New Restricted Discretionary Activity Rule	<p>Rule 3.11.4.7C is 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 for such activities to be provided for as restricted discretionary activities.</p>	<p>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.</p>	Oppose	<p>Federated Farmers considers that all moderate intensity farming activities ought to be able to be regulated under controlled activity status.</p>
Rule 3.11.4.7 – Discretionary Activity Rule – Farming in a collective, high intensity farming, and farming not otherwise authorised	<p>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.</p> <p>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.</p> <p>The conditions refer to the FEP needing to demonstrate how the</p>	<p>Amend Rule 3.11.4.7 to:</p> <p>a. Reword 7A as farming in a collective or sector scheme;</p> <p>b. Delete condition 2 as follows: 2. Farming is undertaken in conformance with the minimum farming standards in Schedule C except in the case of stock exclusion where a tailored solution may be approved as part of a Farm Environment Plan lodged with the resource consent application; and</p> <p>c. Amend condition 4 as follows: A Farm Environment Plan: a. has been prepared in conformance with Schedule D2; and</p>	<p>Support in part Oppose in part</p>	<p>Federated Farmers considers that catchment collectives ought to be a restricted discretionary activity to recognise that these are existing farming activities and that Council's discretion will relate to several key matters that are able to be listed in the plan to provide certainty for all parties. This will provide for a more efficient and effective consenting regime and was sought as relief in Federated Farmers' appeal.</p> <p>Appeal point (a) In the instance that a new restricted discretionary rule is not implemented Federated Farmers would support the rewording of 7A as farming in a collective or sector scheme.</p>

	<p>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.</p>	<p>b. has been <u>approved certified</u> by a Certified Farm Environment Planner as:</p> <p>i. being in conformance with Schedule D2; and</p> <p>ii. providing evidence to demonstrate the Nitrogen Leaching Loss Rate for the property in conformance with Schedule B; and</p> <p>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</p> <p>c. is provided to the Waikato Regional Council <u>by the latter</u> of any relevant Application Date(s) specified in Table 3.11-3; and</p>		<p>Federated Farmers does consider that as currently worded 7A captures farming activities carried out over more than one property, rather than capturing catchment collectives (as was intended).</p> <p>Appeal point (b) Federated Farmers considers that there ought to be the ability to provide a tailored solution to any of the matters in Schedule C and not just stock exclusion but does not consider that condition 2 should be deleted outright.</p> <p>Appeal point (c) Federated Farmers considers that the term “certified” is more appropriate that “approved”.</p> <p>Federated Farmers prefers the relief sought for paragraph (iii) in the Federated Farmers’ appeal.</p> <p>Federated Farmers supports the timeframes amendments sought by the Appellant.</p>
<p>Rule 3.11.4.9 – Non-Complying Activity Rule – Land use change</p>	<p>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.</p> <p>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. The moratorium could only be on land use change that could not be lawfully carried out</p>	<p>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):</p> <p><u>Any change in the use of more than 20ha of land from:</u></p> <p><u>a. Woody vegetation to farming; or</u></p> <p><u>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].</u></p>	<p>Support in part Oppose in part</p>	<p>Federated Farmers supports that land use change ought to be provided for as a discretionary activity, except that land use change to commercial vegetable production that does not meet Rule 3.11.4.8 should be a non-complying activity.</p> <p>Federated Farmers considers that a non-complying activity status for the other kinds of land use change is too high a threshold. Federated Farmers considers that a non-complying activity status (including the section 104D gateway test) is more appropriate for activities that have not been contemplated. In contrast, PC1</p>

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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. The non-complying activity status is the most onerous status imposed by PC1, yet the rule has no link to NLLR. Even if the</p>			<p>provides a robust objective and policy framework for considering a consent application for land use change.</p> <p>Federated Farmers supports the intention of the Appellants redraft and would support further redrafting to ensure an appropriate provision is put in place.</p>
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	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.			
Schedules				
Schedule A – Registration with Waikato Regional Council	<p>Registering the property in conformance with Schedule A is a condition of many of the PC1 rules.</p> <p>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.</p> <p>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.</p>	<p>Amend Schedule A to:</p> <p>a. Replace the date referenced in 4(d) with the date the Schedule is made operative; and</p> <p>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 <u>any applicable sector scheme</u>.</p>	Support in part Oppose in part	Federated Farmers in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers’ appeal.
Schedule B – Nitrogen leaching loss rate for FMUs	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	<p>Amend Schedule B as follows:</p> <p>a. In 2(a), delete “to the 2019/20 year” and item (ii) as follows: a. The Nitrogen Leaching Loss Rate must be determined by a Certified Farm Nutrient Advisor based on the amount of nitrogen being leached from the property during the most recent farming year (using the most recent version of Overseer), or any</p>	Support in part Oppose in part	<p>Appeal point (a) Federated Farmers in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers’ appeal.</p> <p>Appeal point (b) Federated Farmers is concerned that the list of information that must be retained is onerous and that the time</p>

	<p>uncertainty. The exceptions should be deleted.</p> <p>The Appellant endorses the Decision to enable the use of alternative models to Overseer. In particular it agrees with the findings that:</p> <p>a. Overseer is not the only DST able to be used, indicating:</p> <p><i>“The provisions will enable any fit for purpose DST certified by a suitably qualified person.”</i></p> <p>b. It is more effective and efficient to allow for the adoption of a suite of more inclusive and complete alternative DST;</p> <p>c. A general discretion to the CEO is unsatisfactory;</p> <p>d. The person certifying the alternative DST needs experience in the development and assessment of nutrient loss models;</p> <p>e. Essential criteria should be met before an alternative DST is certified for approval; and</p> <p>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.</p> <p>However, clause 3 (and, in particular sub-clauses (a) and (b) and the use of Certified Farm Nutrient Advisor) mean</p>	<p>full year from the 2015/16 year, to the 2019/20 year (using the version of Overseer that was the most recent available in the relevant year), except that:</p> <p>...</p> <p>ii. for any land use approved under Rule 3.11.4.9, the Nitrogen Leaching Loss Rate shall be determined through the resource consent process.</p> <p>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</p> <p>c. In 3:</p> <p>i. Amend the title to “A Nitrogen Leaching Loss Rate established via alternative model(s) to Overseer;</p> <p>ii. Delete 3(a) and (b) and replace with: <u>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.</u></p> <p>iii. Amend 3(c) to add the ability for the NLLR to be determined by the suitably qualified and experienced nutrient loss modeler;</p> <p>iv. Delete 3(c)(ii) and 3(d) as follows: c. The Nitrogen Leaching Loss Rate must be determined by a Certified Farm Nutrient Advisor based on the</p>		<p>period for retaining it is onerous. Federated Farmers considers that the obligation to retain information ought to be for no more than seven years and seeks amendments to paragraph 2d to reflect that in its appeal. In the instance that 7 years is not adopted, Federated Farmers would support the relief sought by the Appellant.</p> <p>Appeal point (c) Federated Farmers supports the amendments proposed to the title.</p> <p>Federated Farmers supports the intention of the relief sought however prefers the amendments sought in its own appeal in relation to paragraph 3.</p>
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	<p>the intended option of using an alternative model is, in reality, not available to an applicant. In particular:</p> <p>a. The opening sentence uses the phrase “approved model” inferring an approval process that is not apparent from the clause;</p> <p>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;</p> <p>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;</p> <p>d. The “robust review” required by the first bullet in clause (a) is both subjective and a higher standard than applies to Overseer;</p> <p>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;</p> <p>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</p>	<p>amount of nitrogen being leached from the property during the most recent farming year, or any full year from the 2015/16 year, except that:</p> <p>...</p> <p>ii. for any land use approved under Rule 3.11.4.9, the Nitrogen Leaching Loss Rate shall be determined through the resource consent process.</p> <p>d. The Nitrogen Leaching Loss Rate data shall comprise the data used in any approved model to calculate the Nitrogen Leaching Loss Rate and will conform to the data input standards that form part of the approved model.</p> <p>v. Amend 3(f) in the same manner as 2(f).</p>		
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	<p>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</p> <p>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.</p> <p>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. 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. 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, and intended the applicant to have the flexibility to select any year.</p> <p>If Overseer is used, records must be retained "for the life of the Regional Plan". One such</p>			
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	<p>record is “a map which shows property boundaries, block management areas, retired/non-productive areas and areas used for effluent irrigation”. By contrast, if an alternative model is used it is only “records relevant to the calculation and compliance auditing” of the NLLR that must be retained, but similarly for the life of the Regional Plan. The Appellant:</p> <p>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</p> <p>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”</p>			
<p>Schedule C – Minimum farming standards</p>	<p>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.” The panel prepared them by adapting the evidence of submitters to be “more clear, objective and enforceable”.</p> <p>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</p>	<p>Amend Schedule C as follows:</p> <p>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;</p> <p>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; and</p> <p>c. Delete clauses 6 to 9, or (in the event clause 9 is retained) delete reference to LUC classes and</p>	<p>Support in part Oppose in part</p>	<p>Appeal point (a) Federated Farmers is concerned that the use of a slope threshold for the exception to the stock exclusion requirements does not provide sufficient certainty for farmers and Council about whether streams are located on land that is above or below 15 degrees (particularly if part of a paddock is flat, or part of the land adjoining the stream is flat but the rest is very steep). Federated Farmers considers that an alternative and more appropriate proxy or threshold for the exception to the stock exclusion requirements ought to be adopted. This could include deleting the slope threshold (so that it is only when stocking rates exceed 18 stock units that stock exclusion is required) and/or adopting a narrative approach i.e. describe the activities or</p>

	<p>been imposed with no supporting rationale.</p> <p>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):</p> <ul style="list-style-type: none"> a. Waterbodies; b. Slope; c. Stock units; and d. Grazed hectares. <p>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.</p> <p>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</p>	<p>replace with reference to slope over 25°.</p>		<p>circumstances during which stock must be excluded e.g. when break feeding or grazing winter forage crops. Federated Farmers considers that such approach is consistent with the relief sought.</p> <p>Appeal point (b) Federated Farmers would support moving the content of clause 5 to a new definition of waterbodies.</p> <p>Appeal point (c) Federated Farmers supports the deletion of clauses 6 to 9 for the reasons outlined in the Federated Farmers’ appeal.</p>
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	<p>location, the requirements of clauses 6 and 9 are problematic for the reasons below.</p> <p>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. 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.</p> <p>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 explanation in the Decision is:</p> <p><i>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.</i></p>			
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	<p>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.</p>			
<p>Schedule D1 – Requirements for Farm Environment Plans for farming under Rule 3.11.4.3</p>	<p>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.</p> <p>The duplication with clauses 6 – 9 of Schedule C is addressed above.</p> <p>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.</p> <p>In terms of content of the other minimum standards:</p> <p>a. 1(c) requires that nitrogen fertilizer is applied to pasture in response to future feed deficit;</p> <p>b. 1(d) restricts the application rate of nitrogen fertilizer to pasture to 30kg/N/ha per dressing;</p> <p>c. 2(b) limits annual purchased N surplus to 150kg/N/ha/yr;</p>	<p>Amend Schedule D1 as follows: 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;</p> <p>Amend Schedule D1, Part D as follows:</p> <p>a. Delete clauses 1(c), 1(d), 2, 8(b) and 8(e);</p> <p>b. Amend clause 4(a) as follows: Actions to minimise sediment loss from critical source areas to waterbodies are prioritised in a plan undertaken as soon as possible in accordance with a plan which prioritises those which are near Schedule C Clause 5 waterbodies.</p> <p>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°;</p> <p>d. In clause 4(c) delete “farm scale”;</p>	<p>Support in part Oppose in part</p>	<p>Schedule D1, Part C, clause 3(e) Federated Farmers’ considers that intermittent water bodies only be captured in a way that is consistent with the Stock Exclusion Regulations.</p> <p>Federated Farmers agrees that there is no reason to refer to rivers, streams, drains, wetlands, lakes and springs when the term “waterbodies” is defined in the plan.</p> <p>Schedule D1, Part D (a) Federated Farmers considers the relief sought in the Federated Farmers’ appeal in relation to paragraphs 1 and 8 is more appropriate;</p> <p>(b) Federated Farmers supports the relief sought in paragraph 4(a);</p> <p>(c) Federated Farmers supports the deletion of 4(b) and 5(a) and considers that 5(b) ought to be amended to refer to strip grazing of winter forage crops on any land where slope exceeds 25 degrees.</p> <p>(d) Federated Farmers considers the relief sought in the Federated Farmers’ appeal in relation to paragraph 4(c) is more appropriate.</p>

	<p>d. 4(a) requires prioritisation of critical source areas which are “near” waterbodies;</p> <p>e. A variety of restrictions are placed on the use of LUC class 6e, 7 or 8 land:</p> <p>i. No cattle older than 2 years or greater than 400kg lwt can be grazed from 1 June to 1 September (clause 4(b));</p> <p>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));</p> <p>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</p> <p>iv. No cultivation (clause 7(a));</p> <p>f. 4(c) requires “farm scale erosion risks” to be mapped;</p> <p>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;</p> <p>h. 6(b) provides only 3 years for all existing races, laneways, culverts and bridges to be upgraded to meet standard 6(a);</p>	<p>e. In clauses 6(a) and (b), delete “culverts”;</p> <p>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;</p> <p>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 phosphorus and microbial pathogen loss are located to minimise the risks to surface water quality away from waterbodies.</p> <p>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.</p> <p>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.</p>		<p>(e) Federated Farmers supports the relief sought by the Appellant.</p> <p>(f) Federated Farmers considers that paragraph 6(b) ought to be deleted.</p> <p>(g) Federated Farmers prefers the relief sought in the Federated Farmers’ appeal.</p> <p>(h) Federated Farmers supports the relief sought by the Appellant.</p>
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	<p>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”;</p> <p>j. 6(d) provides only 3 years for all such existing features to be re-located and to meet the same standard;</p> <p>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</p> <p>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.</p> <p>The minimum standards in Schedule D:</p> <p>a. Are unnecessarily restrictive and not supported by robust and defensible science;</p> <p>b. Fail to meet the intent of the Decision to take a risk-based approach to management;</p> <p>c. Contradict the intent of the Decision that “farmers with reasonably standardized systems, on reasonably flat country... and with no other</p>			
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	<p>unusual environmental, geographical or other features” will be able to easily comply;</p> <p>d. Are not the most efficient methods to achieve the PC1 objectives; and</p> <p>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.</p>			
<p>Schedule D2 – Requirements for Farm Environment Plans for farming that requires consent</p>	<p>Schedule D2 guides the development of FEP for all farming that requires a consent, regardless of activity status.</p> <p>The requirements were intended to be “as ‘simple’ and efficient as possible, with the minimum amount of regulatory intervention.”</p> <p>That has not yet been achieved.</p> <p>The purpose of a D2 FEP is to:</p> <p>a. Achieve consistency with the Goals and Principles; and</p> <p>b. Adopt actions that will result in the greatest reduction in diffuse discharges as practicable.</p> <p>WPL’s concerns stem from the facts that:</p> <p>a. Many of the Goals and Principles are worded in a way that it will be inherently difficult</p>	<p>Amend Schedule D2 as follows:</p> <p>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.</p> <p>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;</p> <p>Amend Schedule D2, Part D as follows: a. Amend Goal 1:</p>	<p>Support in part Oppose in part</p>	<p>Federated Farmers generally supports the intention of the Appellants amendments, however, Federated Farmers prefers the relief sought in its own appeal.</p>

	<p>to establish “consistency” has been “achieved”;</p> <p>b. Requiring the “greatest reduction” “as practicable”, especially for controlled activities, is both unreasonable and unjustified.</p> <p>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.</p> <p>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 FEP49, the reference to Policy 2 inappropriately requires controlled activities to reduce the NLLR to the lowest practicable level</p> <p>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.</p>	<p>To manage farming activities in a way that minimises the loss of contaminants <u>losses of nitrogen, phosphorus, sediment and microbial pathogens</u> that potentially affect water quality, from the farm.</p> <p>b. Amend Goal 2: To minimise nutrient losses <u>losses of nitrogen and phosphorus</u> to water and avoid inefficient nutrient use.</p> <p>c. Delete Principle 9</p> <p>d. Amend Principle 11: Locate and manage farm tracks, gateways, water troughs, self-feeding areas, stock camps, wallows and other <u>critical</u> source <u>areas of runoff</u> to minimise effects on water quality</p> <p>e. Amend Principle 13: Achieve the intended equivalent environmental outcomes of to Schedule C through an alternative approach.</p> <p>f. Amend Goal 6: To minimise contaminant losses of <u>phosphorus, sediment and microbial pathogens</u> to waterways from soil disturbance and erosion.</p> <p>g. Amend Principle 15: Minimise soil losses by either retiring <u>steep</u> erosion prone land, and in particular LUC classes 6e, 7 and 8, or by adopting appropriate soil conservation measures and practices.</p> <p>h. Amend Principle 16: Select <u>paddocks areas</u> for growing crops and intensive grazing which</p>		
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		<p>minimise possible nitrogen and phosphorus, <u>faecal microbial pathogens</u>, and sediment loss from critical source areas and avoid exacerbating erosion.</p> <p>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 <u>microbial pathogens</u> into waterways.</p> <p>j. Amend Goal 7: To minimise contaminant losses <u>of microbial pathogens</u> to waterways from farm animal effluent.</p> <p>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 <u>untreated effluent</u> to waterways at all times.</p> <p>l. Amend Goal 8 to specify the contaminants of interest.</p>		
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Tables

3.11.6 List of tables and maps	There uncertainty surrounding the role of the short-term numeric water quality values in Table 3.11-1 created by 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”.	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”.	Support in part Oppose in part	Federated Farmers in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers’ appeal.
Table 3.11-1(a) <i>E.coli</i> and Clarity Attribute States	In sub-catchment 66 (Waikato at Ohakuri), the notified version of PC1 indicated that no improvement in water clarity was required. The Decision	Amend Table 3.11-1(a) for sub-catchment 66 (Waikato at Ohakuri) to remove the unfounded requirement to improve the clarity.	Support in part Oppose in part	Federated Farmers is interested in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers’ appeal.

	requires substantial improvement in this sub-catchment. There is no discussion of or any rationale for this change in the Decision.			
Table 3.11-2 Prioritisation of contaminants in each sub-catchment (as noted under Policy 1)	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.	Delete the note below Table 3.11-2.	Support in part Oppose in part	Federated Farmers is interested in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers' appeal.
Table 3.11-3 Sub-catchment Application Date		Delete the first sentence under the heading for Table 3.11-3.	Oppose	Federated Farmers considers that the sentence is a need to resolve cross boundary issues
Definitions				
Grazed Hectares	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." 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.	Amend the definition of Grazed Hectares to delete "for a period of 10 years from the date the land is retired".	Neutral	Federated Farmers in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers' appeal.

<p>Property</p>	<p>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.” 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.</p>	<p>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.</p>	<p>Support</p>	<p>Federated Farmers supports the relief sought by the Appellant and considers that it is necessary for the plan to reflect how farming actually occurs on multiple land areas.</p>
<p>Slope</p>	<p>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 appropriate method is to amend the existing definition in the plan rather than to have two definitions.</p>	<p>Amend the definition of slope to address the concerns outlined above.</p>	<p>Support in part</p>	<p>Federated Farmers agrees that the current wording could be amended to ensure there is greater compliance with the rule.</p>
<p>New Definition: Waterbodies</p>		<p>Add a definition of waterbodies using Clause 5 of Schedule C that</p>	<p>Support in part</p>	<p>Federated Farmers supports the use of consistent terminology and agrees</p>

		continues to exclude ephemeral waterbodies		defining the term “water bodies within Waikato and Waipā River catchments”. Federated Farmers has concerns that defining this term should not change the application or meaning of provisions with PC1 and therefore would oppose the change if it did.
Other		Through-out PC1 consistently use the defined terms when appropriate to do so, including but not limited to farming rather than farming activities	Support	Federated Farmers supports the need for consistency of terms throughout the plan.