

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2017-AKL- 000096

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under Clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Plan Change 1 to the Waikato
Regional Plan

BETWEEN **Director General of Conservation**

Appellant

AND **Waikato Regional Council**

Respondent

**NOTICE OF WISH TO BE
PARTY TO PROCEEDINGS PURSUANT TO
SECTION 274 RESOURCE MANAGEMENT ACT 1991**

To: The Registrar

Environment Court

Auckland

1. Horticulture New Zealand ("**HortNZ**") wishes to be a party pursuant to section 274 of the Resource Management Act 1991 ("**RMA**") to the following proceedings:
 - (a) *Director General of Conservation v Waikato Regional Council (ENV-2017-AKL 000096)* being an appeal against decisions of the Waikato Regional Council on the Proposed Plan Change 1 to the Waikato Regional Plan.
2. HortNZ made submissions and further submissions on the Proposed Plan Change 1 (submitter number 73801).
3. HortNZ also has an interest in these proceedings that is greater than the general public as it represents interest groups in the community that are likely to be adversely affected by the proposed relief sought by the Respondent
4. HortNZ is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
5. HortNZ is interested in the whole proceedings, noting particular interest to the points set out in the attached table.
6. HortNZ agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Lucy Deverall

Advisor, North Island, Natural Resources and Environment
Horticulture New Zealand

29 September 2020

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Advice

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

Director-General of Conservation v Waikato regional Council ENV-2020-AKL-000096

Provision Appealed	Relief Sought	Support / Oppose	Reason
Objectives 1 and 2	Amend to include objective of “ecosystem health”.	Oppose in part	The appeal does not provide further detail on the consequences in terms of the interpretation, implementation and monitoring of the planning framework.
New objective	Insert new provision as follows: <i>“The integrated management of land, land use and development, freshwater, the coastal environment and associated ecosystems is required to ensure the restoration and protection of the health and wellbeing of the Waikato and Waipā River catchments.”</i>	Oppose in part	The appeal does not provide further detail on the implications of this new objective on the remaining planning framework withing PC1.
Policy 1	<ul style="list-style-type: none"> - Delete subsection (b). - Amend to apply (d) to <u>all</u> lakes (rather than just riverine and peat). - Amend the policy to provide greater specificity on what constitutes an acceptable level of ‘general improvement’, and including reference to how the improvement contributes to sub-catchment and cumulative catchment outcomes. 	Support in part	Greater clarity is required on “general improvement”. HortNZ does not generally oppose the application of PC1 to all lakes but is interested in how this impacts the attribute tables, prioritisation, FEP content and the PC1 framework generally.
Policy 5	Amend as follows: <i>“Provide for offsetting and compensation that better achieves the objectives of Te Ture Whaimana o Te Awa o Waikato where:</i>	Oppose in part	Unclear how “permanently” and “net environmental benefit” are to be applied, monitored and enforced.

	<p><i>a. There is an overall reduction in the relevant sub-catchment(s) of the diffuse discharge of each of nitrogen, phosphorus, sediment and microbial pathogens from the property(s), <u>and</u></i> <i><u>b. net environmental benefit can be demonstrated, and</u></i> <i>c. or</i> <i>b. There is a sufficient reduction in the diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens from the property(s) so that the positive benefits improvements to restore and protect to restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers <u>permanently and</u> demonstrably exceed those already required by Chapter 3.11. the adverse effects from any increases in the diffuse discharge of any of those contaminants, provided any increases are not of a contaminant that Table 3.11-2 identifies as a priority for reduction in that sub-catchment.</i></p>		
Implementation methods 3.11.3.3 and 3.11.3.4	<p>Amend to 3.11.3.3 to:</p> <ul style="list-style-type: none"> • ensure the co-ordinated monitoring of wetland, estuarine and coastal environments, • ensure periphyton growth is monitored where there is a risk of nuisance periphyton growth in accordance with steps 1-4 in the previous column, • ensure monitoring of dissolved oxygen • include direct reference to nutrients (N and P) at the sub-catchment scale in subclause d • Include monitoring of macrophyte cover in tributary sub-catchments <p>Amend to 3.11.3.4 to:</p> <ul style="list-style-type: none"> • Require 3-yearly review and monitoring towards the progression 	Neutral	HortNZ is interested in understanding the implementation and consequences of the proposed changes to these methods.

	<p>of achieving the water quality values and giving effect to Te Ture Whaimana in subclause a,</p> <ul style="list-style-type: none"> • Include specific methods for monitoring or further development of attributes for [various]: 		
New implementation method	<p>New method inserted to benchmark nutrient and sediment characteristics of wetlands as follows:</p> <p><u><i>“Waikato Regional Council, working with others, will:</i></u></p> <p><u><i>a. undertake the benchmarking of wetland soil nutrients, surface water quality, sub-catchment sediment and nutrient inputs and wetland vegetation for all natural wetlands across the Waikato and Waipā River catchments by 2023; and</i></u></p> <p><u><i>b. prioritise the improvement of degraded wetland systems by identifying methods and requiring actions to reduce the inputs of contaminants”.</i></u></p>	Neutral	HortNZ is interested in understanding the implementation and consequences of the proposed new method.
Rule 3.11.4.4	<p>Amend Rule 3.11.4.4 to specify a restricted discretionary activity status in place of a controlled activity status for activities in 4A and 4B as well as the following specific amendments:</p> <ul style="list-style-type: none"> • Ensure all lake FMU are included in the matters where discretion is to be reserved in (vi) • Ensure further guidance is provided for plan users around what healthy lake environments are and the land use activities and discharges that are likely to have the greatest impact on each lake type. 	Oppose	A controlled activity status is suitable given the matters of control and supporting schedule requirements.
Rule 3.11.4.8	<p>That rule 3.11.4.8 be more clearly worded to ensure it is clear to all plan users when the rule applies.</p> <p>Words to the achieve this could be <i>“For the use of land for</i></p>	Oppose	HortNZ does not believe the appellant has scope to address this issue and believe the recommended changes are

	<p><i>commercial vegetable production on land which is additional to that regulated by, that does not comply with one or more rules in Rule 3.11.4.5, including...</i> or similar/alternative wording is sought that would clearly outline to plan users when the rule applies.</p>		not consistent with the intention of the rule as set out in the decision report.
Schedule D1	Include a definition of “material increase” to the Plan Change which clarifies the intent of Part E (b).	Support in part	“Material increase” needs a definition for clarity
Schedule D2	<p>Replace Part B (1) purpose statement with: <i>“The purpose of an FEP is to manage land use activities in a way that reduces the diffuse discharge of contaminants from farming activities and achieves the water quality attribute states in Tables 3.11-1(a) – (d).”</i>.</p> <p>Revise Goal 1 to ensure it is clear for all plan users that the management of farming activities needs to be managed for the most sensitive waterbody/receiving environment within the sub-catchment</p> <p>Include a new principle to Goal 1 that states: <u>“Manage farming activities within Peat Lake FMUs in accordance with the good management practice guidance contained in ‘For Peat’s Sake’”</u>.</p> <p>Amend Principle 5 (Goal 2) to specifically reference that sources of nutrients and phosphorus includes the urine and faeces of animals as follows: <i>“Manage the amount and timing of nutrient inputs, taking account of all sources of nitrogen and phosphorus, including from the</i> </p>	Neutral	Interested in understanding the impacts and consequences of the proposed changes on the industry.

	<p><u>urine and faeces of animals to match plant requirements and minimise risk of losses to water.”</u></p> <p>Amend Goal 3 and associated principles 9 a and b to refer to “contaminant management” rather than nitrogen management or nutrient loss by replacing “nitrogen” with “contaminant” throughout.</p> <p>Include an additional principle to Goal 4 on farm contaminants as follows: <u>“Identify all on farm contaminant sources and implement specific, time based, strategies to reduce the risk of contaminants entering waterbodies”.</u></p> <p>Add an additional principle to Goal 4 on setbacks that states: <u>“Specify the location and distance of setbacks from waterbodies on the farm to achieve compliance with Schedule C”.</u></p> <p>Add an additional principle to Goal 6 on redundant man-made drainage channels as follows: <u>“Identify any man-made drainage channels that can and will be retired and restored to their pre-excavated state”.</u></p> <p>Include an additional principle to Goal 7 on effluent storage ponds as follows: <u>“Ensure effluent storage facilities are sealed to restrict the seepage of effluent. The permeability of the sealing layer must not exceed 1x10-9m/s.”</u></p>		
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	<p>Part E – remove clause 2 and replace it with a clause that requires a 3-yearly review of all FEPs as follows: <u>“In accordance with 3-yearly review intervals or other such review requirements set out in the conditions of any resource consent.”</u></p>		
Tables 3.11-1	<p>Remove paragraph 2 and replace it with the following: <u>“Where water quality is to be maintained – current, short term and 80-year attribute states in Tables 3.11-1(a) - (d) are the same, to reflect that there is to be no decline in water quality. Where water quality is to be improved from the current state – the short-term attribute state is represented as 20% of the improvement from current state required to achieve the 80-year attribute state”.</u></p> <p>Remove paragraph 3 and replace it with the following: <u>“The achievement of the attribute states in Table 3.11-1 will be determined through analysis of monitoring data in accordance with the required assessment frequency specified in the table or in the implementation methods for each attribute”.</u></p>	Neutral	HortNZ is interested in part of the conversation around changes to the tables due to impacts on the industry.
Tables 3.11-2, 3.11.3 and Map 3.11.2	<p>Delete Table 3.11-2 and references to the table in Chapter 3.11 in its entirety.</p> <p>Amend Table 3.11-3 and Map 3.11-2:</p> <ul style="list-style-type: none"> • Increase priority of sub-catchment #3 Whakapipi to Year 1 from Year 2 to recognise the priority improvements needed to Lake 	Oppose	Potential consequences for the implementation of PC1.

	<p>Otamatearoa.</p> <ul style="list-style-type: none"> • Increase priority of sub-catchment #58 Waiotapu at Campbell from year 4 to year 1, to recognise the improvements required in Lakes Tutaeinanga, Ngapouri and Ngahewa. 		
<p><i>Federated Farmers of New Zealand Inc v Waikato Regional Council ENV-2020-AKL-000148</i></p>			
Provision Appealed	Relief Sought	Support / Oppose	Reason
Policy 2	<p>Amend the policy guidance for the preparation of FEPs so that it is clear, consistent, reasonable and practicable.</p> <p>Delete paragraphs a and b and replace them with a framework that recognises all contaminants, provides for tailored FEPs, and provides an appropriate transition pathway and/or</p> <p>recognises geophysical and other constraints or influences on high intensity activities.</p> <p>Amend paragraph c (and elsewhere in PC1) to clarify that land uses are not grand parented to the intensity they were operating at in 2016, to provide a reasonable definition as to what is considered to be a “material” increase in intensity of land use and to provide flexibility for intensification to recognise the nature of farming.</p>	Support in part	The appellant seeks a range of changes to improve certainty and consistency. HortNZ seeks to be involved in discussions due to the potential for consequential impacts.

	<p>Amend paragraph d to require stock to be excluded from permanent waterbodies.</p> <p>Amend paragraph e to:</p> <ul style="list-style-type: none"> - apply to areas “in accordance with Schedule C”; - Ensure adverse effects are “managed” rather than “minimised”; - Have mitigation measures in FEPs rather than consent conditions. <p>Amend (or otherwise delete) paragraph f to read as follows:</p> <p><u>Where appropriate and practicable, encouraging (but not requiring) creation of</u></p> <p><i>riparian buffers (with appropriate riparian vegetation where necessary) adjacent to</i></p> <p><u>Schedule C waterbodies</u> rivers, streams, drains, wetlands, lakes and springs to manage critical source areas reduce overland flow of contaminants and improve freshwater habitat quality.</p>		
Policy 3	Amend Policy 3 to ensure a consistent and equitable approach to	Oppose	The pathway for commercial vegetable

	all activities in the PC1 catchment and to address Federated Farmers' concerns (aligning CVP provisions with the outcomes of provisions for pastoral farming).		production in PC1 still requires improvement in water quality and will require practice change in order to meet long term goals. HortNZ's evidence demonstrates the impacts of CVP expansion within refined area limits, that there is a negligible increase in N and mitigating effects for other contaminants.
Policy 4	<p>Amend Policy 4 to ensure that the focus is on providing a reasonable and implementable framework for FEPs.</p> <p>Amend paragraph a to address Federated Farmers' concerns, including that the NLLR should be used as a drafting gate for dairy activities.</p> <p>Amend paragraph b as follows:</p> <p>Identify land most vulnerable to diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens including critical source areas for overland flow of sediment, phosphorus and microbial pathogens; and <u>Having regard to the Catchment Profiles and the framework described in Policy 2(a) [as amended by Federated Farmers' appeal]</u> Identify land most vulnerable identify actions to <u>manage</u> diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens including critical source areas</p>	Support in part	HortNZ seeks to be included in discussions on improving the FEP and NLR processes due to the potential for consequential impacts on the industry.

	<p>for overland flow of sediment, phosphorus and microbial pathogens; and</p> <p>Amend paragraph c as follows:</p> <p><i>Take a risk-based approach to managing land use, including adaptive management, to <u>respond to environmental, economic and technological changes over time</u> reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens; and</i></p> <p>Amend paragraph e as follows:</p> <p><i>Prioritise actions and timing of those farming practices that will reduce <u>manage</u> the contaminant(s) set out in Table 3.11-2, having regard to any relevant sub-catchment, or collective management plan and <u>Catchment Profile, the contribution of the farming enterprise to the contaminant and the resources reasonably available to the farm enterprise in terms of those priority actions;</u> and</i></p> <p>Amend paragraph f as follows:</p> <p><i>Take account of any off-property mitigation within the sub-</i></p>		
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	<p><i>catchment (e.g. from a sub-catchment collective approach, <u>Catchment Profile</u> or other Farm Environment Plans) of the effects of diffuse discharge; and</i></p> <p>Amend paragraph g as follows:</p> <p><i>Set out clear, specific and time bound actions and practices, <u>whilst recognising that those proposed mitigations that are further into the future will not have the same specificity or clarity as those in the immediate future, with the former being refined as the time approaches</u>; and</i></p> <p>Amend paragraph h as follows:</p> <p><i>Enable Farm Environment Plans to be updated (<u>without requiring a variation in resource consent</u>) so that continuous improvement, new technologies and mitigation practices can be adopted, such that where necessary diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens further reduce to assist in meeting the objectives of this Chapter.</i></p>		
New Rules	Adopt a new Rule 3.11.4.3A to provide for farming activities as a permitted activity under a Sector Scheme.	Support in part	HortNZ seeks to ensure adequate provision for catchment collectives.

	Adopt a new Rule 3.11.4.7A to provide for catchment collectives as a restricted discretionary activity.		
Rule 3.11.4.8	<p>Amend paragraph 7 as follows:</p> <p><i>The total area of land for which consent is sought must not, in combination with any extant resource consents <u>for commercial vegetable production granted under Chapter 3.11</u>, exceed the maximum sub-catchment area limits specified in Table 1 below.</i></p> <p><i>Such other amendments as are necessary to address Federated Farmers' concerns and ensure a practicable and consistent rule framework.</i></p>	Oppose	The purpose of the rule is to provide for limited expansion in addition to existing activities. HortNZ's evidence provides detailed analysis on the area maximum's and the cumulative effects on water quality (including existing activities). Restricting expansion until all CVP consents under Chapter 3.11 are consented will result in failure to produce to enough fresh vegetables to meet demand.
Schedule E	Amend Schedule E (as well as to the relevant policies, rules and schedules) to achieve a Sector Scheme regime under which FEPs can be prepared as a permitted activity, reduce the risk of regulatory failure, and without placing the obligation of monitoring and enforcing compliance with FEPs on Sector Schemes.	Oppose	Sector schemes will be critical to the successful implementation and ongoing monitoring of PC1. Sector schemes should apply to both permitted and consented activities.
CFEP and CFNA	Federated Farmers has proposed in the context of Schedules D1 and D2 that a CFEP and CFNA could be replaced by a suitably qualified and experienced person (SQEP). If this is the case, or if the term SQEP is to also be used, Federated Farmers seeks the adoption of a reasonable and appropriate definition of SQEP and/or the deletion of the definitions of CFEP and/or CFNA.	Oppose in part	No proposed wording provided. HortNZ wishes to be involved in any discussions on definitions of SQEPs or and/or deletion/amendments to definitions of CFEP/CFNA.

